



# NATIONAL NATIVE TITLE TRIBUNAL



ANNUAL REPORT  
1999 – 2000



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Cover photograph: Mediation meeting between Innawonga and Eastern Guruma people with Tribunal member Doug Williamson, Harding River, Western Australia, May 2000



# NATIONAL NATIVE TITLE TRIBUNAL

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2 October 2000

The Hon Daryl Williams AM QC MP  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney

I am pleased to submit to you, for presentation to the Parliament, the Annual Report of the National Native Title Tribunal for the year ended 30 June 2000.

This report has been prepared in accordance with section 133 of the *Native Title Act 1993*.

Yours sincerely

**Graeme Neate**  
President

FOR MORE INFORMATION, PLEASE CONTACT FREECALL 1800 640 501



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# PRESIDENT'S OVERVIEW



## INTRODUCTION

Change and transition was the theme of the *Annual Report 1998–99* of the National Native Title Tribunal (the Tribunal).

The year covered by this report was another year of change and transition.

Some of the amendments made to the *Native Title Act 1993* (the Act) in 1998 were still being implemented and more of the practical implications of the amendments were being realised. In more general terms, there was a sense that the ways in which native title issues are dealt with in different parts of the country were still being developed or refined.

This report is primarily about the Tribunal. Its focus is not, however, confined to the management of the administrative affairs of the Tribunal. Changes to the environment in which the Tribunal operates provide challenges to how we perform our statutory functions and they provide catalysts for change in aspects of the organisation. Consequently, this overview also looks at various changes that have occurred within the organisation and externally during the year covered by this report.



**Graeme Neate,**  
President of the  
National Native  
Title Tribunal

## CHANGE AND TRANSITIONAL TRENDS WITHIN THE TRIBUNAL

In the reporting period:

- a substantial number of registration test decisions were made, and the focus of the decision-making process started to shift from assessing claimant applications that were made under the Act before the 1998 amendments (the old Act) to assessing applications made under the amended Act (the new Act) as they are lodged;
- the Federal Court gave its first decisions on reviews of some of the registration test decisions and, where necessary, the registration test practices were revised in accordance with those decisions of the Federal Court;
- the Native Title Registrar (the Registrar) commenced a process of notifying individual persons and bodies and the public about claimant applications under the notification provisions of the new Act;
- the completion of substantial amounts of registration test work and the increase in notification of applications marked a refocusing of the Tribunal's resources and energies towards mediation;
- an increased awareness of, and interest in, the potential of indigenous land use agreements (ILUAs) resulted in a greater demand for information and other assistance from the Tribunal as people sought to negotiate agreements and have them registered;

- the increase in ILUA activity caused the Tribunal to review its procedures for providing assistance to parties negotiating agreements, and changes to the law caused a revision in procedures for registering such agreements;
- there were changes in the membership of the Tribunal;
- various changes occurred to the management of the administrative affairs of the Tribunal and the Tribunal developed a new strategic plan.

## Registration test workload

The Registrar has the statutory function of applying the stringent registration test to all native title claimant applications lodged since 30 September 1998 and most applications lodged before that date. Generally speaking, this is the first substantial administrative step in the process leading to a determination in relation to an application.

A summary of registration test decisions is posted on the Tribunal's web site. The reasons for decision are made public in the same way once they have been edited to remove personal references or any matters of cultural or customary sensitivity.

When a claimant application passes all the conditions of the test, the applicants gain (or retain) valuable procedural rights, including the statutory right to negotiate or be consulted about a range of proposed activities on the area to which their application relates. Those rights can be exercised in the period before the application is determined.

In the final nine months of the 1998–99 reporting period, the Registrar and staff of the Tribunal devoted much of their attention to assessing hundreds of claimant applications lodged under the old Act. In that period 139 registration test decisions were made.

Assessing most of the remaining backlog of old Act applications, as well as applications made under the new Act, placed significant demands on the Registrar and his delegates and other resources of the Tribunal.

In the period covered by this report 317 registration test decisions were made. Many of the applications tested (238 or 75 per cent) were made under the old Act, and 79 were made after the amendments which introduced the registration test. Details of the registration test work are set out in 'Claimant applications—output 1.1.1' (p.62) of this report.

It is relevant to note that:

- of the applications tested during the year, 197 (or 62 per cent) satisfied all the conditions of the registration test;
- of the applications tested, 120 (or 38 per cent) did not satisfy one or more of the conditions and so were not registered on (or were removed from) the Register of Native Title Claims;

- of the applications that failed the registration test 83 (or 70 per cent) did so after an abbreviated procedure was applied because the applicants did not provide the Registrar with additional information.

At 30 June 2000, 456 applications had been tested since 30 September 1998. About 75 per cent of those applications were lodged with the Tribunal under the old Act.

The registration test decisions made in the 21 months since the 1998 amendments demonstrate, in summary, that:

- of the 340 applications lodged with the Tribunal under the old Act and to which the registration test was applied, 155 (or 46 per cent) satisfied all the conditions;
- of the 116 applications lodged with the Federal Court under the new Act and to which the registration test was applied, 106 (91 per cent) satisfied all the conditions;
- of the applications which did not satisfy all the conditions of the registration test, 132 (72 per cent) were applications to which an abbreviated process was applied because the applicants did not provide the Registrar with the necessary information.

It is apparent that most applications made under the amended Act were prepared with the legislative conditions in mind and provided sufficient information to satisfy those conditions. By contrast, supplementary information and documentation was necessary before any application made under the old Act could satisfy every condition of the registration test. Requesting and assessing that additional material has been a time consuming process. The changing demands on the Tribunal's resources are reflected in the time taken to make most registration test decisions. In the 21 months since 30 September 1998, it took an average of 13.1 months to make decisions in respect of each old Act application. By comparison, decisions on applications under the amended Act were made on average 2.8 months after the date of lodgement.

One practical consequence of implementing the 1998 amendments, including the application of the registration test, was the reduction in the number of claimant applications. In some parts of Australia, particularly Western Australia, applicants amended, withdrew or combined applications. As a consequence there was a steady reduction in the overall number of claimant applications despite the lodgement of new applications in the reporting period.

At 30 June 2000, 66 applications made under the old Act and 12 made under the new Act remained to be tested. New applications will have to be tested as they are lodged. Experience suggests that in the next year it will take much less time (and, hence, fewer of the Tribunal's resources) to deal with registration test matters.

*The Federal Court is referring more matters to the Tribunal for mediation and is supervising closely the progress of mediation.*

## **Review of registration test procedures in light of Federal Court decisions**

If a claimant application is not accepted for registration, the applicant may apply under the Act to the Federal Court for a review of the Registrar's decision. Another avenue for review is provided by the *Administrative Decisions (Judicial Review) Act 1977*.

As at 30 June 1999, 19 of the Registrar's decisions had been challenged by way of applications for review by the Federal Court. None of those matters had been heard and decided by the Court. In 1999–2000 five of those applications were withdrawn or discontinued. Importantly, single judges of the Federal Court delivered six judgments on individual applications for review, and a Full Federal Court delivered judgment in relation to an appeal against one of those judgments. A summary of the key decisions is in Appendix IV (p.133) in this report.

In most respects, the Court confirmed the interpretation of the relevant sections of the Act adopted by the Registrar and his delegates, particularly the interpretation and application of the conditions of the registration test.

The Court upheld the challenges to the Registrar's decisions in respect of two legal issues. In one series of challenges, the Court held that the Registrar had failed to give procedural fairness to a State by not providing it with the additional information provided by the applicants for the purpose of satisfying the conditions for registration. Following those decisions, the Registrar negotiated with each State and Territory about the basis on which information provided in confidence to the Registrar could be made available to the relevant government for consideration and comment.

## **Notification procedures for claimant applications**

Changes were made to the notification requirements in the Act in 1998. After each new claimant application has been assessed against the conditions of the registration test (and irrespective of whether the application satisfies all of those conditions), the Registrar must notify a range of specified persons and bodies that the application has been made. As a general rule, the Act requires the Registrar to notify individually:

- any person who at the relevant time held a proprietary interest in relation to any part of the area covered by the application, which is registered in a public register of such interests maintained by the Commonwealth, a State or Territory; and
- any other person whose interests may be affected by a determination in relation to the application and who the Registrar considers it appropriate to notify.

To satisfy that requirement, the Registrar depends on the relevant government department(s) to provide lists of the names and addresses of all relevant persons. Locating and providing that information can be time consuming and costly, depending on such factors as the number of parcels of land covered by a claimant application, the types of tenures involved, the number of registers that need to be searched, and the number and complexity of other unanswered requests for tenure information that the Registrar has made previously.

The Registrar or his delegates have negotiated with governments to develop procedures for the timely and cost effective provision of tenure information for this purpose.

The Act does not, however, require individual notification in every case. The Registrar has some discretion in the matter. If he considers that, in the circumstances, it would be unreasonable to give notice to an individual land owner or land holder, he is not required to give notice to that person. The Act does not say in what circumstances it would be 'unreasonable' to give individual notice. It does, however, empower the Registrar to apply to the Federal Court for an order about whether a particular person or class of persons must be given notice of a claimant application or how such notice must be given.

The Registrar applied to the Federal Court for orders concerning the operation of the notification requirements in relation to a claimant application in Western Australia. The reasons for decision of Justice French in *Bropho v Western Australia* provide significant guidance to the Registrar in the discharge of his statutory obligations and the exercise of his discretionary power.

Notification commenced towards the end of the period covered by this report. Because there are differences in the land tenure registration systems of States and Territories, further guidance from the Federal Court may be appropriate in relation to notification in some other parts of the country. The Registrar was considering commencing proceedings in relation to at least one other State to gain judicial guidance on the appropriate form of notification.

### **Increased focus on mediation of claimant applications**

The Act contains numerous references to mediation as the means of resolving some or all of the issues raised by native title applications. It gives the Tribunal and the Federal Court complementary powers and functions to attempt to have applications resolved in this way.

At 30 June 2000, there were 539 claimant applications at some stage between lodgement and resolution. In the reporting period, 241 claimant applications were discontinued or combined with other applications and 86 new claimant applications were lodged. The extent of discontinuance and consolidation is considerable. Between the commencement of the Act

on 1 January 1994 and 30 June 2000, 1026 claimant applications were made, but approximately half that number had been discontinued or combined by the end of that period.

The making of numerous registration test decisions during the reporting period allowed more matters to be notified. A reduction in the volume and complexity of registration test work will allow more resources of the Tribunal and representative bodies to be applied to the mediation of claimant applications.

The increasing level of mediation activity in the reporting period will continue into the next reporting period. The Federal Court is referring more matters to the Tribunal for mediation and is supervising closely the progress of mediation. More mediated outcomes can be expected.

### **Increased assistance in the negotiation of ILUAs**

The Act contains a scheme that enables the negotiation of legally binding agreements that can cover a range of land uses on areas where native title has been determined to exist or where it is claimed to exist.

ILUAs may be used in conjunction with the resolution of native title applications. They can be about future acts and may deal with the exercise of native title rights and interests as well as other rights and interests in relation to an area. Once an ILUA is registered under the Act, it has effect as if it were a contract among the parties, and all the native title holders for the area are bound by it. As is required by the Act, the Registrar maintains the Register of Indigenous Land Use Agreements.

The Tribunal has important functions in relation to ILUAs. People who wish to make an agreement may request assistance from the Tribunal in negotiating the agreement, and the Tribunal has the function of providing that assistance. The Tribunal may attempt to mediate when someone objects to an area agreement or alternative procedure agreement being registered, and the Tribunal may inquire into objections against the registration of alternative procedure agreements.

The ILUAs made under the new Act demonstrate the scope for agreements to be negotiated in relation to a range of land uses.

In the year covered by this report seven applications were made for the registration of ILUAs and seven others were partially processed. Details of those applications, and various practical issues arising in relation to the negotiation and registration of ILUAs, are recorded later in this report. Some of the difficulties experienced in having early ILUAs registered arose from an unfamiliarity of parties with the requirements of the Act and the relevant regulations. The legal requirements changed when the Native Title (Indigenous Land Use Agreements) Regulations 1999 commenced on 22 December 1999, replacing the 1998 regulations.

Although the level of ILUA registration activity was lower than anticipated, the Tribunal was aware of numerous negotiations taking place

in attempts to reach agreements. The Tribunal was not involved at all stages of many negotiations. Indeed, it was sometimes not involved until an agreement was lodged for registration. Many people who were contemplating or commenced negotiations asked the Tribunal for assistance.

The Tribunal took various steps to help parties to ILUAs, or people contemplating entering ILUA negotiations, to understand the nature and benefits of ILUAs and the legal requirements that have to be satisfied before an ILUA can be registered.

The Tribunal published a guide to the registration of ILUAs, which was revised following changes to the Regulations. The guide is available on the Tribunal's web site.

## **Changes in membership of the Tribunal**

The members of the Tribunal are appointed by the Governor General for specific terms. They are classified as presidential and non-presidential members. The Act sets out the qualifications for membership. Some members are full-time and others are part-time appointees.

Various changes to the membership of the Tribunal were made during the year covered by this report. As a result, the membership grew from 12 members at 30 June 1999 to 15 members at 30 June 2000. The 15 members comprised four presidential members (three full-time and one part-time) and 11 other members (four full-time and seven part-time).

The resignation of Ms Joanna Kalowski was effective on 1 July 1999. The five-year term of Justice Jane Matthews, part-time Deputy President, expired on 25 July 1999. On 19 December 1999, the five-year term of Mr Kim Wilson expired.

Six new members were appointed early in 2000 and their terms started between February and March.

Dr Gaye Sculthorpe was appointed as a part-time member from 2 February 2000. She is Director of the Indigenous Cultures Program at Museum Victoria, a member of the Aboriginal Advisory Committee of the National Museum of Australia, and was a Council Member of the Australian Institute of Aboriginal and Torres Strait Islander Studies. Dr Sculthorpe lives in Melbourne.

Mrs Jennifer Stuckey-Clarke was appointed as a part-time member from 2 February 2000. She practices as a barrister at the New South Wales bar. Her areas of practice include native title, property and trusts, and she was involved as a legal representative in the mediation of some native title claims. Mrs Stuckey-Clarke lives in Sydney.

Mrs Ruth Wade was appointed as a part-time member from 2 February 2000. She is a business consultant and was the Executive Director of the Cattlemen's Union of Australia, in which capacity she was involved in the negotiation of heads of agreement between Aborigines, pastoralists and

environmentalists in the Cape York area. Mrs Wade lives in Clermont, Queensland.

Mr John Sosso was appointed as a full-time member from 28 February 2000. He was a consultant specialising in public administration, native title and infrastructure projects. His previous employment included Deputy Director-General of the Queensland Premier's Department where he was involved in native title matters. Mr Sosso lives in Brisbane.

Mr Graham Fletcher was appointed as a full-time member from 20 March 2000. He was involved in land management policy issues for over 25 years as an officer in the Queensland public service. He was particularly involved in indigenous land matters from 1995 onwards, most recently in Native Title Services within the Department of Premier and Cabinet. Mr Fletcher lives in Cairns.

Mr Alistair (Bardy) McFarlane was appointed as a full-time member from 20 March 2000. He is a lawyer and was a partner in a law firm where he practised in the areas of government relations, commercial litigation, environmental law and native title. He has a background in primary production and a particular interest in natural resource management and planning issues, and was involved in native title mediations in South Australia. Mr McFarlane lives in Adelaide.

The five-year term of Ms Sue Ellis, a part-time member of the Tribunal based in New South Wales, ended in April 2000.

The five-year terms of one part-time member, Dr Mary Edmunds, and two full-time members, Hon Chris Sumner and Hon Fred Chaney AO, concluded in April 2000. Each was reappointed for a term of three years. Dr Edmunds was appointed as a part-time member from 12 April 2000. Mr Chaney and Mr Sumner were appointed as full-time Deputy Presidents from 18 April 2000.

I gratefully acknowledge the contribution of each member of the Tribunal during the year covered by this report.

## **Management of the Tribunal**

Other aspects of the organisation and the management of the administrative affairs of the Tribunal are described elsewhere in this annual report. Consistent with this theme of change and transition, it is appropriate to note briefly some aspects of the Tribunal's operations.

In accordance with Commonwealth Government requirements, the Tribunal moved to accrual budgeting and negotiated a contract for the outsourcing of information technology (IT) operational and systems support. The combination of these events had an impact on the availability of resources for service delivery to the Tribunal's clients. This was due to the requirement of accrual accounting that liabilities must be covered by assets. However, this requirement was itself affected by the move to IT outsourcing during the reporting period, which involved the

sale of all IT-related equipment. Until that time, IT equipment constituted the Tribunal's single largest asset base. As a consequence, the Tribunal needed to cover its liabilities by setting aside an amount of cash, which reduced the level of resources available for service delivery to clients.

In the previous year there was a change of focus from program structure and objectives under program management and budgeting to a new outcome and output framework. That shift was consistent with the Commonwealth Government's requirements set out in detail in the 1999–2000 budget papers. That transition was completed in the year covered by this report and builds on the anticipation of those requirements evident in the *Annual Report 1998–99*.

The Tribunal developed a new three-year strategic plan to replace its *Business Plan 1997–2000*, which had been formulated in an earlier period of the Tribunal's work and before the 1998 amendments to the Act.

## **EXTERNAL CHANGES AND TRANSITIONAL TRENDS AFFECTING THE TRIBUNAL**

The Tribunal does not operate in a vacuum. The ways in which it performs its functions, exercises its powers, and meets its obligations are significantly influenced by numerous factors over which it has no control. They include:

- developments in the law on native title;
- the establishment of alternative bodies and legislative regimes in States and Territories;
- the policies and procedures of governments;
- the procedures of the Federal Court;
- the recognition and roles of representative bodies.

The year covered by this report saw changes or developments in respect of each of those factors that had, and will continue to have, implications for the Tribunal's work.

### **Developments in the law of native title**

There were no amendments to the Act in the year covered by this report. The law on native title, however, continued to develop as courts explored the nature and content of native title, and applied and interpreted the terms of the Act and other legislation affected by it.

About 50 written judgments were delivered by superior Australian courts on matters involving native title law during the year. For example, judgments on native title claimant applications were delivered in relation to land in Western Australia and the Northern Territory and in relation to areas of sea surrounding Croker Island in the Northern Territory.

Summaries of the main judgments are contained in Appendix IV (p.139) in this report.

Some judgments concerned the nature of native title, the types of extinguishing tenures, and the circumstances in which native title is extinguished in part or in whole.

Decisions of that nature affect various aspects of the Tribunal's work—the registration test, the mediation of native title applications and the arbitration of future act matters.

As noted earlier, the Federal Court was asked to rule on various applications to review decisions of the Registrar and his delegates on whether particular native title applications satisfied all the conditions of the registration test. Where changes to the Registrar's procedures were required as a result of the Court's decisions, those changes were made.

### **Alternative procedures and bodies to deal with native title issues in States and Territories**

The Act provides that State and Territory legislatures may enact laws that will operate in place of provisions of the Act.

The main interest to date has been in enacting alternative provisions to the future act regime of the Act. For such legislation to be part of the national scheme:

- it must comply with the requirements set out in the Act;
- the relevant Commonwealth Minister (currently the Attorney-General) must determine that the legislation complies with those requirements; and
- neither House of the Federal Parliament must disallow the Minister's determination(s).

During the reporting period there was a limited exercise of the options available to the States and Territories under the new Act. Some attempts to create alternative regimes were frustrated, and the outcome of others was unclear as at 30 June 2000.

#### **Northern Territory**

In 1998 the Northern Territory Government legislated for an alternative provisions scheme. The Federal Attorney-General subsequently determined that the legislation complied with the requirements of the Act. On 31 August 1999 the Senate voted to disallow each of the three determinations made by the Attorney-General. Consequently, those alternative provisions cannot operate. On 22 March 2000 the Northern Territory Minister for Resource Development issued a statement announcing that more than 1,000 exploration and mining tenure applications would be processed under the Native Title Act. All the applications were over areas of pastoral lease land. The Minister said that the Territory Government believed that its proposed alternative

provisions were fair and equitable to all parties and would have provided a far better administrative process. The Government, however, was 'prepared to work closely and in good faith with the Land Councils to facilitate the grant of these titles under the Commonwealth scheme', the Minister said.

At the end of the year covered by this report, notices had not been published under s.29 of the Act. However, administrative procedures were being put in place to publish notices about the accumulated applications for exploration and mining tenements. Because those applications were made in relation to pastoral lease land where there were no native title claimant applications, Aboriginal people who wish to obtain the right to object or negotiate under the Act will have to lodge claimant applications over those areas. Any such applications have to be assessed in accordance with the registration test conditions. They are then notified and, probably, mediated. Some negotiations in relation to the proposed future acts may involve the Tribunal. Objections to the use of the expedited procedure and applications to arbitrate in respect of a proposed future act are dealt with by the Tribunal. The potential workload for the Tribunal is multifaceted in nature and substantial in volume.

### **Queensland**

The Queensland Legislative Assembly passed legislation on 21 July 1999 that included an alternative provisions scheme. Having considered voluminous submissions in relation to the legislation, the Federal Attorney-General announced in June 2000 that he had determined that the proposed Queensland alternative right to negotiate provisions comply with the Act. His 13 determinations were placed before both Houses of Parliament. On 8 June 2000, Australian Democrats Senator Woodley moved to disallow all the determinations. At 30 June 2000 the Senate had not voted on those motions.

### **Western Australia**

In December 1999 the Western Australian Parliament enacted the *Native Title (State Provisions) Act 1999*. Some of that legislation was received by the Federal Attorney-General in March 2000 and he invited submissions from representative Aboriginal and Torres Strait Islander bodies in Western Australia. At 30 June 2000, the Attorney-General had not decided whether to make the requested determinations.

### **New South Wales**

In February 2000, the New South Wales Government sought two determinations in respect of proposed alternative right to negotiate provisions relating to low-impact exploration activities. On 17 February the Federal Attorney-General announced that he was seeking submissions from the New South Wales Aboriginal Land Council and the public.

At the end of the reporting period most of the alternative provisions had not cleared all of the various hurdles necessary before they could

operate as part of the scheme created by the new Act. Consequently, the Tribunal remained the principal, if not the sole, body (other than the Federal Court) dealing with native title matters under the Act in each State and Territory.

### **South Australia**

In South Australia there has been for some years an alternative regime involving the State Supreme Court and the Environment, Resources and Development Court. The Tribunal, however, continues to deal with claimant applications and some future act matters in that State.

The commencement of any alternative State or Territory laws will affect the nature and volume of work to be done by the Tribunal. If a function of the Tribunal is conferred on a local institution, that work is no longer done by the Tribunal. The Tribunal's members and staff focus on the remaining matters. The volume of those remaining matters may increase, rather than decrease, as a result of the operation of State or Territory legislation. For example, if a State or Territory government were to publish notices about proposed future acts in relation to areas of land or waters where there were no native title claimant applications, those notices could prompt the lodgement of claimant applications with the Federal Court. Those applications would have to be registration tested by the Registrar, who would also need to notify nominated persons and bodies and the public about the applications. The Federal Court and Tribunal would deal with the mediation and determination of the claims.

No State or Territory proposes to establish an equivalent body to replace the Tribunal. Consequently, the Tribunal can expect to have some role to play in each jurisdiction into the foreseeable future.

## **Changes to policies and procedures in States and Territories**

State and Territory governments have a critical role in the resolution of native title issues. Without the support of governments, consent determinations of native title cannot be made. Governments can do much to set the tone of mediation and some other parties will take a lead from the attitude and approach of a government party.

Changes of approach or policies by State and Territory governments can significantly affect the environment in which native title issues are dealt with and, hence, the ways in which the Tribunal performs its functions.

Three changes in different parts of the country during the reporting period illustrate the range of areas in which significant policy decisions can affect the administration of native title law.

### **South Australia**

In South Australia, the State Government was engaged in negotiations with the Aboriginal Legal Rights Movement (the Aboriginal representative body for South Australia), the South Australian Farmers

Federation and the South Australian Chamber of Mines and Energy towards a possible ILUA or ILUAs.

Discussion documents were issued by the negotiation parties. They stated that the participants recognised that it would be better to reach agreements with other groups through binding ILUAs instead of continuing with court cases. The participants wanted the talks to resolve native title issues and claims in South Australia to the satisfaction of all the parties and land users represented by them. They wanted to act in a way that created greater understanding and recognition of each other's positions and needs; built trust and respect between land users in the State; and formed a strong basis for future dealings and harmony between the parties and land users.

The Attorney-General for South Australia, Hon Trevor Griffin, was involved in those negotiations and the State Government provided substantial financial and other resources. The Tribunal was involved as an observer with the option of providing information to the parties if required.

A direct consequence of those negotiations was that the attention and resources of the participants were diverted from the mediation of most individual claimant applications while the participants were seeking a framework in which South Australian claims are resolved. The Tribunal adjusted its mediation program accordingly and informed the Federal Court about those changes.

### **Victoria**

In April 2000, the Attorney-General of Victoria, Hon Rob Hulls, made a speech in which he referred to the 'opportunity to spearhead a new approach to native title'. He indicated that he would be 'making every effort to resolve native title claims by negotiation and mediation'. It was the Victorian Government's intention to establish a whole-of-government approach to native title that required a coordinated management of the issues. The Department of Justice would lead the process by developing a Native Title Policy and a Mediation Framework Principles document. The Government intended to provide assistance to applicants to prepare native title determination applications and to participate in mediation and negotiation (including future act negotiations). The Attorney-General emphasised that the settlement of claims allows for a range of outcomes, including possible native title outcomes and ILUAs.

Although the administrative implementation of that scheme was not finalised within the year of this report, the implications for the Tribunal were becoming apparent. Tribunal employees were involved in training programs for Victorian Government staff, and negotiations were proceeding in relation to various native title matters.

### Western Australia

In *Western Australia v Ward* (a decision delivered in March 2000 with final orders in May 2000), a majority of the Full Federal Court decided that native title rights and interests are extinguished over areas of:

- Western Australian pastoral leases issued after 1934 which were enclosed (for example, by fencing) or, where there is no enclosure, which were otherwise improved;
- Western Australian pastoral leases issued before 1933 which were both enclosed and improved; and
- mining leases and general purpose leases issued under the *Western Australian Mining Act 1978*.

On 16 June 2000, the Premier of Western Australia announced that the Western Australian Government had decided to process mining tenement applications on such areas where native title had been extinguished and not put them through the native title processes. On 20 June 2000, the Tribunal was formally advised that the State Government (which was a party to certain proceedings before the Tribunal) would proceed to grant tenements where it was satisfied that native title had been extinguished.

That policy has potential to significantly affect, among other things, the number of future act matters that will be dealt with under the Act by the Tribunal.

### Requirements of governments to mediate claimant applications

The pace of mediation and the outcomes reached in relation to claimant applications are significantly influenced by the approach to mediation taken by the relevant State or Territory government. Other parties take their lead from, or are influenced by, a government's assessment of the application and the best way to deal with it.

Because mediation takes place in private and on a 'without prejudice' basis, the Tribunal has not previously reported on the various approaches that influence when and how mediation might occur in different parts of Australia.

In the reporting period however, the Queensland and Western Australian Governments published their requirements for agreeing to determinations of native title or for entering into negotiations with applicants. A clear articulation of such policies assists each group of applicants to know what information the government requires before it will consider a consent determination rather than go to court. A clear State or Territory negotiating policy can also assist the Tribunal to develop a mediation strategy when the Federal Court refers an application to it.

The documents published in the reporting period include:

- *Guide to Compiling a Connection Report*, Queensland Government, July 1999 (the *Guide*);
- *General Guidelines—Native title determinations and agreements*, Government of Western Australia, March 2000 (the *Guidelines*).

For the purpose of this overview it is appropriate to identify the salient features of the approaches by quoting or closely paraphrasing parts of each document.

### **Queensland**

The Queensland Government's policy favours negotiated agreements between native title claimants and other land users. An important starting point for agreements between native title claimants and the State is the compilation and presentation of a connection report. These reports provide the State with a basis for recognition that an applicant group holds native title over the land or waters claimed and the rights and interests sought under native title. The connection report becomes central to mediating agreements between the State and the applicant group.

The purpose of the *Guide* is to set out clearly and fully what the State requires in such a report. The *Guide* includes a suggested format to be followed in compiling a report and identifies various potential sources of information.

A connection report (also known as an anthropological report, historical report, claimants' statement) has three essential elements:

- evidence that the applicants are in fact the traditional owners of the land and waters claimed;
- evidence of continuity of connection; and
- evidence of existence of traditional law and custom which gives rise to the claim, and of continued holding of the native title rights and interests by the group in accordance with those laws and customs.

A connection report is presented at an early stage in the mediation process. The assessment process undertaken by the State looks at:

- the range of sources (both contemporary and retrospective) which have been used in the compilation of the report;
- how the contemporary and the retrospective information have been reconciled to present a continuous record; and
- how the sources have been analysed and interpreted to support the applicants' claim.

If there are gaps or questions arising from reading the connection report, the applicant group may be asked to supply more information.

The assessment process enables a recommendation to be made to the Executive of State Government confirming that the connection report has

presented credible evidence that clearly identifies the applicant group as the traditional owners of the land and waters.

Acceptance of the connection report by the State during mediation is a type of preliminary acknowledgement of the nature and scope of the rights and interests sought in relation to the claimed country. The State's requirements for the proof of native title may not necessarily be the same as other parties to the same claim.

The State is particularly conscious of its obligations to maintain and ensure the confidentiality of culturally sensitive material provided for the purposes of a connection report. All aspects of a connection report prepared as part of mediation of a claim, including the State's response, are confidential to the mediation process. Each report is kept in a locked place within the Historical and Anthropological Unit in the Department of Premier and Cabinet. If required, specific procedures can be negotiated to limit access to the material to those directly involved in the connection report.

The *Guide* states that it will be constantly revised and welcomes suggestions and comments for its improvement.

### **Western Australia**

The Western Australian Government will consider negotiation of native title claims where:

- the native title claimants provide satisfactory evidence of their ancestry and their continuous traditional connection (the evidence to be incorporated in what is referred to as a 'connection report');
- there are no overlapping claims other than those which reflect shared native title rights and interests;
- the native title claim excludes tenures granted by the Crown,
- native title rights and interests claimed over non-exclusive tenures are consistent with other parties' rights and interests; and
- the native title claimants acknowledge that any native title rights and interests are subject to State laws of general application.

Each native title claim is assessed on its merits to determine if there is scope for a consent determination of native title. The support of other people, indigenous and non-indigenous, with interests in the same area will be important in reaching a consent determination.

The *Guidelines* contain the Western Australian Government's basic expectations for any native title connection report. They set out the structure and content of a connection report, but the Government appreciates that individual reports will vary. The purposes of the main parts of a connection report are:

- to clearly identify the applicant group and to establish the applicant group as the descendants of the native title holders for the claim area at the time of the acquisition of British sovereignty;

- to describe the features of the system of indigenous law by which the native title rights and interests of the claimants operate;
- to establish that there is continuity of connection between the applicants and the claim area;
- to detail the nature of rights in land and waters that are being claimed and to justify each right by reference to traditional law and custom and continued exercise of each right.

Applicants are encouraged to consult with the Native Title and Strategic Issues Division of the Ministry of the Premier and Cabinet prior to preparing a connection report.

The detail provided in a connection report should be no less than is required to prepare a case for the Federal Court, with the exception that the native title applicants are not expected to provide oral testimony. Native title applicants are not, however, precluded from providing some evidence in the form of video or audio recordings or witness statements.

The negotiation process (including draft agreements, acknowledgements, proposals and the like) will be without prejudice, that is, they will not be used or referred to in litigation or made public.

Any part of the connection report that requires particular confidentiality should be brought to the Government's attention before its submission and every reasonable effort will be made to meet claimants' requests.

The connection report will not be disclosed to any person except relevant officers of the Ministry, consultant anthropologists and historians and legal advisers as required. Following negotiations, the documents will be securely archived.

However, claimants should be aware that, if the application goes to trial, the State does not undertake to continue to preserve the confidentiality of the connection report in the event that evidence at the trial is inconsistent with the connection report. That is to say, claimants and their experts should ensure that statements in the connection report are made with the same care as would statements in court.

## **Federal Court procedures**

The reporting period has seen a development of the close working relationship between the Federal Court and the Tribunal which has been created as a necessary consequence of the 1998 amendments to the Act. The Court, among other things, supervises the mediation process by requesting reports from the Tribunal on the progress of mediation in particular cases. The Court and the Tribunal have agreed on the form and nature of mediation reports. In the reporting period, Tribunal members provided 174 mediation reports to the Court.

Employees of the Tribunal work closely with Court officers in relation to many administrative matters to ensure the smooth processing of native

title applications as they pass between the two institutions on the way to resolution. Variations in the practices of individual provisional docket judges in different States have meant that the nature and level of interaction between the Tribunal and the Court differs from State to State.

In its report *Managing Justice: A review of the federal civil justice system*, published in early 2000, the Australian Law Reform Commission highlighted the need for 'close working arrangements' between the Federal Court and the Tribunal and pointed to 'the need for consultation, appropriate prediction and planning' in dealing with the Court's native title workload. In identifying a collaborative approach to meeting the challenges, the Commission stated:

It is important that the parties, the Court and the NNTT discuss matters relevant to the fair and efficient resolution of native title cases to develop some consensus about management options and a common understanding about the management of native title litigation.

Such discussions have been taking place in various ways and at various levels and have provided useful ways of exchanging information and developing procedures.

One potentially significant change in Federal Court practice was the adoption of a proposed timeframe for the resolution of each native title application from the date of lodgement with the Court. As the Australian Law Reform Commission has reported, the Federal Court aims to ensure 'that native title cases will be managed, heard and determined in a timely and appropriate manner'. The Federal Court told the Commission that following consultations with participants at user group meetings it had set a goal of three years to dispose of all the native title cases currently before the Court. This is a goal. It is not intended to be prescriptive.

It remains to be seen whether and how often the goal will be achieved. The Commission noted that not all participants agree with that goal. There are concerns that such a goal could limit opportunities for effective mediation in the Tribunal. The Commission heard from practitioners that management of cases by the Court and the imposition of tight timetables may be counter-productive, as it may unnecessarily drain applicants' resources and direct attention away from productive negotiation and mediation inside and outside the Tribunal. The numerous different factors that may be relevant to each case, the pace of mediation and litigation, the resources available to key parties and institutions and other factors point to the need for the Court to manage the native title list in a way that is informed by the peculiar features of native title litigation.

The Commission stated that the experience of all those involved has been, and should continue to be, shared in meetings between representatives from the Aboriginal representative bodies, the Commonwealth Government, State and Territory governments, the

Federal Court and the Tribunal. Such meetings should give ongoing consideration to the timeframe within which native title cases should reasonably be determined (whether by a mediated agreement between the parties, a determination by the Court or a combination of both processes) and ways to achieve this.

### **Re-recognition of representative bodies and changing functions**

Most of the 1998 amendments to the Act commenced to operate on 30 September that year. Other changes, principally in relation to representative Aboriginal and Torres Strait Islander bodies, were scheduled to commence on 30 October 1999. The commencement date was subsequently postponed to 1 July 2000.

Those changes included the removal of sections of the Act concerning the original representative bodies and inserting new sections specifying, among other things, the functions and powers of representative bodies. Those provisions were to take effect once the existing representative body regime had been revamped.

The Act required the relevant Commonwealth Minister, the Minister for Aboriginal and Torres Strait Islander Affairs, to determine the boundaries of representative body areas and invite eligible bodies to apply for recognition as the representative body for those areas. The invitations were to be issued in the transition period before the new provisions commenced.

In May 1999, the Minister, Senator Herron, announced the boundaries of the areas for which there would be representative bodies (invitation areas). As a result of the redrawn boundaries, the number of representative body areas in Western Australia and in Queensland was reduced from nine to six. There were two invitation areas in the Northern Territory and one each for New South Wales, Victoria, Tasmania, South Australia, the Australian Capital Territory/Jervis Bay, and the external territories (Heard and McDonald Islands, Cocos and Christmas Islands, Norfolk Island and the Australian Antarctic Territory). The total number of representative body areas nationally went from 24 to 20.

Under the relevant section of the Act, the Minister invited the existing representative body (or bodies) to apply for recognition in relation to an invitation area within the boundaries of their current area(s). The Minister could recognise an eligible body as a representative body if he was of the opinion that the body satisfied various criteria set out in the Act. He was assisted in the process by a panel of people engaged by the Aboriginal and Torres Strait Islander Commission (ATSIC).

The first decisions to recognise five original representative bodies were gazetted on 22 March 2000. Decisions to recognise some other original representative bodies were gazetted in June 2000.

As at 30 June 2000, 10 representative bodies had been recognised. Representative bodies for the other 10 areas had not been recognised. The Pilbara Aboriginal Land Council Aboriginal Corporation Inc unsuccessfully challenged the Minister's decision not to recognise it as a representative body in respect of the Pilbara invitation area of Western Australia.

From 1 July 2000, there could only be one representative body for each area, and only bodies that had been recognised by the Minister under s.203AD of the Act would be representative bodies. Consequently, as at 1 July 2000 there would be 10 areas for which there was no recognised body.

*Properly functioning representative bodies are important for the practical administration of significant parts of the Act, the resolution of claimant applications, and the negotiation of future act outcomes and ILUAs.*

Some of the original representative bodies were invited to submit additional invitation for consideration by the Minister. ATSIC was continuing to work with bodies that had not been formally recognised by the Minister. Generally these bodies were rejected for recognition on their first application and had applied (or intended to apply) for recognition. The Minister was also to invite other bodies to apply for recognition as representative bodies for some areas. ATSIC intended to complete the recognition process by 31 December 2000 and expected that several bodies would be recognised before that date.

Under s.203FE of the Act, ATSIC may grant money to a person or body to enable that person or body to perform functions where there is no representative body. Grants can be made for the performance of all representative body functions or specified functions. ATSIC advised the Tribunal that it intended to use s.203FE to secure the continuation of services in areas where there were no recognised bodies as at 1 July 2000. In most cases that would involve the continuation of funding to previously recognised bodies for up to six months pending the completion of the recognition process.

Representative bodies have had, and continue to have, important functions and powers under the Act. For many indigenous groups their local representative body is the principal source of advice and representation on native title matters. The representative body may represent people in mediations concerning claimant applications, and may be involved in future act negotiations (e.g. in relation to the grant of mining interests) and the negotiation of indigenous land use agreements.

In the year covered by this report, the invitation and re-recognition process diverted some of the attention and resources of representative bodies away from the performance of their core functions and towards attempts to secure recognition as representative bodies under the new regime. In some instances, the representative bodies were seeking re-recognition in respect of the area for which they had been the representative body for some years. In cases where the boundaries had

been redrawn, or the areas of two representative bodies were combined, representative bodies competed to see which (if any) of them would obtain recognition from the Minister.

Properly functioning representative bodies are important for the practical administration of significant parts of the Act, the resolution of claimant applications, and the negotiation of future act outcomes and ILUAs. They are not just important for the people they represent. The Tribunal and other parties to native title proceedings or negotiations benefit from properly functioning bodies which assist in dealing with and resolving a range of native title issues.

The conclusion of the recognition process in some parts of the country and the commencement of the new provisions governing the representative bodies on 1 July 2000 will bring another period of change and transition, but there should be greater stability in the years ahead. In those areas where there are no representative bodies, the ongoing recognition process, and the legal constraints on the powers of continuing bodies which are funded to perform particular functions, may inhibit some of the progress that might otherwise have been made.

*Representative bodies have had, and continue to have, important functions and powers under the Act.*

## **FUTURE PROSPECTS**

When considering future prospects for the resolution of native title issues, it is important to recognise that:

- native title proceedings have numerous features that distinguish them from other matters that come before courts and tribunals;
- actions taken or decisions made by one institution affect the work of others;
- there will be a continuing demand for resources by those involved in, or attempting to resolve, native title matters;
- there are unresolved legal issues on which High Court decisions are likely; and
- there is a continuing need for clear information.

### **Features of native title proceedings**

Native title determination proceedings are different in many respects from conventional litigation. For example:

- although claimant applications are made to obtain an approved judicial determination of native title from the Federal Court, the Act provides a structured process of mediation as the preferred method of resolving applications—with the judicial determination being the final step in a process that is conducted by a tribunal which is separate from, but supervised by, the Court;

- claimant application proceedings often involve scores or even hundreds of parties, each of whom has a role to play in the final resolution of some or all of the issues raised by the proceedings;
- because claimant applications are made for the recognition of existing native title rights, the applications are not made in the context of a dispute between parties (though disputes may arise in the course of attempting to resolve issues raised by an application);
- claimant application proceedings often involve people who do not know (or even know of) the applicants and hence have no relationships relevant to the proceedings;
- the resolution of claimant applications involves an attempt to understand and reconcile culturally different (and divergent) views about land and waters;
- complex issues have to be addressed, and the applicants bear a significant burden to convince other parties or a court that, when the Crown assumed sovereignty, their group had native title and has maintained a connection to the area of land or waters based on their traditional laws and customs;
- the information necessary to resolve applications in mediation or at trial can include anthropological, historical (including oral family histories), and genealogical evidence;
- the collection and communication of much of the relevant information involves cross-cultural understanding and overcoming various practical issues;
- the proceedings may involve the resolution of disputes within and between indigenous groups, for example, where claimant applications are made over the same areas or where there is a dispute about who the members of the native title claim group ought to be;
- the range of issues to be resolved before a matter can be determined can vary significantly, depending on such factors as the area of land or waters covered by the application, the number of parties, and the variety of the parties' interests;
- the role taken by the relevant State or Territory government will be critical to the way in which each matter is resolved, and each government has a different approach to native title issues;
- whatever the native title rights and interests are found to be, a determination that native title exists is a determination of rights *in rem*, and, as a general rule, only one approved determination can be made in respect of any area of land or waters, but that determination can be in favour of more than one group of people;

- the resolution of a claimant application may involve components other than, or in lieu of, an approved determination of native title (including an indigenous land use agreement or another form of agreement that may include a non-native title outcome).

Some of the same observations can be made about compensation applications, indigenous land use negotiations, future act negotiations and arbitration proceedings.

### **Implications of decisions for various institutions**

It is also important to recognise that actions taken or decisions made by one institution directly affect the work of others. For example, in *Western Australia v Ward* the majority of a Full Federal Court decided that the native title rights and interests recognised by the common law of Australia are less extensive than had previously been thought to be the case. The majority also held that native title had been extinguished in relation to areas where certain mining and pastoral tenures had been granted in Western Australia. The decisions on those matters:

- affected the areas of land which could be the subject of native title claimant applications and compensation applications;
- affected the scope of some registration test conditions which the Registrar had to apply (nationally or in Western Australia) to applications;
- prompted a change in policy by the Western Australian Government about the areas where exploration and mining tenements could be granted without the need to follow the future act procedures of the Act;
- raised issues about the jurisdiction of the Tribunal to rule on objections to the proposed grants of certain exploration tenements in Western Australia;
- potentially affected the scope of determinations of native title (whether consent determinations or litigated determinations) made by the Federal Court.

The practical implications of the Court's decision were not fully evident in the reporting period. It is possible that in the next reporting period the High Court will hear an appeal against the decision of the Full Federal Court. If the High Court allows some or all of the appeal, then that decision will also have implications for native title applicants and the representative bodies, governments, the Registrar and members of the Tribunal, and the Federal Court.

### **Increased demands on resources**

The pace of the resolution of native title issues is influenced by the human and financial resources available to the parties to proceedings or

negotiations, and to the other major institutions and bodies involved. Those bodies include the Federal Court, the Tribunal, ATSIC and representative bodies funded by ATSIC, the Legal Aid Branch of the Federal Attorney-General's Department, the Indigenous Land Corporation (ILC), and the State and Territory governments.

Parties need assistance. They need information, sound technical and practical advice, and the financial and other resources to explore outcomes without regular resort to expensive, protracted and potentially acrimonious court cases.

Each of the major institutions and bodies, as well as the parties, has to attempt to optimise the use of resources available to it. What each does, and when it acts, is influenced to some extent by the actions or requirements of others. Decisions may have to be made about how resources are to be allocated to deal with a range of native title issues, not just the resolution of claimant applications.

From the Tribunal's perspective, the increased demand on resources will result from an increase in claimant applications (many of them in response to future act notices), an increase in mediation work (including part-heard matters referred back to the Tribunal from the Federal Court), an increase in future act work (particularly in the Northern Territory) and an increase in requests for ILUA assistance and applications to register ILUAs.

Resource pressures similar to those experienced by the Tribunal affect all major participants. For example:

- Each State or Territory government is a party to every claimant application within its jurisdiction. Consequently, it needs to be involved in the mediation of each application. If all the matters raised by the application are not resolved by agreement, and the matter goes to a hearing before the Federal Court, the State or Territory is likely to play a major role as the first named respondent. In cases to date, that role has involved substantial financial costs and has drawn on the resources of people (such as lawyers and anthropologists) who might otherwise be involved, say, in mediation or negotiation activity.
- The Federal Court has a range of roles in relation to native title applications. All applications are filed in the Court. The Court settles the list of parties to each application, refers matters to the Tribunal for mediation, deals with any applications to have matters struck out, supervises the mediation, determines questions of fact or law referred to it by the Tribunal, determines whether mediation should continue, settles the terms of agreements for consent determinations, or, where it orders that mediation ceases, sets matters down for trial, and hears and determines the matters in issue. The resource implications of native title proceedings for the Court were discussed in the Australian Law Reform Commission's report.

- Representative bodies have limited financial resources and are competing for appropriate staff and professional advisers. In performing their statutory functions, representative bodies are involved in such activities as: attempting to ensure that claimant applications meet the requirements of the registration test within statutory timeframes (so that applicants gain the right to negotiate and other procedural rights); representing or assisting applicants in mediation of their claims; preparing other matters for trial; negotiating in relation to future act matters; negotiating indigenous land use agreements, as well as attempting to resolve disputes between indigenous people, and other activities.

Strains emerge if, for example, the orders or directions of the Federal Court are not complied with because one or more of the parties is unable to meet those requirements as well as meet other demands within the broader native title regime.

Much of the funding of native title work comes directly from the Commonwealth. The Tribunal, the Federal Court, the Legal Aid Branch, ATSIC and the ILC are funded to perform a range of functions that affect each other. While an overall coordination of their work may be neither desirable nor achievable, some mutual understanding of what each sees its priorities to be and the way in which its resources are allocated for native title work might assist in anticipating and relieving strains within the systems.

In that vein, the Australian Law Reform Commission recommended that:

The Federal Court should continue to facilitate meetings between representatives from the Aboriginal representative bodies, Federal Government, State and Territory governments, Federal Court and National Native Title Tribunal to discuss the expected timeframe for resolution of native title claims and ways to manage the cases so as to meet the agreed timetable.

## Clarification of law and practice

Significant legal issues remain to be resolved. The reasons for decision of the Full Federal Court judges in *Western Australia v Ward*, for example, demonstrated different judicial views about the nature and content of native title. Judges reached different conclusions about important matters such as whether native title is a bundle of rights or a more comprehensive interest in land, whether there can be partial extinguishment of native title, whether there can be a cumulative extinguishment of elements of native title, and which interests in land (other than those already identified in legislation) extinguish native title. The Croker Island case raised such issues as whether native title can exist over areas of sea and sea beds, and whether native title holders could have exclusive rights over

areas of sea. These issues may be authoritatively resolved by the High Court. At the end of the reporting period the High Court had not considered applications for special leave to appeal from those decisions of the Full Federal Court.

The Full Federal Court is expected to deliver its judgment on appeal from Justice Olney's decision that the Yorta Yorta people do not have native title.

If the High Court grants special leave to appeal in the Croker Island, Miriuwung Gajerrong, and Western Lands Leases cases, the law on important and fundamental legal issues should be more certain in the next year or so.

As more native title trials are concluded and appeals are decided, the law of native title will be refined and made more certain. As parties become more informed about the possible outcomes and what is needed to achieve them, they should become increasingly confident about assessing the prospects of success of particular applications and in deciding whether agreements can be reached and the terms of any agreements. Parties should work to see whether agreements can be reached and, where agreement is not possible, to isolate the real issues so that they can be resolved judicially.

The content of approved determinations of native title will also guide parties in framing appropriate consent determinations that reflect their local circumstances and accord with the current state of the law.



Attending the Bremer Bay men's meeting (Family Futures) to discuss the role of the Tribunal in resolving native title issues, are: (left to right) Edward Brown (Tribunal external liaison manager), Christopher Doepel (Registrar), Ken Dean (Manager, Southern Aboriginal Corp. Health Promotion Unit), Ezard Flower (Aboriginal health worker, Central Great Southern Primary Health Service), Graeme Minter (Program manager, Great Southern Family Futures, Albany), and (front) Nathan Minter.

## Continuing need for clear information

There is still misunderstanding about what native title is, where it may exist, how it can be exercised alongside other rights and interests in land and waters, and how native title issues can be resolved.

A sound understanding about native title, and its interaction with the rights of others, is an important precondition to successful mediation. The degree of misunderstanding and misapprehension about native title means that members and Tribunal staff spend considerable time informing parties so that they can engage more constructively in the native title process.

The Tribunal has produced various publications and audio-tapes and plans to produce a CD-rom, videotape and targeted, plain English fact sheets in the year ahead.

## CONCLUSION

The Tribunal's *Strategic Plan 2000–2002* includes the Tribunal's vision: 'The Australian community recognises and respects the relationship between native title and other interests in land and waters'. Our purpose is to 'assist people to resolve native title issues'.

The resolution of native title issues is a matter for the whole community. No single group can provide all the answers or the means for finding them. No single institution has the legal responsibility for, or the range of resources to deal with, all the issues.

This is proving to be a costly exercise; but it is one from which the nation cannot withdraw and for which the responsible institutions and major parties need adequate resources. Experience is bearing out the oft-expressed view that mediation is preferable to litigation. While test cases have been argued in the courts, and more test cases may be necessary to clarify important legal issues, the statutory ground rules have been set. Negotiated outcomes should prove to be the most common way of resolving native title issues.

The nature and volume of the work to be done will draw on the efforts and resources of many people and organisations. We have not yet reached the pinnacle or even the plateau of the workload. But signs to date are encouraging. We can be confident that there will be consent determinations of native title and a variety of related agreements in the next reporting period.

The Tribunal remains committed to performing our various functions to help parties resolve the array of native title issues in ways which are fair, practical and durable.

I thank the members, Registrar and employees of the Tribunal for their enthusiastic and dedicated work in the past year and am confident that the level of commitment demonstrated to date will help us meet the challenges of the future.

# TRIBUNAL OVERVIEW



## ROLE AND FUNCTION

The functions and powers of the National Native Title Tribunal are conferred by the *Native Title Act 1993*, under which the Tribunal was established. The Tribunal's main role is to assist people reach agreements about native title. The Tribunal also arbitrates in certain future act matters.

The Act specifies that the Tribunal is to pursue the objective of carrying out its functions in a fair, just, economical, informal and prompt manner.

The President, deputy presidents and other members of the Tribunal have statutory responsibility for:

- mediating issues related to native title determination applications (claimant and non-claimant applications);
- mediating compensation applications;
- reporting to the Federal Court of Australia on the progress of mediation, either of their own volition or at the request of the Court;
- assisting people to negotiate indigenous land use agreements, and helping to resolve any objections to area and alternative procedure ILUAs;
- arbitrating objections to the expedited procedure in the future act scheme;
- mediating to resolve future act determination applications; and
- arbitrating applications for a determination of whether a future act can be done, and if so, whether any conditions apply.

Under the Act, the President is responsible for managing the administrative affairs of the Tribunal. The Registrar assists the President to manage the Tribunal's administrative affairs and carries out specific statutory functions. The Registrar has the powers of the Secretary of a Department of the Australian Public Service in relation to financial matters and the management of employees. The Registrar may delegate all or any of his or her powers under the Act to Tribunal employees, and may also engage consultants.

Specific functions of the Registrar include:

- assisting people at any stage of any proceedings under the Act, including assisting people to prepare applications;
- assessing claimant applications for registration against the conditions of the registration test;
- giving notice of applications to individuals, organisations, governments and the public in accordance with the Act;
- registering ILUAs that meet the registration requirements of the Act;

- maintaining the Register of Native Title Claims, the National Native Title Register (the register of determinations of native title) and the Register of Indigenous Land Use Agreements.

Applications for a native title determination (claimant and non-claimant) and compensation applications are filed in and managed by the Federal Court. Although the Court oversees the progress of these applications, the Tribunal performs various statutory functions as each application proceeds to resolution. The main steps in the process are referred to in Appendix VII (p.149).



**What is native title? Jo Newby (Tribunal communication officer in Victoria) speaks at the Mildura introductory native title workshop for government land managers, May 2000.**

# ORGANISATIONAL STRUCTURE

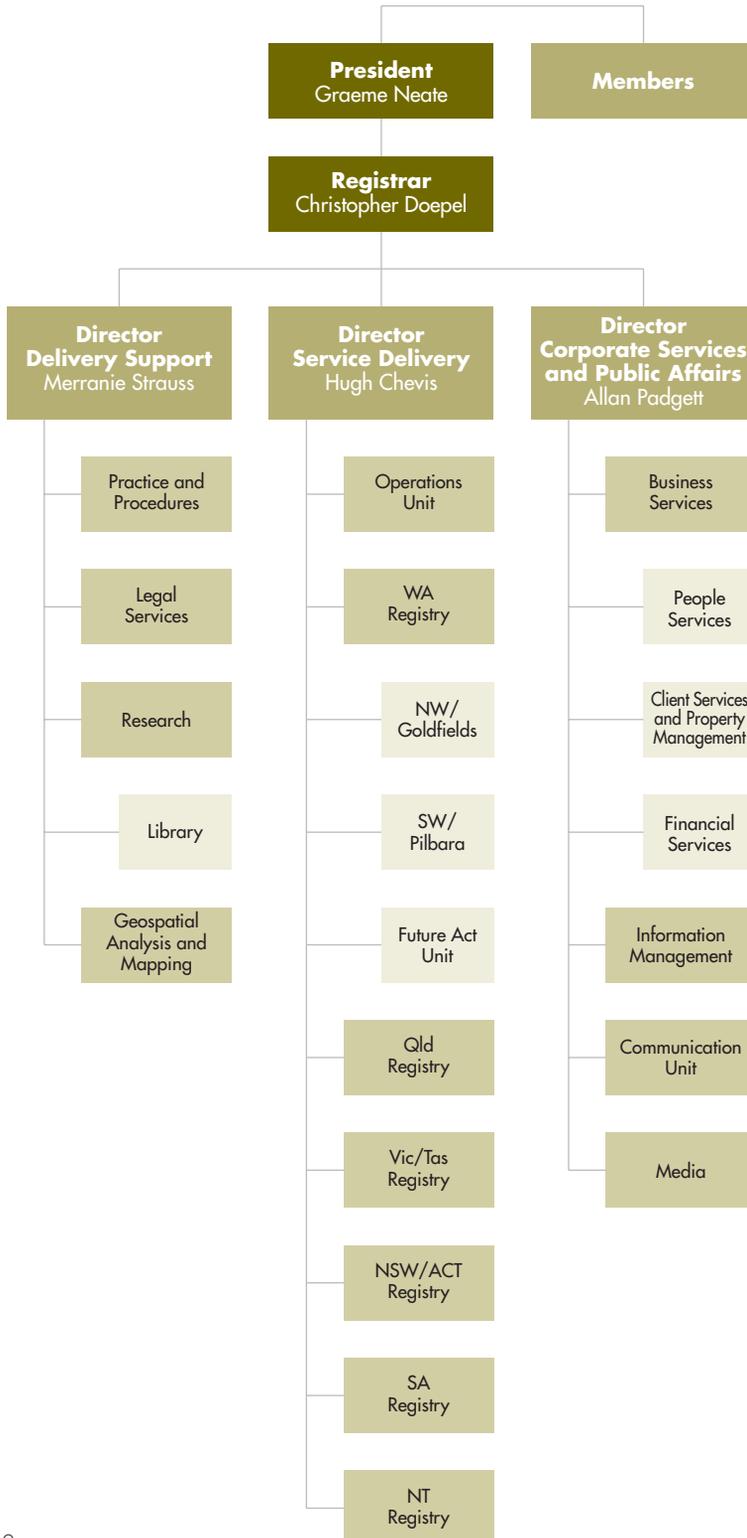


Figure 1: National Native Title Tribunal organisational structure

## OUTCOME AND OUTPUT STRUCTURE

The Tribunal forms part the ‘justice system’ group within the Attorney-General’s portfolio.

The Tribunal’s outcome and output framework complies with the Commonwealth Government’s accrual budgeting framework, which came into effect on 1 July 1999. Under this framework, Commonwealth agencies are required to specify and cost their outcomes and outputs, as well as report on their performance.

Outcomes are the results, impacts or consequences of action by the Commonwealth, in this case the Tribunal, on the Australian community. Outputs are the goods or services produced by agencies (the Tribunal) on behalf of the government for external organisations or individuals, including other areas of government. Output groups are the aggregation, based on type of product, of outputs.

The Tribunal has one outcome—the recognition and protection of native title. The Tribunal has four output groups:

- registration;
- agreements;
- arbitration; and
- assistance and information.

Figure 2: Outcome and output framework for 1999–2000 (p.34), illustrates the outcome and output framework. Details of the Tribunal’s performance and costs in accordance with this framework are provided in the section ‘Report on performance’ (p.57).

During the year covered by this report changes were made to some of the outputs and descriptions in order to clarify the particular nature of the service being provided by the Tribunal. The Tribunal retained its single outcome statement for the next reporting period. For more information about the changes see the National Native Title Tribunal’s portion of the Attorney-General’s Portfolio Budget Statements for 2000–2001 at <http://law.gov.au/publications/budget.htm> .

## TRANSITION FROM FORMER PROGRAM STRUCTURE

The Tribunal made a transition from its former program structure to output-based reporting during the previous reporting period. The transition was explained in the National Native Title Tribunal *Annual Report 1998–1999* (pp.59–61) which provided a map of the former program structure in relation to the new outcome and output structure. The Tribunal’s 1999–2000 outcome and output structure is unchanged from the 1998–1999 reporting period. For more information about the transition see the *Annual Report 1998–1999* at <http://www.nntt.gov.au/nntt/publicctn.nsf/area/homepage> .

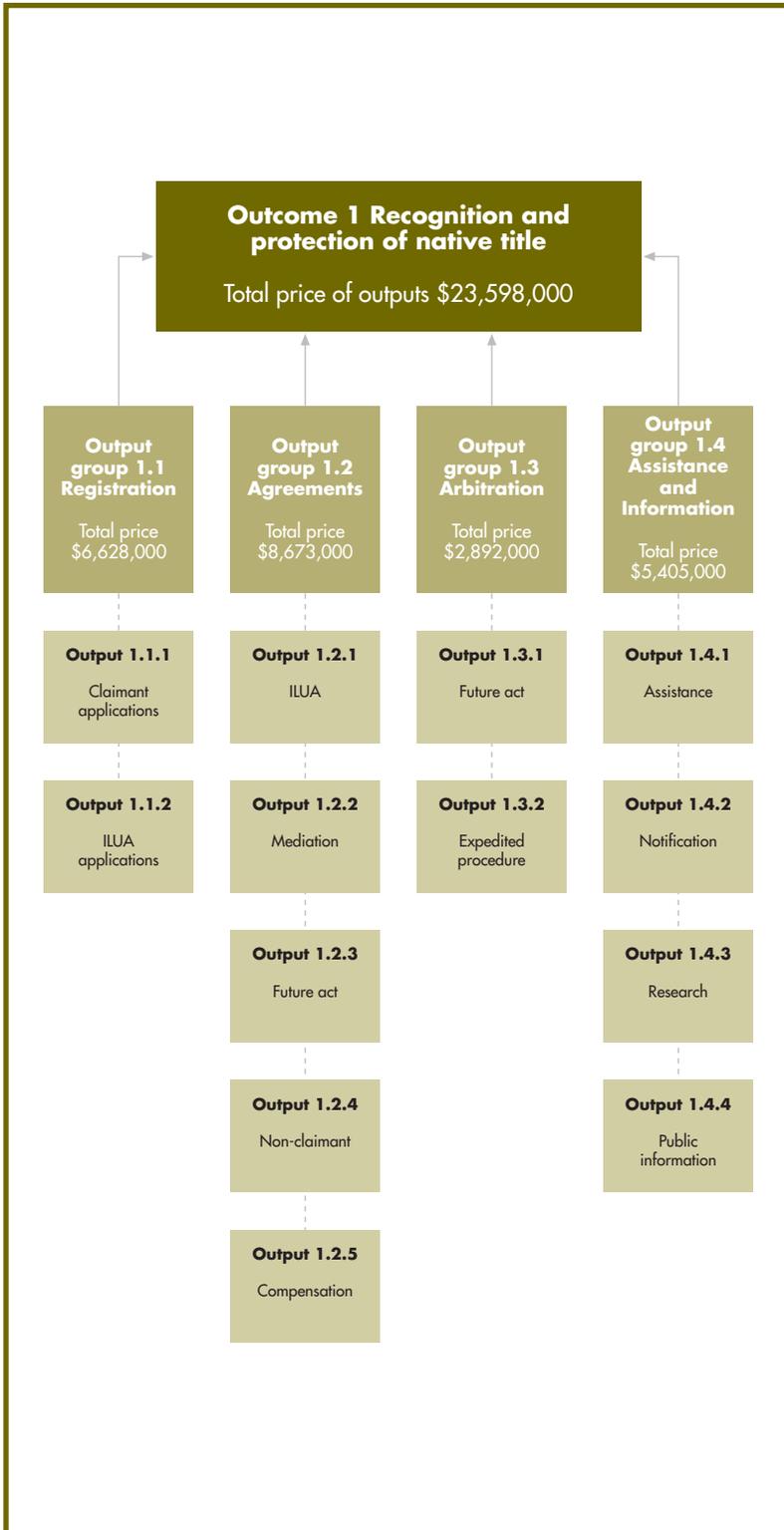


Figure 2: Outcome and output framework for 1999-2000

# MANAGEMENT AND ACCOUNTABILITY



## CORPORATE GOVERNANCE

### TRIBUNAL MEMBERS



Members of the National Native Title Tribunal at 30 June 2000: *(back row, left to right)* John Sosso, Jennifer Stuckey-Clarke, Terry Franklyn, Christopher Doepel (Registrar), Mary Edmunds, Bardy McFarlane, Graham Fletcher, Christopher Sumner, *(middle row)* Patricia Lane, Ruth Wade, Graeme Neate (President), Doug Williamson, *(front row)* Fred Chaney, Geoff Clark, Tony Lee, Gaye Sculthorpe

### MEMBERS' ROLES AND RESPONSIBILITIES

The President directs a member (or members) to act in relation to a particular mediation, negotiation or inquiry under the Act (s.123). The member who has conduct of a matter determines how it will proceed. Members' responsibilities for a matter include:

- developing the mediation strategy;
- assessing information needs and overseeing the delivery of information;
- identifying critical dates for the processing of the application;
- exchanging information affecting the claim or region with the case manager and the regional coordinator; and
- directing the activities of the case manager in relation to the matter.

The role of members includes making recommendations to the President and the Registrar concerning operational and administrative matters. On 28 July 1999, the President released three key strategy documents that were the result of the recommendations of a Members' Ad Hoc Committee:

- 'President's Response to the Report of the Members' Ad Hoc Committee of the National Native Title Tribunal';
- a revised version of the foundation document prepared by the Ad Hoc Committee, titled 'Roles, Responsibilities and Relationships within the National Native Title Tribunal: A Framework Document'; and
- 'Guidelines for the Setting of Priorities and the Allocation of Resources During the 1999–2000 Financial Year'.

The purpose of these documents is, among other things, to:

- provide information about the constitution of the Tribunal and the roles of members, the Registrar and staff of the Tribunal;
- establish some principles to ensure effective working relationships between the members, Registrar and staff in performing the Tribunal's mediation and arbitration functions;
- set out practical steps to be taken to provide appropriate training of members and staff, and to ensure that members receive appropriate administrative and other support in doing their work; and
- provide guidelines for setting priorities and allocating human, financial and other resources during the financial year.

During the reporting period, the President, Registrar and members gathered twice for two-day meetings. These meetings enabled members to discuss a range of issues relating to their statutory functions. They exchanged ideas on mediation practice and issues affecting mediation and agreement making, such as resource issues, Federal Court practice and the development of State and Territory approaches to mediation and agreement making.

For further information on members, see 'Changes in membership of the Tribunal' in the President's overview (p.8).

## TRIBUNAL EXECUTIVE



The executive of the National Native Title Tribunal at 30 June 2000: (left to right) Christopher Doepel (Registrar), Allan Padgett (Director Corporate Services and Public Affairs), Merranie Strauss (Director Service Delivery Support), Hugh Chevis (Director Service Delivery)

### ROLE AND RESPONSIBILITIES

The Tribunal's executive comprises the President, Registrar, and the three directors who head the Tribunal's divisions of Service Delivery, Delivery Support, and Corporate Services and Public Affairs (see Figure 1, p.32).

Under the Act, the President is responsible for managing the administrative affairs of the Tribunal, assisted by the Registrar. The Registrar has responsibility for the day-to-day operations of the Tribunal, in close consultation with the President. The Registrar may delegate all or any of his powers under the Act to Tribunal employees. This delegation capacity typically includes work in relation to registration of claimant applications, registration of ILUAs, notification and keeping the Registers.

### SENIOR MANAGEMENT COMMITTEES

The Registrar and directors form the Registrar's Group. This group meets weekly and is the main formal vehicle through which the directors assist the Registrar. The directors also meet weekly in a formal capacity as the Directors' Group. These meetings attend to a range of operational matters that do not require the direct involvement of the Registrar, but may involve formulating recommendations for the Registrar's direction.

Formal management and coordination of the regional network is achieved through the Implementation Group. This group meets fortnightly and comprises the Director of Service Delivery, Operations Manager, and State, Territory and regional managers. The Implementation Group meets with other directors and key employees, such as the managers and senior employees of Practice and Procedures and Legal Services as necessary, usually in relation to particular issues arising for strategic implementation.

The State, Territory and regional managers also have extended meetings, including workshop-style sessions three times per year. Other senior managers attend relevant segments to exchange ideas and plan future work.

### STRATEGIC AND OPERATIONAL PLANS

In the second half of the reporting period the Tribunal developed a new three-year strategic plan for the period 2000–2002.

The *Strategic Plan 2000–2002* focuses on the ways the Tribunal can build effective relationships with the Australian community by inviting, and providing opportunities for, people affected by native title issues to use the services offered by the Tribunal. The plan provides a basis for the relationship by clearly setting out the Tribunal's vision, purpose and values. The plan also sets out the key success areas which will assist the Tribunal meet a range of foreseeable challenges. The key elements of the plan were as follows:

- **Vision**  
The Australian community recognises and respects the relationship between native title and other interests in land and waters.
- **Purpose**  
We assist people to resolve native title issues.
- **Values**  
Impartial—remaining independent in what we do.  
Practical—working to achieve lasting results.  
Innovative—developing new solutions to native title issues.  
Fair—recognising, understanding and respecting social, cultural and economic differences.

### Key success areas

The *Strategic Plan 2000–2002* nominates four key success areas:

- to assist people to develop agreements that resolve native title issues;
- to have fair and efficient processes for making arbitral and registration decisions;
- to provide accurate and comprehensive information about native title matters to clients, governments and communities; and
- to have a highly skilled, flexible, diverse and valued workforce.

Success in each area is critical to achieving the Tribunal's vision and in fulfilling its statutory role.

The Tribunal's work units commenced development of new operational plans or updated existing plans in accordance with the direction set by the *Strategic Plan*. It was intended that these local plans would, in turn, drive the development and maintenance of individual performance management plans, so that all operational plans coordinate with the Tribunal's *Strategic Plan*.

The Tribunal's corporate and operational direction was given significant impetus during the reporting period by three documents initiated and driven by the Members' Ad Hoc Committee and released by the President on 28 July 1999. For more information see 'Members' roles and responsibilities' (p.36).

## RISK MANAGEMENT

During the reporting period the Tribunal initiated a project designed to identify and prioritise business risks and fraud control. By minimising and managing risk, the project began to meet its objective of improving service standards by focusing on:

- procedural standards, such as registration and general service delivery procedures;
- occupational health and safety;
- duty of care in personnel and staff development; and
- insurance and security issues.

The proposed policy and associated guidelines for dealing with business risk in these areas are based on AS/NZS 4360:1999 Australian Standard Risk management.

At the end of the reporting period and subject to audit committee endorsement of the project plan for business risk management, the Tribunal anticipated the risk management policy and processes to be in place by the beginning of 2001.

## VALUES AND CODE OF CONDUCT

The Tribunal upholds and promotes the Australian Public Service (APS) Values and Code of Conduct, which are provided for in the *Public Service Act 1999* (PSA), *Public Service Regulations* and *Public Service Commissioner's directions*.

During the reporting period, the Tribunal implemented relevant aspects of the new PSA with a range of strategies that assisted employees to understand and manage their rights and responsibilities under the PSA.

The strategies included:

- information sessions conducted by the Registrar for all employees;
- certified agreement focus group discussions; and
- the distribution of information through the Business Services Bulletin and Questions and Answers fact sheets.

Copies of the APS Values and Code of Conduct and procedures for breaches were provided to all employees.

The new and amended APS Values were incorporated into the Tribunal's *Strategic Plan 2000–2002*.

The APS Values are a key component in the Tribunal's 'key success area' strategy for building and maintaining a highly skilled, flexible, diverse and valued workforce (for more information on strategic and operational plans see p.39).

The Tribunal's draft certified agreement, negotiated during the reporting period, is consistent with APS Code of Conduct requirements and includes a grievance mechanism and dispute resolution process to accommodate review of employment decisions. All employees were provided with information and an opportunity to comment on the draft agreement, so that the PSA 'review of actions procedures' can be appropriately reflected and captured during renegotiation of the certified agreement.

The Tribunal established procedures for breaches of the Code of Conduct as is outlined in the Public Service Merit Protection Commission framework. These procedures were promoted to all employees.

During the reporting period, the Tribunal updated its policies in relation to:

- Code of Conduct guidelines and procedures for electronic communication;
- the receipt of gifts and benefits, including acceptance of gifts from indigenous stakeholders; and
- Tribunal employee standards of behaviour in dealing with contractors.

## REMUNERATION

Members' and the Registrar's remuneration entitlements are fixed by the Remuneration Tribunal. Senior Executive Service (SES) employees in the Tribunal are employed under Australian workplace agreements. Salaries are determined by the Registrar, providing that they are not less than the salary the employee would be otherwise entitled to under the National Native Title Tribunal Certified Agreement 1998–2000. The APS SES Band 1 salary range is used as the base salary. Other employees' entitlements are provided for according to the Tribunal's Certified Agreement.

## ADMINISTRATIVE ISSUES AND DEVELOPMENTS

### INFORMATION MANAGEMENT WORKING GROUP

The Information Management Working Group was established during the reporting period to provide practical business solutions to the collection, storage, maintenance, security and retrieval of Tribunal information. With input from all key areas, through the Tribunal's Information Management Reference Group, an information management plan was developed covering the next three years. The information management plan links directly into the *Strategic Plan 2000–2002* in all four key success areas (for more information about the *Strategic Plan 2000–2002* see p.39). Of particular relevance to the information management group is the key success area that relates to the provision of 'accurate and comprehensive information about native title matters to clients, governments and communities'.

### INFORMATION TECHNOLOGY OUTSOURCING

In line with the Whole-of-Government Information Technology Infrastructure Outsourcing Initiative, the Tribunal completed a competitive tender process in December 1999. Prior to this, employees of the Tribunal provided the majority of information technology operational and systems support.

While the initial outcomes of the outsourcing implementation were largely positive, the recent commencement date of the contract—February 2000—meant that a formal assessment of project performance levels was not possible within the reporting period. At the end of the period, regular interim reporting against performance standards enabled assessment and management of various settling-in issues.

Key factors in the Tribunal's IT outsourcing tender process were:

- conformity with guidelines issued by the Commonwealth Office of Asset Sales and Information Technology Outsourcing;
- participation in the Small Agency Program, which was designed to provide opportunities for Australian Small to Medium Enterprises (SME); and
- use of a method that was implemented by an experienced IT tender consultant and audited by the Australian National Audit Office. Salient features of the method were strict probity controls, equitable treatment of all tenderers and due diligence in processes involving access to Tribunal employees and information.

The request for tender attracted five bids, including one from an SME. The tender evaluation involved assessing the pricing separately from the technical aspects, assigning each part a score, and then combining the scores to arrive at a value-for-money ranking.

The Tribunal adopted a facilities management approach, which resulted in outsourcing of all its IT functions (except applications development and support) and divesting its ownership of all IT-related equipment.

Overall, the tender by Unisys Australia Limited (Unisys) demonstrated the best value for money and won a three-year contract.

The base contract price was \$4.15m over three years, with the leasing component subject to variation as equipment is updated. All desktop equipment was replaced at the commencement of the contract. Network infrastructure was not replaced during the period.

Other costs in conjunction with, though not part of, the outsourcing process included:

- \$69,000 for consultants involved in the tender and subsequent contract negotiations (for more information see Table 12, p.130);
- \$309,000 for employee redundancy costs; and
- \$36,700 to upgrade the network management tools to enable service levels to be met.

An agreed level of service was developed through consultation with Tribunal members and employees. The contract provided that agreed service levels would condition the future equipment lease arrangements and provision of services generally.

Control of IT policy and strategic direction is retained by the Tribunal. A contract manager has been appointed by the Tribunal to manage the relationship with Unisys, monitor performance, review costs and advise on contractual issues. The contract provides that the Tribunal has access to relevant information about finances and purchases made by Unisys on the Tribunal's behalf to maintain service levels.

During the next reporting period the Tribunal's IT operations will be assessed according to the following government criteria:

- effective IT support of agency business needs and service delivery requirements;
- improved efficiency, cost effectiveness and significant savings;
- improved service levels at lower costs; and
- leveraging access to private sector technology know how.

## REGISTERS AND DATABASES

The Tribunal maintains a number of registers of information and databases that hold accurate and comprehensive records of native title claimant and non-claimant applications, determinations, and agreements made under the Act.

The importance of information management was acknowledged in the Tribunal's new *Strategic Plan 2000–2002*. Strategies in the plan include ensuring that statutory registers and other records about the location, content and status of applications, determinations and agreements are accurate, comprehensive and accessible.

### REGISTERS

The Native Title Registrar is required to maintain three registers under the Act:

- the Register of Native Title Claims (s.185(2)), which contains information about all claimant applications that have been registered under s.190A of the Act (for more information see 'Claimant applications—output 1.1.1', p.62) or were registered prior to the 1998 amendments to the Act;
- the National Native Title Register (s.192(2)), which contains information about determinations of native title; and
- the Register of Indigenous Land Use Agreements (s.199A(2)), which contains information about all ILUAs that have been accepted for registration (for more information see 'ILUA applications—output 1.1.2', p.70).

### DATABASES

The Tribunal continued to maintain and develop a number of databases to assist in the management of native title applications and the collation of information and statistics about those applications. These included:

- Case Management System (CMS), which contains details of the location, content and status of all applications filed with the Federal Court and referred to the Tribunal;
- Future Act Reporting and Statistical System (FARSS), which contains details of all applications made under the future act provisions of the Act; and
- Reporter, which contains workload and statistical information in relation to claimant applications, including registration test details and Federal Court activity.

The latter two systems were developed in order to track and report on activity at both individual application and registry level. Other Tribunal databases maintained during the period were the Assistance database and the Agreements database.

During the reporting period the CMS and Registers Working Group was responsible for the maintenance and review of the key databases and registers. This group revised the Register of Native Title Claims (RNTC). In June 2000 the RNTC was separated from the Tribunal's CMS to create the RNTC on its own system. The original CMS was designed around the Act before the 1998 amendments, and the separation allows for better, more user-friendly performance.

The CMS and Registers Working Group coordinated its efforts with the Information Management Working Group to ensure that all work done on the databases and Registers was in keeping with the information management principles adopted by the Tribunal (for more information on the Information Management Working Group, see p.42).

## EXTERNAL SCRUTINY

### JUDICIAL DECISIONS

At the end of the reporting period the Federal Court had received:

- nineteen applications for review of the Registrar's decisions with respect to registration of claimant applications;
- four appeals against future act decisions of Tribunal members (under s.169 of the Act); and
- two applications under the *Administrative Decisions (Judicial Review) Act 1997* (AD(JR) Act) in respect of future act decisions.

### REGISTRATION TEST

Of the 19 applications to review the Registrar's decisions, six were decided, five were withdrawn or discontinued, one was dismissed and seven were still on foot at 30 June 2000. The six that were decided were:

- *Western Australia v Strickland* (2000) FCA 652, Full Federal Court (Beaumont, Wilcox and Lee JJ), 18 May 2000, the outcome of an appeal against the decision in *Strickland v Native Title Registrar* (1999) 168 ALR 242, Federal Court (French J), 4 November 1999;
- *Western Australia v Native Title Registrar and others* (1999) FCA 1591–1594 (four decisions, one reported at (1999) 95 FCR 93) Federal Court (Carr J), 16 November 1999;
- *Ward v The Registrar* (1999) FCA 1732, Federal Court (Carr J), 13 December 1999.

Details of these cases are provided in Appendix IV (p.133).

In all six applications that were decided, the Registrar's interpretation and subsequent application of the conditions of the test were upheld.

Individual judges of the Court set aside five of the Registrar's decisions for the following reasons:

- failure of the Registrar to give procedural fairness to the State by not providing it with the additional information provided by the applicants for the purpose of satisfying the conditions for registration; and
- misinterpretation by the Registrar of the rule preventing overlapping applications with members in common (s.190C(3)). The Full Federal Court subsequently upheld the Registrar's approach to applying this condition.

The Registrar's response to these decisions was to consider the implications for other similar matters and, in general, his administration of the registration test. The Registrar also considered and, on two

occasions, implemented a moratorium on making further registration test decisions. A procedural response was formulated and implemented within three weeks of the decision having been handed down.

The four decisions by Carr J, in relation to procedural fairness, required the Tribunal to negotiate a confidentiality arrangement with the State and Territory governments concerning the way applicants' material can be used. The time taken to negotiate those arrangements extended the period before decision-making could recommence. These agreements were made with all States and Territories except New South Wales and the Australian Capital Territory.

### **FUTURE ACTS**

During the reporting period, three decisions were handed down by the Federal Court which directly affected the Tribunal's operations in relation to future act matters. One of these decisions further clarified what constitutes good faith negotiations for the purposes of the right to negotiate process. Another dealt with the question of whether the Tribunal had the jurisdiction to determine future act applications where the government party had not negotiated in good faith even though the s.35 application (which is an application for the Tribunal to arbitrate the matter) was lodged by the native title party. In this case the Court held that it didn't matter which party made the application, the government party had to have negotiated in good faith before the Tribunal had jurisdiction.

The third decision clarified whether applicants lost the right to negotiate in circumstances where an amended 'old Act' application lodged before 27 June 1996 was not accepted for registration. The Court found that the right to negotiate (in relation to old Act s.29 notices) was not lost.

At the end of the reporting period there were four appeals under s.169 of the Act outstanding. Three related to the application of s.237 of the Act—acts attracting the expedited procedure. The other concerned the issue discussed above relating to deregistered amended old Act applications and whether applicants retained the right to negotiate. Details of these cases are provided in Appendix IV (p.133).

### **AUDITOR GENERAL**

The Australian National Audit Office conducted its annual review of the Tribunal's financial statements. The audit of the Tribunal's 1999–2000 annual financial statements produced an unqualified audit report. The audit certificate appears on page 163 of this report.

Minor issues from the audit for 1998–1999 were addressed.

There were no other reports into the Tribunal's operations by the Auditor General during the reporting period.

## ADMINISTRATIVE APPEALS TRIBUNAL

Reviews by the Administrative Appeals Tribunal (AAT) are available in respect of decisions not to waive certain application and search fees. No applications regarding the Tribunal were made to the AAT during the reporting period.

## PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

The duties of the Parliamentary Joint Committee (PJC) under the Act (s.206) include inquiring into and reporting on the effectiveness of the Tribunal, reporting on the implementation and operation of the Act, and examining and reporting on each annual report of the Tribunal.

The Tribunal has an interactive relationship with the PJC. During the reporting period there was a high level of Parliamentary and public interest in the implementation of the 1998 amendments to the Act.

The Tribunal made four appearances before the PJC during the reporting period.

On 20 October 1999, the PJC heard evidence from the President and Registrar regarding the Tribunal's implementation of the amendments to the Act (s.206(b)). On 14 March 2000, the PJC also heard evidence from the President and Registrar regarding the Tribunal's *Annual Report 1998–99* (s.206(c)).

On 19 April 2000, the Acting State Manager, South Australia appeared before the PJC, in a public meeting in Adelaide, to make a short presentation about pertinent issues in South Australia and to respond to any questions arising.

On 14 September 1999, the coordinator of the Goldfields Mediation Service and a case manager from the future act unit appeared before the PJC in a public meeting in Kalgoorlie to provide information about the operation of the Goldfields Mediation Service and to respond to any future act questions arising.

The Tribunal made written submissions to the PJC on 4 August 1999 and 20 October 1999. These submissions were in response to evidence provided to the PJC during its visits to regional Western Australia. The submissions clarified aspects of the Tribunal's operations under the amended Act in response to third parties' criticisms and comments.

Transcripts of the Tribunal's appearances before the PJC and the PJC's comments on Tribunal annual reports are available at [www.apf.gov.au/hansard/joint/commtee/comjoint.htm](http://www.apf.gov.au/hansard/joint/commtee/comjoint.htm) .

## COMMONWEALTH OMBUDSMAN

During the reporting period the Native Title Registrar received one referral from the Ombudsman. The complaint was made by a member of a native title claim group who asserted that the Tribunal had not acted properly in relation to the combination and registration testing of some overlapping applications.

The Registrar responded to the Ombudsman in detail, addressing a number of issues raised by the complainant and explaining how the Tribunal had acted in accordance with the Native Title Act and its own procedures.

The Registrar heard nothing further from the Ombudsman on this matter.

## CUSTOMER SERVICE CHARTER

The Tribunal's *Customer Service Charter* invited comment from the public on any aspect of the Tribunal's service (for more information see, 'Performance against *Customer Service Charter*', p.60).

## FREEDOM OF INFORMATION

No formal requests for access to documents under the *Freedom of Information Act 1982* were received by the Tribunal during the reporting period (for more information see Appendix VI, p.144).

## PUBLIC INFORMATION

The Tribunal was active in community liaison and education initiatives during the reporting period. These initiatives allowed the Tribunal to obtain views from a wide range of people with specific and general interests in native title issues.

Output 1.4.4 highlights that the Tribunal sponsored, either in whole or in collaboration, 38 seminars and workshops with individual client groups. Tribunal members and employees delivered 57 presentations that included an opportunity for the audience to ask questions and make comments.

The Tribunal routinely obtained feedback for use in formal product evaluation from people who attended native title information sessions or requested information products (for a list of seminars in which the Tribunal obtained feedback see Table 16, p.154).

## MANAGEMENT OF HUMAN RESOURCES

The Tribunal's human resources strategic objective is to align its people management strategies with its business needs. The Tribunal's human resource management aims for a seamless link between business policy and recruitment, performance management and professional development, and pay and conditions.

### WORKFORCE PLANNING, AND STAFF RETENTION AND TURNOVER

During the reporting period there were changes to the membership of the Tribunal (for more information see 'Changes in membership of the Tribunal' in the President's overview, p.8).

At 30 June 2000, the Tribunal had 215 people employed under the *Public Service Act 1999* (PSA) and 17 Holders of Public Office (President, Registrar and members), an overall reduction of 16 from the end of the previous reporting period.

The reduction in employees by the end of the reporting period was largely the result of the shift to accrual accounting at the beginning of the reporting period. A key requirement of accrual accounting is that liabilities must be covered by assets. This requirement was affected by the Tribunal's move to outsourced IT arrangements, which involved the sale of its IT equipment (for more information see 'Information technology outsourcing', p.42).

Prior to the sale, IT equipment constituted the Tribunal's single largest asset base. Since that time the largest proportion of the Tribunal's asset base has been cash. The amount of cash that needed to be set aside during the reporting period affected available running cost funds for service delivery to clients, which included the Tribunal's capacity to sustain the previous reporting period's staff level.

Of the 215 people employed, 139 were female and 76 male, 200 were full-time and 15 part-time, 170 were ongoing staff and 45 non-ongoing. Twenty-four people identified themselves as being either Aboriginal or Torres Strait Islander, seven people identified themselves as having a disability, and seven people as coming from a linguistically diverse background (for more information see Table 13, p.142).

The total expenditure on salaries for 1999–2000 was \$12,880,628 compared with \$12,368,142 for the previous reporting period.

The increase in expenditure was largely due to:

- payment of retrenchments associated with the Whole-of-Government Information Technology Outsourcing Initiative;
- a certified agreement pay increase; and

- the effect over the full year of recruitment activity undertaken in 1998–1999.

During the reporting period, significant reviews of three principal registry sections (Communication and Mediation Support, Corporate Development and Human Resources) were conducted together with several other smaller reviews. A key outcome of these reviews was the establishment of flexible staffing structures able to handle changes in the character of, and priorities in, the Tribunal's work.

## **CERTIFIED AGREEMENT AND AUSTRALIAN WORKPLACE AGREEMENTS**

The reporting period coincided with the Tribunal's final year of its certified agreement. During the reporting period negotiations commenced for a new comprehensive agreement. Features of the existing agreement that had a significant benefit for employees but a negative impact on administration and reporting, such as leave management, were identified for adjustment and improvement.

## **OCCUPATIONAL HEALTH AND SAFETY**

The Tribunal's occupational health and safety policy and agreement has been in place since 30 April 1996. During the reporting period, occupational health and safety was a standing agenda item for the Tribunal's Consultative Committee.

Employee representatives (from the Community and Public Sector Union, and the Media, Entertainment and Arts Alliance) are responsible for the selection of health and safety representatives. The Tribunal provides training and accreditation for the representatives.

During the reporting period there were no accidents or dangerous occurrences notifiable under s.68 of the *Occupational Health and Safety (Commonwealth Employment Act) 1991* and no specially commissioned tests in any of the Tribunal offices.

The Tribunal routinely provides information about, and training in, occupational health and safety issues. The Tribunal has an eyesight testing program and a vaccination service open to all employees and provides special equipment to staff and members on a case-by-case basis.

## **INDUSTRIAL DEMOCRACY INITIATIVES AND PERFORMANCE**

The Tribunal implemented its industrial democracy policy and procedures in 1996. During the reporting period the Consultative Committee continued to provide a focal point for concerns and initiatives in participative work practices.

Three specific activities reflected principles of industrial democracy during the reporting period:

- The development of the new *Strategic Plan 2000–2002* for the Tribunal (for more information see p.39) was conducted by a planning group that consisted of a broad range of employee and management representatives. Consultation was held with all employees at key stages throughout the development of the plan.
- Negotiations for the Tribunal's next certified agreement commenced at the beginning of 2000. A group, consisting of management and staff, negotiated issues and initiatives for the development of the new workplace agreement. When it is finalised, this agreement will determine the employment framework to meet the aspirations of employees consistent with the business needs of the Tribunal.
- The implementation of the performance management scheme has involved consultation and negotiation of work plans between employees and their managers.

## TRAINING AND DEVELOPMENT STRATEGIES

During the reporting period, Tribunal-wide training was promoted in management skills, core professional knowledge and skills, and workplace diversity. The Tribunal aims to achieve its corporate goals, manage change and extend organisational competence by ensuring employees gain appropriate skills and knowledge.

Training was offered on a targeted basis, in areas where particular operations were affected by significant new or revised practices and procedures (for example, in notification procedures and database improvements). Training was provided to managers in dealing with workplace diversity issues.

Evaluation of the strategies is ongoing but preliminary feedback indicates that further training in some aspects of the training strategies will need to be considered.

The Tribunal promoted, on a case-by-case basis, a number of other training opportunities including:

- a studies assistance and professional development scheme;
- public sector management; and
- an indigenous employee study and undergraduate award program.

By granting these awards to employees the Tribunal assists particular employees to gain career skills and qualifications appropriate to the needs of the Tribunal (for more information about training see Table 14, p.143).

## PURCHASING AND ASSETS

### PROCUREMENT

The Tribunal continued to implement purchasing practices in line with APS procurement principles. Office services procurement staff were instructed in the need to adhere to the procurement principles, particularly the principle dealing with the promotion of Australian and New Zealand industry, and small-to-medium sized enterprises.

An objective of the Tribunal's purchasing is to support its functions by achieving value for money when acquiring goods or services with a central operating principle of open and effective competition.

During the reporting period, implementation commenced of an information management system for the collection and reporting of procurement data. It was expected that this system would be completed during the 2000–2001 reporting period.

### ASSET MANAGEMENT

The Tribunal's assets during the year were significantly reduced as a result of the IT outsourcing, in which all Tribunal IT hardware was replaced with vendor-owned equipment (for more information see 'Information technology outsourcing', p.42). Nonetheless, the Tribunal's custodianship of these assets is recognised in its insurance coverage. The remainder of the Tribunal's assets consists mainly of library, office fitout and major office equipment.

Tribunal-owned IT hardware was sold by auction. This resulted in a slight net loss and a significant reduction in the Tribunal's non-financial asset value (for more information see Appendix XI, p.163).

An annual stocktake was completed in accordance with *Financial Management Act 1997*.

## CONSULTANTS AND COMPETITIVE TENDERING AND CONTRACTING

### CONSULTANCY SERVICES

The Tribunal expended \$1,857,014 on consultancy services during the reporting period.

The Act provides for consultancies in two circumstances. Section 131A specifies that the President may engage consultants for any assistance or mediation activity specified in the Act. Section 132 provides that the Registrar may engage consultants with suitable qualifications to undertake administrative and research activities.

The Tribunal's consultants policy details the criteria for the engagement of consultants, the steps and processes that must be followed when engaging a consultant, and the standard terms and conditions to be used for the engagement. In the policy reference is made to the Tribunal's purchasing procedures and the Commonwealth procurement guideline 'Contracting for Consultancy Services'.

A legitimate need must be established to justify using consultants. A consultancy handbook for the engagement of consultants was developed and distributed to all staff and members involved in procuring the services of external consultants during the reporting period.

### CONSULTANTS ENGAGED UNDER S.131A OF THE NATIVE TITLE ACT

During the reporting period 11 consultants were engaged to undertake 20 s.131A consultancies.

Although the total contract cost of the consultancies was \$533,004, the sum of \$275,525 was spent against these contracts during the reporting period. The expenditure comprised fees to the consultants and support costs incurred by the Tribunal. During the reporting period, nine contracts were cancelled. The cancelled contracts totalled \$207,910. Details of the individual s.131A consultancies, including cancelled contracts, are provided in Appendix III (p.125).

Twelve of the 20 contracts were awarded to former members of the Tribunal whose appointments had expired. They were selected on the basis of a range of factors related to their experience and expertise, including a capacity to facilitate a smooth hand-over to new members of matters for which they had been responsible as members.

Contracts entered into in the 1998–1999 and first half of the 1999–2000 reporting period were negotiated at a time when the number of members of the Tribunal was declining and there was no immediate prospect of appointments of additional members. As noted in the *Annual*

*Report 1998–1999*, membership fell from 19 to 12 members, and by December 1999 there were nine members. In order to progress some matters that were well advanced and in which former members had been involved, it was considered appropriate to retain their services for specific purposes.

With the prospect of additional members being appointed, it was a condition in some contracts that their continuation be subject to the progress of a staged hand-over from the consultants to incoming members. This was a factor in the termination and phasing-out of activity of some contracts.

Other reasons for contract terminations resulted from conflicting time commitments for consultants and existing contract objectives and proposed methods being superseded by changes to native title applications. On some occasions the changes in an application resulted in new contracts being developed.

### **CONSULTANTS ENGAGED UNDER S.132 OF THE NATIVE TITLE ACT**

The total contract cost of all s.132 consultancies for the reporting period was \$1,324,010.

During the reporting period 38 consultants were engaged to undertake 39 consultancies. Of those consultancies two were connected with IT outsourcing (for more information see ‘Information technology outsourcing’, p.42). Of the 39 consultancies, 17 exceeded \$10,000. Details of those 17 consultancies are provided in Appendix III (p.125).

### **COMPETITIVE TENDERING AND CONTRACTING**

The Tribunal completed the outsourcing of its IT-related function during the reporting period (for more information see ‘Information technology outsourcing’, p.42).

## OTHER INFORMATION

### USE OF ADVERTISING AND MARKET RESEARCH

The following amounts were spent on advertising during the reporting period:

- notification of applications as required under the Act \$91,350
- staff recruitment \$97,559
- other advertising (for example, Tribunal services in local and industry media, tenders and consultants) \$5,660

The Tribunal did not use the services of advertising agencies, market research, polling or direct mail organisations. The Tribunal paid \$2,621 to an external distribution agency for labour costs associated with packaging, sorting, mailing, storage and disposal of information products.

### GST IMPACT

Introduction of the Goods and Services Tax (GST) from 1 July 2000 is expected to have a minimal impact on the Tribunal's business processes.

The cost of implementing the GST in the Tribunal was approximately \$40,000, which was primarily constituted by software changes and staff time for implementation of those changes. This cost, and an ongoing cost of \$5,000 per year, has been absorbed within the Tribunal's existing budget.

During the reporting period the Tribunal estimated that the GST will increase the annual travelling allowance expenses of members and staff by \$37,000 in the first year. Individual members and staff have discretion to choose accommodation and meals from any provider. However, the increased costs flowing from the GST in these areas cannot be subject to recovery of input credits. These costs are expected to be offset by reductions in the cost of goods and services nett of GST.

### YEAR 2000 IMPACT

The Year 2000 project covered all aspects of addressing year 2000 issues in respect of business-critical information systems, service delivery, IT infrastructure, building and facilities, and office services. The completion of the contingency planning phase in November 1999 meant the Tribunal achieved Year 2000 compliance and completed its reporting responsibilities to the Office of Government Online and the Attorney-General's Department. The transition phase over the new year period was achieved with no disruption to service or facilities.

# REPORT ON PERFORMANCE



## OUTCOME AND OUTPUT PERFORMANCE

The Tribunal has one outcome, the recognition and protection of native title, against which performance is measured. The level of achievement against this outcome is constituted by activities that are grouped into the four output categories of registration, agreements, arbitration and assistance and information. Figure 2: Outcome and output framework (p.34), includes a list of the outputs that constitute each of the output groups. This framework provides the basis for reporting on the Tribunal's operational performance in this report.

### FINANCIAL PERFORMANCE

The Tribunal's actual expenditure for the reporting period was \$23.60m. The estimated expenditure detailed in the Attorney-General's portfolio budget statement (PBS) was \$24.63m. The Tribunal's actual expenditure constitutes an underspending of \$1.03m compared to the PBS estimate.

The Tribunal spent \$5.68m less than anticipated on registration of claimant applications and ILUAs (output group 1.1). As is detailed later in the performance report, this was partly because 33 fewer claimant applications were registered and 43 fewer ILUAs were registered. In addition, the cost per registration was less than estimated.

The sum of \$4.35m of the savings made in registration costs were absorbed by overall increases in activity in agreements, arbitration, and assistance and information. The increases in activity are detailed below.

## SUMMARY FOR OUTCOME INFORMATION

### RESOURCE TABLE FOR OUTCOME

The resource table for outcome (Table 1, p.61) identifies the cost of each output group and outputs during the reporting period.

### SUMMARY OF RESOURCE TABLE FOR OUTCOME

Revenue from government through appropriations contributed 99.2 per cent to the total output price for this outcome. In addition to revenue from Appropriation Bill 1, the Tribunal applied carryover funds from the 1998–1999 financial year to output group 1.1.

### SUMMARY OF SIGNIFICANT RESOURCE CHANGES

Between 1998–99 and 1999–2000 the focus started to shift to mediation, ILUA assistance, notification, and away from registration testing, despite the increased number of registration test decisions made. This shift reflects the increased referral of matters by the Federal Court to the Tribunal for mediation during the period. While the expected use of the ILUA provisions was not as great as anticipated, the Tribunal recorded a growing interest among native title parties and other people in making these types of agreements.

During the reporting period, the overall balance of workload across the States and Territories shifted. The volume of mediation work declined in Western Australia due to a reduction in claims, discontinuances and combinations, and a reluctance by some parties to actively engage in mediation. The workload in Queensland, by contrast, continued to increase, with claims moving through mediation towards consent determinations, coupled with an active interest in the use of ILUAs.

The Tribunal increased its commitment in the Northern Territory to cope with applications lodged in response to compulsory acquisitions by the Northern Territory Government. The Tribunal also increased its capacity in the region to respond to the processing of a backlog of mining tenement applications that is expected to occur in 2000–2001. In the reporting period, the staff of the Northern Territory registry increased from two to six, with further increases planned.

Applications in Victoria moved into mediation and, with the decision by the Victorian Government to participate in mediation, reasonably intensive negotiations were anticipated.

## PERFORMANCE AGAINST CUSTOMER SERVICE CHARTER

The Tribunal's customer service practices are underpinned by its *Customer Service Charter*. The charter sets out the quality of service customers can expect from the Tribunal and provides an avenue for customers to provide feedback on that service.

Feedback received covers a range of performance areas and is positive in each instance. The most common areas of positive feedback involved geospatial services, registration test assistance conducted in South Australia, and background reports (for more information on background reports see p.110).

The charter's feedback mechanisms did not attract any complaints during the reporting period. However, in the event that complaints were to arise, the appropriate officer or section would be required to respond within 14 days.

A review of the *Customer Service Charter*, including an evaluation of customer familiarity with Tribunal objectives and service standards, was scheduled for the reporting period. However, the Tribunal deferred the review to align its timing with other evaluation initiatives being undertaken with stakeholder groups.

Table 1: Total resources for outcome between 1 July 1999 and 30 June 2000

|   | Estimate<br>(\$'000) | Actual<br>(\$'000) |
|---|----------------------|--------------------|
| <b>Departmental appropriations</b>  |                      |                    |
| Output group 1.1 Registration   |                      |                    |
| Output 1.1.1 Claimant applications  |                      | 6 431              |
| Output 1.1.2 Indigenous land use agreements   |                      | 197                |
| <b>Subtotal output group 1.1</b>  | <b>9 935</b>         | <b>6 628</b>       |
| Output group 1.2 Agreements   |                      |                    |
| Output 1.2.1 Indigenous land use and access   |                      | 1 479              |
| Output 1.2.2 Mediation  |                      | 6 531              |
| Output 1.2.3 Future act   |                      | 494                |
| Output 1.2.4 Non-claimant   |                      | 152                |
| Output 1.2.5 Compensation   |                      | 16                 |
| <b>Subtotal output group 1.2</b>  | <b>7 965</b>         | <b>8 673</b>       |
| Output group 1.3 Arbitration  |                      |                    |
| Output 1.3.1 Future act   |                      | 728                |
| Output 1.3.2 Expedited procedure  |                      | 2 164              |
| <b>Subtotal output group 1.3</b>  | <b>1 361</b>         | <b>2 892</b>       |
| Output group 1.4 Assistance and Information   |                      |                    |
| Output 1.4.1 Assistance   |                      | 1 921              |
| Output 1.4.2 Notification   |                      | 853                |
| Output 1.4.3 Research   |                      | 522                |
| Output 1.4.2 Public information   |                      | 2 109              |
| <b>Subtotal output group 1.4</b>  | <b>2 995</b>         | <b>5 405</b>       |
| <b>Total of departmental outputs</b>  | <b>22 256</b>        | <b>23 598</b>      |
| <b>Total revenue from government<br/>(appropriations) contributing to price<br/>of departmental outputs</b> | <b>22 046</b>        | <b>23 404</b>      |
|   | <b>99.1%</b>         | <b>99.2%</b>       |
| <b>Total revenue from other sources</b>   | <b>210</b>           | <b>194</b>         |
| Carried forward from 1998–1999  | 2 372                |                    |
| Total price of departmental outputs   |                      |                    |
| <b>(Total revenue from government<br/>and other sources)</b>  | <b>24 628</b>        | <b>23 598</b>      |
| Average staffing level (number)   | 215                  | 209                |

Note: Due to changes to the outcome and output framework for the 2000–2001 reporting period, the estimates for that period have been included in a separate table (see Table 10, p.124).

## OUTPUT GROUP 1.1 REGISTRATION

Output group 1.1 is constituted by:

- registration test decisions for claimant applications—output 1.1.1; and
- registration of ILUA applications—output 1.1.2.

The following outline summarises the Tribunal’s performance against this output group. In line with the PBS, this summary includes a description of the outputs (item descriptions) and how the Tribunal has measured its level of achievement for these items (performance measures).

### CLAIMANT APPLICATIONS—OUTPUT 1.1.1

Native title claimant applications are made to the Federal Court by persons who are authorised on behalf of a native title claim group. The applicants are generally seeking a determination from the Court that native title exists in the claimed area. Applicants sometimes have a more immediate concern for lodging a claimant application, which is to obtain the right to negotiate over certain future acts involving mining and compulsory acquisition.

Once filed with the Federal Court, the application is copied and provided to the Native Title Registrar for the purpose of applying the registration test (s.190A). The registration test serves as a threshold assessment for most claimant applications lodged with the Tribunal under the Act as it was before 30 September 1998 (‘old Act’), and for all claimant applications filed in the Federal Court on and after 30 September 1998 (‘new Act’). If the Registrar or a delegate of the Registrar, determines that a claimant application satisfies all of the conditions of the registration test, then it is placed on the Register of Native Title Claims.

Where the application is affected by an s.29 notice (which is a government notice of its intention to allow a future act), the Registrar must endeavour to apply the registration test within four months from the date of the notice. Native title applicants may also gain procedural rights under State or Territory legislation if they become registered within the timeframe set by that legislation.

#### ITEM DESCRIPTION

This output is concerned with the registration of claimant applications.

#### Performance measures

The performance measures for applications are constituted by the number processed for registration, quality of decisions, and use of resources.

Figure 3: Number of claimant application registration test decisions

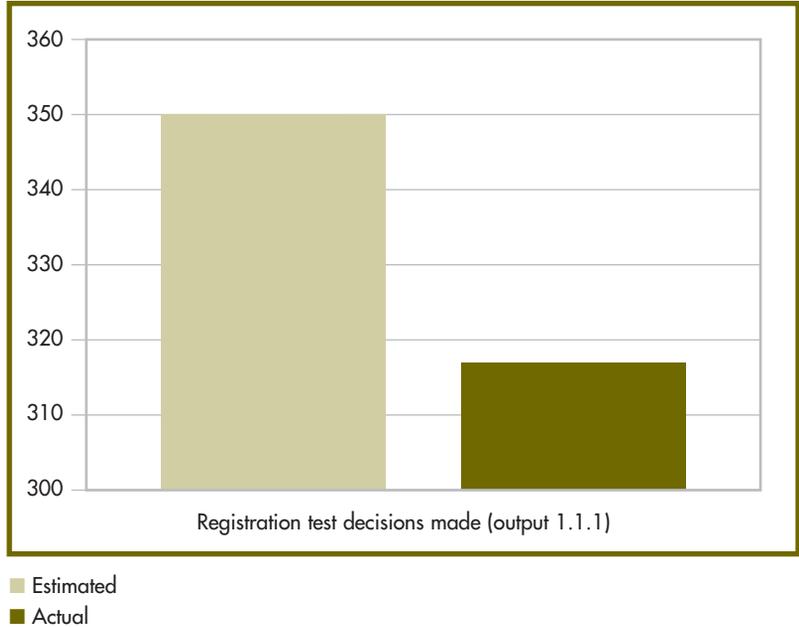
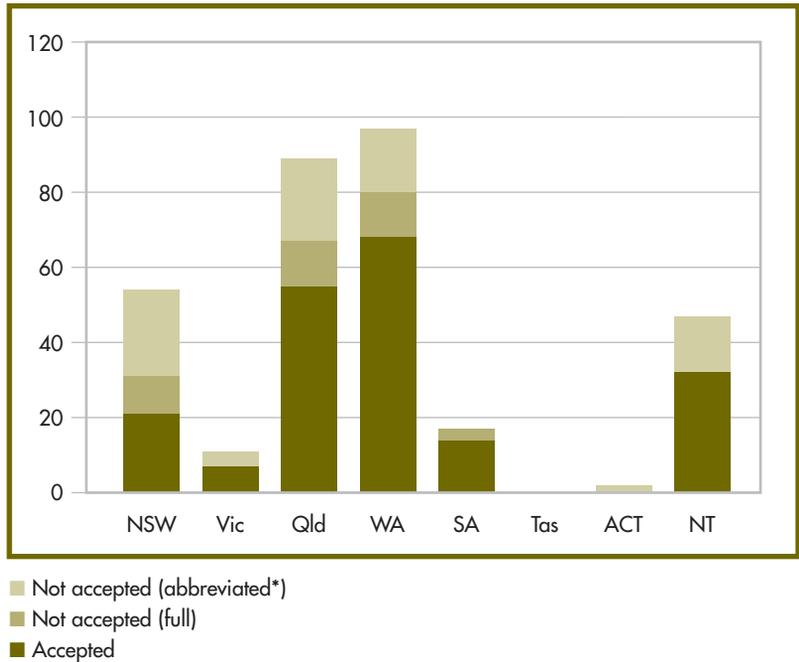


Figure 4: Number of claimant applications registration test decisions by State or Territory



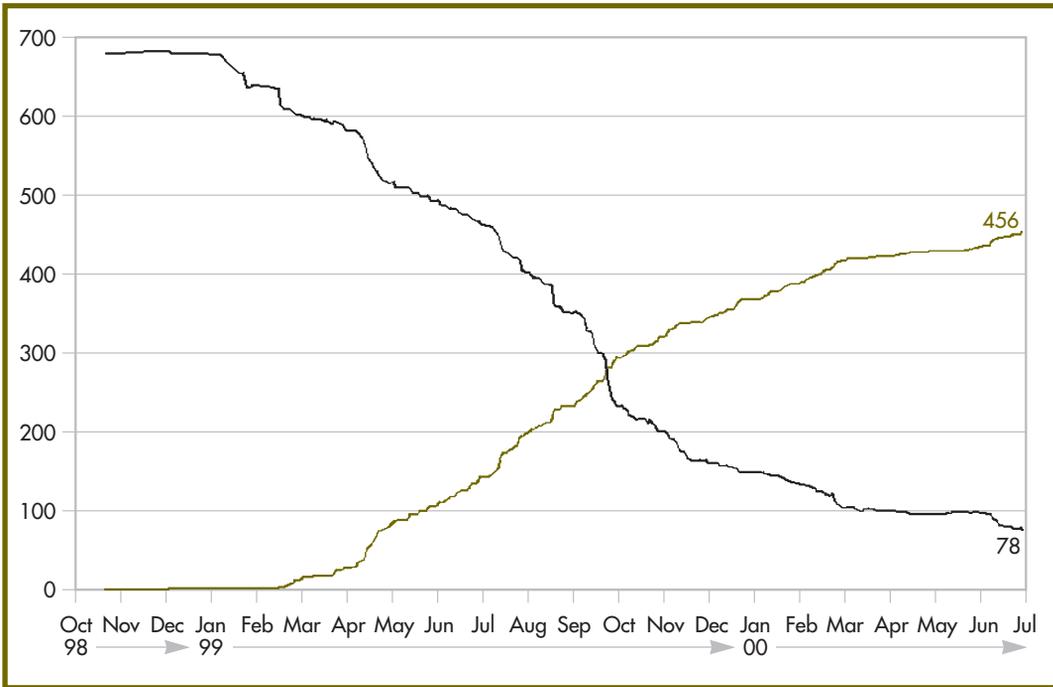
\* The 'abbreviated' decision-making procedure occurs when applicants do not provide the Registrar with all the information necessary to meet the requirements of the registration test. This situation generally relates to applications made under the old Act, where additional information is required.

**Number of decisions made**

Figure 4 shows a State and Territory breakdown of numbers of registration test decisions, resulting in the national total of 317. This is slightly less than the estimated target of 350 decisions.

Of the 317 decisions that were made, 238 were in respect of old Act applications and 79 were on new Act applications.

**Figure 5: Registration test decisions made and still to be made for all applications between 30 September 1998 and 30 June 2000**



— total number of applications remaining to be tested  
 — registration test decisions made

Figure 5 shows that 456 registration test decisions have been made since 30 September 1998 across all States and Territories, and that 78 applications were still to be tested at the end of the reporting period. Of these 78, 66 were old Act applications and 12 were new Act applications.

Figure 5 shows that there were 678 applications that needed to be tested at the time of the commencement of the new Act. The number of applications that needed to be registration tested at that time has since been affected by two factors:

- new applications filed in the Federal Court, which added to the number of applications that had to be registration tested; and
- the rationalisation of applications (that is, applications that are combined with other applications, or applications that are withdrawn, discontinued, etc.), which decreased the total number of applications that had to be registration tested.

Consequently, the 678 applications that were due to be tested at the time of the new Act's commencement as shown in Figure 5 do not relate directly to the sum of the 456 decisions made and the 78 decisions remaining at the end of the reporting period.

Table 2: Registration test status of claimant applications at 30 June 2000

| Application status  | Quantity |
|---|----------|
| Decisions made between 30 September 1998 (commencement of new Act) and 30 June 2000 | 456      |
| Decisions made during 1999–2000   | 317      |
| New applications filed during 1999–2000   | 86       |
| Rationalised applications (combined, amended, discontinued etc.) during 1999–2000   | 241      |
| Applications remaining for decisions at 30 June 2000                                | 78       |

The rate of testing was significantly higher than in the previous reporting period (between 30 September 1998 and 30 June 1999), when 139 decisions were made.

The increased rate at which registration test decisions were made in the reporting period was due to the finalisation of the majority of old Act applications. Old Act applications took, on average, 13.1 months to process from the commencement of the new Act, while new Act applications took, on average, 2.8 months to process. The Act provides that an application must meet all conditions of the registration test before it can be registered. The majority of applications that failed the registration test did so because one or more of the following conditions were not met:

- an application must contain all the prescribed information, such as the applicant's name and address, and be accompanied by prescribed documents such as an affidavit sworn by the applicant (ss.190C(2) and 62(1)(a)). Of those applications that failed the test 74 per cent did not meet the requirements of s.190C(2);
- an application must be certified by the relevant native title representative body (s.190C(4)(a)) or authorised by the members of the claim group in accordance with the meaning of the Act (s.190C(4)(b)). Of those applications that failed the test 52 per cent were not certified and 58 per cent were not authorised in accordance with the Act.

Of the 317 applications tested during the period, 62 per cent were accepted for registration. This compares with a rate of 45 per cent achieved in the previous period, when a greater proportion were old Act applications.



**Tribunal employees in the Service Delivery division check the location of a claimant application in relation to existing tenures marked on a generalised land tenure map.**

The reduction in time taken to process applications and the increased proportion of applications passing the test can be attributed to two main factors that became apparent during the reporting period:

- greater familiarity among applicants and applicants' representatives with the conditions of the registration test. Tribunal staff, including staff acting as registration test delegates of the Registrar, increased their familiarity with the conditions of the test, and were able to provide assistance and process applications with improved efficiency; and
- applications made in accordance with the new Act's provisions were planned and substantiated with a view to meeting the requirements of the test from the beginning. By contrast, the testing of old Act applications under the different conditions of the new Act registration test required, in every case, supplementary information from the applicants. The supply and assessment of that information was time consuming. Figure 6 and Figure 7 highlight the increased level of compliance with the registration test conditions demonstrated by claimant applications. Ninety-five per cent of new Act applications tested during the reporting period met the conditions of the registration test, compared with 52 per cent of applications lodged under the old Act.

Figure 6: Proportion of accepted and not accepted decisions for old Act claimant applications

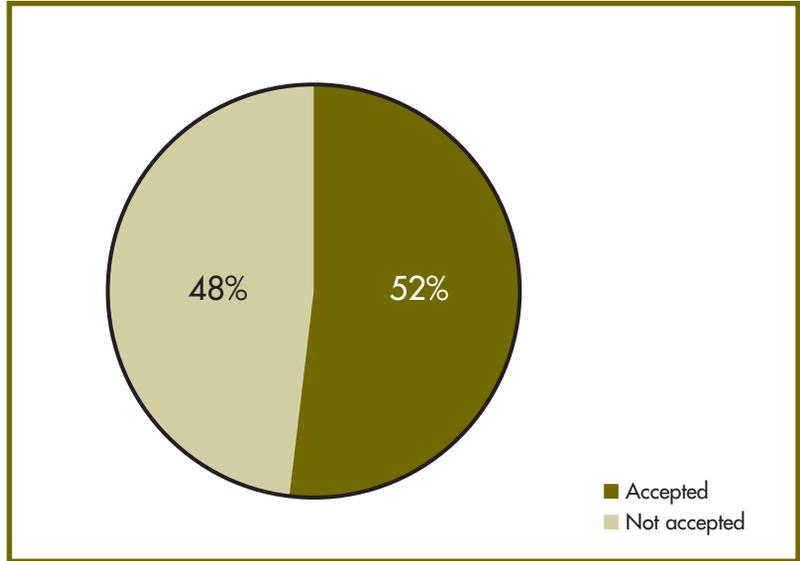
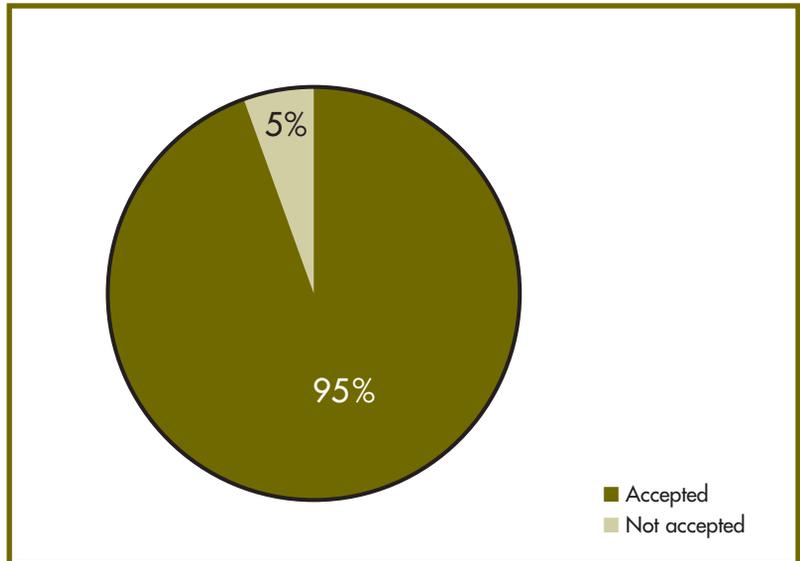


Figure 7: Proportion of accepted and not accepted decisions for new Act claimant applications



Despite increased compliance and familiarity with the registration test, some factors delayed the processing of applications during the reporting period. These included:

- the effects of judicial decisions, particularly the decisions of the Full Federal Court in *Western Australia v Ward* and *Western Australia v Strickland* and the four decisions of Carr J in *Western Australia v Native Title Registrar* (for more information on these decisions see Appendix IV, p.133);

- applicants being unrepresented or involved in inter-group disputes;
- representative bodies lacking the resources to assist claimants promptly; and
- in some cases, the complexity and uncertainty of the legislative provisions necessitating extensive assistance to some applicants by the Tribunal.

These matters and decisions created some delay in registration testing, and affected the total number of decisions made in the period. At the end of the reporting period the rate of decision-making had increased (see Figure 5, p.64).

### **Quality of decisions**

During the reporting period, the quality of Tribunal decisions was measured by the percentage of decisions that survived a 'court appeal'. In the next reporting period this performance measure will be replaced with timeliness.

During the reporting period 19 applications were subject to judicial review. Of the 19 applications, six were decided, five were withdrawn or discontinued, one was dismissed and seven were still on foot at 30 June 2000. In all six applications for review that were decided, the Registrar's interpretation and application of the conditions of the test were upheld (for more information see 'External scrutiny', p.46 and Appendix IV, p.133).

The Registrar's approach to decision-making was underpinned by a number of strategies that were carried over from the previous reporting period. These strategies included:

- detailed analysis of court decisions;
- clear procedures that were modified according to changing circumstances, primarily, the implementation of procedural fairness measures ordered by the Federal Court in *Western Australia v Native Title Registrar*;
- training for registration test officers and delegates; and
- regular delegate meetings to discuss approaches to new issues.

### **Resource usage**

During the reporting period, the total cost for the registration of claimant applications was \$6.43m. This amount constitutes most of the actual resources for output group 1.1 (\$6.63m). The estimated cost for output 1.1, as detailed in the PBS, was \$12.31m. The difference between the estimated and the actual expenditure for registration is an underspent amount of \$5.68m. For summary information regarding the re-allocation of these resources see 'Financial performance' (p.58).

The reasons for the lower than expected use of resources for registration of claimant applications were outlined in the discussion above

concerning the number of applications processed (p.64). In summary these reasons concerned;

- lower than estimated number of decisions made;
- greater familiarity among applicants and Tribunal employees with registration processes; and
- effective consolidation of strategies for processing applications.

By the end of the reporting period the Tribunal reached the tail end of the old Act applications and the new Act applications were being processed relatively quickly. The rationalisation of claims that characterised the previous reporting period's registration test effort continued and, consequently, the combination and amendment of applications significantly reduced the number of active applications. This claim rationalisation resulted in resource savings for the Tribunal.

Aside from these broad reasons for greater efficiency, the Tribunal made savings in specific areas by establishing cooperative arrangements with some States and representative bodies. For example:

- the Tribunal, the Victorian State Government and Mirimbiak Nations Aboriginal Corporation (the native title representative body in Victoria) agreed on the circumstances in which the State will waive, on a case-by-case basis, their right to receive specific classes of additional material, such as anthropological reports, genealogies, affidavits containing sensitive material and documents on the public record. This agreement expedited the timeframes in which the test was administered, and promoted goodwill between the parties; and
- the Tribunal acquired digital cadastral data from the Queensland and Victorian government custodians. This enabled improved cost effectiveness when describing and mapping the areas subject to new and amended applications. Both jurisdictions have adopted data access and pricing policies that encourage others to use this data.

Notwithstanding the Tribunal's expectation that the workload for registration testing will continue to decrease, there are some developments which may lead to an increase in new claimant applications.

During the reporting period the Northern Territory Government indicated its intention to process the substantial backlog of applications for exploration and mining tenements in their jurisdiction. Those applications relate to areas of pastoral lease land over which no native title applications have been made. Consequently, it was expected that indigenous people wishing to obtain the right to negotiate in respect of the proposed tenements would need to make native title applications. The Tribunal will have to apply the registration test to each new application.

## ILUA APPLICATIONS—OUTPUT 1.1.2

ILUAs are voluntary agreements made between people who hold, or claim to hold, native title in an area and other people who have, or wish to gain, an interest in that area. Under the Act there are three types of ILUAs: Body Corporate Agreements (s.24BA–24BI), Area Agreements (s.24CA–24CL), and Alternative Procedure Agreements (s.24DA–24DM). The ILUA scheme facilitates agreement by allowing a flexible and broad scope for negotiations about native title and related issues, including future acts.

Under the Act, registered ILUAs bind all persons who hold native title in the area to the terms of the agreement. Parties to an ILUA apply to the Registrar for registration of the agreement.

The processing of applications includes:

- checking for compliance against the registration requirements of the Act;
- notifying individuals and organisations; and
- mediating or inquiring into objections to registration in some situations.

### ITEM DESCRIPTION

ILUA applications are applications for registration of indigenous land use agreements (including inquiry into objections to registration).

### Performance measures

The performance measures for ILUA applications are constituted by numbers processed, percentage of lodged applications becoming registered, and use of resources.

#### Number of ILUA applications processed for registration

The Registrar made seven registration decisions during the reporting period (Table 3, p.71). Seven lodged applications were yet to be decided at 30 June 2000. This was lower than the number predicted in the PBS (Figure 8, p.72).

Key issues affecting the registration of applications related to the novelty of the ILUA scheme. Over time, both stakeholder and Tribunal experiences with ILUA processes were expected to develop and lead to greater levels of efficiency and effectiveness.

Under sections 24BF, 24CF and 24DG, the Tribunal may provide assistance to parties engaged in negotiating ILUAs. The Registrar may provide other assistance under s.78 of the Act. This assistance is most effective when provided before an application is lodged for registration. In a number of cases, however, parties sought assistance from the Tribunal late in the ILUA negotiation process. This caused difficulties in situations where there was a lack of familiarity with the ILUA provisions.

Table 3: Status of ILUA applications lodged for registration with the Registrar between 1 July 1999 and 30 June 2000

| Status                                      | Name  | State/Territory    | Total     |
|---|---|--------------------|-----------|
| Lodged and rejected                         | Saibai Mura Buway Corporation and Saibai Island Community Council | Queensland         | 1         |
|   | Yorta Yorta ILUA  | Victoria           | 1         |
| <b>Rejected total</b>                       |   |                    | <b>2</b>  |
| Lodged and registered                       | Venn Blocks — Warlangluk (Katherine)                              | Northern Territory | 1         |
|   | Ewamian People #2   | Queensland         | 1         |
|   | Mackay Harbour Beach Park   | Queensland         | 1         |
|   | Mackay Surf Lifesaving Club                                       | Queensland         | 1         |
|   | BHP — Minerva   | Victoria           | 1         |
| <b>Registered total</b>                     |   |                    | <b>5</b>  |
| Lodged and yet to be registered or rejected | Suplejack   | Northern Territory | 1         |
|   | Mer Gedkem Le Corporation and Australian Customs Service          | Queensland         | 1         |
|   | Mer Gedkem Le Corporation and Mer Island Community Council        | Queensland         | 1         |
|   | Cairns Esplanade Re-development Agreement                         | Queensland         | 1         |
|   | Small mining project (Opalton area)                               | Queensland         | 1         |
|   | Birregurra — Paaratte Pipeline                                    | Victoria           | 1         |
|   | Lara to Birregurra Pipeline                                       |                    | 1         |
| <b>Lodged total</b>                         |   |                    | <b>7</b>  |
| <b>Total ILUAs lodged</b>                   |   |                    | <b>14</b> |

The most common reasons for non-compliance included:

- incorrect parties to ILUAs;
- insufficient or incorrect description of areas that were the subject of an ILUA;
- poor attention to the importance of proper authorisation by native title parties;
- incorrect certification of ILUAs by representative bodies; and
- incomplete applications and failure to supply necessary accompanying information.

Other factors that limited the number of ILUAs registered included:

- changes to the Native Title (Indigenous Land Use Agreements) Regulations during the reporting period; and
- uncertainty about how some of the registration provisions should be interpreted in particular circumstances.

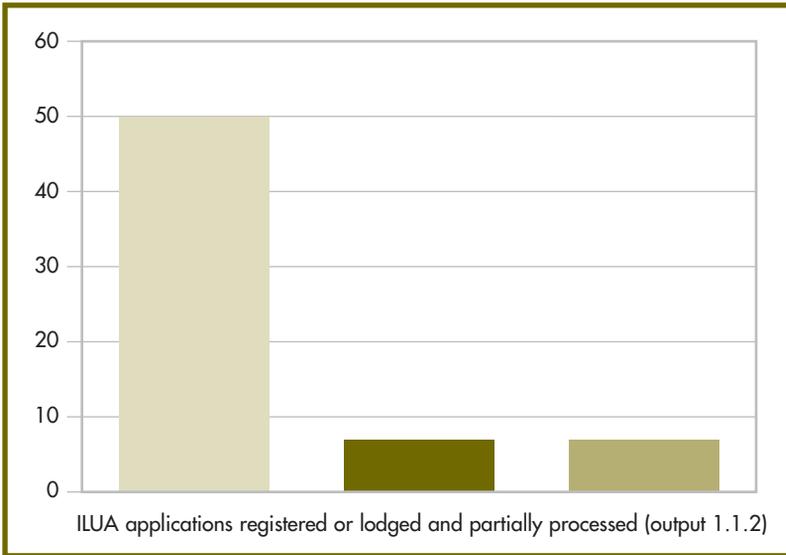


Figure 8: ILUA applications processed for compliance between 1 July 1999 and 30 June 2000

- Estimated
- ILUA applications fully processed
- ILUA applications lodged but not fully processed at 30 June 2000

Within the Tribunal, the generally novel character of ILUA processes created some challenges in implementing the registration process. Tribunal strategies for dealing with these challenges included:

- the President’s nomination of a coordinating member for ILUAs and allocation of members and employees to assist parties negotiating particular ILUAs;
- ongoing training of staff;
- appointment of an employee dealing exclusively with ILUAs; and
- review of procedures as new issues arose.

To improve the effectiveness with which ILUA applications are processed a key Tribunal objective is to provide clear, concise and well-targeted information to applicants and others.

During the reporting period the Tribunal released three ILUA-related information products targeted toward groups and individuals who would benefit from introductory materials:

- *Yarning about ILUAs* (audio-tape);

- *Indigenous land use agreements (ILUAs) short guide to registration* (brochure); and
- Indigenous land use agreements (ILUAs) application information (brochures on body corporate agreements, area agreements and alternative procedure agreements).

The Tribunal has also published detailed guidelines on its web site to assist parties who are nearing completion of their ILUA negotiations.

During the reporting period the Tribunal's communication strategy group identified that there was a need for more information that could assist parties who are in the midst of ILUA negotiations but are not yet in a position to utilise a detailed set of ILUA compliance guidelines.

### **Proportion of lodged applications becoming registered**

Of the seven applications that were fully processed during the reporting period, five applications were accepted for registration, and two were not accepted. This is a low number from which to assess performance. In addition to the low number of ILUA applications lodged for registration during the reporting period, the issues that affected decisions to accept applications for, or reject them from, registration were numerous. These issues were discussed in the above section in relation to the total number of ILUA applications lodged with the Tribunal.

### **Resource usage**

Actual expenditure on the registration of ILUA applications during the reporting period was \$0.20m. As was outlined in the resource usage section of 'Registration of claimant applications' (p.62), the \$0.20m is a component of output 1.1, in which there was a significant underspending compared with the estimated amount detailed in the PBS. A summary of how the resources estimated for output 1.1 were re-allocated is provided in 'Financial performance' (p.58).

The actual expenditure was lower than estimated due to the fewer than expected number of applications lodged.

Several ILUAs in which the Tribunal had been assisting were approaching a stage where they may be ready for registration in the next reporting period (for more information see 'Indigenous land use and access agreements—output 1.2.1', p.74). The anticipated increase in ILUA registration workload is reflected in next year's budget estimate for this output of \$0.90m (see Table 10, p.124).

As occurred during this reporting period with the registration of claimant applications (output 1.1.1), increasing familiarity with ILUA registration processes in the next reporting period is expected to translate into improved efficiencies among parties and their representatives, and within the Tribunal.

## OUTPUT GROUP 1.2 AGREEMENTS

For the purposes of this output, agreements are defined as an outcome reached with the active participation of two or more parties.

Output group 1.2 is comprised of:

- Indigenous land use and access agreements—output 1.2.1;
- Mediation reports to the Federal Court and agreements—output 1.2.2;
- Future act agreements—output 1.2.3;
- Non-claimant agreements—output 1.2.4; and
- Compensation agreements—output 1.2.5.

The following outline summarises the Tribunal’s performance against this output group. In line with the PBS, this summary includes a description of the outputs (item descriptions) and how the Tribunal has measured its level of achievement for these items (performance measures).

### INDIGENOUS LAND USE AND ACCESS AGREEMENTS—OUTPUT 1.2.1

The Act provides that persons wishing to make ILUAs or access agreements can request assistance from the Tribunal.

A brief description of the nature of ILUAs is provided in ILUA applications—output 1.1.2 (p.70). The Act’s provisions for agreements about access to non-exclusive agricultural and pastoral leases (s.44A–44G) preserve the right of native title holders to carry out traditional activities in certain circumstances.

State and Territory governments have widely differing policies concerning the use of ILUAs. The Western Australian Government did not use the ILUA option during the reporting period. In Queensland, on the other hand, the State Government actively promoted the use of ILUAs to reach agreements about mining developments and other future acts. In South Australia, key stakeholders, including the State, were considering ILUAs to resolve issues in native title claimant applications.

A trend anticipated by the Tribunal is that parties to native title determination agreements will increasingly negotiate a number of ILUAs concurrently with consent determinations. During the reporting period the trend was most noticeable in Queensland and New South Wales.

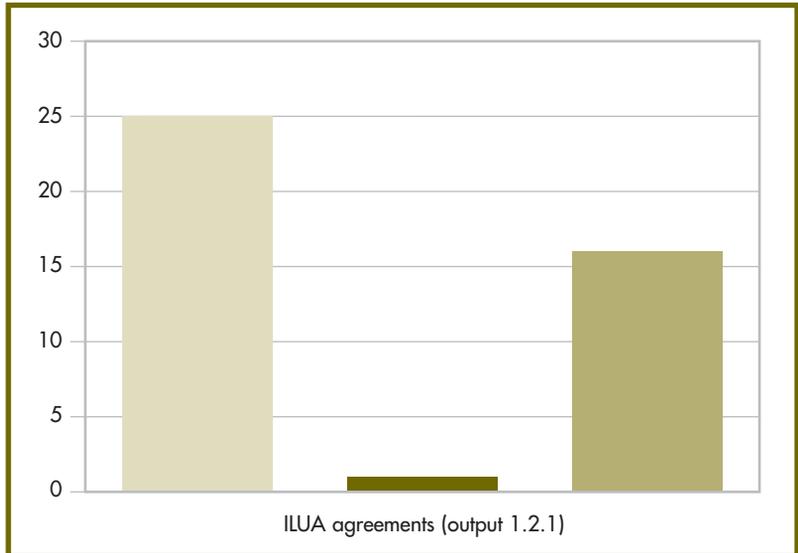
#### ITEM DESCRIPTION

This item is described as indigenous land use agreements and other agreements negotiated with the assistance of the Tribunal.

## Performance measures

The performance measures for ILUA and access agreements are constituted by the number of registered agreements in which the Tribunal assisted, level of client satisfaction, and use of resources.

Figure 9: ILUA agreements



- Estimated
- Registered ILUAs
- ILUA negotiations in progress with direct Tribunal involvement at 30 June 2000

### Number of indigenous land use and access agreements

During the reporting period, the Tribunal assisted parties to negotiate one ILUA that was subsequently registered. Assistance was provided in 16 ILUA-related negotiations that were part of applications not yet lodged for registration by 30 June 2000. These negotiations all took place in Queensland.

No assistance was provided by the Tribunal in the negotiation of s.44 statutory access agreements.

### Level of client satisfaction

The Tribunal did not formally evaluate client satisfaction for this output during the reporting period.

The level of negotiation assistance in relation to ILUAs and access agreements was lower than anticipated during the reporting period. Consequently, the Tribunal considered that a survey of client satisfaction could not provide accurate representations of client experiences up to 30 June 2000.

### Resource usage

Expenditure on ILUAs during the reporting period was \$1.48m. ILUAs were part of the agreement output group (output 1.2) that was estimated

to cost \$7.97m. Output group 1.2 was overspent by \$0.78m in comparison with the estimate.

A significant proportion of the resources expended against output 1.2.1 were in regard to the 16 ILUA negotiations that have not yet been lodged for registration.

The ILUA scheme has involved costs that will decrease as the scheme becomes better established over time. These costs include continuing refinement of systems that help coordinate and oversee ILUA negotiation functions, such as assessing client needs, allocating member and staff resources, training staff, and tracking and reporting.

In areas where State or Territory governments are supporting ILUA processes, the demand for negotiation assistance was expected to increase. Indications were given during the reporting period that many ILUA negotiations are expected to be affected by commercial considerations, including the need to progress negotiations quickly. Those timeframe pressures have the potential to place a significant demand on the Tribunal's resources, and those of negotiating parties.

Efficiency gains are being made through increasing levels of, and strategies for, cooperation between the Tribunal, State and Territory governments and native title representative bodies. For example, in South Australia, the main parties to native title agreements, the State government included, were considering an ILUA approach to resolve native title issues. The Tribunal's Adelaide registry provided information to assist the negotiations, including guidance about ILUA registration processes.

The President nominated a member to oversee and coordinate ILUA work. Further, on the east coast, where ILUA activity was greatest, the Tribunal created a specialist ILUA position to assist agreement-making with the aim to communicate to parties:

- the situations in which ILUAs may be a useful tool for the resolution of land management issues;
- the strategic issues that need to be factored into negotiations; and
- the registration requirements.

## CASE STUDY—INDIGENOUS LAND USE AGREEMENTS

### **Mackay ILUAs**

The Tribunal registered Queensland's first two ILUAs on 24 August 1999. The two ILUAs are located in Mackay. The negotiations took place between four local Aboriginal groups, the Queensland Government, Mackay Surf Life Saving Club and Mackay City Council. The agreements relate to the construction of a new surf lifesaving club and the gazettal of land for a park in the Mackay Harbour Beach area of North Mackay.

The two agreements were placed on the Register of Indigenous Land Use Agreements after the three-month notification period closed without any formal response from other native title applicants.

The Mackay ILUAs represent a strong commitment by all parties to achieving a negotiated outcome. In a broader context, the Mackay ILUAs are part of a trend, particularly in Queensland, in which the benefits of voluntary agreements are being recognised and translated into an increasing preparedness to utilise the ILUA option provided for in the Act. The flexibility of ILUAs allows parties to tailor agreements to suit their circumstances, and provides a valuable alternative to other schemes in the Act. A registered agreement gives the certainty and legal enforcement parties require for development while protecting the interests of indigenous people.

The McKay ILUAs allowed for valuable service to the local community to be given the go-ahead, but also dealt with native title issues appropriately. ILUAs may provide similarly appropriate mechanisms for agreements to be achieved between native title parties and other persons or organisations, such as mining, pastoral, forestry, tourism or other resource industries.

## MEDIATION—OUTPUT 1.2.2

This output is constituted by mediation reports to the Federal Court and mediation agreements. These reports and agreements relate to native title applications that were made to the Federal Court, under s.61 of the Act, and subsequently referred by the Court to the Tribunal (or old Act applications that were deemed to be referred to the Tribunal).

Section 86A(1) specifies that the purpose of mediation is to assist the parties to reach agreement on whether native title exists, or existed, in relation to an area covered by an application. If parties agree that native title exists or existed in the area, then the mediation can assist parties to reach further agreement on all or some of the following matters:

- who holds or held the native title;
- the nature, extent and manner of exercise of the native title rights and interests in relation to the area;
- the nature and extent of any other interests in relation to the area;
- the relationship between the rights and interests of native title parties and other people with interests in the area; and
- whether the native title rights and interests confer or conferred possession, occupation, use and enjoyment of the land or waters on its holders to the exclusion of all others.

These matters are, in essence, to be included in a determination that native title exists (ss.94A and 225). Such a determination can be made as a result of an agreement between the parties.

During the reporting period no consent determinations of native title were made. There were two litigated determinations of native title made by the Federal Court:

- *State of Western Australia v Ward* [2000] FCA 611 (11 May 2000) (Miriuwung-Gajerrong #1); and
- *Hayes v Northern Territory of Australia* [2000] FCA 671 (23 May 2000) (Arrente (Hayes)).

Once a matter is referred to the Tribunal for mediation, a Tribunal member will develop a mediation strategy with the parties. The orders of the Court will set the scope of the mediation. The order may be quite specific (for example, to resolve overlaps in applications) or more encompassing, which may lead to a consent determination of native title.

### ITEM DESCRIPTION

Reports to the Federal Court are compilation and submissions of mediation and status reports.

Although the Tribunal is independent of the Court, the Court supervises the progress of mediation in each matter referred to the

Tribunal. The Tribunal member presiding over a matter being mediated reports to the Court when:

- the mediation is successfully concluded (s.136G(1));
- the Court requests information about the progress of the mediation (ss.86E, 136G(2)); or
- the presiding member considers that a report would assist the Federal Court in progressing the proceeding (s.136G(3)).

Mediation reports to the Court have potential to assist:

- parties to reach agreement or clarify the matters in dispute between them;
- the Tribunal to advance the mediation process; and
- the Court to ascertain whether mediation should cease or continue, including whether the continuation should be based on new orders or directions (ss.86C(5), 86E, 136G(3)).

The number of mediation reports prepared by the Tribunal was largely determined by the number of orders made by the Federal Court under s.86E of the Act.

In addition to mediation reports, the Tribunal provides the Federal Court with status reports, which inform the Court of the current situation of an application prior to each directions hearing. Status reports are provided to the Federal Court as part of the Tribunal's normal administrative procedures and deal with issues such as progress with notification.

## **Performance measures**

The performance measures for reports to the Federal Court are the number of completed reports and use of resources.

### **Number of reports to the Federal Court**

During the reporting period, 174 mediation reports were submitted to the Federal Court plus 177 status reports. The estimated number was 25 (see Figure 10, p.80).

### **Resource usage**

Spending on reports to the Federal Court during the reporting period was \$0.73m which is a small proportion of the \$6.53m total for this output. However, many of the matters that were mediated by the Tribunal during the reporting period were at an early stage and thus the workload is not captured solely in finalised mediation agreements (see below, 'Item description'). Thus, the number of mediation reports to the Federal Court provides an important complementary indication of the large amount of mediation work that was undertaken. The large number of status reports completed during the reporting period provide an indication of the workload that was undertaken in preparing applications for mediation.

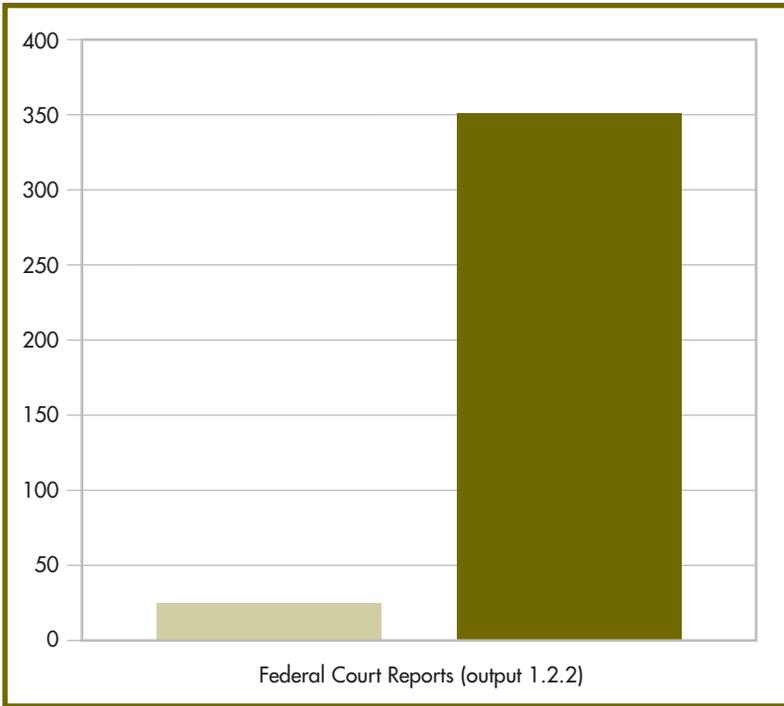


Figure 10: Mediation and status reports to the Federal Court

■ Estimated  
 ■ Actual

Table 4: Reports to the Federal Court

| State/Territory              | Mediation reports | Status reports |
|------------------------------|-------------------|----------------|
| New South Wales              | 2                 | 9              |
| Victoria                     | 2                 | 29             |
| Queensland                   | 72                | 5              |
| Western Australia            | 86                | 134            |
| South Australia              | 10                | -              |
| Tasmania                     | -                 | -              |
| Australian Capital Territory | 2                 | -              |
| Northern Territory           | -                 | -              |
| <b>Total</b>                 | <b>174</b>        | <b>177</b>     |

During the reporting period, the Tribunal worked closely with the Federal Court to develop mutually convenient and efficient reporting processes, and by the end of the period the Tribunal was able to settle some guiding principles with the Court.

**Item description**

Mediated agreements are agreements in relation to native title determination applications.

Mediated agreements made under s.86A, that may lead to consent determinations, are considered by the Tribunal to be generally preferable to litigated determinations because of a capacity to deliver comprehensive, flexible and economical outcomes. Moreover, mediated agreements (including consent determinations) are generally achieved without the high personal and financial costs often associated with the adversarial character of litigation.

Agreements are able to meet the practical needs of affected parties, and hence provide a sustainable basis for the recognition, protection and exercise of the rights and responsibilities of all people involved.

A mediated agreement is defined as an outcome reached with the active participation of two or more parties. The key factors in determining whether an agreement is recorded by the Tribunal as an output are:

- the requirement for participation by more than one party; and
- the substance of outcomes from mediation, for example, a compromise among parties constitutes an agreement, but a clarification of an issue does not constitute an agreement. For instance, a clarification may occur when a pastoralist acknowledges that a native title claim will not affect the existing conditions of his or her lease. An agreement, by contrast, might relate to parties establishing certain conditions that provide for access to an area by the native title party.

## Performance measures

The performance measures for agreements made in relation to native title determination applications are numbers of agreements, the level of client satisfaction and resource use.

### Number of agreements

The Tribunal recorded a total of 132 agreements in mediation during the reporting period. The Tribunal assisted directly in 51 of these agreements. The balance of these agreements were negotiated directly by the parties. The 51 agreements is less than the number estimated.

There were a number of factors that affected parties' capacity to enter into negotiations, including:

- the concentration by native title representative bodies on completing registration test work;
- limited resources available to native title representative bodies and internal restructuring within some of those bodies;
- representative bodies' intensive involvement in the re-recognition process under the provisions of the new Act; and
- reluctance by some parties to negotiate native title issues until a High Court decision is made in the pending appeal against the decision of the Full Federal Court in *Western Australia v Ward* (for more information see Appendix IV, p.133).

As more applications are allocated to judges in the Federal Court there is likely to be a wider variety of mediation directions made, which may alter the Tribunal’s current mediation priorities and agreement focus.

During the reporting period there was a high level of interest expressed, particularly in Queensland and Victoria, about negotiating indigenous land use agreements concurrently with negotiations towards a consent determination.

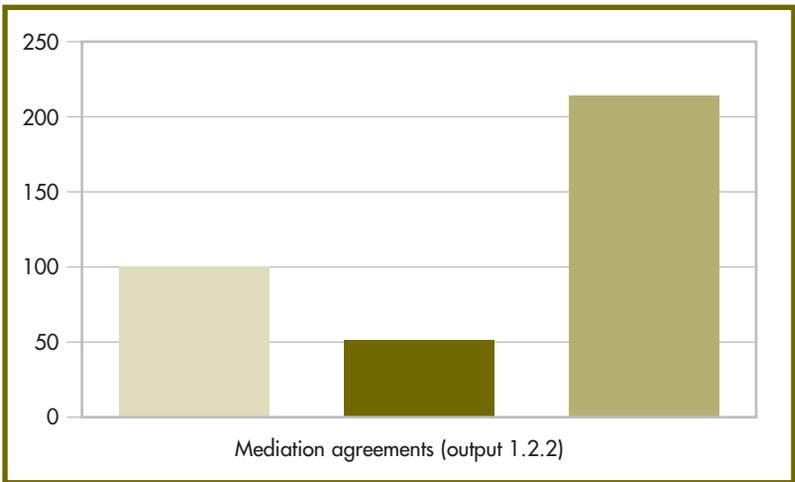


Figure 11: Mediation agreements

- Estimated
- Actual
- Applications that had been referred to the Tribunal for mediation at 30 June 2000

**Level of client satisfaction**

Client satisfaction was not evaluated for this output during the reporting period.

In general, most applications referred by the Federal Court to the Tribunal were at an early stage of mediation. Attempts to formally gauge client satisfaction for applications that were in mediation were thought to hinder the agreement process. Furthermore, as completed mediation agreements were low in number, the Tribunal considered that a survey of client satisfaction could not provide an accurate general representation of client experiences up to 30 June 2000.

**Resource usage**

Native title mediation agreements cost \$5.80m during the reporting period. The overall total of output 1.2.2, which is constituted by agreements and reports to the Federal Court was \$6.53m. While the number of agreements was lower than estimated, a significant proportion of Tribunal activity involved progressing matters related to the 214 applications that had been referred by the Federal Court to the Tribunal.

Table 5: Total number of mediated agreements

| State/Territory              | Total      |
|------------------------------|------------|
| New South Wales              | 32         |
| Victoria                     | 75         |
| Queensland                   | 9          |
| Western Australia            | 10         |
| South Australia              | 6          |
| Tasmania                     | –          |
| Australian Capital Territory | –          |
| Northern Territory           | –          |
| <b>Total</b>                 | <b>132</b> |

Table 6: Number of mediated agreements made with direct Tribunal involvement

| Agreements                         | Total     |
|------------------------------------|-----------|
| Fully mediated by the Tribunal     | 33        |
| Partially mediated by the Tribunal | 18        |
| <b>National total</b>              | <b>51</b> |

Native title mediation can be resource intensive, not only because of the issues and personalities involved in the process but also because it can involve travel to remote locations over a period of time and lengthy, intensive negotiations. The cost of an agreement will also vary considerably according to the nature of the agreement and the issues resolved.

By the end of the reporting period mediation activity was expected to increase in most States and Territories as the registration test backlog was completed and the newly recognised native title representative bodies commenced operation. In South Australia, however, the level of mediation was expected to remain low pending the outcome of the State-wide ILUA negotiations, in which many of the key parties were engaged (for more information see 'Changes to policies and procedures in States and Territories' in the President's overview, p.13).

### FUTURE ACT AGREEMENTS—OUTPUT 1.2.3

A future act agreement may occur between parties in response to a government notice (an ‘s.29 notice’) to allow a future act that might affect native title holders or registered native title claimants. The Act specifies that parties to the future act process must negotiate in good faith with a view to reaching an agreement before any other avenue for achieving an outcome can be utilised (ss.31 and 35).

If any of the parties to a future act process request that the Tribunal mediate, then the Tribunal must do so (s.31(3)).

This output is concerned with final agreements in which the Tribunal had a direct mediation role as provided in s.31(3), and consent determinations within the expedited procedure (s.32). Consent determinations generally concern moving to a different facet of the future act process, for further negotiations with less restrictive timeframes. Agreements related to s.32 are usually achieved by the parties with some Tribunal involvement.

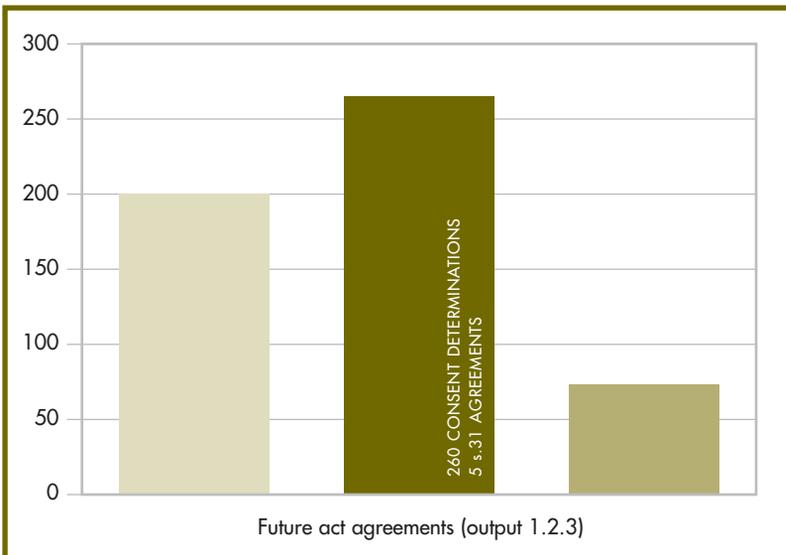


Figure 12: Future act agreements made between 1 July 1999 and 30 June 2000

- Estimated
- Actual
- Applications that were in mediation with Tribunal involvement at 30 June 2000, or were mediated during the reporting period and had terminated, moved to arbitration, or were suspended

## ITEM DESCRIPTION

A future act agreement is an agreement between parties that a proposed activity or acquisition may proceed.

### Performance measures

The performance measures for future act agreements are constituted by numbers finalised, timeliness of mediated outcomes, and use of resources.

#### Number of agreements

During the reporting period 73 future act negotiations were conducted with direct mediation assistance from the Tribunal. Of these 73, five were concluded with final agreements being reached between the parties. Of the remainder, 43 were still being mediated at 30 June 2000, five were suspended at the parties' request, and 20 were terminated. Of these 20, seven proceeded to arbitration.

The Tribunal was directly involved in 260 future act consent determinations. This number includes 25 consent determinations made in the reporting period in relation to applications that were lodged in a previous reporting period.

There are two other types of agreement recorded by the Tribunal that utilise its resources to varying degrees:

- procedure agreements in relation to s.32 matters, which arise in circumstances where the parties, principally the grantee and the native title party, have reached an agreement which leads to the withdrawal of the native title party objection and the grant of a tenement application through the expedited procedure. During the reporting period procedure agreements constituted the major proportion of 464 objection withdrawals, in which the Tribunal often provided input; and
- sections 34 and 41A agreements, which are lodged with the Tribunal when the parties have negotiated successfully through the right to negotiate process and the State agrees that the grant can be made. A State Deed is signed and lodged with the Tribunal. The Tribunal has minimal input into these agreements apart from those specified above as having utilised the Tribunal as mediator under s.31(3).

These agreements have not been included in the 1999–2000 outcome and output framework (Figure 2, p.34) but have contributed significantly to future act workload and achievement. In light of this experience, the framework for 2000–2001 has been altered to better account for this aspect of Tribunal work (for more information see *Tribunal performance information and planned level of achievement 2000–01* on the Tribunal's web site).

Tribunal mediation of future act matters was anticipated to increase, based on a number of indicators that occurred during the reporting period:

- the intention of the Western Australian Government to increase the number of matters referred to the Tribunal for future act mediation;
- the continuing mediation of 43 matters at the end of the reporting period; and
- an anticipated additional workload resulting from the use of the future act native title scheme by the Northern Territory Government and possibly the Queensland Government.

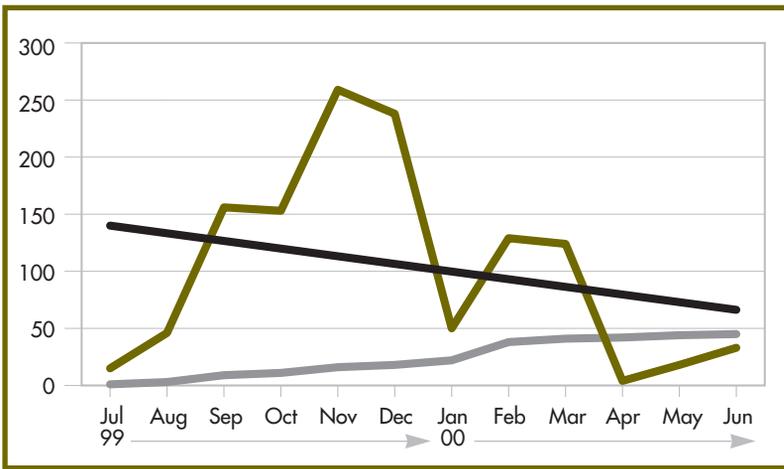


Figure 13: Overall trends in expedited procedure objection applications and mediation applications between 1 July 1999 and 30 June 2000

- Mediation
- Objection
- Objection (trend)

**Timeliness**

Timeliness in reaching Tribunal-mediated future act agreements is primarily a matter for the parties, although the Tribunal mediator has a role in guiding the process. Consequently, the time taken to reach agreements varies.

The Act provides, under s.31, that if no agreement is reached after six months, any party can apply to the Tribunal for an arbitrated future act determination.

The five agreements that were concluded during the reporting period were achieved by the parties remaining in mediation despite the availability of arbitration. The reasons why parties sometimes continued with mediation, even after the six-month negotiation period had elapsed, included:

- acceptance among all parties that the pace of negotiation would be hampered by remote locations, cultural and social commitments, and

low levels of resources affecting the ability of some parties to fully participate;

- if the proposal was complex it required a longer period to establish agreed terms and conditions;
- the character of the proposed future act might have changed over time, or changes might have occurred in the inter-group or intra-group relationships. These factors could lead to requests from parties for extensions to the process; and
- the result of registration-testing relevant native title claims may have influenced the tactics of negotiating parties.

### **Resource usage**

Expenditure against the output for the reporting period was \$0.49m.

This amount is lower than was estimated, largely due to a lower level of activity in future act right to negotiate processes. The use of resources for future act agreements during the reporting period was focused largely on processing objections to the expedited procedures within arbitration (for more information see 'Expedited procedure determinations—output 1.3.2', p.96). However, recent decreases in levels of activity within arbitration have been matched by increases in mediation requests (Figure 13, p.86). By contrast with mediation, arbitral inquiries in the future act determination process are costly. As numbers of arbitral inquiries decrease, resources can be diverted into mediation activity.

The Tribunal is continually considering new ways of conducting future act mediation, including options for facilitating broader agreements between parties that cover multiple future act matters, or are region specific.

## CASE STUDY—FUTURE ACT AGREEMENT

### **Gunai/Kurnai People, Yallourn Energy Pty Ltd, and the State of Victoria**

On 17 September 1999, the Tribunal (the Hon CJ Sumner, member) made a future act determination that a mining licence may be granted to Yallourn Energy Pty Ltd as part of the \$200m Maryvale Project. The mining licence was to secure the supply of coal to the Yallourn Power Station for the next 30 years while recognising the traditional interests of indigenous people in the region.

On 17 June 1998, the State of Victoria had given notice of its intention to grant the mining licence, and in so doing triggered the right to negotiate process. The Gunai/Kurnai People were registered native title claimants over the area of the proposed mining lease. Negotiations between the parties took place but when no agreement was reached after almost a year from the issue of the notice of intention to grant the mining licence, Yallourn made an application to the Tribunal for an arbitrated determination.

In preparation for a hearing the Tribunal gave directions for the exchange of contentions and any other documents by the parties. On 27 August 1999, the Tribunal heard submissions and ruled on a number of preliminary issues. These preliminary issues included whether evidence presented at the hearing could be treated as confidential. The Tribunal found that while evidence could not be considered in terms of 'global confidentiality', more limited confidentiality could be provided to meet the cultural concerns of Aboriginal parties. Related to this issue, the Tribunal made a further ruling that proceedings would not be stayed while an appeal was made to the Federal Court.

The hearing proper commenced on 13 September 1999 and concluded on 15 September 1999. The hearing included a site visit to Morwell where evidence was taken. In accordance with the Tribunal's procedures and directions, much of the evidence was provided in writing, including in the form of affidavits. Those

who had provided written evidence were available for cross-examination. The hearing concluded when the parties informed the Tribunal that an agreement had been reached.

While the details of the agreement are confidential to the parties, in broad terms the agreement provides for:

- recognition that the Gunai/Kurnai People are the traditional owners of the area subject to the mining licence;
- implementation of a joint management plan for cultural heritage and sites of Aboriginal significance; and
- initiation of a number of education and training opportunities for young Aboriginal people.

Mr Sumner said that the agreement showed the benefit of continuing negotiations even after the arbitration process had begun: 'The arbitral process is there if parties cannot reach agreement on their own, and can even help parties re-focus on negotiations. But once arbitration has started, there is still room for people to negotiate an agreement themselves rather than have the umpire make the decision.'



Pictured at the signing of the Yallourn agreement in Morwell are: (left to right, back row) Graeme Offer (Yallourn), Bootsie Thorpe (Gunai/Kurnai), Terry Hood (Gunai/Kurnai), Bryan Keon-Cohen (principal legal officer, Mirimbiak), Doug Williamson (Tribunal member), and (front row): Uncle Carl Turner (Gunai/Kurnai), Keith Hamilton (local MP and State Minister for Aboriginal Affairs), Gwen Atkinson (Gunai/Kurnai), Mike Johnston (Chief Executive, Yallourn Energy Pty Ltd), and Sheila Baksh (Gunai/Kurnai).

## NON-CLAIMANT AGREEMENTS—OUTPUT 1.2.4

A non-claimant application is made by a person seeking a determination that native title does not exist. Non-claimant applications are primarily used by governments and statutory authorities to achieve s.24FA protection under the Act, which allows particular acts to be done that would otherwise be invalid. A secondary use is to alert any group asserting native title to a proposed act. If a native title claim is registered in response to the non-claimant application then negotiations can proceed and may result in an ILUA or some other process being used to give validity to the proposed act.

The description of this output is: ‘Agreements that an application be adjourned to allow a proposed activity or development to proceed’. This output description reflects a practice that was developed by the Tribunal under the old Act. The adjournment procedure basically involved a non-claimant application, which had achieved the equivalent of s.24FA protection (under the old Act), being adjourned with the agreement of the parties for the length of time it took for the protected act to be done. Once the act was done, the application would then be dismissed with the consent of the parties.

Since the amendments to the Act, the Federal Court has taken over this aspect of the native title process, and has adopted the adjournment procedure. As a consequence, this is the last time that the Tribunal will report on this output. During the reporting period, the Tribunal amended its outputs for the next reporting period to combine non-claimant agreements with claimant and compensation applications in situations where the Tribunal provides mediation services.

### ITEM DESCRIPTION

Non-claimant agreements are agreements that an application be adjourned to allow a proposed activity or development to proceed.

### Performance measures

Performance measures for non-claimant agreements are constituted by the number of non-claimant applications adjourned after notification, and use of resources.

#### Number of non-claimant agreements

During the reporting period five applications were adjourned by the Federal Court, following notification, to allow for a future act covered by s.24FA.

The use of the non-claimant application procedure during the reporting period mainly occurred in New South Wales (with one in Queensland). Since the amendments to the Act in 1998 the number of fresh non-claimant applications in New South Wales has declined from around 40 per year to around 12 per year. This may be due to the amended

Act providing a wider range of procedural steps and agreement mechanisms for governments seeking to make valid grants.

The Tribunal expects to provide mediation assistance for a non-claimant application agreement in the future in the following situations:

- in New South Wales where a number of Local Aboriginal Land Councils are lodging non-claimant applications to meet the conditions of s.40AA of the *Aboriginal Land Rights Act 1983* (NSW). These applications require a determination of native title, thus the Tribunal may be requested by the Federal Court to mediate to determine if an agreement can be reached on the form of the determination;
- if a particular non-claimant application does not achieve s.24FA protection then an ILUA may be used to provide validity to a proposed act. The Tribunal may be requested to assist in this situation under s.86F of the Act or in an ILUA negotiation.

During the reporting period, 29 non-claimant applications were dismissed by consent, or discontinued once they were no longer procedurally useful. One application was referred to the Tribunal for mediation under s.86B and at the end of the reporting period was still in mediation.

#### **Resource usage**

The Tribunal expended \$0.15m on non-claimant agreements during the reporting period. The expenditure reflects the low level of activity for this output.

The Tribunal's primary role in relation to non-claimant applications is the notification of the applications and assistance to applicants and others (for more information see 'Notification of native title claims—output 1.4.2', p.106 and 'Assistance to applicants and other persons—output 1.4.1', p.101).

## **COMPENSATION AGREEMENTS—OUTPUT 1.2.5**

A compensation agreement is one possible outcome after a compensation application is lodged under s.61 of the Act. A compensation agreement can assist parties to tailor compensation outcomes to their particular needs, without the costs of litigation, and thus it provides an opportunity for resource efficiency and effectiveness in native title processes.

Compensation agreements are guided by the provisions of s.86A(2). This section of the Act requires, in the first instance, that agreement is reached on issues relating to a native title determination and, second, agreement is reached about the amount or kind of any compensation payable, the names of persons who are entitled to the compensation, and methods for determining the amount or kind of compensation, and a method for resolving any disputes that may arise regarding a person's entitlement to an amount of compensation.

Compensation agreements are supported by a statutory provision that ensures fairness. The Act's general rule is that the entitlement to compensation is an entitlement on just terms to compensate the native title holders for any loss, diminution, impairment or other effect of the act on their native title rights and interests (s.51(1)).

Compensation applications are usually lodged in relation to past acts that have occurred since the *Racial Discrimination Act 1975* (Cth) came into effect, and have adversely affected or extinguished native title.

Agreements about future acts (right to negotiate agreements or ILUAs) can provide for compensation without the applicants having to lodge a compensation application. Parties are under no obligation to report the compensation terms to the Tribunal.

## **ITEM DESCRIPTION**

Compensation agreements are agreements in relation to native title compensation applications.

## **Performance measures**

The performance measures for compensation agreements are constituted by the numbers finalised, and use of resources.

### **Number of compensation agreements**

During the reporting period there were no compensation agreements.

Section 13 of the Act specifies that if the Federal Court is making a compensation determination in relation to an area that does not yet have a determination of native title, then the Federal Court must make a determination of native title at the same time as a determination of compensation. This provision includes the situation in which a consent or agreed determination occurs. The approach that all applicants who are seeking a compensation determination have taken up to this point is to pursue determination of their claimant applications first, and adjourn their compensation applications pending that outcome. At the end of the reporting period there were 23 active compensation applications.

### **Resource usage**

The Tribunal expended \$0.016m on processing compensation applications during the reporting period.

## OUTPUT GROUP 1.3 ARBITRATION

Output group 1.3 is comprised of:

- Future act—output 1.3.1; and
- Expedited procedure—output 1.3.2.

The following outline summarises the Tribunal's performance against this output group. According to the PBS, this summary includes a description of the output groups (items) and how the Tribunal has measured its level of achievement (performance measure).

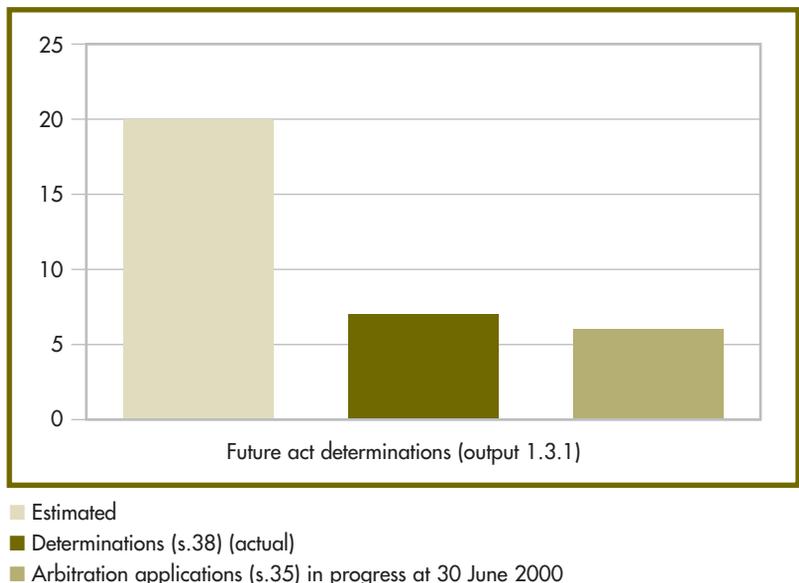
### FUTURE ACT DETERMINATIONS—OUTPUT 1.3.1

The Act provides (s.35) that, if parties have negotiated in good faith and no agreement is reached about a proposed future act, after six months any negotiation party can apply to the Tribunal for an arbitrated determination, which is made by a Tribunal member or a panel of members. The nature of, and conditions for, a determination are set out in s.38 of the Act.

#### ITEM DESCRIPTION

Future act determinations are decisions by the Tribunal (when parties have not reached agreement) that proposed activities or acquisitions may or may not proceed.

Figure 14: Future act determinations finalised and applications for arbitration in progress at 30 June 2000



## Performance measures

The performance measures for future act determinations are constituted by the number of determinations, timeliness, and use of resources.

### Number of future act determinations

During the reporting period 13 future act determination applications were lodged (see Table 7 below) and the Tribunal made seven determinations. At the end of the reporting period there were six future act determination applications in progress.

**Table 7: Future act determination applications lodged between 1 July 1999 and 30 June 2000**

| State/Territory              | Total     |
|------------------------------|-----------|
| New South Wales              | –         |
| Victoria                     | 2         |
| Queensland                   | –         |
| Western Australia            | 11        |
| South Australia              | *         |
| Tasmania                     | –         |
| Australian Capital Territory | –         |
| Northern Territory           | –         |
| <b>Total</b>                 | <b>13</b> |

\* South Australia operated its own arbitral body

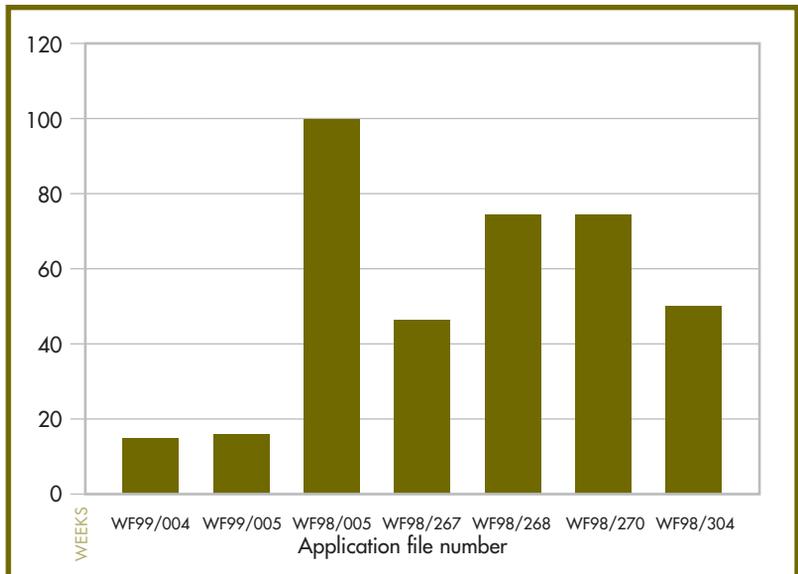
Applications for determinations were relatively few in number during the reporting period. Future act matters were resolved by parties continuing in negotiations, rather than moving into arbitration (for more information about continued negotiations see ‘Future act agreements—output 1.2.3: Number of agreements’, p.84).

At the end of the reporting period, the Tribunal expected an increase in future act workload that may result in an increase in s.35 applications. The reason for this is that there was a recent decrease in the number of s.29 notices published in Western Australia while the State considered the implications of the full Federal Court’s decision in *Western Australia v Ward* (for more information see Appendix IV, p.133). However, the Western Australian Department of Minerals and Energy was still receiving tenement applications, and as a consequence, a short-term backlog was likely to occur. If, as was thought to be likely, the tenement applications are eventually processed through the Commonwealth Native Title Act, the number of arbitration applications may correspondingly increase.

Future act determination numbers were likely to be affected by the general increase in workload stemming from the rejection by the Senate of the Northern Territory Government’s alternative provisions legislation during the reporting period. In March 2000, the Northern Territory Government decided that it would utilise the Act to progress future act work. However, at the end of the reporting period it was unclear as to the

rate at which the Northern Territory Government would notify its intention to grant exploration and mining tenements. The Tribunal used an estimate of 12 to 15 applications per fortnight as a basis for planning to meet the future Northern Territory workload. Furthermore, if Queensland’s alternative provisions legislation is also rejected (in part or whole) by the Senate, then the Tribunal could expect to receive a number of both expedited procedure objections and future act determination applications from that State in the next reporting period.

Figure 15: Time taken to finalise future act determination applications



**Timeliness**

Future act determination inquiries typically involve both practical and technical issues that affect timeliness. In practical terms, remote locations and resourcing limitations of some parties contribute to delays in conducting inquiries. The technical issues largely relate to the relative newness of the amended provisions and their interaction with other parts of the Act (registration test and register provisions in particular). For example:

- when applicants amend their pre-27 June 1996 application, which is subsequently not accepted for registration, those applicants lose the right to negotiate (refer to *Bullen v Western Australia*, Appendix IV, p.139); and
- when claimant applications are combined there is an issue about whether registered claimants have been replaced in the combined application. This creates uncertainty in relation to pre-existing right to negotiate processes. This was resolved by determination in the *State of*

*Western Australia v Evans and others and Anaconda Nickel Ltd and others*, presided over by Hon C J Sumner, member, 20 August 1999. While this issue was resolved relatively early on in the reporting period there were a number of related issues that needed attention in subsequent determination inquiries throughout the financial year.

The Tribunal has employees who are dedicated to future act determination matters. This has improved the effectiveness and efficiency with which clients are assisted in their engagement with the process.

### **Resource usage**

The cost of future act determination matters for the reporting period was \$0.72m. This amount is constituted by the costs of 340 preliminary meetings and 19 hearings.

Each arbitration matter for a future act determination application has the potential to require considerable resources. For example, one determination application is likely to require intensive involvement of a member or members, administrative and case management resources and internal legal expertise.

The level of resources and expertise available to parties can also have a dramatic effect on the efficiency with which Tribunal resources are deployed. For example, an unrepresented or relatively poorly informed party can require considerable use of case manager time to explain the process and options.

The use of resources is affected by the manner in which parties give evidence. Where evidence is given in the field, the cost and length of the inquiry will increase. During the reporting period, Tribunal hearings were seldom held on country, as matters focused on interpretations of the amended Act, rather than on oral proof of connection to particular areas. As a consequence, Tribunal costs were lower in this area of activity. The trend for the next reporting period is an increase in time that hearings spend on country, as many of the contentious issues have been resolved. This trend will be reflected in increased costs of individual hearings.

The Tribunal anticipates that resource savings will gradually accrue as precedents from Tribunal and Federal Court findings accumulate and thus establish commonly accepted approaches among stakeholders.

## **EXPEDITED PROCEDURE DETERMINATIONS— OUTPUT 1.3.2**

The expedited procedure is a fast-tracking process for the granting of certain types of tenements and licences. Future act activities attract the expedited procedure if the activity is not likely to:

- interfere directly with native title holders' community or social activities;
- interfere with areas or sites of particular significance; or

- involve any major disturbance to land or water concerned, or create rights whose exercise is likely to involve major disturbance to any land or waters concerned (s.237).

The expedited procedure is triggered when a government party, in an s.29 notice, asserts that the procedure applies. The Act includes a mechanism for native title parties to object to the assertion of the expedited procedure.

A Tribunal member may need to resolve the issue by making:

- a determination under s.32 that the act does not attract the expedited procedure; or
- a decision under s.148 to dismiss an application because the Tribunal is not entitled to inquire into a matter (s.148(a)) or an applicant fails either to comply with a direction or proceed within a reasonable timeframe (s.148(b)).

## ITEM DESCRIPTION

Expedited procedure determinations are decisions by the Tribunal whether proposed future acts attract the expedited procedure.

## Performance measures

The performance measures for the expedited procedure scheme are constituted by numbers of determinations or decisions by the Tribunal about whether a proposed future act attracts the expedited procedure, timeliness in making these decisions and determinations, and use of resources.

### Number of decisions and determinations

During the reporting period, the Tribunal made one determination (s.32) and 29 decisions (s.148) regarding whether the expedited procedure applied. Decisions using s.148 were made:

- when the Tribunal had no jurisdiction due to the effect of a relevant court decision; or
- when a claim did not satisfy the registration test conditions and therefore applicants did not have the right to negotiate.

In addition, on 69 occasions, a tenement application was withdrawn, due to the conditions specified in s.148, and there was therefore no matter to inquire into.

During the reporting period 3,437 s.29 notices were issued by State and Territory governments. Of these 3,048 or 89 per cent claimed that the expedited procedure applied. In response to the notices that asserted the expedited procedure, 1,150 objection applications were lodged. Full resolution in 833 of these objection applications occurred during the reporting period. At the end of the reporting period there were 365 objection applications before the Tribunal.

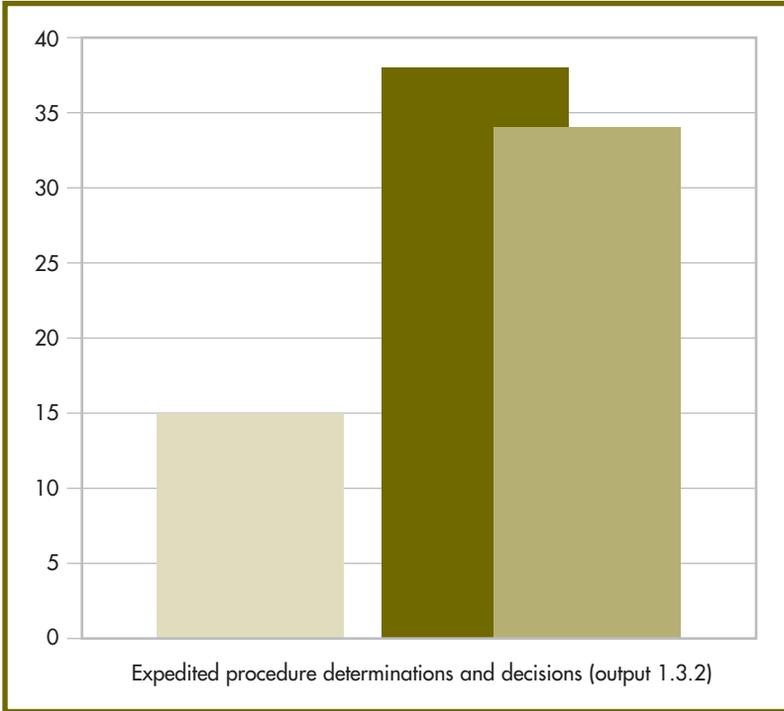


Figure 16:  
Expedited procedure  
determinations and  
decisions

- Estimated determinations and decisions
- Actual determinations (s.32)
- Actual decisions (s.148)

Table 8: Future act notices issued and applications lodged between 1 July 1999 and 30 June 2000

| State or Territory           | s.29 notices | s.29 notices that assert the expedited procedure | s.32(3) objection applications | s.31(2) mediation applications |
|------------------------------|--------------|--|--------------------------------|--------------------------------|
| New South Wales              | 47           | –  | –                              | 2                              |
| Victoria                     | 42           | –  | –                              | 1                              |
| Queensland                   | 18           | –  | –                              | 4                              |
| Western Australia            | 3,330        | 3,048  | 1,150                          | 45                             |
| South Australia*             | –            | –  | –                              | –                              |
| Tasmania                     | –            | –  | –                              | –                              |
| Australian Capital Territory | –            | –  | –                              | –                              |
| Northern Territory           | 3            | –  | –                              | –                              |
| <b>Total</b>                 | <b>3,437</b> | <b>3,048</b>                                     | <b>1,150</b>                   | <b>52</b>                      |

\* South Australia operated its own arbitral body

As noted above, of the 833 objection applications resolved, 30 required a determination or decision by a Tribunal member. The other 803 objection applications were resolved by:

- agreement between parties usually leading to withdrawal of the objection (for more information see ‘Future act agreements—output 1.2.3’, p.84);
- withdrawal of the objection without agreement, following the applicants’ assessment of their options;
- moving to the right to negotiate process by consent of the parties; or
- withdrawal of the application for a licence or tenement in the affected area.

In addition, 103 objection applications that were lodged in a previous reporting period were resolved in the period under review. Of these 103, 37 were resolved by determination and five with a decision under s.148 (a). Table 9 provides a further breakdown in the resolution of these applications.

**Table 9: Outcomes of objection applications between 1 July 1999 and 30 June 2000**

| <b>Outcome</b>               | <b>Applications lodged and finalised in 1999–2000</b> | <b>Applications lodged in a previous reporting period and finalised in 1999–2000</b> |
|------------------------------|---|--|
| Consent determination*       | 235   | 25   |
| Determination                | 1   | 37   |
| Dismissed—s.148(a) no Juris. | 11  | 3  |
| Dismissed—s.148(a) Reg Test. | 1   | 2  |
| Dismissed—s.148(a) ten w/d   | 69  | 7  |
| Dismissed—s.148(b)           | 17  | –  |
| Objection not accepted       | 27  | –  |
| Objection withdrawn          | 473   | 29   |
| <b>Total</b>                 | <b>833</b>  | <b>103</b>   |

\* For information about the definition of a ‘consent determination’ see p.81

During the reporting period several factors became apparent that are likely to impact on the Tribunal’s future act activities in the next reporting period. These factors included:

- decisions having been made on a number of cases with respect both to issues arising from the 1998 amendments to the Act and recent Federal Court decisions. The cases related to issues such as interpretation of the Act, particularly s.237, and the continuing right to negotiate prior to registration of applications lodged under the old Act (for more information see ‘Future acts’, in the ‘External scrutiny’ section, p.46);

- the Western Australian Department of Minerals and Energy temporarily ceased the publishing of some s.29 notices concerning proposed grants of tenements. This was in response to the decision of the Full Federal Court in *Western Australia v Ward* concerning extinguishment of native title by certain categories of land tenure (for more information about the decision see Appendix IV, p.133);
- in its response to the decision in *Ward*, the Tribunal was considering whether it has jurisdiction to decide on certain future act matters.

**Timeliness**

Of the 833 objection applications lodged and resolved during the reporting period, 84 per cent were cleared for grant within 24 weeks.

Issues of remote locations and lack of resources and expertise among parties affect the time that it takes to complete expedited procedure matters.

New 'Procedures under the Right to Negotiate Scheme' were issued by the President on 20 April 2000 and were published on the Tribunal's web site. The procedures prompt shorter, less flexible timeframes and should enable matters to move through the Tribunal system more rapidly. This was favourably received by grantee parties and the States and Territories. The reduction in flexibility drew mixed reactions from native title parties: some native title parties were unconcerned and some had not yet considered the implications by the end of the reporting period.

**Resource usage**

During the reporting period, the total cost for dealing with applications that asserted the expedited procedure and subsequent objection applications was \$2.16m. This amount constitutes the largest proportion of output 1.3, which was overspent by \$1.53m, in comparison with the estimated amount of \$1.36m (see Table 1, p.61).

As Figure 16 (p.98) shows, activity in this output far exceeded the estimated level. However, the Tribunal recognised during the reporting period that the real level of workload in output 1.3.2 can be better represented by altering the performance indicator descriptions. In light of this experience, the annual report for the subsequent reporting period will measure achievement in the expedited procedure according to the number of objection applications processed.

Many of the factors affecting efficiency and effectiveness in delivering future act determinations (output 1.3.1.) were relevant in regard to the expedited procedure scheme.

## OUTPUT GROUP 1.4

### ASSISTANCE AND INFORMATION

One of the responsibilities of the Tribunal is to provide assistance and information to help people resolve native title issues. Practical and accessible information is an important prerequisite for effective participation in registration processes and in mediation, negotiation and arbitration.

The Tribunal recognises that its primary obligation is to provide information and assistance to participants in native title processes, and at a secondary level, to the wider community. For that reason, the Tribunal's assistance and information initiatives are directed towards meeting the day-to-day needs of people actively engaged in native title processes. This extends to the provision of claim information, mapping and geospatial information services, plain language information products, research reports and collaborative projects.

Output group 1.4 is comprised of:

- Assistance provided to applicants and other persons—output 1.4.1;
- Notification of persons/parties to native title claims—output 1.4.2;
- Research—output 1.4.3; and
- Public information—output 1.4.4.

The following outline summarises the Tribunal's performance against this output group. In line with the PBS, this summary includes a description of the outputs (item descriptions) and how the Tribunal has measured its level of achievement for these items (performance measures).

#### ASSISTANCE TO APPLICANTS AND OTHER PERSONS—OUTPUT 1.4.1

Section 78 of the Act provides that the Registrar may assist applicants or other persons on request.

The Tribunal's assistance objective is to help people develop agreements that resolve native title issues.

The assistance provided by the Tribunal may be direct or indirect. Direct assistance is provided through the specialised knowledge of its case management, procedures, research, geospatial, legal and corporate services staff. Examples of direct assistance might be staff discussing application processes with clients, or the utilisation of the Tribunal's mapping and geospatial information services. The Tribunal's web site provides forms of indirect assistance, such as guides for the registration of ILUAs and registration test procedures.

Figure 17 provides an overview of the categories of types of assistance and the amount of assistance provided.

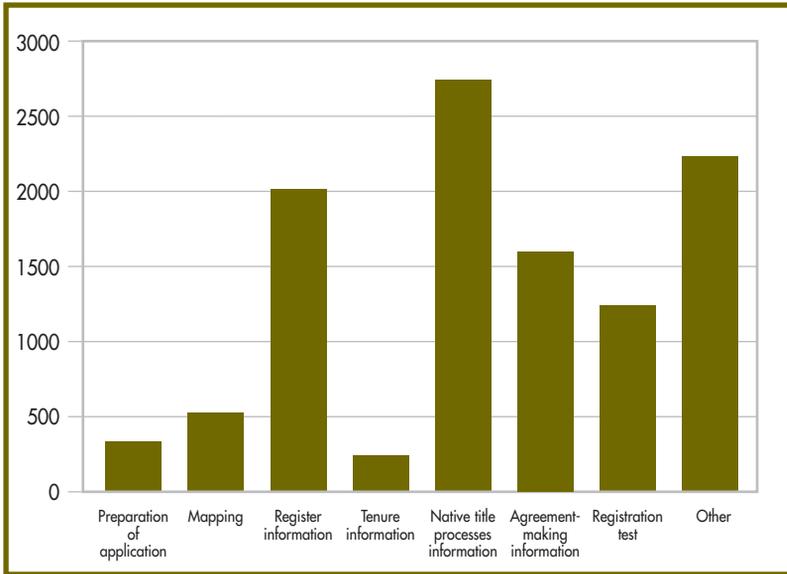


Figure 17: Total units of assistance provided to applicants and other persons by type

**ITEM DESCRIPTION**

Assistance to applicants and other persons is given for the preparation of applications, mapping, provision of Register information and current and historical tenure information, information about native title processes and agreement-making processes.

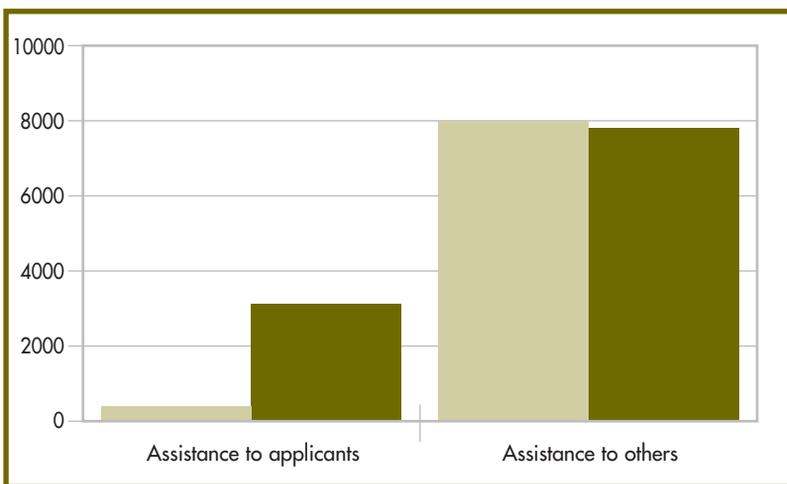


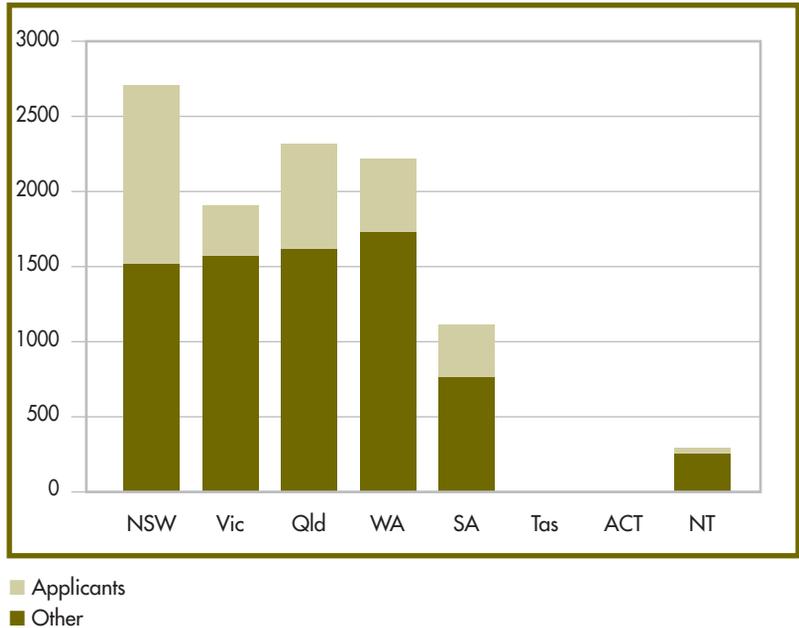
Figure 18: Assistance to applicants and other persons

■ Estimated  
 ■ Actual

## Performance measures

The performance measures for assistance to applicants and other persons are constituted by number of clients assisted, level of client satisfaction, and use of resources.

**Figure 19: Number of units of assistance to applicants and other persons by State and Territory**



### Number of applicants and other persons assisted

The breakdown shown in Figure 19 relates to assistance provided directly by Service Delivery staff (for more information see Figure 1: National Native Title Tribunal organisational structure', p.32). The other divisions in the Tribunal—Corporate Services and Public Affairs, and Delivery Support—provided 13 instances of assistance to applicants and 344 instances to others. In many situations these two divisions provided advice to Service Delivery staff who were dealing with applicants and others who had requested assistance.

For most of the reporting period, the demands and resource intensiveness of the registration test meant that requests for assistance in this, and related, areas accounted for a significant proportion of Tribunal assistance. However, during the last quarter of the reporting period most registries reported a decrease in registration test assistance. Corresponding to the decrease in registration test assistance requests, there was an overall increase in the numbers of requests across a broader range of the assistance categories (see Figure 17, p.102).

During the reporting period the Tribunal anticipated that an increased focus on notification, mediation and ILUA matters in the next reporting

period would drive a shift to a broader range of requests from applicants and other persons. In addition, future act activity in the Northern Territory, and possibly Queensland, was anticipated to increase sharply in the next reporting period. As a consequence, the number of requests for assistance in a range of assistance categories would rise in these areas.

An important factor that the Tribunal took into account in planning its activities for the next reporting period was that many people would be introduced to native title processes for the first time. Consequently, the Tribunal would be required to provide assistance to an increased number of people who have varying levels of experience.

### ***Applicants***

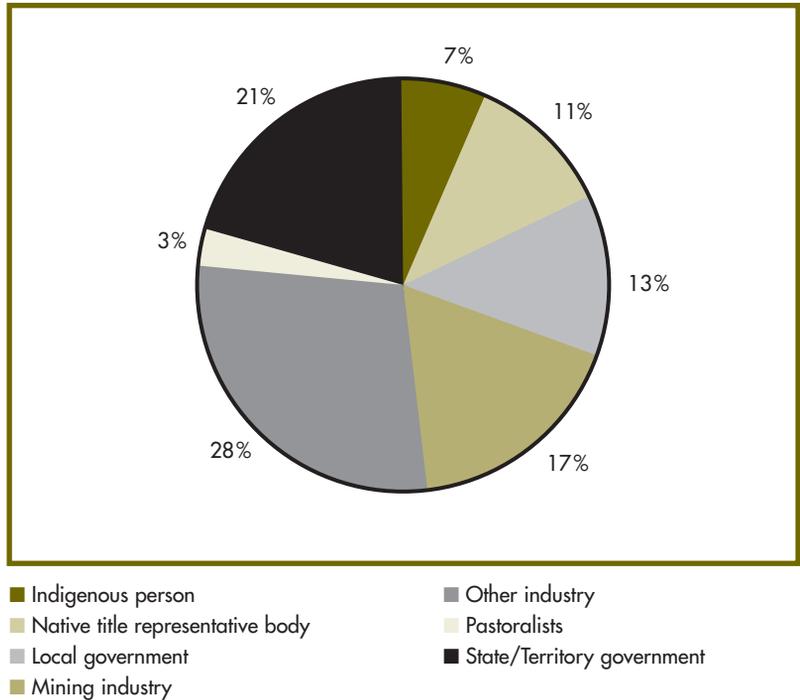
For the purposes of this output ‘applicants’ also include the representatives of applicants. Applicants made 3,131 requests for assistance during the reporting period, or 29 per cent of total requests for assistance (see Figure 18, p.102).

Assistance to applicants was significantly higher than predicted. Factors in the higher-than-expected number of requests for assistance by applicants were the rapidly changing environment for the registration of native title applications and ILUAs. Judicial review decisions and amended regulations were the principal areas affecting the change.



**Tribunal employees from the Geospatial Analysis and Mapping Unit provide specialist expertise in response to requests for assistance from applicants and other persons.**

Figure 20: Assistance to others by client group



A regional breakdown of the number of applicants who were assisted during the reporting period (see Figure 19, p.103) shows that a large proportion of requests for assistance were made to the New South Wales registry. This can be attributed, in part, to a reduction in the operational capacity of the relevant native title representative body during the first half of the reporting period. Consequently, the Tribunal dealt with requests for assistance from applicants in New South Wales that might normally have been dealt with by the representative body.

#### Other persons

Figure 20 provides a breakdown of 'other persons' assisted.

Figure 18 (p.102) shows that the number of instances of assistance to other persons was 7,798, or 71 per cent of total amount of assistance provided. This number was marginally lower than estimated.

One reason for the slightly lower-than-expected level of assistance to other persons is the focus on the registration test in the early part of the period, which largely concerned applicants. It was anticipated at the end of the reporting period that the trend away from registration test assistance and toward notification and agreement-making will provide an environment in which assistance to other persons will be more prevalent.

**Level of client satisfaction**

Client satisfaction was not evaluated for this output during the reporting period. In the next reporting period the Tribunal intends to engage consultants to conduct formal evaluations of client satisfaction in key areas of business.

**Resource usage**

During the reporting period, the total cost for assistance was \$1.92m.

Expenditure under this output facilitated greater efficiency in delivering native title outcomes as a whole. One indicator of the ongoing value of s.78 assistance was the increased quality in the applications being received by the Tribunal (for more information see ‘Claimant applications—output 1.1.1’, p.62). The Tribunal considers that the assistance function had a direct effect in the significant underspend that occurred for output 1.1.1.

By the end of the reporting period the Tribunal anticipated that greater efficiency and effectiveness would be reported in subsequent periods as a result of an expansion in assistance strategies and products. In particular, the use of packages of information to be designed for use by specific stakeholder groups would complement current forms of assistance that are reported under this output (for more information see p.116).

**NOTIFICATION OF NATIVE TITLE CLAIMS—OUTPUT 1.4.2**

Notification is the process by which the Registrar provides written notice, under the Act, to the general public and those interested in a claim area about native title applications, compensation applications, non-claimant applications (s.66) or applications to register an ILUA in an area (s.24BH, 24CH, 24DI). The Registrar also gives notice of amendments to native title claims (s.66A).

The main purpose of notification of native title claims is to ensure that relevant people and organisations have the opportunity to apply to the Federal Court to become a party to the application and to participate in mediation. The Tribunal’s notification objective is to provide persons who may have an interest in any part of the area covered by an application with the relevant information, including how to become a party to the application.

**ITEM DESCRIPTION**

Notification is written notice given by the Registrar to the public and interest holders in an area affected by a native title determination application, compensation application or an application to register an ILUA.



**Tribunal employees prepare an application for notification.**

## **Performance measures**

The performance measures for notification are constituted by numbers of persons notified, and resource usage.

During the reporting period the Federal Court provided direction in relation to notification processes. This affected the extent to which the performance measure of ‘number of persons notified’ reflects the notification process undertaken in accordance with the Act. In providing direction in *Bropho v State of Western Australia*, Justice French noted that where it was unreasonable to give personal notice, the Registrar could rely upon public notice, including advertisements, use of newsletters to clients, and other media (for more information on this case see Appendix IV, p.138; for more information about the Registrar’s discretion as a result of *Bropho v State of Western Australia* see ‘Notification procedures for claimant applications’ in the President’s overview, p.5).

### **Number of people notified**

During the reporting period 3,595 persons were individually notified. Figure 22 (p.109) shows the number of persons individually notified in each region.

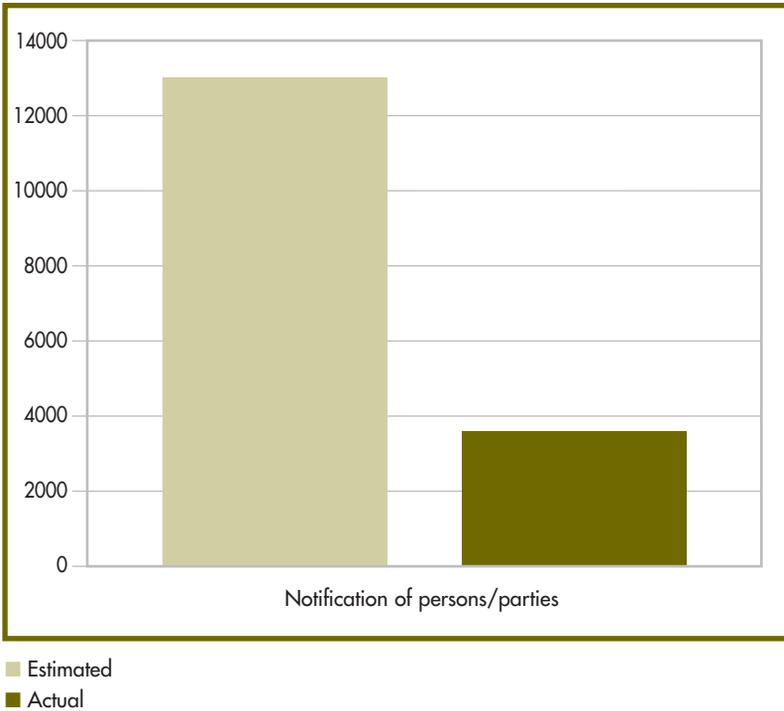


Figure 21: Number of notifications made

During the reporting period 65 applications were notified, comprising 50 claimant applications, 12 non-claimant applications and three ILUA applications.

The Act requires that the registration test be applied prior to notification of a claimant application. As a consequence, the bulk of notifications were delayed pending registration testing. Section 66A notifications (which are notifications of amended applications) commenced in August 1999, and by 30 June 2000 were largely complete. Notification under s.66 recommenced in May 2000. It was expected that most outstanding claims would be notified in the next reporting period.

**Resource usage**

During the reporting period, the total cost of notification was \$0.85m.

Public advertising constituted \$0.09m of the total cost of notification. The Tribunal reduced the costs of newspaper advertising by notifying up to 14 applications in one advertisement. The balance of the cost for the notification output was largely made up of administration and training.

Aside from the flexible methods endorsed by the Federal Court, the Tribunal recognised that cost effectiveness in the direct notification of interest holders could be improved through cooperative information management and data transfer policies between the Tribunal and State and Territory data custodians.

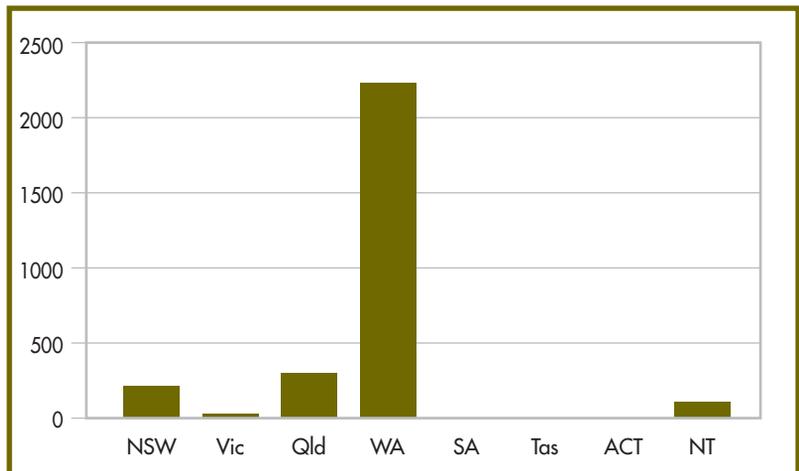
For example, the New South Wales Government has no point of coordination for providing interest holder details. Consequently, the Tribunal has to separately request information from up to seven different agencies, and may not receive the required information for many months. Other registries report delays due to similar lack of coordination between State or Territory government departments.

Despite these difficulties, all the Tribunal registries reported a constructive and improving working relationship with State and Territory tenure providers. In particular, the South Australian registry chairs a committee involving the major tenure custodians in the State for the specific purpose of coordinating data acquisition for notification. This committee was established as an outcome of a Tribunal strategic planning meeting in which the State participated.

Other Tribunal initiatives in this area of activity were:

- providing a map of the claim area in notification advertisements. While this strategy increased preparation costs, the Tribunal anticipated that overall savings would accrue through a reduction in the numbers of public enquiries; and
- conducting extensive notification training for relevant staff.

Figure 22:  
Number of persons  
individually notified



### RESEARCH—OUTPUT 1.4.3

This output was constituted by two items: background reports and collaborative research projects.

Under s.78(2) of the Act, the Registrar may assist parties and potential parties by providing research services, including the provision of background reports to assist parties in mediation. The Tribunal may also carry out research for the purpose of performing its functions (s.108(2)). In this regard, Tribunal collaborative research projects encourage informed discourse about native title issues between major stakeholders. A research reference group, which comprises Tribunal members and senior employees, assists the Research Unit’s planning and evaluation functions.

#### ITEM DESCRIPTION

Background reports are collations of published materials relating to a geographic area or application for determination of native title, focused on indigenous contact and land-use histories.

The background reports are comprised of a selective summary of the available documentation on linguistic and cultural mapping for local indigenous groups, and extracts from anthropological literature relevant to the area. The methodology used for summarising or including particular information is clearly stated in each report. Background reports do not canvass personal histories, nor the content of native title rights and interests claimed.

The purpose of background reports is to assist the parties to an efficient and timely resolution of native title determination applications.

The Tribunal produces two types of background report. One type is aimed at an internal audience of members and case managers. These are

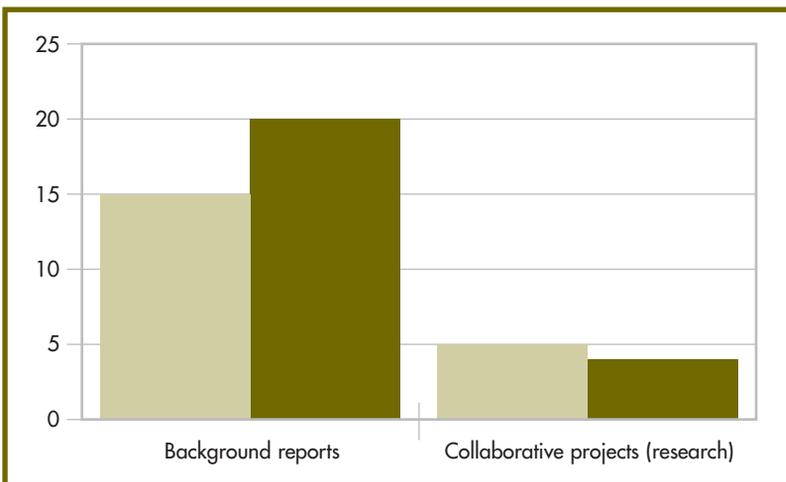


Figure 23: Research

■ Estimated  
 ■ Actual

referred to as ‘general background reports’. The other type of report, ‘published reports’, aims to assist both the internal audience and the parties to a mediation. Reports aimed at the larger audience incorporate higher production values, such as colour maps, indexes, and more extensive extracts. See Appendix IX (p.153) for a list of the reports distributed to internal and external clients.

The experience has been that the provision of some primary documentation on the claimant group and its historical association with the claim area assists the mediator and the parties to begin direct negotiations at an early stage.

## **Performance measures**

The performance measures for background reports are constituted by number of reports completed, timeliness, and use of resources.

### **Number of reports**

During the reporting period, 20 background reports were produced. This exceeded the estimated number of 15. Of the 20 reports, 13 were general background reports and seven were published reports.

### **Timeliness**

Eighty-five per cent of reports were supplied within a month of the due delivery date.

### **Client satisfaction**

There was no formalised procedure in place for gauging customer feedback during the reporting period. However, partly in response to the increasing trend of providing reports to parties as well as to the mediating team, steps were taken during the reporting period to collect feedback—both internal and external. This involved making requests for feedback from relevant case managers on the impact of the reports among applicants and other parties both in formal mediation meetings and in any general discussions that may have occurred.

A number of positive responses were received from clients about background reports through the Customer Service Charter feedback mechanisms (for more information see ‘Performance against Customer Service Charter’, p.60).

### **Resource usage**

Reports, on average, take a research officer four weeks to complete. The published reports produced during the reporting period required an increased commitment of staff support to this program.

Background reports cost \$0.31m, which is approximately 60 per cent of the total resources (\$0.52m) used for output 1.4.3.

## **ITEM DESCRIPTION**

Collaborative research projects are public and industry information projects conducted in partnership with stakeholder groups.

The objective of collaborative research projects with major stakeholders is to clarify understandings of native title processes and issues and provide practical assistance to those who engage in the native title process.

## Performance measures

The performance measures for collaborative research projects are comprised by the number of projects, level of client satisfaction and resource usage.

### Number of projects

The Tribunal undertook four collaborative research projects during the reporting period. This is one less than was anticipated. These projects were as follows:

- **Prescribed bodies corporate (PBCs):** This was a collaborative project with the Australian Research Council (ARC) in which the Tribunal participated as an industry sponsor. The larger ARC project involved a study of governance structures for Indigenous Australians for holding native title and managing land after a determination of native title. The Tribunal provided practical assistance to native title group members and their advisers on the establishment of native title corporations. At the end of the reporting period, the project had produced one publication, *Guide to the design of native title corporations* by Dr David Martin and Mr Christos Mantziaris, and a series of workshops nationally. A further major publication was in press.
- **Teacher training on native title:** This collaborative project with the Centre for Aboriginal Studies and School of Education at Curtin University (WA) continued during the year, finalising a training kit with audiovisual material, group learning activities and case studies in the area of native title. The teaching materials were trialed in June 2000 at Curtin University. It is expected that there will be further utilisation of the materials in Curtin University's teacher training program, as well as in industry training institutions throughout Australia.
- **Working with Native Title: a local government project:** The Tribunal continued its partnership with the Australian Local Government Association (ALGA) and Attorney-General's Department. During the reporting period the program focused on a training and information program, delivered through a nation-wide series of seminars (for details see Table 16, p.154). The project is ongoing.
- **The Stakeholder Culture Seminar Series:** The second edition of the well-received publication *Talking Common Ground: Negotiating Agreements with Aboriginal People*, published by Rural Landholders for Coexistence, marked the end of this project.

**Level of client satisfaction**

Information regarding the level of client satisfaction for the PBC and ALGA collaborative research projects has been included on p.115. Collaborative research projects have resulted in products that have, on each occasion, been assessed by the client group for which they were designed. The Tribunal has adapted this output in preparation for the next reporting period to better reflect the relationship between research projects and information products.

**Resource usage**

Expenditure on collaborative research projects during the reporting period was \$0.21m.

To improve information flow, and to improve general understandings of the processes set out in the Act, the Tribunal has initiated, or joined, projects that engage a wide range of people and agencies in a cost effective way. Collaborative projects with major stakeholders engage a wider range of people than the parties directly involved in mediation or arbitration of native title applications.



Prescribed Body Corporate seminar and workshop participants gathered in Perth, November 1999.

## PUBLIC INFORMATION—OUTPUT 1.4.4

Communicating native title information to client groups in an effective manner is a key aspect of the Tribunal’s work. The Tribunal’s public information activities focus on three areas:

- seminars, workshops and conferences;
- information products; and
- collaborative information projects.

### ITEM DESCRIPTION

This item is made up of the presentation of, or participation in seminars, workshops and conferences by Tribunal employees, involving government, industry, and applicant groups.

The Tribunal initiates and participates in the organisation of seminars, workshops and conferences for the purpose of providing information to, and receiving feedback from, native title claimants and holders and other people with an interest in native title matters.

### Performance measures

The performance measures for this item are numbers of seminars, workshops and conferences, client satisfaction, and use of resources.

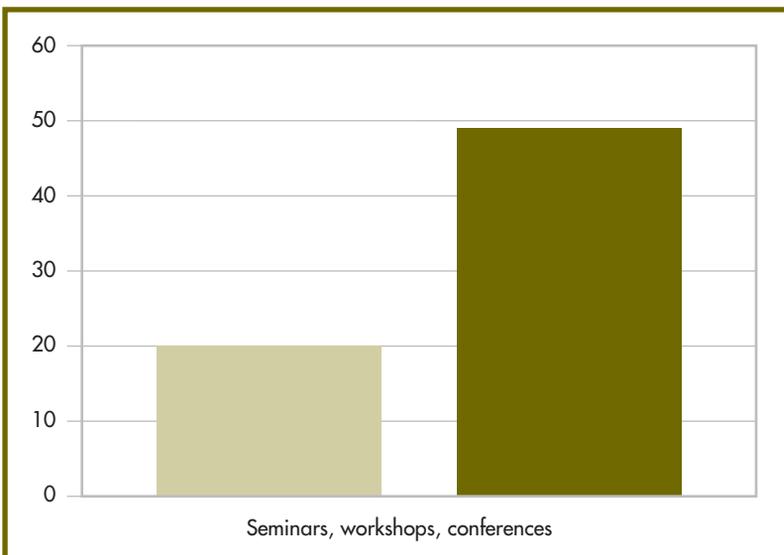


Figure 24: Number of seminars and workshops (wholly or collaboratively sponsored)

■ Estimated  
 ■ Actual

### Number of seminars and levels of client satisfaction

During the reporting period, the Tribunal sponsored, either wholly or in collaboration with other groups, 49 seminars and workshops. Participants were asked to complete evaluation forms at a number of these events. The Tribunal did not participate in organising any conferences during the reporting period.

The more prominent Tribunal-sponsored initiatives in this area of activity included:

- ***Prescribed bodies corporate (PBC) seminar series***, which was an extension of the PBC collaborative research project with the Australian Research Council (for more information see p.112). Seminars were held in Perth, Cairns, Brisbane, Sydney, Melbourne and Adelaide. The focus of the series was on the practical situations affecting the design of PBCs in different regions.

Over 350 participants attended the seminars. They included members of key client groups such as government representatives, representative bodies and claimants as well as legal practitioners and consultants. The participant survey showed a high level of participants' satisfaction with each of the seminars.

- ***Australian Local Government workshop series***, which was part of the ALGA research project, entitled '*Working with Native Title: a local government project*' (for more information see p.112).

The Tribunal participated in organising 23 of the 25 ALGA workshops held between November 1999 and June 2000 in Queensland, South Australia, New South Wales and Western Australia. Aimed primarily at senior officers in local government, the workshops were also attended by State government department, ATSIC and representative bodies' staff. They focused on how local government can engage effectively with native title and attracted a total of 389 participants. Feedback through evaluation forms indicated an overwhelming majority of participants found the workshops informative and useful.

- ***Sutton seminars***, which ran in October 1999 and April 2000. Anthropologist Dr Peter Sutton ran seminars titled 'The community of native title holders', and 'Conflict, negotiation and mediation in classical Aboriginal society'. The seminars were held in Cairns, Brisbane and Perth. More than 200 people attended, including Tribunal employees, members, legal representatives and practitioners.

### Resource usage

The total cost of output 1.4.4 was \$2.11m. The costs for seminars and workshops are often directly linked to information products and collaborative projects. For example, the PBC and ALGA seminars, as outlined above, both involved the release of major native title publications (information products, see below) as a result of a

collaboration with other organisations. For this reason the Tribunal has accounted for its resource usage for this output as a whole rather than as a discrete amount against each of the three items that constitute public information.

## ITEM DESCRIPTION

Information products are published works in a variety of media about native title, native title processes and aspects of the Act.

The Tribunal developed a range of information products aimed at assisting people to effectively participate in native title processes.

One of the main challenges the Tribunal faces is the diversity of its client groups. During the reporting period, it increased its efforts to meet the needs of specific client groups. The public affairs section developed publications such as brochures and guides but also audio-tapes, radio programs, a visual display and online products.

The Tribunal's communication policy emphasises the use of plain English style in its public information products whenever appropriate. For example, the brochure *Short guide to native title*, launched in January 2000, was designed as an accessible information product targeted toward a broad audience. At the end of the reporting period 19,700 copies had been distributed.

Other products released during the reporting period included:

- *Native Title Bulletin*, which was a status report highlighting key aspects of the native title landscape one year after the changes to the legislation were introduced. The four-page bulletin was distributed to Federal, State and Territory Members of Parliament, the media and other Tribunal stakeholder groups and was well received.
- *Guide to the design of native title corporations*, published in November 1999, as part of the collaborative research project on PBCs (for more information see p.112). The publication drew a strong level of interest in this topic from representative bodies, legal practitioners and other Tribunal clients. In November 1999, the Tribunal published the guide as part of the project. Almost 1000 copies of the book were sold by March 2000. The guide is the companion volume to the longer monograph *Native title corporations: a legal and anthropological analysis* to be published during the second quarter of 2000.
- The Tribunal's media unit produced radio programs and the audio-tape *Yarning about ILUAs* for indigenous clients. In July 1999, Tribunal staff member Narelda Jacobs won two Louis Johnson media awards for excellence in reporting indigenous issues in the categories 'Radio News' and 'Best Entry by an Indigenous Person'. The winning radio program, *Native Title News*, was distributed fortnightly to more than 150 community radio stations and resource centres around Australia.



**Graeme Neate (President) congratulates Narelda Jacobs (from the Tribunal's Media Unit) for her achievements in winning two Louis Johnson media awards for excellence.**

Electronic versions of all printed information products as well as information about registration test decisions and future act determinations were available online on the Tribunal's web site at [www.nntt.gov.au](http://www.nntt.gov.au). During the reporting period, the web site recorded a total of 275,558 visitors' hits.

In response to the Government Online Strategy, the Tribunal started the development of an 'online action plan' aimed at optimising the use of the internet to provide information to its clients and make services available online where appropriate. The Tribunal anticipated finalising its online action plan by the end of September 2000, and starting a staged implementation soon after that date.

In addition, members and employees gave numerous presentations and addresses on a wide range of topics related to native title and the role of

the Tribunal at events organised by other groups around the country (for a detailed list see Table 17, p.157).

**Performance measures**

The performance measures for information products are constituted by numbers of different products, client satisfaction, and resource usage.

**Number of products**

During the reporting period, the Tribunal produced 680 separate information products. For a list of information products see Appendix X (p.160).

**Client satisfaction**

During the year, the Tribunal measured client satisfaction levels for two large circulation information products: the *Short guide to native title* brochure, aimed at a general audience and the audio-tape *Yarning about ILUAs* which was developed specifically for indigenous clients and communities.

Reply paid feedback forms were included in the *Short guide to native title* brochure. Ninety-eight per cent of respondents indicated that the information in the booklet increased their understanding of native title.

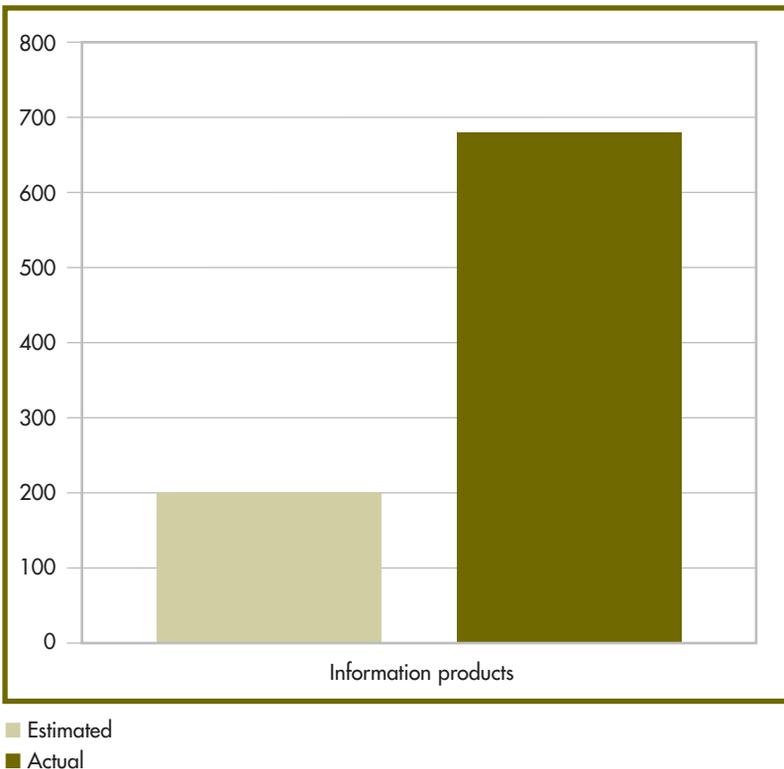


Figure 25: Information products

Client feedback about *Yarning about ILUAs* indicated 95 per cent of respondents found the audio-tape very good and easy to understand.

#### **Resource usage**

As noted on p.115, the total cost of output 1.4.4 was \$2.11m. Information products constituted the largest proportion of this output.

#### **ITEM DESCRIPTION**

Collaborative public information projects are public and industry information initiatives conducted in partnership with stakeholder groups.

The Tribunal works in collaboration with other groups and agencies to improve cost effectiveness and to ensure information is relevant for the client group.

#### **Performance measures**

The number of projects and the satisfaction level of the project partner constitute the performance measures for this output group.

##### **Number of projects**

The Tribunal was involved in three collaborative information products, which is seven less than estimated.

The projects in which the Tribunal was involved were:

- ***Victorian native title information workshop series***, in which the Melbourne registry of the Tribunal conducted a series of native title information workshop in partnership with the Victorian Government during May and June 2000.

The workshops were aimed at developing Victorian government agencies' awareness of Commonwealth native title processes while providing a forum for government staff to inform Tribunal staff about State land, water and cultural heritage processes. The workshops took place in Melbourne and in six regional centres throughout the State.

Out of a total of 450 participants, 290 returned the feedback form. All respondents indicated that they were satisfied with the workshops, with an overwhelming majority rating them as very good or excellent.

- ***Research Exchange***, is a continuing project launched in 1998, where the Tribunal provides native title researchers an opportunity to publicise current or recent work on its web site.

During the reporting period, the Research Exchange published details of research about native title and related topics, updated the database of works and posted bibliographic information resulting from its historical and anthropological background-reporting program.

- ***Geospatial data exchange***, the Tribunal works in collaboration with other government agencies (Commonwealth, State and Territory), instrumentalities, and the private sector to map the boundaries of native title claimant applications and ILUA applications.

Where the Tribunal holds copyright of geospatial data on the boundaries of applications it provides the data to the collaborative partner for the cost of extraction and transfer.

Where the Tribunal does not hold copyright, it advises clients about which State or Territory agencies may hold the data. This is the case in Western Australia, Queensland and Victoria. The Tribunal is seeking an agreement with the Queensland Department of Natural Resources (DNR) to provide DNR data to Tribunal clients. The Tribunal adds value to this data by including native title-related information.

**Resource usage**

As noted on p.115, the total cost of output 1.4.4 was \$2.11m. Collaborative projects constituted a minor proportion of the total cost of this output.

# APPENDICES



## APPENDIX I

### CORPORATE DIRECTORY

#### **Western Australia (principal registry)**

Commonwealth Law Courts Building  
Level 4 1 Victoria Avenue  
PERTH WA 6000  
GPO Box 9973, PERTH WA 6848  
Tel: (08) 9268 7272  
Fax: (08) 9268 7299  
Office hours: 8.30am–5.00pm

#### **Queensland**

MLC Building  
Level 30 239 George Street  
BRISBANE QLD 4000  
GPO Box 9973, BRISBANE QLD 4001  
Tel: (07) 3226 8200  
Fax: (07) 3226 8235  
Office hours: 8.30am–5.00pm

#### **Cairns regional office**

Commonwealth Building  
Level 3 Cnr Grafton and Shields Streets  
CAIRNS QLD 4870  
PO Box 9973, CAIRNS QLD 4870  
Tel: (07) 4048 1500  
Fax: (07) 4051 3660  
Office hours: 9.00am–5.00pm

#### **New South Wales**

Level 25  
25 Bligh Street  
SYDNEY NSW 2000  
GPO Box 9973, SYDNEY NSW 2001  
Tel: (02) 9235 6300  
Fax: (02) 9233 5613  
Office hours: 8.30am–5.00pm

**Victoria**

Level 8  
310 King Street  
MELBOURNE VIC 3000  
GPO Box 9973, MELBOURNE VIC 3001  
Tel: (03) 9920 3000  
Fax: (03) 9606 0680  
Office hours: 9.00am–5.00pm

**South Australia**

Chesser House  
Level 10, 91–97 Grenfell Street  
ADELAIDE SA 5000  
GPO Box 9973, ADELAIDE SA 5001  
Tel: (08) 8306 1230  
Fax: (08) 8224 0939  
Office hours: 8.30am–5.00pm

**Northern Territory**

NT House  
Level 5 22 Mitchell Street  
DARWIN NT 0800  
GPO Box 9973, DARWIN NT 0801  
Tel: (08) 8936 1600  
Fax: (08) 8981 7982  
Office hours: 8.00am–4.30pm

**Tasmania**

Commonwealth Law Courts Building  
39-41 Davey Street  
HOBART TAS 7000  
GPO Box 9973, HOBART TAS 7001  
Tel: (03) 6232 1712  
Fax: (03) 6232 1701  
Office hours: 9.30am–1.00pm, 2.00pm–4.00pm

**Australia Capital Territory**

Level 4, Canberra House  
40 Marcus Clark Street  
CANBERRA ACT 2601  
GPO Box 9973, CANBERRA ACT 2601  
Tel: (02) 6243 4611  
Fax: (02) 6247 0962  
Office hours: 8.00am–5.00pm

**National Freecall Number:** 1 800 640 501

**Web site:** [www.nntt.gov.au](http://www.nntt.gov.au)

## APPENDIX II

### TOTAL RESOURCES FOR OUTCOME 2000–2001

Table 10: Total resources for outcome between 1 July 2000 and 30 June 2001

|   | 1999–2000<br>Actual<br>(\$'000) | 2000–2001<br>Estimate<br>(\$'000) |
|---|---------------------------------|-----------------------------------|
| <b>Departmental appropriations</b>  |                                 |                                   |
| Output group 1.1 Registration   |                                 |                                   |
| Output 1.1.1 Claimant applications  |                                 | 3 957                             |
| Output 1.1.2 Native title determinations  |                                 | 45                                |
| Output 1.1.3 Indigenous land use agreements   |                                 | 899                               |
| <b>Subtotal output group 1.1</b>  | <b>6 628</b>                    | <b>4 901</b>                      |
| Output group 1.2 Agreements   |                                 |                                   |
| Output 1.2.1 Indigenous land use and access   |                                 | 735                               |
| Output 1.2.2 Claimant, non-claimant & compensation  |                                 | 6 302                             |
| Output 1.2.3 Future act   |                                 | 1 245                             |
| <b>Subtotal output group 1.2</b>  | <b>8 673</b>                    | <b>8 282</b>                      |
| Output group 1.3 Arbitration  |                                 |                                   |
| Output 1.3.1 Future act determinations  |                                 | 818                               |
| Output 1.3.2 Objections to the expedited procedure  |                                 | 2 663                             |
| <b>Subtotal output group 1.3</b>  | <b>2 892</b>                    | <b>3 481</b>                      |
| Output group 1.4 Assistance and Information   |                                 |                                   |
| Output 1.4.1 Assistance to applicants and other persons   |                                 | 1 737                             |
| Output 1.4.2 Notification   |                                 | 2 169                             |
| Output 1.4.3 Reports to Federal Court   |                                 | 1 613                             |
| <b>Subtotal output group 1.4</b>  | <b>5 405</b>                    | <b>5 519</b>                      |
| <b>Total of departmental outputs</b>  | <b>23 598</b>                   | <b>22 183</b>                     |
| <b>Total revenue from government (appropriations) contributing to price of departmental outputs</b> | <b>23 404</b>                   | <b>22 183</b>                     |
|   | <b>99.2%</b>                    | <b>98.8%</b>                      |
| <b>Revenue from other sources</b>   |                                 |                                   |
| Output 1.1.1 Claimant applications  |                                 | 48                                |
| Output 1.1.2 Native title determinations  |                                 |                                   |
| Output 1.1.3 Indigenous land use agreements   |                                 | 11                                |
| Output 1.2.1 Indigenous land use and access   |                                 | 9                                 |
| Output 1.2.2 Claimant, non-claimant and compensation  |                                 | 75                                |
| Output 1.2.3 Future act   |                                 | 15                                |
| Output 1.3.1 Future act determinations  |                                 | 10                                |
| Output 1.3.2 Objections to the expedited procedure  |                                 | 32                                |
| Output 1.4.1 Assistance to applicants and other persons   |                                 | 21                                |
| Output 1.4.2 Notification   |                                 | 29                                |
| Output 1.4.3 Reports to Federal Court   |                                 | 19                                |
| <b>Total revenue from other sources</b>   | <b>194</b>                      | <b>267</b>                        |
| Total price of departmental outputs   |                                 |                                   |
| <b>(Total revenue from government and other sources)</b>  | <b>23 598</b>                   | <b>22 450</b>                     |

## APPENDIX III

### CONSULTANTS

As discussed earlier in the report the Act provides for consultancies in two circumstances under ss.131A and 132. For more information see ‘Consultancy services’ (p.54). All consultants are engaged in accordance with the Tribunal’s engagement of consultants policy.

Please note, contract price and actual expenditure during the reporting period for consultants engaged under s.131A are inclusive of fees and other costs, such as travel, accommodation, etc.

Table 11: Consultants engaged under s.131A of the Act

| Consultant    | Purpose  | Contract price | Period              | Selection process   | Comments  |
|---------------|--|----------------|---------------------|---|---|
| D. Smith      | Ngunnawal: Mediation of a (draft) Heads of Agreement.  | \$20,000       | Jan.–<br>July 00    | Direct appointment due to previous work with applicants as a Tribunal member. | Interim reports indicated satisfactory progress.<br>Actual expenditure \$12,327                     |
| S. McLaughlin | Northern Rivers: Design and implementation of a mediation program for a range of native title issues, including overlapping applications, national park management, and access agreements. | \$36,000       | Jan.–<br>Sept. 99   | Direct appointment due to previous work with applicants.                      | Final report submitted. Contract objectives satisfactorily achieved.<br>Actual expenditure \$26,391 |
| S. McLaughlin | Northern Rivers # 3: Development of certain tasks related to the previous Northern Rivers contract (see above).  | \$50,437       | Nov. 99–<br>June 00 | Direct appointment due to previous work with applicants.                      | Interim reports indicated satisfactory progress.<br>Actual expenditure \$50,437                     |

Table 11 (cont.): Consultants engaged under s.131A of the Act

| Consultant    | Purpose   | Contract price | Period              | Selection process  | Comments  |
|---------------|---|----------------|---------------------|--|---|
| S. McLaughlin | Central Queensland: Facilitation of negotiations that deal with overlap and boundary issues.                | \$28,000       | June 99–<br>July 00 | Direct appointment due to previous work with applicants. | Key outcomes included the design and implementation of: <ul style="list-style-type: none"> <li>• a regional research project; and</li> <li>• an ILUA-based process agreement for resolving overlap issues. Parties included the claimants, Central Qld Land Council, and interested third parties such as the State Govt and mining interests.</li> </ul> Interim reports indicated satisfactory progress.<br>Actual expenditure \$21,828 |
| W. Jenvey     | Yalanji: Conducting of plenary meeting to finalise agreement.   | \$6,420        | Mar.–<br>Aug. 99    | Expression of Interest submissions                       | Plenary did not take place but mediation was continuing.<br>Actual expenditure \$6,420  |
| J. Whittaker  | Rubibi: Provision of options related to the resolution of conflicts affecting Rubibi Working Group parties. | \$31,200       | May 99–<br>Feb. 00  | Expression of Interest submissions                       | Final report submitted. Consultant's report demonstrated that contract objectives were achieved.<br>Actual expenditure \$31,200   |
| R. Farley     | Bunjalung Peoples: Resolution of overlap issues.  | \$16,800       | Mar.–<br>July 99    | Direct appointment due to previous work with applicants. | Delays in the process hindered a successful outcome. The contract was under review.<br>Actual expenditure \$140   |

Table 11 (cont.): Consultants engaged under s.131A of the Act

| Consultant | Purpose  | Contract price | Period              | Selection process  | Comments   |
|------------|--|----------------|---------------------|--|--|
| R. Farley  | Ba Barrum and Goldsborough Valley. This contract has three objectives:<br>1. to seek agreement in respect of consolidation and/or withdrawal of the two claimant applications;<br>2. to identify resources that will assist parties to negotiate on a claim or regional basis; and<br>3. to discuss strategies for assisting in applicant negotiations with the Queensland Government. | \$20,190       | Feb.–<br>Aug. 00    | Direct appointment due to previous work with applicants. | Interim reports indicated satisfactory progress.<br>Actual expenditure \$1,965   |
| F. Powell  | Wulgurukaba: Preparation of a report dealing with the State's methodology for reporting on the connection to country of the Birri Gubba and Wulgurukaba native title groups, and assistance in production of connection reports for those applications.  | \$30,000       | Nov. 99–<br>Mar. 00 | Expression of Interest submissions                       | Final report was being drafted for presentation. Interim reports indicated satisfactory progress.<br>Actual expenditure \$30,759 |
| M. Dodson  | Bindal: Facilitation of s.86A court order dealing with overlaps in the Bindal application.   | \$20,000       | Mar.–<br>Aug. 00    | Expression of Interest submissions                       | Interim reports indicated satisfactory progress.<br>Actual expenditure \$3,530   |

Table 11 (cont.): Consultants engaged under s.131A of the Act

| Consultant  | Purpose  | Contract price | Period              | Selection process   | Comments  |
|-------------|--|----------------|---------------------|---|---|
| J. Kalowski | Girramay: Facilitation of agreements between parties, with a view to achieving a native title determination by consent.  | \$18,322       | Feb.–<br>July 00    | Expression of Interest submissions  | Interim reports indicate satisfactory progress.<br>Actual expenditure \$12,148                                  |
| K. Wilson   | Qld various: Facilitation of continuity in existing mediations. Objectives of the contract are to continue mediations until a new member is assigned and a hand-over process is completed. | \$53,860       | Jan.–<br>July 00    | Direct appointment due to work with the applicants prior to term expiry as a Tribunal member. | Interim reports indicated satisfactory progress.<br>Actual expenditure \$20,093                                 |
| K. Wilson   | NSW various: Facilitation of continuity in existing mediations. Objectives of the contract are to continue mediations until a new member is assigned and a hand-over process is completed. | \$27,175       | Jan.–<br>July 00    | Direct appointment due to work with the applicants prior to term expiry as a Tribunal member. | Final report submitted. Contract objectives were satisfactorily achieved.<br>Actual expenditure \$9,047         |
| M. Ivanitz  | White Mountains National Park: Clarification of the discrete and shared interests of applicants.   | \$22,000       | Mar.–<br>Aug. 99    | Direct appointment due to previous work with applicants.                                      | Contract officially cancelled Feb. 00 due to conflicting commitments of consultant.<br>Actual expenditure \$NIL |
| M. McDaniel | Saltwater Lagoon: Mediation of negotiations with parties to an application.  | \$10,000       | Aug. 99–<br>Feb. 00 | Direct appointment due to previous work with applicants as a Tribunal member.                 | Contract cancelled Feb. 00. Consultant unavailable for remainder of 2000.<br>Actual expenditure \$NIL           |

Table 11 (cont.): Consultants engaged under s.131A of the Act

| Consultant  | Purpose  | Contract price | Period               | Selection process   | Comments  |
|-------------|--|----------------|----------------------|---|---|
| M. McDaniel | Githabul: To resolve overlap issues, progress the application toward a framework agreement and assist in the resolution of land management issues. | \$46,600       | May–<br>Nov. 99      | Direct appointment due to previous work with applicants as a Tribunal member. | Contract cancelled Feb. 00. Consultant unavailable for remainder of 2000. Actual expenditure \$46,600 |
| R. Farley   | BaBarrum: Facilitation of agreements between parties with a view to achieving a determination of native title.                                     | \$24,000       | Mar.–<br>Dec. 99     | Direct appointment due to previous work with applicants as a Tribunal member. | Contract cancelled Feb. 00. Contract superseded by smaller contract. Actual expenditure \$587         |
| R. Farley   | Goldsborough Valley: Facilitation of agreements between parties with a view to achieving a determination of native title.                          | \$24,000       | Sept. 99–<br>Mar. 00 | Direct appointment due to previous work with applicants as a Tribunal member. | Contract cancelled Feb. 00. Contract superseded by smaller contract. Actual expenditure \$880         |
| R. Farley   | Kaurareg: Facilitation of agreements between parties with a view to achieving a determination of native title.                                     | \$24,000       | Aug. 99–<br>Mar. 00  | Direct appointment due to previous work with applicants as a Tribunal member. | Contract cancelled Feb. 00. Actual expenditure \$293  |
| R. Farley   | Kuuku Ya'u: Facilitation of agreements between parties with a view to achieving a determination of native title.                                   | \$24,000       | Sept. 99–<br>Apr. 00 | Direct appointment due to previous work with applicants as a Tribunal member. | Contract cancelled Feb. 00. Mediation stalled for application amendment. Actual expenditure \$880     |

Note: totals are provided in the body of the text see 'Consultancy services' ( p.54).

Table 12: Consultants engaged under s.132 of the Act (over \$10,000)

| Consultant                                       | Purpose  | Contract price | Period              | Selection process  | Comments  |
|--|--|----------------|---------------------|--|---|
| Interim Technology Solutions                     | Future act reporting and statistics system   | \$54,945       | Dec. 99–<br>June 00 | Selective tender   | Specialist expertise was required due to lack of in-house expertise.  |
| Centre for Aboriginal Studies, Curtin University | Development of a training kit  | \$12,000       | Aug. 99–<br>June 00 | Direct appointment due to curriculum writing expertise.                                  | Specialist expertise was required due to lack of in-house expertise.  |
| C. Mantziaris and D. Martin                      | Prescribed Bodies Corporate (PBC) project: Analysis of issues associated with the incorporation and function of PBCs and other bodies corporate in the native title context. | \$51,000       | July 99–<br>June 00 | Selective tendering process using Transigo (government purchasing and disposal gazette). | Specialist assistance was required due to lack of in-house expertise. Major outcomes were publications targeted different audiences but, collectively, provided comprehensive information about PBCs. |
| P. Jones   | Implementation of Performance Management Scheme. Outcomes include, advising on the scheme and guidelines, a pilot training program, and a series of national workshops.      | \$32,472       | July–<br>Nov. 99    | Contracted through PSMPC   | Specialist assistance was required due to lack of in-house expertise.   |
| Morgan and Banks                                 | Specialist recruitment service: Recruitment of a manager for the Information Management Group to deal with IT outsourcing contract issues.                                   | \$31,301       | Dec. 99–<br>Jan. 00 | Selective tender   | Specialist assistance was required.   |

Table 12 (cont.): Consultants engaged under s.132 of the Act (over \$10,000)

| Consultant           | Purpose   | Contract price | Period           | Selection process  | Comments  |
|----------------------|---|----------------|------------------|--|---|
| P. Sutton            | Development of discussion paper 'Conflict, Representation and Negotiation: Some Cultural Issues in the Context of Native Title' and presentation of seminars on Aboriginal land law in Australia. | \$13,950       | Feb.–<br>Apr. 00 | Direct engagement of a recognised and pre-eminent expert.                | Specialist expertise was required due to lack of in-house expertise.  |
| A. Cox               | Year 2000 Contingency Planning: to mitigate the risks associated with the 'Y2K bug'.  | \$29,400       | Aug.–<br>Oct. 99 | Selective Request for Quotation  | Failure to implement a Y2K plan may have resulted in disruption to the Tribunal's services. The transition went smoothly. |
| R. Warr              | Outsourcing tender consultant: Development of a comprehensive Information Technology outsourcing contract.  | \$37,350       | July 99          | Selective Request for Quotation  | Specialist assistance was required due to lack of in-house expertise.   |
| Blake Dawson Waldron | Legal advice and negotiation assistance on the Unisys outsourcing contract: Assistance in contract negotiation from a specialist provider.  | \$30,000       | Nov. 99          | Selective request to a number of providers for quotation and submissions | Specialist assistance was required due to lack of in-house expertise.   |
| G. Fernandez         | IT Help Desk support  | \$20,800       | Aug.–<br>Oct. 99 | Selective Request for Quotation  | Specialist assistance was required due to lack of in-house expertise.   |
| P. Collet            | Lotus Notes application support   | \$81,000       | July–<br>Dec. 99 | Selective Request for Quotation  | Specialist assistance was required due to lack of in-house expertise.   |
| R. T Joe             | Applications support: Provide Information Systems support   | \$75,364       | Aug.–<br>Dec. 99 | Selective Request for Quotation  | Specialist assistance was required due to lack of in-house expertise.   |

Table 12 (cont.): Consultants engaged under s.132 of the Act (over \$10,000)

| Consultant  | Purpose   | Contract price | Period              | Selection process               | Comments   |
|-------------|---|----------------|---------------------|---------------------------------|--|
| F. Burke    | Lotus Notes application development and maintenance | \$59,800       | July 99–<br>Jan. 00 | Selective Request for Quotation | Specialist assistance was required due to lack of in-house expertise.    |
| S. Lee      | Lotus Notes applications support                    | \$36,400       | Jan.–<br>Apr. 00    | Selective Request for Quotation | Specialist assistance was required due to lack of in-house expertise.    |
| S. Wilson   | Information Systems applications support            | \$81,960       | July 99–<br>June 00 | Selective Request for Quotation | Specialist assistance was required due to lack of in-house expertise.    |
| D. Crawford | Information Systems project management              | \$65,360       | Feb.–<br>June 00    | Selective Request for Quotation | Service was provided while permanent position was advertised and filled. |
| H. Stevens  | Lotus Notes applications support                    | \$44,200       | Apr.–<br>June 00    | Selective Request for Quotation | Specialist assistance was required due to lack of in-house expertise.    |

## APPENDIX IV

### JUDICIAL DECISIONS, REGULATION CHANGES AND DEVELOPING LEGAL AND PROCEDURAL ISSUES

The decisions listed below, of the High Court and Federal Court of Australia, have changed and/or consolidated the common law understanding of the character of native title rights and interests. They have generally clarified the manner in which native title issues are to be dealt with, but in some cases have led to further questions that will need to be resolved.

*Hayes v Northern Territory* [1999] FCA 1248, Federal Court (Olney J), 9 September 1999. This was a determination of native title in relation to various parcels of land in and near Alice Springs. Olney J found that native title exists in some but not all of the land claimed by the applicants. Based on the evidence, the applicants' native title rights and interests did not give them the right to *exclusive* possession, occupation, use and enjoyment of the land. A final determination in this matter was handed down on 23 May 2000 :[2000] FCA 671. Some of the native title rights recognised in *Hayes* appear to conflict with what the Full Court found in *Western Australia v Ward* in relation to what rights and interests can be recognised. This case is relevant to mediation and the registration test.

*Yanner v Eaton* (1999) 166 ALR 258, [1999] HCA 53, Full High Court (Gleeson CJ, Gaudron, McHugh, Gummow, Kirby, Haynes and Callinan JJ), 7 October 1999. By a 5:2 majority the High Court allowed the appeal from the Queensland Court of Appeal and held that the *Fauna Conservation Act 1974* (Qld) did not extinguish the appellant's native title rights and interests. As a native title holder, the appellant was entitled to hunt or fish for crocodiles that are taken for the purpose of satisfying personal, domestic or non-commercial communal needs. This case affects the nature of rights and interests which can be recognised in Queensland under the registration test.

*Lardil, Kaiadilt, Yangkaal and Gangalidda Peoples v State of Queensland* (1999) 95 FCR 14, [1999] FCA 1633, Federal Court (Cooper J), 24 November 1999. In this case the applicants complained that the State had issued an authority for Pasmenco to construct a buoy mooring in the area without any notice to the registered native title claimants. The applicants sought an injunction to protect their interests by relying upon the procedural requirements of s.24HA and /or s.24NA of the Act.

However, while the applicants were found to have standing at common law, the buoy construction was not a future act as defined by s.233(1) of the Act. The applicants' approach was, as a result, not sufficient to bring the matter within the accrued jurisdiction of the Federal Court. (This decision is on appeal to the Full Federal Court.)

*Commonwealth and others v Yarmirr* (Croker Island case) (1999) 168 ALR 426, Full Federal Court, (Beaumont, Von Doussa and Merkel JJ), 3 December 1999. This was an appeal from the judgment of Olney J, handed down on 4 September 1998 (see (1998) 82 FCR 533, 156 ALR 370). The Commonwealth appeal argued that there was no basis for offshore recognition of native title. It was also submitted that the native title rights identified were already encompassed within the public rights and were not capable of separate recognition. In the alternative, it was argued that the evidence to recognise those rights was insufficient or non-existent.

The applicants argued that the native title rights should have been determined to be exclusive to the native title holders and include a right to exclude persons from the area and a right to exploit and control access to, and exploitation of, resources in the sea, seabed and subsoils.

The majority held that both appeals failed. They generally concurred with the reasons of Olney J. In a dissenting judgment, Merkel J found that an exclusive fishing right could be recognised and protected in relation to an offshore area under the Act.

*Western Australia v Ward* (2000) 170 ALR 159, [2000] FCA 191 (3 March 2000) and [2000] FCA 611 (11 May 2000), Full Federal Court, (Beaumont, Von Doussa, and North JJ). This was an appeal from the decision of Lee J in *Ward v Western Australia* (1998) 159 ALR 483. The Court held that native title continued to exist in relation to certain areas. In a split judgment, the Court set aside aspects of Lee J's findings in relation to the nature of native title and found that the exclusive nature of the native title concerned was extinguished in areas where pastoral leases had been granted. The majority also held that native title was extinguished where the pastoral lease reservation for the benefit of Aboriginal people had been affected by enclosure and/or improvement of the area covered by a lease (depending upon when the lease had been granted). Only certain native title rights and interests were recognised. They also found that native title was extinguished by the grant of mining leases under the *Mining Act 1978* (WA). North J would have dismissed the appeal. Parties (including the Western Australian Government and native title applicants) have sought leave to appeal the decision to the High Court.

This case is significant because it suggests that extinguishment of native title is significantly more widespread than previously considered.

This has ramifications for the work of the Tribunal in relation to its future act and mediation activities. It also affects which native title rights and interests can be prima facie made out under the registration test.

*Anderson v Wilson* (2000) 171 ALR 705, [2000] FCA 394, Full Federal Court (Black CJ, Beaumont and Sackville JJ), 5 April 2000. This was a 'stated case' before the Full Federal Court by which Mr Wilson, the holder of a Western Lands Division Lease, sought to have the court find that native title had been extinguished by the grant of his lease. There was a native title claim over the land covered by the lease, which had not yet been determined. The Court held that the nature of the Western Lands Division Lease legislative regime and the terms of the lease itself do not lead to a conclusion that the rights granted under the lease are necessarily inconsistent with all native title rights that may exist over the area. This case is important because the Western Land Division covers a large part of New South Wales. If native title had been found to be extinguished in the area then many of the native title applications in New South Wales may have been affected.

*Harris v Great Barrier Reef Marine Park Authority* [2000] FCA 603, Full Federal Court (Heerey, Drummond and Emmett JJ), 11 May 2000. This case concerned the nature of the notice that must be given and the opportunity to comment which must be afforded under s.24HA(7) of the Act.

## REGISTRATION TEST

*Powder v Native Title Registrar* [1999] FCA 913, Federal Court (Kiefel J), 5 July 1999. This was an interlocutory decision concerning the nature of the review under s.190D(2) of the Act. Kiefel J held that review of the Registrar's decision was equivalent to an ADJR Act review. This case clarified the basis upon which applicants could seek review of the Registrar's decision not to accept their application for registration. This judgment may have been overturned by the Full Court decision in *Western Australia v Strickland* [2000] FCA 652 (see note below).

*Strickland v Native Title Registrar* (1999) 168 ALR 242, [1999] FCA 1530, Federal Court (French J), 4 November 1999. The applicants applied for review following the delegate's decision that the combined Maduwongga application should not be accepted for registration. The delegate found that the application failed to satisfy the condition found in 190C(3) which requires the Registrar to be satisfied that there are no members in common between the application being considered for registration and any previous application, where the two applications overlap in area.

The State of Western Australia also asserted that the delegate had erred in respect of other conditions, in particular:

- reasonable certainty of internal boundary descriptions (190B(2));
- authorisation of the applicants (190C(4) and (5));
- adequacy of description of the native title rights and interests claimed (190B(4)); and
- factual basis for claimed native title (190B(5)).

French J held that the delegate misconstrued s.190C(3) but had not erred in law in respect of the further matters raised by the State of Western Australia. The procedures were amended to reflect His Honour's interpretation of 190C(3). The decision was appealed to the Full Federal Court (see note below).

*Western Australia v Native Title Registrar and others* [1999] FCA 1591–1594 (four decisions one reported at (1999) 95 FCA 93), Federal Court (Carr J), 16 November 1999. These matters concerned a review the delegate's decision to accept four applications for registration (Gnaala Karla Booja, Ngadju, Wongatha and Koara). These cases raised issues about the description of the boundaries of applications, the claim group description and the interpretation of s.190C(3).

His Honour found that the Registrar had not afforded the State procedural fairness in that it was not given an opportunity to comment on material supplied direct to the Registrar by the native title claimants. Two methods were suggested by the judge for providing procedural fairness:

- making a 'fair summary' of the material; or
- copying the material to the State.

Carr J noted that the Registrar could liaise with the native title claimants as to how the substance of the material would be conveyed to the State and that the Registrar could impose confidentiality conditions on the State with respect to the use of that material.

This case has required the Registrar to resolve with the applicants and the relevant State and Territory governments the basis upon which material is supplied to the latter.

*Moran v Minister for Land and Water Conservation for the State of New South Wales* [1999] FCA 1637, Federal Court (Wilcox J), 25 November 1999. This case concerned an application under s.66B of the Act which sought to replace the applicant in two native title applications. The Court found that neither the original applicant nor the person seeking to replace the applicant were authorised to make the native title application on behalf of the native title claim group. The proceedings were not well commenced and were dismissed. A further application, for review of the Registrar's decision not to register one of the applications, was also dismissed.

*Ward v The Registrar* [1999] FCA 1732, Federal Court (Carr J), 13 December 1999. This case related to an application for review of the registration test decision made in *Miriuwung Gajerrong* (No 2) ('MG2'). The application was dismissed with costs. Carr J upheld the delegate's decision to refuse registration of the MG2 application on the basis that she could not be satisfied with respect to claim group description and authorisation.

*Western Australia v Strickland* [2000] FCA 652, Full Federal Court (Beaumont, Wilcox and Lee JJ), 18 May 2000. In a joint judgment, the Full Court upheld French J's decision regarding description of native title rights and interests, the factual basis of the claimed rights and interests and authorisation of the application but overturned French J's interpretation of 190C(3). The Full Court's decision in respect of s.190C(3) is consistent with the approach originally taken by the Registrar.

The Full Court also suggests that an application for review under s.190D is more like a hearing *de novo* (a re-making of the decision by a judge) than an ADJR Act review, contrary to what was held in *Powder v Native Title Registrar* [1999] FCA 913.

### REGISTRATION TEST LITIGATION IN PROGRESS

Of the 19 applications for review (noted in the 'President's overview' p.5), six were decided, five were withdrawn or discontinued, one was dismissed and seven were still on foot. The outstanding applications for review were:

- *State of Queensland v Peter Hutchison and others* Q274 of 1999;
- *State of Queensland v Tony Shelley and other* Q249 of 1999;
- *McKenzie v ALRM and Native Title Registrar* SG604 of 1999;
- *Stock and another (Niyiyaparli) v Registrar of the National Native Title Tribunal and State of Western Australia* W6002 of 1999;
- *Bullen and another (Esperance Nyungars) v The Native Title Registrar and National Native Title Tribunal and State of WA* W6001 of 1999;
- *Joan Martin (Widi mob) v Native Title Registrar* W6013 of 1999; and
- *State of WA v Native Title Registrar (Combined Metropolitan Working Group)* W6016 of 1999 and W6017 of 1999.

Of the seven listed above, hearing dates were set in two (the hearing date for those is 22 June 2000). The others were subject to further directions hearings.

## NOTIFICATION

*Bropho v State of Western Australia* (2000) 169 ALR 365, Federal Court (French J), 7 January 2000. The Registrar filed five notices of motion seeking orders with respect to notification pursuant to s.66(7) and s.66A(5). It was held that the pre-eminent feature of notification as an aid to the Court in the exercise of its jurisdiction should inform the construction of notification provisions of the Act. The Registrar was found to have broad discretion under the provisions to give effective notification. The Court gave non-exhaustive guidelines in relation to the matters to which the Registrar may have regard in exercising the relevant discretions not to notify individual interest holders.

This decision is significant for Tribunal operations and administration because it has clarified the notification provisions for the Registrar and provided a framework within which notification can be undertaken in an effective and efficient manner.

## FUTURE ACT

*Coppin (on behalf of the Njama People) v State of WA and National Native Title Tribunal* (1999) 164 ALR 270, Federal Court (Carr J), 8 July 1999. Native title parties lodged s.35 applications to try and benefit from the Transitional Provisions under the new Act which provide that the old Act provisions apply to s.35 applications lodged under the old Act. (Applicants considered s.39 of the new Act may be more restrictive, the arbitral body now being required to take into account existing non-native-title interests and uses.) The applications related to proposed future acts to which the right to negotiate continues to apply. The Tribunal dismissed the applications for want of jurisdiction on the basis that there had been no negotiation in good faith by the government party under the old Act. The native title parties sought judicial review of Member Sumner's decision under the AD(JR) Act. Carr J dismissed the application.

This decision confirmed that approximately 2000 s.35 applications could not be heard by the Tribunal because the State had not negotiated in good faith. It was immaterial that the native title parties lodged the applications. This decision has relieved the Tribunal of a large inquiry work load. Of the 2000 determination applications, the native title parties have formally withdrawn 75 per cent. The others will be withdrawn when the native title parties have notified relevant grantee parties.

*Brownley v State of Western Australia* (1999) 95 FCR 132, [1999] FCA 1139, Federal Court (Lee J) 19 August 1999. The Tribunal found that the State of Western Australia had negotiated in good faith with the native title parties in relation to negotiation under s.31 of the Act. Negotiation in good faith by the State is a jurisdictional condition precedent to the

making of s.35 applications. Lee J held that the Tribunal had correctly understood and applied the law and that upon the evidence it was open to the Tribunal to find that the State had negotiated in good faith. The application for review was therefore dismissed.

This decision affirmed the Tribunal decision in the matter. It further enunciated what constitutes good faith negotiation in the context of the right to negotiate.

*Bullen v State of Western Australia* [1999] FCA 1490, Federal Court (French J), 28 October 1999. The question at issue was the status of the applicants' right to negotiate in relation to s.29 notices issued under the old Act once the application was amended post-30 September 1998 and removed from the Register. It was common ground that the State did not negotiate in good faith. The applicants sought a declaration that they were still native title parties for the purposes of existing right to negotiate processes even though they had been de-registered and that the grant of exploration licences is invalid under s.28 of the Act.

French J held that item 11 of the transitional provisions did apply to amended applications; thus deregistered applicants or registered native title claimants, whose application was lodged before 27 June 1996, retain the right to negotiate, despite the fact that the application has been amended.

This decision meant that more remaining old Act applications continued on foot. It also affected the status, for registration test purposes, of additional materials which are supplied by applicants in relation to old Act applications.

#### **FUTURE ACT LITIGATION IN PROGRESS OR DISCONTINUED DURING THE REPORTING PERIOD**

*State of Western Australia v Harrington-Smith and others (Wongatha People), Evans (Koara People) and Anaconda Nickel and others*. Error of law in respect of the effect of a court order (to combine claims) on identity of native title claimants. Appeal under s.169. Discontinued 1 September 1999.

*Winnie McHenry on behalf of the Noongar People v State of WA*. This concerns the application of s.237 of the Act—act attracting the expedited procedure. Appeal under s.169.

*Rita Dempster and others on behalf of various Southern Noongar families v Bayside Abalone Farms Pty Ltd, WA Abalone Farming Pty Ltd and the State of Western Australia*. Error of law in respect of a finding of negotiation in good faith by respondents. Appeal under s.169. Discontinued 3 February 2000.

*Harvey Murray and others v State of Western Australia*. Error of law in determining that the applicant was no longer a native title party. Appeal under s.169.

*Rita Dempster on behalf of the Southern Noongar People v State of Western Australia*. This concerns the application of s.237 of the Act—act attracting the expedited procedure. Appeal under s.169.

*Rita Dempster on behalf of the Southern Noongar People v State of Western Australia*. This concerns the application of s.237 of the Act—act attracting the expedited procedure. Appeal under s.169.

## REGULATION CHANGES

### PRESCRIBED BODY CORPORATE REGULATIONS

The Native Title (Prescribed Bodies Corporate) Regulations were repealed on 14 July 1999 and replaced with the Native Title (Prescribed Bodies Corporate) Regulations 1999. This was chiefly in response to the decision of Drummond J in the *Mualgal People v State of Queensland and others* (1998) 160 ALR 386 which held that new regulations needed to be made because the Act had been amended.

There is currently a review of the regulations underway which is managed by ATSIC. Two Tribunal members are participating in that review.

### INDIGENOUS LAND USE AGREEMENT REGULATIONS

The Native Title (Indigenous Land Use Agreements) Regulations 1998 were repealed on 22 December 1999. They were replaced with the Native Title (Indigenous Land Use Agreements) Regulations 1999. These regulations were repealed chiefly to take into account the changes to the Prescribed Bodies Corporate regulations.

The Tribunal in response to the new regulations revised its information packages for applications for registration of indigenous land use agreements. New internal forms for compliance checking of such applications were also drafted.

## DEVELOPING LEGAL AND PROCEDURAL ISSUES

### RETURN OF CONFIDENTIAL INFORMATION

In at least three cases, the applicants sought return of information supplied for the registration test on the basis that it is confidential. (Applicants want to avoid effect of the decision of Carr J in *Western*

*Australia v Native Title Registrar* on procedural fairness—and so prevent information being passed to the State). The Tribunal response was that the material has been supplied for the registration test and therefore the Registrar could not return or disregard it. The Registrar is required to have regard to information supplied for the registration test and to provide it to the State if it is relevant, credible and of likely significance. Therefore documents should not be returned.

**WHETHER THE REGISTRAR IS REQUIRED TO REVISIT  
REGISTRATION TEST DECISIONS WHEN THE LAW CHANGES  
OR PROCEDURES HAVE BEEN FOUND INVALID**

The law on this issue is uncertain. Seeking to treat such decisions as invalid may affect many parties which rely upon the registration details of applications. The Registrar has taken the position that such decisions are valid until a court determines otherwise.

## APPENDIX V

### STAFFING

Table 13: Employees by classification, location and gender at 30 June 2000

| Classification                | Location  |           |          |          |          |          |           |           |           |           |          |          |          |            |
|-------------------------------|-----------|-----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|----------|----------|----------|------------|
|                               | Male      |           |          |          |          |          | Total     | Female    |           |           |          |          |          | Total      |
| WA                            | NSW       | Qld       | Vic.     | SA       | NT       | WA       |           | NSW       | Qld       | Vic.      | SA       | NT       |          |            |
| APS Level 1                   | -         | -         | -        | -        | -        | -        | -         | 1         | -         | -         | -        | -        | -        | 1          |
| APS Level 2                   | 3         | 2         | 1        | -        | -        | -        | 6         | 5         | 4         | 5         | 1        | 1        | -        | 16         |
| APS Level 3                   | 2         | -         | -        | -        | -        | -        | 2         | 14        | -         | 1         | -        | -        | -        | 15         |
| APS Level 4                   | 6         | 3         | 2        | -        | 2        | -        | 13        | 21        | 1         | 5         | 2        | -        | 2        | 31         |
| APS Level 5                   | 6         | -         | -        | -        | -        | -        | 6         | 5         | -         | -         | -        | -        | -        | 5          |
| APS Level 6                   | 13        | 3         | 2        | 1        | 1        | -        | 20        | 21        | 4         | 10        | -        | 1        | 2        | 38         |
| Legal Officer                 | -         | -         | -        | -        | -        | -        | -         | 4         | -         | -         | -        | -        | -        | 4          |
| Senior Legal Officer          | 1         | -         | -        | -        | -        | -        | 1         | -         | -         | -         | -        | -        | -        | -          |
| Senior Public Affairs Officer | 1         | -         | -        | -        | -        | -        | 1         | 1         | -         | -         | -        | -        | -        | 1          |
| Professional Officer          | -         | -         | -        | -        | -        | -        | -         | 2         | -         | -         | -        | -        | -        | 2          |
| Senior Professional Officer   | -         | -         | -        | -        | -        | -        | -         | -         | 1         | 1         | -        | -        | -        | 2          |
| Executive Level 1             | 9         | 1         | 2        | 1        | 1        | 1        | 15        | 15        | -         | 2         | 1        | -        | -        | 18         |
| Executive Level 2             | 7         | 1         | 1        | -        | 1        | -        | 10        | 4         | -         | -         | 1        | -        | -        | 5          |
| Senior Executive              | 2         | -         | -        | -        | -        | -        | 2         | 1         | -         | -         | -        | -        | -        | 1          |
| <b>TOTAL EMPLOYEES</b>        | <b>50</b> | <b>10</b> | <b>8</b> | <b>2</b> | <b>5</b> | <b>1</b> | <b>76</b> | <b>94</b> | <b>10</b> | <b>24</b> | <b>5</b> | <b>2</b> | <b>4</b> | <b>139</b> |

Table 14: Employees professional development and training

| Training category          | Training activities (workshop/conference) included in category   | Total training hours (based on 7.5 hr day) | Total staff attended |
|----------------------------|--|--|----------------------|
| Communication              | Cross cultural cwareness, conflict management, customer service, interpersonal skills, presentation skills, media skills         | 590  | 90                   |
| Finance                    | Financial management, activity based costing   | 101  | 14                   |
| Health and Diversity       | Equal opportunity and harassment awareness, health awareness, First Aid  | 211  | 37                   |
| Human Resource Management  | Selection panels, workplace relations, public sector reforms, pay and conditions, policy, APS legislation                        | 216  | 18                   |
| Information and Technology | NNTT databases, Excel, Powerpoint, technical, Word   | 868  | 94                   |
| Management and Leadership  | Leadership, management, performance management, supervision, managing diversity  | 1901                                       | 216                  |
| Mediation                  | Mediation, negotiation   | 572  | 22                   |
| Native Title               | Native Title Act/law, native title procedures  | 389  | 29                   |
| Personal Development       | Career management and job search, professional/executive assistants development, indigenous employee development                 | 281  | 30                   |
| Professional               | Legal (incl. administration law and freedom of information), library management, records management, geospatial, media, research | 325  | 25                   |
| Task Management            | Project management, time management, consultancy and contract management   | 121  | 9                    |
| <b>Total</b>               |  | <b>5573</b>                                | <b>584</b>           |

## APPENDIX VI

### FREEDOM OF INFORMATION

Section 8 of the *Freedom of Information Act 1982* requires each Commonwealth agency to publish information about the way it is organised, its functions, powers, and arrangements for public participation in the work of the agency. Agencies are also required to publish the categories of documents they hold and inform the public how they can gain access to them.

### ORGANISATION

The Tribunal's organisational structure is provided in a chart on p.32 of this report. An outline of the responsibilities of its executive and senior management committees is provided on p.38.

### FUNCTIONS AND POWERS

A summary of the information related to the Tribunal's functions and powers is provided below, but for more detail see p.30.

#### Role

The Tribunal's role is to assist people in reaching agreements about native title in a spirit of mutual recognition and respect for each other's rights and interests. The Tribunal arbitrates in certain future act matters.

The Tribunal seeks to carry out its functions in a fair, just, economical, informal and prompt way.

#### Authority and legislation

The functions and powers of the National Native Title Tribunal are conferred by the *Native Title Act 1993* under which the Tribunal was established. The functions and powers of the Tribunal were significantly altered by the Native Title Amendment Bill 1998. Supervision of the native title determination process is under the control of the Federal Court.

#### Native Title Registrar

Under the Act, the Native Title Registrar must assist the Tribunal's President in the management of the administrative affairs of the Tribunal. The Registrar may delegate all or any of his powers under the Act to Tribunal officers and he or she may also engage consultants to perform services for the Registrar.

### **National Native Title Tribunal**

Mediation of native title applications by the Tribunal is under the Federal Court's supervision. All or part of an application may be referred to the Tribunal for that purpose.

The Tribunal has the function to provide, if asked, assistance to parties negotiating various agreements.

### **NUMBER OF FORMAL REQUESTS FOR INFORMATION**

There were no Freedom of Information requests during the reporting period.

### **PUBLIC PARTICIPATION**

Information about how the public has, and can, participate in the work of the Tribunal is outlined in 'External scrutiny' (p.46).

### **CATEGORIES OF DOCUMENTS**

The Tribunal has three main categories of documents or information:

- information available to the public upon payment of a statutory fee;
- documents available for purchase; and
- documents customarily available free of charge (but which may be subject to a photocopy fee).

### **Information available to the public upon payment of a statutory inspection fee**

Information is available from:

- the Register of Native Title Claims—a register of native title applications filed with the Federal Court and referred to the Native Title Registrar, including a brief statement of the area subject to claim, the native title rights and interests claimed and a map of the relevant area (s.187 *Native Title Act 1993*);
- the National Native Title Register—a register of native title determinations (s.194 *Native Title Act 1993*);
- the Register of Indigenous Land Use Agreements—a register of indigenous land use agreements (s.199D of the *Native Title Act 1993*).

### **Documents or information available for purchase or subject to a photocopy fee**

Information is available as:

- extracts from the Schedule of Applications—documents relating to future act applications or to claimant applications that have failed the registration test, new or amended claimant applications that have not yet been through the registration test, non-claimant applications, and

compensation applications filed with the Federal Court and referred to the Native Title Registrar within the state boundaries in which the registry is located;

- copies of certain documents contained on the file of referred applications (subject to the provisions of the Privacy Act and the discretion of the Registrar under s.188 of the *Native Title Act 1993*);
- books published by the Tribunal; and
- future act determinations made and published by the Tribunal.

## Documents customarily free of charge

The following documents are available free of charge upon request or as indicated (\*) on the Tribunal's web site:

- brochures;\*
- customer service charter;\*
- ILUA application booklets;\*
- flyers;
- flowcharts;
- registration test kit;\*
- regional newsletters\*;
- Yarning about native title audio-tapes;
- guide and application forms to instituting applications for a future act determination and objection to inclusion in an expedited procedure (under s.75 of the Act);\*
- procedures of the Tribunal published by the President and Registrar, amended as necessary;\*
- table of applications lodged with current status (Timeline);\*
- bibliographies;\*
- Tribunal's performance information and planned level of achievement;\*
- edited reasons for decisions in registration test matters;\* and
- *Native Title Act 1993* consolidated to include the *Native Title Amendment Act 1998*\*.

## Other information

### Briefs, submissions and reports

The Tribunal prepares and holds copies of briefing papers, submissions and reports relevant to specific functions. Briefing papers and submissions include those prepared for ministers, committees and conferences. Reports are generally limited to meetings of working parties and committees.

**Conference papers**

The Tribunal library holds copies of all conference and seminar papers presented by the President, Registrar, members or staff. Copies of conference papers can be obtained from the Tribunal (see Appendix VIII, p.150).

**Reviews and research**

The Tribunal prepares and holds background research papers, prepared at the request of staff or members, about legal or social and land-use issues related to native title applications (for more information see 'Research — output 1.4.3' p.110).

**Databases**

A number of computer databases is maintained to support the information and processing needs of the Tribunal.

**Files**

Paper and computer files are maintained on all Tribunal activities. A list of files relating to the policy-advising functions, development of legislation, and other matters of public administration created by the Tribunal is available on the Tribunal's web site.

**Finance documentation**

A series of documents is maintained relating to the Tribunal's financial management, including the chart of accounts, expenditure and revenue ledgers, register of accounts and appropriation ledger.

**Mailing lists**

The Tribunal maintains mailing lists for its own use which are used principally to disseminate information.

**Maps and plans**

Maps and plans held within the Tribunal include: working drawings, plans and specifications for Tribunal accommodation; and maps depicting either specific applications or applications within a defined region, either commissioned or produced by the Tribunal or made available by State or Territory government service providers for purchase. These can be viewed under Freedom of Information processes but are not copied if this would be in breach of copyright/data licensing agreements.

**Administration**

Documents relating to administration include such matters as personnel, finance, property, information technology and corporate development. There are also a number of manuals and instructions produced to guide Tribunal officers.

**ACCESS TO DOCUMENTS**

Facilities for examining documents and obtaining copies are available at the addresses shown in Appendix I (p.122). Documents available free of charge upon request (other than under the *Freedom of Information Act*

1982) are available from the principal registry at the address given at page 122. The public registers may be inspected and copies purchased from any registry of the Tribunal.

### **Access through the Freedom of Information Act**

Inquiries regarding freedom of information may be made at the principal registry and the various regional registries or offices. Assistance will be given to applicants to identify the documents they seek.

Inquiries concerning access to documents or other matters relating to freedom of information should be directed to the Manager, Legal Services at the principal registry.

Applications for access to documents under the Freedom of Information Act must be made in writing (there is no mandatory application form) and must be accompanied by the relevant fee. Remittal of the fee may be sought on a number of grounds. Applications should be lodged with, or posted to, the principal registry of the Tribunal. Applicants may contact the Legal Services Unit regarding making applications under the Freedom of Information Act.

Applications should have an address to which notices may be sent and a daytime telephone number. If there is insufficient information in an application an officer of the Tribunal will assist the applicant to clarify the request.

As required by the Freedom of Information Act, the Tribunal refers to other agencies those requests that involve information not in the possession of the Tribunal, but known to be available in another agency which is more closely connected with the function.

### **Access other than through the Freedom of Information Act**

Parties to applications can obtain access to their own records. No formal or written application is required. Inquiries should be directed to the case manager for the application. It may be necessary to obtain some documents from the Federal Court.

## APPENDIX VII

### MAIN STEPS IN THE NATIVE TITLE APPLICATION PROCESS

| Main steps in native title application process | Responsible agency   |  | Relevant section of the Native Title Act |
|--|--|--|--|
|  | Federal Court  | National Native Title Tribunal or equivalent State or Territory body                                     |  |
| Filing   | Application filed and checked for compliance with procedural requirements  |  | s.61<br>s.61A<br>s.62                    |
| Referral #1                                    | Application referred to Tribunal or equivalent body  |  | s.63                                     |
| Notification #1                                |  | State or Territory government and Native Title Representative Bodies provided with a copy of application | s.66(2)<br>s.66(2A)                      |
| Registration                                   |  | New registration test applied to native title application  | s.190B<br>s.190C                         |
| Notification #2                                |  | Native title application advertised and other potential parties notified                                 | s.66(3)                                  |
| Parties  | Applications for party status assessed and determined  |  | s.84<br>(s.84A)                          |
| Referral #2                                    | Native title application referred to Tribunal or equivalent body for mediation   |  | s.86B                                    |
| Mediation                                      |  | Mediation conducted  | s.136A                                   |
| Agreement                                      |  | Mediated agreement referred to Federal Court   | s.136G(1)                                |
| Agreed determination                           | Court considers if appropriate to make determination of native title   |  | s.81<br>s.87<br>s.94A                    |
| No agreement                                   |  | Tribunal makes mediation report to Federal Court   | s.86E<br>s.136G(3)                       |
| Contested determination                        | Court decides whether to make a determination of native title (Court may refer matter back to Tribunal or equivalent body for further mediation) |  | s.81<br>s.94A<br>s.86B(5)                |

## APPENDIX VIII

### PUBLICATIONS AND PAPERS

Bowen, P. 1999, 'Delivering native title information to support infrastructure development', paper presented to 3rd GIS Asia Pacific Conference, Singapore.

— 1999, 'Mapping, recording and analysing native title—the Australian experience', paper presented to 19th International Cartographic Conference, Ottawa.

— 1999, 'Native title: post Wik—the need for the Australian spatial data infrastructure', paper presented to *Association of Consulting Surveyors Australia Research Notes* Vol. 2, pp.1–8.

— 2000, 'Mapping native title: a national picture (Background paper No.15)', Native title in the new millenium: Representative Bodies Legal Conference, Melbourne, Vic.

— 2000, 'Mapping, recording and analysing native title—post Wik', paper presented to Mapping Science Institute of Australia/Queensland Institute of Technology Public Lecture, Brisbane, Qld.

Byrne, J.-A. 1999, 'Application for registration of ILUAs: some issues', *Indigenous Law Bulletin* Vol. 4, no. 21, pp. 14,15.

— 1999, 'Applications for the registration of indigenous land use agreements', paper presented to Negotiating native title training course, Darwin, NT.

Chaney, F. 2000, 'A guide to the design and operation of native title corporations', paper presented to Negotiating native title training course, Perth, WA.

Jones, C. 1999, 'Native title and natural resource management : a way forward?', paper presented to International Symposium Society and Resource Management: Application of social science to resource management in the Asia-Pacific Region, University of Queensland, Brisbane, Qld.

— 2000, 'Parallel negotiation: tradition and development. A mediation model for these troubled times', paper presented to Mediation: past and promise, 5th National Mediation Conference, Brisbane, Qld.

Kee, S. 1999, 'Final stage of amendments to the NTA: new provisions relating to native title representative bodies', *Native Title Bulletin*, no. 14, Butterworths, Sydney, pp. 1–8.

— 1999, ‘NNTT Short Guide to ILUA Registration” and “ILUA application booklets”, *Native Title News* Vol. 4, no. 4, Butterworths, Sydney, pp. 68–9.

— 1999–2000, ‘Indigenous land use agreements’, *Native Title Bulletin* no. 25–26, Butterworths, Sydney, pp.1001–1052.

— 2000, ‘Indigenous land use agreements: which, why and where?’, paper presented to Native title in the new millenium: Representative Bodies Legal Conference, Melbourne, Vic.

Lane, P. 1999, ‘Indigenous Land Use Agreements—an alternative to the right to negotiate provisions under the Native Title Act’, paper presented to Aboriginal Rights Summit, Sydney, NSW.

— 2000, ‘Native title—the end of property as we know it?’, *Australian Property Law Journal* Vol. 8, no. 1, pp. 1–37.

— 2000, ‘A quick guide to ILUAs’, paper presented to Native title in the new millenium: Representative Bodies Legal Conference, Melbourne, Vic.

Litchfield, J. 1999, ‘Compensation for loss or impairment of native title rights and interests : an analysis of suggested approaches (Part I)’, *Australian Mining and Petroleum Law Journal* vol. 18, no. 3, pp. 253–66.

— 2000, ‘Compensation for loss or impairment of native title rights and interests: An analysis of suggested approaches (Part II)’, *Australian Mining and Petroleum Law Journal*, Vol. 19, no. 1, pp. 44–53.

McRae, T. 1999, ‘Marking progress on native title’, *Native Title Newsletter*, National Native Title Tribunal, no. 5, pp.16–8.

Meyers, G.D., Cowan, C. 1999, ‘Environmental and natural resources management by the Maori in New Zealand’ in *Governance structures for Indigenous Australians on and off native title lands: Discussion paper 6*, University of New South Wales, Sydney, NSW.

Neate, G. 1999, ‘The effectiveness of ILUAs as a risk management tool: a mediator’s perspective’, *Australian Mining and Petroleum Law Association Yearbook*, University of Melbourne, Victoria, pp.254–76.

— 1999, ‘Living in the native title era: three challenges for Australians’, paper presented to Annual dinner of the Public Law and Public Administration discussion group, Centre for International and Public Law, University House, ANU, ACT.

— 1999, ‘Mapping landscapes of the mind: a cadastral conundrum in the native title era’, paper presented to International Conference on Land Tenure and Cadastral Infrastructure for Sustainable Development, Melbourne, Vic.

— 1999, ‘Mapping landscapes of the mind: a cadastral conundrum in the native title era’, paper presented to UN/FIG Workshop, Bathurst, NSW.

— 1999, 'Native title dispute resolution and proof of native title', paper presented to Native Title Law, Policy and Practice QUT Masters Course, Queensland University of Technology, Qld.

— 1999, Native Title Teacher Training Project: notes for the inauguration of the project at Curtin University, 20 July 1999.

— 1999, 'Recognising, respecting and restricting indigenous peoples' rights to land: law in a social context in Australia', paper presented to International Symposium on Society and Resource Management: Application of social science to resource management in the Asia-Pacific Region, University of Queensland, Brisbane, Qld.

— 1999, *Submission to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund: Number 2 of 1999*.

— 1999, *Submission to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund: Number 3 of 1999*.

— 1999, 'Working with the Native Title Act—finding alternatives to the adversarial method', paper presented to Negotiating native title training course, Darwin, NT.

— 2000, 'Alternative State and Territory schemes: a national overview', paper presented to Native title in the new millenium: Representative Bodies Legal Conference, Melbourne, Vic.

— 2000, 'Managing native title litigation', paper presented to Managing justice—the way ahead for civil disputes. Australian Law Reform Commission Conference, Sydney, NSW.

— 2000, 'Meeting the challenges of native title mediation', paper presented to LEADR 2000: ADR International Conference, Sydney, NSW.

— 2000, 'Native title and mining: challenges and possibilities in 2000 and beyond', in *Outlook 2000: new directions future markets*, Volume 4, ABARE, Canberra, ACT, pp. 73–92.

— 2000, 'Native title update', paper presented to Australian Mining and Petroleum Law Association 3rd Queensland State Conference, Broadbeach, Queensland, Qld.

Nish, S. 2000, 'Getting to agreements under the *Native Title Act 1993*', paper presented to Resource management, compensation, and indigenous land claims in the Pacific Regional Conference, Hawaii.

Sparkes, S., Wright, G. 1999, 'Native title and the reconciliation of indigenous Australian fishing rights', paper presented to FishRights99 Conference, Fremantle, WA.

Wright, L. 2000, 'The law governing prescribed bodies corporate', paper presented to Native title in the new millenium: Representative Bodies Legal Conference, Melbourne, Vic.

## APPENDIX IX

### BACKGROUND REPORTS

Table 15: Background reports distributed to internal and external clients

| Product name   | Target audience  | Publication date | Quantity |
|--|--|------------------|----------|
| Ghungalu and Kangoulu (Queensland)                                     | Applicants<br>Rep Body (Gurang)<br>Member<br>Case Manager                            | July 99          | 30       |
| Kalakadoon and Waluwarra (Queensland)                                  | Applicants<br>Rep Body Member<br>Case Manager  | Oct. 99          | 6        |
| Kullilli, Budjiti and Badjiri (Queensland)                             | Applicants<br>Rep Body (Goolburri)<br>Member<br>Case Manager                         | Nov. 99          | 8        |
| Wangkanguru Yarluyandi (South Australia)                               | Applicants<br>Rep Body (ALRM)<br>Member<br>Case Manager                              | Mar. 00          | 6        |
| Badjiri, Budjiti, Kunja and Moorawari (Queensland and New South Wales) | Applicants<br>Rep Bodies (Goolburri and NSWLC)<br>Members<br>Case Managers           | Apr. 00          | 12       |
| Eringa (South Australia)   | Applicants<br>Rep Body (ALRM)<br>Member<br>Case Manager                              | May 00           | 6        |
| Witjira National Park (South Australia)                                | Applicants<br>Rep Body (ALRM)<br>Member<br>Case Manager<br>(Copy also passed to ILC) | June 00          | 8        |

## APPENDIX X

### INFORMATION PRODUCTS AND ACTIVITIES

Table 16: Seminars and/or workshops (wholly or collaboratively sponsored)

| Event  | Place                | Date   | Target audience  | Audience numbers |
|--|----------------------|--|--|------------------|
| Workshop series<br><b>Australian<br/>Local<br/>Government</b><br>(See output 1.4.3<br>collaborative<br>research projects<br>for description) | Brisbane, Qld        | 9 Nov. 99  | Local government, State government, academics, planning consultants, legal practitioners, Local Government Association of Queensland | 22               |
|  | Rockhampton, Qld     | 10 Nov. 99   | Local government, State government, ATSIC  | 9                |
|  | Mackay, Qld          | 12 Nov. 99   | Local government, ATSIC, representative bodies   | 10               |
|  | Cairns, Qld          | 15 Nov. 99   | Local government, State government, ATSIC, planning consultants, legal practitioners, representative bodies                          | 19               |
|  | Townsville, Qld      | 17 Nov. 99   | Local government, State government, ATSIC, surveying consultants, representative bodies, Local Government Association of Queensland  | 25               |
|  | Cloncurry, Qld       | 18 Nov. 99,  | Local government, State government, ATSIC  | 10               |
|  | Thursday Island, Qld | 22 Nov. 99   | Local government, State government, representative bodies  | 9                |
|  | Perth, WA            | 29 Nov. 99   | Local government, ATSIC, representative bodies   | 13               |
|  | Merredin, WA         | 30 Nov. 99   | Local government, ATSIC, representative bodies   | 10               |
|  | Geraldton, WA        | 1 Dec. 99  | Local government, ATSIC, representative bodies   | 11               |
|  | Broome, WA           | 2 Dec. 99  | Local government, ATSIC, representative bodies   | 18               |
|  | Perth, WA            | 4 Dec. 99  | Local government   | 5                |
|  | Albany, WA           | 6 Dec. 99  | Local government   | 11               |
|  | Stirling, WA         | 7 Dec. 99  | Local government, State government, WA Municipal Association, representative bodies  | 22               |
|  | Kalgoorlie, WA       | 8 Dec. 99  | Local government, State government, ATSIC, representative bodies   | 13               |
|  | Melbourne, Vic.      | 7 Feb. 00  | Local government, State government, industry body  | 25               |
|  | Horsham, Vic.        | 9 Feb. 00  | Local government, State government, ATSIC  | 23               |
|  | Melbourne, Vic.      | 11 Feb. 00   | Local government, State government, planning consultants, Municipal Association of Victoria, community and industry groups           | 26               |
|  | Echuca, Vic.         | 15 Feb. 00   | Local and State government   | 16               |
|  | Murray Bridge, SA    | 31 May 00  | Local government, State government   | 13               |
| Adelaide, SA   | 2 June 00            | Local government, State government, ATSIC, representative bodies, Indigenous Land Corporation, legal practitioners | 26   |                  |

Table 16 (cont.): Seminars and/or workshops (wholly or collaboratively sponsored)

| Event  | Place            | Date       | Target audience  | Audience numbers |
|--|------------------|------------|--|------------------|
| <b>Workshop series<br/>Australian<br/>Local<br/>Government<br/>(cont.)</b>   | Pt Augusta, SA   | 5 June 00  | Local government, State government, land management consultant   | 14               |
|  | Elliston, SA     | 7 June 00  | Local government   | 15               |
|  | Fremantle        | 12 June 00 | Local government, industry body  | 12               |
| <b>Prescribed<br/>body corporate<br/>seminar series</b><br>(See output 1.4.3 collaborative research projects for description)  | Perth, WA        | 25 Nov. 99 | Native title holders and claimants, representative bodies, legal practitioners, Tribunal staff and members | 125              |
|  | Cairns, Qld      | 6 Dec. 99  | Native title holders and claimants, representative bodies, legal practitioners, Tribunal staff and members | 35               |
|  | Brisbane, Qld    | 8 Dec. 99  | Native title holders and claimants, representative bodies, legal practitioners, Tribunal staff and members | 45               |
|  | Sydney, NSW      | 11 Feb. 00 | Native title holders and claimants, representative bodies, legal practitioners, Tribunal staff and members | 45               |
|  | Melbourne, Vic.  | 14 Feb. 00 | Representative bodies, State government and legal practitioners  | 30               |
|  | Melbourne, Vic.  | 15 Feb. 00 | Applicants   | 40               |
|  | Adelaide, SA     | 17 Feb. 00 | Native title holders and claimants, representative bodies, legal practitioners, Tribunal staff and members | 45               |
| <b>Native title<br/>training<br/>workshop series</b><br>in partnership with the Victorian State Government (See output 1.4.4 collaborative information projects for description) | Melbourne, Vic.  | 16 May 00  | State Government Officers working in management of lands and waters  | 60               |
|  | Mildura, Vic.    | 18 May 00  | As above   | 24               |
|  | Horsham, Vic.    | 23 May 00  | As above   | 32               |
|  | Benalla, Vic.    | 25 May 00  | As above   | 53               |
|  | Bairnsdale, Vic. | 30 May 00  | As above   | 77               |
|  | Melbourne, Vic.  | 1 June 00  | As above   | 45               |
|  | Bendigo, Vic.    | 6 June 00  | As above   | 63               |
|  | Melbourne, Vic.  | 8 June 00  | As above   | 55               |
|  | Ballarat, Vic.   | 13 June 00 | As above   | 41               |

Table 16 (cont.): Seminars and/or workshops (wholly or collaboratively sponsored)

| Event   | Place           | Date              | Target audience   | Audience numbers |
|---|-----------------|-------------------|---|------------------|
| Seminar<br><b>Conflict, negotiation and mediation in classical Aboriginal society</b> | Perth, WA       | 1 Oct. 99         | Members, staff, legal practitioners   | No record        |
| Seminar<br><b>Traditional indigenous knowledge and its appropriate protection</b>     | Perth, WA       | 24 Nov. 99        | Members, staff, legal practitioners   | 18               |
| Workshop<br><b>Native title mediation</b>   | Melbourne Vic.  | 25 Oct. 99        | Mirimbiak Nations Aboriginal Corporation staff  | 15               |
| Workshop<br><b>Native title mediation</b>   | Melbourne, Vic. | 25 Oct. 99        | Tribunal clients  | 30               |
| Forum<br><b>The role of the Indigenous Land Corporation</b>                           | Melbourne, Vic. | 16 Mar. 00        | Tribunal clients  | 30               |
| Seminar<br><b>The community of native title holders</b>                               | Brisbane, Qld   | 11 Apr. 00        | Members, staff, legal representatives and practitioners                                 | 41               |
|   | Cairns, Qld     | 13 Apr. 00        | Members, staff, legal representatives and practitioners                                 | 60               |
|   | Perth, WA       | 26 Apr. 00        | Members, staff, legal representatives and practitioners                                 | 65               |
| Seminar<br><b>ILUAs</b>   | Sydney, NSW     | 27 and 29 June 00 | Members, staff, state government officers, legal representatives, representative bodies | 70               |

Table 17: Member and employee presentations at events organised by other groups

| Event   | Sponsor   | Place                 | Date          | Target audience  | Audience numbers |
|---|---|-----------------------|---------------|--|------------------|
| <b>Western Australia</b>  |   |                       |               |  |                  |
| Address<br><b>Native title</b>  | TAFE  | Leederville, WA       | 30 Aug. 99    | Students   | 10               |
| Address<br><b>Native title</b>  | Curtin University                                       | Perth, WA             | 6 Oct. 99     | Students   | 60               |
| Address<br><b>Native title</b>  | Edith Cowan University                                  | Perth, WA             | 14 Oct. 99    | Students   | 16               |
| Address<br><b>Native title, the role of the Tribunal and of representative bodies</b> | Bremer Bay Men's Meeting (Family Future, Albany)        | Bremer Bay, WA        | 27–28 Nov. 99 | Indigenous men   | 80               |
| <b>Victoria</b>   |   |                       |               |  |                  |
| Talk<br><b>Amendments to the Native Title Act as they affect Victoria</b>             | Port Phillip Citizens for Reconciliation                | South Melbourne, Vic. | 8 July 99     | Tribunal clients, general public                             | 20               |
| Seminar<br><b>Future acts in Victoria</b>   | Victorian Chamber of Mines                              | Melbourne, Vic.       | 10 Aug. 99    | Department of Natural Resources and the Environment officers | 30               |
| Information session<br><b>Native title and national parks</b>                         | National Parks Association of Victoria                  | Melbourne, Vic.       | 11 Aug. 99    | National Parks Association of Victoria, Board                | 60               |
| Information session<br><b>Forming conservation partnerships with claimants</b>        | National Parks Association of Victoria                  | Melbourne, Vic.       | 30 Nov. 99    | National Parks Association of Victoria Board                 | 60               |
| Seminar<br><b>The Tribunal's role in mediation</b>                                    | Victorian Indigenous Working Group Statewide Conference | Melbourne, Vic.       | 9 Dec. 99     | Tribunal clients, general public                             | 60               |
| Seminar<br><b>The registration test</b>   | Victorian Indigenous Working Group Statewide Conference | Melbourne, Vic.       | 9 Dec. 99     | Tribunal clients, general public                             | 60               |
| Seminar<br><b>ILUAs</b>   | Victorian Indigenous Working Group Statewide Conference | Melbourne, Vic.       | 9 Dec. 99     | Tribunal clients, general public                             | 60               |

Table 17 (cont.): Member and employee presentations at events organised by other groups

| Event   | Sponsor  | Place              | Date        | Target audience                        | Audience numbers   |
|---|--|--------------------|-------------|--|--------------------|
| <b>Northern Territory</b>   |  |                    |             |  |                    |
| Educational display   | Agricultural show                                | Alice Springs, NT  | 2–3 July    | Indigenous clients, general public     |                    |
| Educational display   | NAIDOC   | Alice Springs      | 5–7 July    | Indigenous clients, general public     |                    |
| Educational display   | Agricultural show                                | Tenant Creek       | 9 July      | Indigenous clients, general public     |                    |
| <b>Queensland</b>   |  |                    |             |  |                    |
| Educational display<br><b>NAIDOC Week</b>                             | NAIDOC   | Brisbane, Qld      | 5–9 July 99 | Indigenous clients, general public     |                    |
| Talk<br><b>Native Title Act amendments</b>                            | Cook Shire Council                               | Cook Shire, Qld    | 17 Aug. 99  | Cook Shire councillors and staff       | No figure provided |
| Seminar<br><b>Native Title Act amendments</b>                         | Australian Property Institute                    | Toowoomba, Qld     | 3 Sept. 99  | Planners, developers, local government | No figure provided |
| Seminar<br><b>Native title — Issues and Implications for Planners</b> | Royal Australian Planning Institute (Conference) | Brisbane, Qld      | 8 Oct. 99   | Planners, developers, local government | No figure provided |
| <b>New South Wales</b>  |  |                    |             |  |                    |
| Forum<br><b>Role of the Tribunal</b>                                  | ATSIC  | Parramatta, NSW    | 8 July 99   | Indigenous clients                     | No figure provided |
| Forum<br><b>Role of the Tribunal</b>                                  | ATSIC  | Coffs Harbour, NSW | 11 July 99  | Indigenous clients                     | No figure provided |
| Forum<br><b>Role of the Tribunal</b>                                  | ATSIC  | Moruya, NSW        | 19 July 99  | Indigenous clients                     | No figure provided |
| Forum<br><b>Role of the Tribunal</b>                                  | ATSIC  | Dubbo, NSW         | 21 July 99  | Indigenous clients                     | No figure provided |
| Workshop<br><b>Native Title Amendments</b>                            | Australian Property Institute                    | Sydney, NSW        | 23 July 99  | Planners, developers, local government | No figure provided |
| Federal Court staff briefing<br><b>Role of the Tribunal</b>           | Federal Court Staff                              | Sydney, NSW        | 29 July 99  | Federal Court staff                    | No figure provided |

Table 17 (cont.): Member and employee presentations at events organised by other groups

| Event   | Sponsor  | Place                | Date        | Target audience  | Audience numbers   |
|---|--|----------------------|-------------|--|--------------------|
| <b>New South Wales (cont.)</b>                              |  |                      |             |  |                    |
| Presentation<br><b>Briefing to Federal Court</b>            | Federal Court  | Sydney, NSW          | 17 Sept. 99 | Federal Court staff                                    | No figure provided |
| Seminar<br><b>Amendments to the Native Title Act</b>        | NSW Minerals Council   | Sydney, NSW          | 8 Mar. 00   | Miners and developers                                  | No figure provided |
| Seminar<br><b>Notification</b>                              | NSW Minerals Council   | Sydney, NSW          | 14 Mar. 00  | Miners and developers                                  | No figure provided |
| Seminar<br><b>New developments in native title</b>          | Australian Minerals and Petroleum Law Association                                  | Sydney, NSW          | 15 June 00  | Legal practitioners, miners, developers                | No figure provided |
| <b>South Australia</b>                                      |  |                      |             |  |                    |
| Seminar<br><b>Native Title and ILUAs for local councils</b> | Cities of Onkaparinga, Marion and Holdfast Bay, and District Council of Yankalilla | Noarlunga Centre, SA | 21 July 99  | Councillors, local government staff                    | 60                 |
| Address<br><b>Future acts in South Australia</b>            | SA Chamber of Mines and Energy   | Adelaide, SA         | 25 Feb. 00  | Bidders for Cooper Basin petroleum exploration licence | 40                 |
| Address<br><b>ILUAs</b>                                     | Narungga community   | Kadina, SA           | 30 June 00  | Indigenous clients                                     | 50                 |

This list includes only those presentations for which copies of presentation papers are not available. Presentation papers either published in conference proceedings or held in the Tribunal library are listed in Appendix VIII (p.150).

Table 18: Information products \*

| No. of different products | Product name   | Product type  | Target audience  | Publication date | Quantity distributed at 30 June 2000   |
|---------------------------|--|---|--|------------------|--|
| 1                         | <b>National Native Title Tribunal web site*</b><br>(www.nntt.gov.au)                                     | Online information  | All clients, general public  | July 99–June 00  | Visitor activity indicator:<br>275,558 hits                                  |
| 1                         | <i>Yarning about native title: indigenous land use agreements</i>  | Audio-tape  | Indigenous clients   | Feb. 00          | 2,240  |
| 1                         | <b>Indigenous display</b>  | Static display  | Indigenous clients   | Nov. 99          | 1  |
| 1                         | <i>Guide to the design of native title corporations</i>  | Book  | Claimants, legal representatives, legal practitioners  | Nov. 99          | 955  |
| 1                         | <i>Native Title Bulletin</i>   | Pamphlet  | Members of Parliament, media, all clients  | Oct. 99          | 3,200  |
| 1                         | <i>Native title news</i>   | Radio program   | Indigenous clients   | Aug. 99          | Sent to 150 community radio stations and resource centers                    |
| 1                         | <i>Native title and land rights</i>  | Flyer   | Northern Territory clients   | July 99          | 2,200  |
| 1                         | <i>Indigenous land use agreements: short guide to registration</i>                                       | Brochure<br><br>Revised edition available online, hard copy provided on request | Project proponents, developers, native title claimants and holders, representative bodies, legal practitioners | July 99          | Distribution interrupted due to amendments to the Regulations                |
| 1                         | <i>Indigenous land use agreements—area agreements</i><br><br>Application guide and form                  | Brochure<br><br>Revised edition available online, hard copy provided on request | Project proponents, developers, native title claimants and holders, representative bodies, legal practitioners | July 99          | Distribution interrupted due to amendments to the Regulations in December 99 |
| 1                         | <i>Indigenous land use agreements—alternative procedure agreements</i><br><br>Application guide and form | Brochure<br><br>Revised edition available online, hard copy provided on request | Project proponents, developers, native title claimants and holders, representative bodies, legal practitioners | July 99          | Distribution interrupted due to amendments to the Regulations in December 99 |

Table 18 (cont.): Information products \*

| No. of different products | Product name  | Product type  | Target audience  | Publication date             | Quantity distributed at 30 June 2000   |
|---------------------------|---|---|--|------------------------------|--|
| 1                         | <b>Indigenous land use agreements—body corporate agreements</b><br><br>Application guide and form | Brochure<br><br>Revised edition available online, hard copy provided on request | Project proponents, developers, native title claimants and holders, representative bodies, legal practitioners | July 99                      | Distribution interrupted due to amendments to the Regulations in December 99 |
| 1                         | <b>Short guide to native title</b>  | Brochure  | All clients, general public  | Feb. 00                      | 19,700   |
| 10                        | <b>Queensland Native Title News</b>   | Regional newsletter   | All Queensland clients   | Monthly                      | 300 per issue  |
| 4                         | <b>New South Wales Native Title News</b>  | Regional newsletter   | All NSW clients  | Quarterly                    | 2900 per issue   |
| 3                         | <b>Victoria Native Title News</b>   | Regional newsletter   | All Victoria clients   | Aug, Oct, Dec. 99<br>Feb. 00 | 1050 per issue   |
| 1                         | <b>South Australia Native Title News</b>  | Regional Newsletter   | All South Australian clients   | Oct. 99                      | 1500 per issue   |
| 25                        | <b>Media releases</b>   | Media products  | Media  | July 99–June 00              | Faxed to media outlets and available online                                  |
| 8                         | <b>Letters to the Editor</b>  | Media product   | General Media  | July 99–June 00              |  |
| 318                       | <b>Registration test decisions (summaries and reasons for decisions)</b>                          | Available online. Hard copies available on request.                             | Claimants, parties, legal practitioners, representative bodies   | July 99–June 00              | Visitor activity statement: 56,165 hits                                      |
| 161                       | <b>Future act determinations</b>  | Available online. Hard copies of specific decisions available on request.       | Claimants, parties, legal practitioners, representative bodies   | July 99–June 00              | Visitor activity statement: 23,779 hits                                      |

Table 18 (cont.): Information products \*

| No. of different products | Product name  | Product type   | Target audience  | Publication date | Quantity distributed at 30 June 2000 |
|---------------------------|---|--|--|------------------|--------------------------------------|
|                           | <b>Annual report 1998–99</b>                                | Book   | Parliament, all clients  | Oct. 99          | 1,445                                |
|                           | <b>ILUA applications</b>                                    | ILUA register information (printouts) available on request | Project proponents, developers, native title claimants and holders, representative bodies, legal practitioners | July 99–June 00  |                                      |
|                           | <b>Registration test procedures policies and guidelines</b> | Online document  | Claimants, parties, legal practitioners, representative bodies   | July 99–June 00  |                                      |
| 63                        | <b>Geospatial information</b>                               | Maps   | Claimants, parties, legal practitioners, representative bodies   | July 99–June 00  |                                      |

\* Note: all Tribunal information products (with the exception of maps and audio-tapes) are available online at [www.nntt.gov.au](http://www.nntt.gov.au)

# APPENDIX XI

## AUDIT REPORT AND NOTES TO THE FINANCIAL STATEMENTS



### INDEPENDENT AUDIT REPORT

To the Attorney-General

#### Scope

I have audited the financial statements of the National Native Title Tribunal for the year ended 30 June 2000. The statements comprise:

- Statement by Chief Executive Officer;
- Operating Statement;
- Balance Sheet;
- Statement of Cash Flows;
- Schedule of Commitments;
- Schedule of Contingencies; and
- Notes to and forming part of the financial statements.

The Tribunal's Chief Executive is responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you.

The audit has been conducted in accordance with Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Standards, other mandatory professional reporting requirements and statutory requirements in Australia so as to present a view of the Tribunal which is consistent with my understanding of its financial position, the results of its operations and its cash flows.

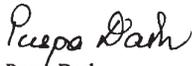
The audit opinion expressed in this report has been formed on the above basis.

**Audit Opinion**

In my opinion,

- (i) the financial statements have been prepared in accordance with Schedule 2 of the Finance Minister's Orders; and
- (ii) the financial statements give a true and fair view, in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 2 of the Finance Minister's Orders, of the financial position of the National Native Title Tribunal as at 30 June 2000 and the results of its operations and its cash flows for the year then ended.

Australian National Audit Office



Puspá Dash  
Senior Director

Delegate of the Auditor-General

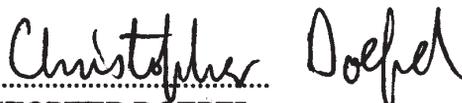
Canberra

20 September 2000

**NATIONAL NATIVE TITLE TRIBUNAL**  
**Statement by the Chief Executive**

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In my opinion, the attached financial statements give a true and fair view of the matters required by Schedule 2 to the Finance Minister's Orders made under section 63 of the *Financial Management and Accountability Act 1997*.

Signed.....  
**CHRISTOPHER DOEPEL**  
**Chief Executive**

**20 September 2000**

## NATIONAL NATIVE TITLE TRIBUNAL AGENCY OPERATING STATEMENT

for the year ended 30 June 2000

|   | Notes | 1999-00<br>\$     | 1998-99<br>\$      |
|---|-------|-------------------|--------------------|
| <b>Operating revenues</b>   |       |                   |                    |
| Revenues from government  | 4A    | 22,072,213        | 19,063,648         |
| Sale of goods and services  | 4B    | 50,707            | 44,164             |
| Interest  | 4C    | 143,704           | –                  |
| Net gains from sale of assets   |       | –                 | 4,313              |
| Other   |       | –                 | 180,000            |
| <b>Total operating revenues</b>                                       |       | <u>22,266,624</u> | <u>19,292,125</u>  |
| <b>Operating expenses</b>   |       |                   |                    |
| Employees   | 5A    | 13,147,676        | 13,298,100         |
| Suppliers   | 5B    | 8,829,028         | 9,357,452          |
| Depreciation and amortisation   | 5C    | 1,198,968         | 1,363,481          |
| Net loss from sale of assets  | 5D    | 74,676            | –                  |
| Write-down of assets  | 5E    | 819               | 174,806            |
| <b>Total operating expenses</b>                                       |       | <u>23,251,167</u> | <u>24,193,839</u>  |
| <b>Operating surplus(deficit) before extraordinary items</b>          |       | (984,543)         | (4,901,714)        |
| Gain on extraordinary items   |       | –                 | 220,213            |
| <b>Net surplus or deficit after extraordinary items</b>               |       | <u>(984,543)</u>  | <u>(4,681,501)</u> |
| <i>Net deficit attributable to the Commonwealth</i>                   |       | (984,543)         | (4,681,501)        |
| Accumulated surpluses or deficits<br>at beginning of reporting period |       | 2,442,864         | 4,752,365          |
| <b>Total available for appropriation</b>                              |       | <u>1,458,321</u>  | <u>70,864</u>      |
| Equity Appropriation  |       | 43,000            | 2,372,000          |
| Capital use provided for or paid                                      |       | (357,000)         | –                  |
| <b>Accumulated surpluses at end of reporting period</b>               |       | <u>1,144,321</u>  | <u>2,442,864</u>   |

## STATEMENT OF ADMINISTERED REVENUES AND EXPENSES

for the year ended 30 June 2000

|   |    |               |               |
|---|----|---------------|---------------|
| <b>Operating revenues</b>                             |    |               |               |
| <b>Taxation</b>                                       |    |               |               |
| Fees  |    | 64,140        | 64,761        |
| <b>Total taxation</b>                                 |    | <u>64,140</u> | <u>64,761</u> |
| <b>Non-taxation</b>                                   |    |               |               |
| Other—former year revenue                             |    | 5,249         | 16,108        |
| <b>Total non-taxation</b>                             |    | <u>5,249</u>  | <u>16,108</u> |
| <b>Total operating revenues</b>                       |    | <u>69,389</u> | <u>80,869</u> |
| <b>Operating expenses</b>                             |    |               |               |
| Refund of fees  |    | –             | 880           |
| Net Write-down of assets                              | 5F | 2,257         | –             |
| <b>Total operating expenses</b>                       |    | <u>2,257</u>  | <u>880</u>    |
| <b>Net contributions to the Budget Outcome</b>        |    | <u>67,132</u> | <u>79,989</u> |
| Transfer to Official Commonwealth Public Account      |    | (67,940)      | (79,125)      |
| <b>Net surplus or deficit</b>                         |    | <u>(808)</u>  | <u>864</u>    |
| Accumulated results at beginning of reporting period  |    | 7,366         | 6,502         |
| <b>Accumulated results at end of reporting period</b> |    | <u>6,558</u>  | <u>7,366</u>  |

The above statement should be read in conjunction with the accompanying notes.

## NATIONAL NATIVE TITLE TRIBUNAL AGENCY BALANCE SHEET

as at 30 June 2000

|                                     | Notes | 1999/00<br>\$    | 1998/99<br>\$    |
|-------------------------------------|-------|------------------|------------------|
| <b>ASSETS</b>                       |       |                  |                  |
| <b>Financial assets</b>             |       |                  |                  |
| Cash                                |       | 2,775,371        | 21,181           |
| Receivables                         | 6A    | 7,336            | 6,064            |
| Equity appropriation receivable     |       | 43,000           | 2,372,000        |
| Accrued revenues                    | 6B    | 44,301           | –                |
| <b>Total financial assets</b>       |       | <u>2,870,008</u> | <u>2,399,245</u> |
| <b>Non-financial assets</b>         |       |                  |                  |
| Land and buildings                  | 7A    | 942,423          | 1,479,051        |
| Infrastructure, plant and equipment | 7B    | 452,133          | 1,119,819        |
| Intangibles                         | 7C    | 184,770          | 341,341          |
| Other                               | 7E    | 41,169           | 78,480           |
| <b>Total non-financial assets</b>   |       | <u>1,620,495</u> | <u>3,018,691</u> |
| <b>Total assets</b>                 |       | <u>4,490,503</u> | <u>5,417,936</u> |
| <b>LIABILITIES</b>                  |       |                  |                  |
| <b>Provisions and payables</b>      |       |                  |                  |
| Capital use                         |       | 63,840           | –                |
| Employees                           | 8A    | 2,732,531        | 2,766,919        |
| Suppliers                           | 8B    | 549,811          | 208,153          |
| <b>Total liabilities</b>            |       | <u>3,346,182</u> | <u>2,975,072</u> |
| <b>EQUITY</b>                       |       |                  |                  |
| Capital                             |       | 2,415,000        | 2,372,000        |
| Accumulated surpluses               |       | (1,270,679)      | 70,864           |
| <b>Total equity</b>                 | 9A    | <u>1,144,321</u> | <u>2,442,864</u> |
| <b>Total liabilities and equity</b> |       | <u>4,490,503</u> | <u>5,417,936</u> |
| <b>Current Liabilities</b>          |       | 2,241,901        | 2,064,155        |
| <b>Non-current Liabilities</b>      |       | 1,104,280        | 910,917          |
| <b>Current Assets</b>               |       | 2,911,177        | 2,477,725        |
| <b>Non-current Assets</b>           |       | 1,579,326        | 2,940,211        |

## STATEMENT OF ADMINISTERED ASSETS AND LIABILITIES

as at 30 June 2000

|                                |    |              |              |
|--------------------------------|----|--------------|--------------|
| <b>ASSETS</b>                  |    |              |              |
| <b>Financial assets</b>        |    |              |              |
| Receivables                    | 6C | 6,558        | 7,366        |
| <b>Total financial assets</b>  |    | <u>6,558</u> | <u>7,366</u> |
| <b>Total assets</b>            |    | <u>6,558</u> | <u>7,366</u> |
| <b>LIABILITIES</b>             |    |              |              |
| <b>Total liabilities</b>       |    | <u>–</u>     | <u>–</u>     |
| <b>EQUITY</b>                  |    |              |              |
| Accumulated results            |    | 6,558        | 7,366        |
| <b>Total equity</b>            | 9B | <u>6,558</u> | <u>7,366</u> |
| <b>Current liabilities</b>     |    | Nil          | Nil          |
| <b>Non-current liabilities</b> |    | Nil          | Nil          |
| <b>Current Assets</b>          |    | 6,558        | 7,366        |
| <b>Non-current assets</b>      |    | Nil          | Nil          |

The above statement should be read in conjunction with the accompanying notes.

## NATIONAL NATIVE TITLE TRIBUNAL STATEMENT OF CASH FLOWS

for the year ended 30 June 2000

|  | Notes | 1999/00<br>\$     | 1998/99<br>\$     |
|--|-------|-------------------|-------------------|
| <b>OPERATING ACTIVITIES</b>                          |       |                   |                   |
| <b>Cash received</b>                                 |       |                   |                   |
| Appropriations for outputs                           |       | 22,046,000        | 21,140,333        |
| Equity Appropriation                                 |       | 2,372,000         | –                 |
| Sales of goods and services                          |       | 48,616            | 44,164            |
| Interest   |       | 99,402            | –                 |
| Other  |       | –                 | 180,000           |
| <b>Total cash received</b>                           |       | <b>24,566,018</b> | <b>21,364,497</b> |
| <b>Cash used</b>                                     |       |                   |                   |
| Employees  |       | 13,182,064        | 12,368,142        |
| Suppliers  |       | 8,423,844         | 8,574,394         |
| <b>Total cash used</b>                               |       | <b>21,605,908</b> | <b>20,942,536</b> |
| <b>Net cash from operating activities</b>            | 10A   | <b>2,960,110</b>  | <b>421,961</b>    |
| <b>INVESTING ACTIVITIES</b>                          |       |                   |                   |
| <b>Cash received</b>                                 |       |                   |                   |
| Proceeds from sales of property, plant and equipment |       | 176,018           | 4,313             |
| <b>Total cash received</b>                           |       | <b>176,018</b>    | <b>4,313</b>      |
| <b>Cash used</b>                                     |       |                   |                   |
| Purchase of property, plant and equipment            |       | 88,778            | 430,747           |
| Other  |       | –                 | –                 |
| <b>Total cash used</b>                               |       | <b>88,778</b>     | <b>430,747</b>    |
| <b>Net cash from investing activities</b>            |       | <b>87,240</b>     | <b>(426,434)</b>  |
| <b>FINANCING ACTIVITIES</b>                          |       |                   |                   |
| <b>Cash used</b>                                     |       |                   |                   |
| Capital use paid                                     |       | 293,160           | –                 |
| <b>Total cash used</b>                               |       | <b>293,160</b>    | <b>–</b>          |
| <b>Net cash from (used by) financing activities</b>  |       | <b>(293,160)</b>  | <b>–</b>          |
| <b>Net increase in cash held</b>                     |       | <b>2,754,190</b>  | <b>(4,473)</b>    |
| Cash at the beginning of the reporting period        |       | 21,181            | 25,654            |
| <b>Cash at end of reporting period</b>               |       | <b>2,775,371</b>  | <b>21,181</b>     |

## ADMINISTERED CASH FLOWS

for the year ended 30 June 2000

### OPERATING ACTIVITIES

|   |     |               |               |
|---|-----|---------------|---------------|
| <b>Cash received</b>                      |     |               |               |
| Fees                                      |     | 62,691        | 63,397        |
| Cash from Official CPA                    |     | –             | 880           |
| Other                                     |     | 5,249         | 16,108        |
| <b>Total cash received</b>                |     | <b>67,940</b> | <b>80,385</b> |
| <b>Cash used</b>                          |     |               |               |
| Refund of Fees                            |     | –             | 880           |
| Cash to Official CPA                      |     | 67,940        | 80,005        |
| <b>Total cash used</b>                    |     | <b>67,940</b> | <b>80,885</b> |
| <b>Net increase in cash held</b>          | 10B | <b>–</b>      | <b>(500)</b>  |
| add cash at beginning of reporting period |     | –             | 500           |
| <b>Cash at end of reporting period</b>    |     | <b>Nil</b>    | <b>Nil</b>    |

The above statement should be read in conjunction with the accompanying notes.

**NATIONAL NATIVE TITLE TRIBUNAL  
SCHEDULE OF COMMITMENTS**  
as at 30 June 2000

|                                     | Note | Agency           |                  | Administered  |               |
|-------------------------------------|------|------------------|------------------|---------------|---------------|
|                                     |      | 1999-00<br>\$    | 1998-99<br>\$    | 1999-00<br>\$ | 1998-99<br>\$ |
| <b>BY TYPE</b>                      |      |                  |                  |               |               |
| <b>CAPITAL COMMITMENTS</b>          |      |                  |                  |               |               |
| Infrastructure, plant and equipment |      | Nil              | Nil              | Nil           | Nil           |
| <b>Total capital commitments</b>    |      | <b>Nil</b>       | <b>Nil</b>       | <b>Nil</b>    | <b>Nil</b>    |
| <b>OTHER COMMITMENTS</b>            |      |                  |                  |               |               |
| Operating leases <sup>1</sup>       |      | 1,122,023        | 996,204          | Nil           | Nil           |
| Other commitments <sup>2</sup>      |      | 3,581,156        | 137,037          | Nil           | Nil           |
| <b>Total other commitments</b>      |      | <b>4,703,179</b> | <b>1,133,241</b> | <b>Nil</b>    | <b>Nil</b>    |
| <b>Net commitments</b>              |      | <b>4,703,179</b> | <b>1,133,241</b> | <b>Nil</b>    | <b>Nil</b>    |
| <b>BY MATURITY</b>                  |      |                  |                  |               |               |
| <b>All net commitments</b>          |      |                  |                  |               |               |
| One year or less                    |      | 2,257,167        | 840,010          | Nil           | Nil           |
| From one to two years               |      | 1,557,625        | 287,031          | Nil           | Nil           |
| From two to five years              |      | 888,388          | 6,200            | Nil           | Nil           |
| Over five years                     |      | Nil              | Nil              | Nil           | Nil           |
| <b>Net commitments</b>              |      | <b>4,703,179</b> | <b>1,133,241</b> | <b>Nil</b>    | <b>Nil</b>    |
| <b>Operating Lease Commitments</b>  |      |                  |                  |               |               |
| One year or less                    |      | 710,457          | 702,973          | Nil           | Nil           |
| From one to two years               |      | 252,369          | 287,031          | Nil           | Nil           |
| From two to five years              |      | 159,198          | 6,200            | Nil           | Nil           |
| Over five years                     |      | Nil              | Nil              | Nil           | Nil           |
| <b>Net commitments</b>              |      | <b>1,122,023</b> | <b>996,204</b>   | <b>Nil</b>    | <b>Nil</b>    |

<sup>1</sup> Operating leases included are effectively non-cancellable and comprise leases for office accommodation.

<sup>2</sup> Other commitments comprise:

- orders placed for consumable goods and services; and
- contract commitment for the provision of IT services to the Tribunal until 31 January 2003.

The above statement should be read in conjunction with the accompanying notes.

## NATIONAL NATIVE TITLE TRIBUNAL SCHEDULE OF CONTINGENCIES

as at 30 June 2000

|                   | Note | Agency  |         | Administered |         |
|-------------------|------|---------|---------|--------------|---------|
|                   |      | 1999-00 | 1998-99 | 1999-00      | 1998-99 |
| CONTINGENT LOSSES |      | Nil     | Nil     | Nil          | Nil     |
| CONTINGENT GAINS  |      | Nil     | Nil     | Nil          | Nil     |
| Net contingencies |      | Nil     | Nil     | Nil          | Nil     |

The above statement should be read in conjunction with the accompanying notes.

**NATIONAL NATIVE TITLE TRIBUNAL**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
 for the year ended 30 June 2000

**NOTE 1—OBJECTIVES OF THE NATIONAL NATIVE TITLE TRIBUNAL**

The objectives of the National Native Title Tribunal are to:

- promote practical and innovative resolution of applications under the *Native Title Act 1993*;
- increase community and stakeholder knowledge of the Tribunal and its processes;
- address the cultural and customary concerns of Aboriginal and Torres Strait Islander people;
- manage the Tribunal's human, financial, physical and information resources efficiently and effectively.

The Tribunal is structured to meet one outcome, the recognition and protection of native title.

(Further details on the Tribunal's objectives can be found in the corporate goals section of the annual report).

**NOTE 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**2.1 Basis of accounting**

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- *Requirements for the Preparation of Financial Statements of Commonwealth Agencies and Authorities* made by the Minister for Finance and Administration in August 1999 (Schedule 2 to the Financial Management and Accountability (FMA) Orders);
- Australian Accounting Standards;
- other authoritative pronouncements of the Australian Accounting Standards Board; and
- the Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to:

- Statements of Accounting Concepts; and
- the Explanatory Notes to Schedule 2 issued by the Department of Finance and Administration.

The financial statements have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The continued existence of the Tribunal in its present form, and with its present programs, is dependent on Government policy and on continuing appropriations by Parliament for the Tribunal's administration and programs.

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June 2000

### 2.2 Changes in accounting policy

Changes in accounting policy have been identified in this note under their appropriate headings.

### 2.3 Agency and administered items

Agency assets, liabilities, revenues and expenses are those items that are controlled by the Tribunal. They are used by the Tribunal in producing its outputs, including:

- computers, plant and equipment used in providing goods and services;
- liabilities for employee entitlements;
- revenues from appropriations or independent sources in payment of outputs; and
- employee, supplier and depreciation expenses incurred in producing agency outputs.

Administered items are those items which are controlled by the Government and managed or oversighted by the Tribunal on behalf of the Government. These items include other taxes, fees and fines.

The purpose of the separation of agency and administered items is to enable assessment of the administrative efficiency of the Tribunal in providing goods and services.

The basis of accounting described in Note 2.1 applies to both departmental and administered items.

Administered items are distinguished from departmental items in the financial statements by shading.

### 2.4 Revenues from government

Revenues from government are revenues relating to the core operating activities of the Tribunal.

Policies for accounting for revenue from government follow; amounts and other details are given in note 4.

#### **Agency Appropriations**

From 1 July 1999, the Commonwealth Budget has been prepared under an accruals framework.

Appropriations to the Tribunal for its departmental outputs are recognised as revenue to the extent they have been received into the Tribunal's bank account or are entitled to be received by the Tribunal at year end.

Appropriations to the Tribunal for departmental capital items are recognised directly in equity, to the extent that the appropriation has been received into the Tribunal's bank account or is entitled to be received by the Tribunal at year end.

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June 2000

The appropriation for departmental capital items for 1999–2000 represents, as carryover, the re-appropriation to the Tribunal of certain unspent amounts from 1998–99. These amounts were recognised directly in equity in the financial statements for 1998–99.

This is a change in the policy adopted in prior years when agency appropriations, other than running costs, were recognised as revenue to the extent that appropriations were spent. Amounts appropriated for agency running costs were recognised as revenue in the year of appropriation, except to the extent of

- unspent amounts not automatically carried over into the new financial year, and
- running cost borrowings.

### **Administered appropriations**

Appropriations for administered expenses are recognised as revenue to the extent that expenses have been incurred up to the limit, if any, of each appropriation. Appropriations for administered capital are recognised as the amount appropriated by Parliament.

### **Resources received free of charge**

Services received free of charge are recognised in the Operating Statement as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

## **2.5 Other revenue**

Revenue from the sale of goods is recognised upon the delivery of goods to customers. Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets. Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

Agency revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services to Commonwealth bodies.

The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Fees are charged for lodgement of application of recognition of native title and for inspection of the Native Title register. Administered fee revenue is recognised when applications are received or an inspection takes place.

All revenues described in this note are revenues relating to the core operating activities of the Tribunal, whether in its own right or on behalf of the Commonwealth. Details of revenue amounts are given in Note 4.

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000**2.6 Assets sales program**

The Tribunal outsourced its Information Technology function in 1999–00 and sold off most of its Information Technology physical assets. The net loss to the Tribunal on sale of these assets is given at Note 5D.

**2.7 Employee entitlements****Leave**

The liability for employee entitlements includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Tribunal is estimated to be less than the annual entitlement for sick leave.

The liability for annual leave reflects the value of total annual leave entitlements of all employees at 30 June 2000 and is recognised at the nominal amount.

The non-current portion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2000. In determining the present value of the liability, the Tribunal has taken into account attrition rates and pay increases through promotion and inflation.

**Separation and redundancy**

Provision is also made for separation and redundancy payments in circumstances where the Tribunal has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined. No provision has been made for 1999–00 (1998–99: \$151,612).

**Superannuation**

Staff of the National Native Title Tribunal contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Employer contributions, including the Productivity Benefit, amounting to \$1,296,989 (1998–99: \$1,246,030) in relation to these schemes have been expensed in these financial statements.

No liability is shown for superannuation in the Balance Sheet, other than the superannuation contribution on-costs associated with annual and long service leave provisions, as the employer contributions fully extinguish the accruing liability which is assumed by the Commonwealth.

**2.8 Leases**

Operating lease payments are charged to the Agency Operating Statement on a basis which is representative of the pattern of benefits derived from the leased assets.

The Tribunal had no finance leases in existence at 30 June 2000.

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS for the year ended 30 June 2000

### 2.9 Cash

For cashflow purposes cash includes notes and coins held and deposits held at call with a bank or financial institution.

### 2.10 Financial instruments

Accounting policies for financial instruments are stated at Note 16.

### 2.11 Acquisition of assets

Assets are recorded at cost on acquisition. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

### 2.12 Property, plant and equipment

#### Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than when they form part of a group of similar items which are significant in total).

#### Revaluations

Schedule 2 requires that property, plant and equipment be progressively revalued in accordance with the 'deprival' method of valuation in successive 3-year cycles.

The Tribunal has implemented its progressive revaluation as follows:

- leasehold improvements are revalued progressively on a geographical basis. The current cycle commenced in 1999–2000;
- plant and equipment assets are initially being revalued over the financial years 1998–99 to 2000–01 by type of asset. In 1998–99 all information technology assets were revalued. All other plant and equipment assets on hand at the commencement of the cycle will be revalued in 2000–01.

Assets in each class acquired after the commencement of the progressive revaluation cycle are not captured by the progressive revaluation then in progress.

The Tribunal recognises property plant and equipment at its depreciated replacement cost.

#### Recoverable amount test

Schedule 2 requires the application of the recoverable amount test to departmental non-current assets in accordance with AAS 10 *Accounting for the Revaluation of Non-Current Assets*. The carrying amounts of these non-current assets have been reviewed to determine whether they are in excess of their recoverable amounts. In assessing recoverable amounts, the relevant cash flows have been discounted to their present value.

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

## 2.12 Property, plant and equipment (cont.)

### Depreciation and amortisation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Tribunal using, in all cases, the straight-line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each balance date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the following useful lives:

|                        | 1999–00              | 1998–99       |
|------------------------|----------------------|---------------|
| Leasehold improvements | <b>Lease term</b>    | Lease term    |
| Plant and equipment    | <b>3 to 10 years</b> | 3 to 10 years |

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 5C.

## 2.13 Taxation

The Tribunal is exempt from all forms of taxation except fringe benefits tax and the goods and services tax.

## 2.14 Capital usage charge

A capital usage charge of 12% is imposed by the Commonwealth on the net departmental assets of the agency. The charge is adjusted to take account of asset gifts and revaluation increments during the financial year.

## 2.15 Insurance

The Commonwealth's insurable risk managed fund, called 'Comcover', commenced operations in 1998–99. The Tribunal has insured with the fund for risks other than workers compensation, which is dealt with via continuing arrangements with Comcare.

## 2.16 Comparative figures

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**2.17 Rounding**

Amounts shown in the financial statements and notes have been rounded to the nearest \$1 with the exception of amounts shown in the outcome table in Note 11 which are rounded to the nearest \$1,000.

**NOTE 3—EVENTS OCCURRING AFTER BALANCE DATE**

No events have occurred after the balance date which have any effect on the Tribunal's financial position.

**NOTE 4—OPERATING REVENUES**

|   | 1999-00           | 1998-99           |
|---|-------------------|-------------------|
| <b>Note 4A: Revenues from government</b>    |                   |                   |
| Appropriations for outputs                  | 22,046,000        | 18,972,122        |
| Resources received free of charge           | 26,213            | 91,526            |
| Total                                       | <u>22,072,213</u> | <u>19,063,648</u> |
| <b>Note 4B: Sales of goods and services</b> |                   |                   |
| Services                                    | <u>50,707</u>     | <u>44,164</u>     |
| <b>Note 4C: Interest revenue</b>            |                   |                   |
| Bank interest                               | <u>143,704</u>    | -                 |

**NOTE 5—OPERATING EXPENSES**

|                                      | 1999-00           | 1998-99           |
|--------------------------------------|-------------------|-------------------|
| <b>Note 5A: Employee expenses</b>    |                   |                   |
| Remuneration (for services provided) | 12,596,971        | 12,931,501        |
| Separation and redundancy            | 238,584           | 151,612           |
| Total remuneration                   | <u>12,835,555</u> | <u>13,083,113</u> |
| Other employee expenses              | 312,121           | 214,987           |
| Total                                | <u>13,147,676</u> | <u>13,298,100</u> |
| <b>Note 5B: Suppliers expenses</b>   |                   |                   |
| Supply of goods and services         | 6,989,574         | 8,105,080         |
| Operating lease rentals              | 1,839,454         | 1,252,372         |
| Total                                | <u>88,209,028</u> | <u>9,357,452</u>  |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

|   | 1999-00          | 1998-99          |
|---|------------------|------------------|
| <b>Note 5C: Depreciation and amortisation</b> |                  |                  |
| Depreciation of property, plant and equipment | <u>1,198,968</u> | <u>1,363,481</u> |

The aggregate amount of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:

|                        |                  |                  |
|------------------------|------------------|------------------|
| Leasehold improvements | 536,628          | 498,768          |
| Plant and equipment    | <u>662,341</u>   | <u>864,713</u>   |
| Total                  | <u>1,198,969</u> | <u>1,363,481</u> |

**Note 5D: Net loss on sale of assets**

|                                     |               |   |
|-------------------------------------|---------------|---|
| Non-financial assets                |               |   |
| Infrastructure, plant and equipment | <u>74,676</u> | - |
| Total                               | <u>74,676</u> | - |

**Note 5E: Write down of assets**

|   |            |                |
|---|------------|----------------|
| Financial assets                        |            |                |
| Receivables                             | 819        | -              |
| Non-financial assets                    |            |                |
| Plant & equipment—revaluation decrement | -          | <u>174,806</u> |
| Total                                   | <u>819</u> | <u>174,806</u> |

**Note 5F: Write down of administered assets**

|   |              |   |
|---|--------------|---|
| Financial assets receivables                      |              |   |
| Other taxes, fees and fines—bad debts written off | <u>2,257</u> | - |

**NOTE 6—FINANCIAL ASSETS**

|                             | 1999-00      | 1998-99      |
|-----------------------------|--------------|--------------|
| <b>Note 6A: Receivables</b> |              |              |
| Goods and services          | <u>7,336</u> | <u>6,064</u> |

No provision has been made for doubtful debts. Receivables which are overdue are aged as follows:

|                   |              |              |
|-------------------|--------------|--------------|
| Not overdue       | 4,320        | 2,073        |
| Overdue by:       |              |              |
| less than 30 days | 1,569        | 297          |
| 30 to 60 days     | 443          | 1,455        |
| more than 60 days | <u>1,004</u> | <u>2,239</u> |
|                   | <u>7,336</u> | <u>6,064</u> |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

|  | 1999-00   | 1998-99   |
|--|-----------|-----------|
| <b>Note 6B: Accrued revenues</b>                       |           |           |
| Interest   | 44,301    | -         |
| <b>Note 6C: Administered receivables</b>               |           |           |
| Fees   | 6,558     | 7,366     |
| Fee receivables which are overdue are aged as follows: |           |           |
| Not Overdue  | 740       | 2,388     |
| Overdue by:  |           |           |
| less than 30 days                                      | 4,340     | 1,678     |
| 30 to 60 days  | 1,338     | 740       |
| more than 60 days                                      | 140       | 2,560     |
|  | 6,558     | 7,366     |
| <b>NOTE 7—NON-FINANCIAL ASSETS</b>                     |           |           |
|  | 1999-00   | 1998-99   |
| <b>Note 7A: Land and buildings</b>                     |           |           |
| Leasehold Improvements—at cost                         | 2,670,653 | 2,670,653 |
| Accumulated depreciation                               | 1,728,230 | 1,191,602 |
| Total land and buildings                               | 942,423   | 1,479,051 |
| <b>Note 7B: Plant and equipment</b>                    |           |           |
| Plant and equipment—at valuation                       | 1,017,307 | 2,759,465 |
| Accumulated depreciation                               | 565,174   | 1,639,646 |
| Total plant and equipment                              | 452,133   | 1,119,819 |
| <b>Note 7C: Intangibles</b>                            |           |           |
| Computer software—at cost                              | 889,835   | 875,778   |
| Accumulated depreciation                               | 705,065   | 534,437   |
| Total Intangibles                                      | 184,770   | 341,341   |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 7—NON-FINANCIAL ASSETS (CONT.)**

**Note 7D: Analysis of property, plant, equipment and intangibles**

|   | Buildings        | Plant &<br>equipment | Intangibles    | Total            |
|---|------------------|----------------------|----------------|------------------|
| Gross value at 1 July 1999  | 2,670,653        | 2,759,465            | 875,778        | 6,305,896        |
| Acquisition of new assets   | –                | 74,721               | 14,057         | 88,778           |
| Disposals   | –                | (1,816,879)          | –              | (1,816,879)      |
| <b>Gross value at 30 June 2000</b>                                | <b>2,670,653</b> | <b>1,017,307</b>     | <b>889,835</b> | <b>4,577,795</b> |
| Accumulated depreciation<br>at 1 July 1999                        | 1,191,602        | 1,639,646            | 534,437        | 3,365,685        |
| Depreciation charges for assets<br>held at 1 July 1999            | 536,628          | 489,829              | 167,704        | 1,194,161        |
| Depreciation charges for additions                                | –                | 1,884                | 2,924          | 4,808            |
| Adjustments for disposals   | –                | (1,566,185)          | –              | (1,566,185)      |
| <b>Accumulated depreciation/<br/>amortisation at 30 June 2000</b> | <b>1,728,230</b> | <b>565,174</b>       | <b>705,065</b> | <b>2,998,469</b> |
| Net book value at 30 June 2000                                    | 942,423          | 452,133              | 184,770        | 1,579,326        |
| Net book value at 1 July 1999                                     | 1,479,051        | 1,119,819            | 341,341        | 2,940,211        |

|                         | 1999–00       | 1998–99       |
|-------------------------|---------------|---------------|
| <b>Note 7E: Other</b>   |               |               |
| Prepaid GST recoverable | 3,286         | –             |
| Prepaid expenses        | 37,883        | 78,480        |
|                         | <b>41,169</b> | <b>78,480</b> |

**NOTE 8—PROVISIONS AND PAYABLES**

|                                      | 1999–00          | 1998–99          |
|--------------------------------------|------------------|------------------|
| <b>Note 8A: Employees</b>            |                  |                  |
| Salaries and wages                   | 444,998          | 238,153          |
| Leave                                | 2,287,533        | 2,377,154        |
| Separation and redundancies          | –                | 151,612          |
| Total employee entitlement liability | <b>2,732,531</b> | <b>2,766,919</b> |

**Note 8B: Suppliers**

|                         | 1999–00        | 1998–99        |
|-------------------------|----------------|----------------|
| Trade creditors         | 312,100        | 208,153        |
| Operating lease rentals | 237,711        | –              |
|                         | <b>549,811</b> | <b>208,153</b> |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 9—EQUITY**

**Note 9A: Equity—agency**

| Item                           | Capital          |                  | Accumulated Results |               | TOTAL EQUITY     |                  |
|--------------------------------|------------------|------------------|---------------------|---------------|------------------|------------------|
|                                | 1999-00          | 1998-99          | 1999-00             | 1998-99       | 1999-00          | 1998-99          |
| Balance 1 July 1999            | 2,372,000        | –                | 70,864              | 4,972,578     | 2,442,864        | 4,972,578        |
| Operating result               | –                | –                | (984,543)           | (4,901,714)   | (984,543)        | (4,901,714)      |
| Equity appropriation           | 43,000           | 2,372,000        | –                   | –             | 43,000           | 2,372,000        |
| Capital Use Charge             | –                | –                | (357,000)           | –             | (357,000)        | –                |
| <b>Balance at 30 June 2000</b> | <b>2,415,000</b> | <b>2,372,000</b> | <b>(1,270,679)</b>  | <b>70,864</b> | <b>1,144,321</b> | <b>2,442,864</b> |

**Note 9B: Equity—administered**

| Item                                 | Capital    |            | Accumulated Results |              | TOTAL EQUITY |              |
|--------------------------------------|------------|------------|---------------------|--------------|--------------|--------------|
|                                      | 1999-00    | 1998-99    | 1999-00             | 1998-99      | 1999-00      | 1998-99      |
| Balance 1 July 1999                  | –          | –          | 7,366               | 6,502        | 7,366        | 6,502        |
| Contributions to<br>Budget Outcome   | –          | –          | 67,132              | 79,989       | 67,132       | 79,989       |
| Amount to Official<br>Public Account | –          | –          | (67,940)            | (79,125)     | (67,940)     | (79,125)     |
| <b>Balance at 30 June 2000</b>       | <b>Nil</b> | <b>Nil</b> | <b>6,558</b>        | <b>7,366</b> | <b>6,558</b> | <b>7,366</b> |

**NOTE 10—CASH FLOW RECONCILIATION**

**Note 10A: Agency reconciliation**

Reconciliation of operating deficit to net cash provided by operating activities:

|  | 1999-00          | 1998-99        |
|--|------------------|----------------|
| Net deficit                                      | (984,543)        | (4,901,714)    |
| Depreciation/Amortisation                        | 1,198,968        | 1,363,481      |
| Loss on sale of non-current assets               | 74,676           | (4,313)        |
| Write down of assets                             | –                | 174,806        |
| Decrease (increase) in receivables               | (1,271)          | 4,543,175      |
| Decrease (increase) in accrued revenues          | (44,301)         | –              |
| Decrease (increase) in capital receivable        | 2,329,000        | (2,372,000)    |
| Initial recognition of capital injection         | 43,000           | –              |
| Decrease in prepayments                          | 37,311           | 761,782        |
| Increase (decrease) in employee liabilities      | (34,388)         | 929,958        |
| Increase (decrease) in suppliers liabilities     | 341,658          | (73,214)       |
| <b>Net cash provided by operating activities</b> | <b>2,960,110</b> | <b>421,961</b> |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**Note 10B: Administered reconciliation**

|   |                 |                 |
|---|-----------------|-----------------|
| Reconciliation of net contributions to budget outcome to net cash provided by operating activities: |                 |                 |
|   | <b>1999–00</b>  | <b>1998–99</b>  |
| Net contribution to the budget outcome  | <b>67,132</b>   | <b>79,989</b>   |
| Cash to Commonwealth Public Account from operations   | <b>(67,940)</b> | <b>(79,125)</b> |
| Net surplus or deficit  | <b>(808)</b>    | <b>864</b>      |
| Decrease (increase) in receivables  | <b>808</b>      | <b>(864)</b>    |
| Net Cash from Operating Activities  | <b>Nil</b>      | <b>Nil</b>      |

**NOTE 11—APPROPRIATIONS**

**Annual appropriations for departmental items (price of outputs)**

|  |                         |
|--|-------------------------|
|  | <b>1999–2000</b>        |
|  | \$                      |
| Balance available at 1 July                      | –                       |
| Add: Appropriation Acts No 1 & 3 credits:        |                         |
| Section 6 Act 1—basic appropriations (budget)    | 22,046,000              |
| Section 6 Act 3—basic appropriations             | –                       |
| Section 9 adjustments                            | –                       |
| Section 10 Advance to the Finance Minister       | –                       |
| Comcover receipts                                | –                       |
| Add: FMA Act                                     |                         |
| s30 appropriations                               | –                       |
| s31 appropriations                               | 324,036                 |
| Total appropriations available for the year      | <u>22,370,036</u>       |
| Expenditure during the year                      | <u>19,615,846</u>       |
| Balance of appropriations for outputs at 30 June | <u><u>2,754,190</u></u> |

**Annual appropriations for departmental non-revenue items**

|  |                    |
|--|--------------------|
|  | <b>1999–2000</b>   |
|  | \$                 |
| Balance available at 1 July                      | –                  |
| Add: Appropriation Act No 2 (Budget)             | 2,372,000          |
| Add: Advances to the Finance Minister            | –                  |
| Add: FMA Act s30 appropriations                  | –                  |
| Add: Appropriation Act No 4                      | –                  |
| Total appropriations available for the year      | <u>2,372,000</u>   |
| Expenditure debited during the year              | <u>(2,372,000)</u> |
| Balance of appropriations for capital at 30 June | <u><u>–</u></u>    |



**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 12—REPORTING OF OUTCOMES**

The Tribunal has one outcome: *the Recognition and Protection of Native Title*.

**Reporting by outcomes**

|   | Budget            | Outcome<br>Actual |
|---|-------------------|-------------------|
|   | \$                | \$                |
| Net Subsidies, benefits and grants expenses | –                 | –                 |
| Other administered expenses                 | –                 | 2,257             |
| Total net administered expenses             | –                 | 2,257             |
| <br>  |                   |                   |
| Add net cost of entity outputs              | 24,418,000        | 23,056,760        |
| Outcome before abnormal/extraordinary items | 24,418,000        | 23,056,760        |
| Abnormal/extraordinary items                | –                 | –                 |
| Net Cost to Budget Outcome                  | <u>24,418,000</u> | <u>23,059,017</u> |
| <br>  |                   |                   |
| Total assets deployed as at 30/6/00         | 4,253,000         | 4,497,061         |
| Net assets deployed as at 30/6/00           | 1,843,000         | 1,150,879         |

**Major agency revenues and expenses by outcome**

|                            | Outcome<br>Actual |
|----------------------------|-------------------|
|                            | \$                |
| Major expenses             |                   |
| Employees                  | 13,147,676        |
| Suppliers                  | 8,829,028         |
| Depreciation               | 1,198,968         |
| Loss from sale of assets   | 74,676            |
| <br>                       |                   |
| Major sources of revenues  |                   |
| Revenues from government   | 22,072,213        |
| Sale of goods and services | 50,707            |
| Interest                   | 143,704           |

**Major administered revenues and expenses by outcome**

|                           | Outcome<br>Actual |
|---------------------------|-------------------|
|                           | \$                |
| Major expenses            |                   |
| Write down of assets      | 2,257             |
| <br>                      |                   |
| Major sources of revenues |                   |
| Fees                      | 64,140            |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 13—EXECUTIVE REMUNERATION**

The number of Executive who received or were due to receive total remuneration of \$100,000 or more:

|                        | 1999–2000 | 1998–99 |
|------------------------|-----------|---------|
| \$100,000 to \$110,000 | 1         | –       |
| \$110,001 to \$120,000 | 2         | 1       |
| \$120,001 to \$130,000 | –         | –       |
| \$130,001 to \$140,000 | 1         | –       |

|   |         |         |
|---|---------|---------|
| The aggregate amount of total remuneration of Executives shown above. | 484,516 | 114,940 |
|---|---------|---------|

**NOTE 14—SERVICES PROVIDED BY THE AUDITOR-GENERAL**

Financial statement audit services are provided free of charge to the Tribunal. The fair value of audit services provided was \$12,000 (1998–99: \$12,000).

No other services were provided.

**NOTE 15—ACT OF GRACE PAYMENTS AND WAIVERS**

No Act of Grace payments were made during the reporting period (1998–99 nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997 (1998–99 nil).

**NOTE 16—AVERAGE STAFFING LEVELS**

Average staffing level for the Tribunal in 1999–00 was 209 (1998–99: 229).

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 17—FINANCIAL INSTRUMENTS**

**(a) Terms, conditions and accounting policies**

| Financial Instrument               | Notes | Accounting Policies and Methods (including recognition criteria and measurement basis)   | Nature of underlying instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)  |
|------------------------------------|-------|--|--|
| <i>Financial Assets</i>            |       | Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.  |  |
| Cash                               |       | Deposits are recognised at their nominal amounts. Interest is credited to revenue as it accrues.   | The Tribunal invests funds with the Reserve Bank at call. Moneys in the Tribunal's bank account are swept into the Official Public Account nightly and interest is earned on the daily balance at rates based on money market call rates. Rates have averaged 7% for the year. Interest is paid quarterly. |
| Receivables for goods and services | 6A    | These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.  | Credit terms are net 30 days (1998–99: 30 days).   |
| Fees receivable                    | 6D    | Fees accrue and are recognised at the time services are performed.   | Credit terms are net 30 days (1998–99: 30 days).   |
| Accrued revenue                    | 6B    | Interest is credited to revenue as it accrues. Interest is payable quarterly.  | As for cash.   |
| <i>Financial Liabilities</i>       |       | Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.  |  |
| Trade creditors                    | 8B    | Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced). | Settlement is usually made net 30 days.  |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 17—FINANCIAL INSTRUMENTS (CONT.)**

**(b) Interest rate risk**

| Financial Instrument                            | Notes | Floating Interest Rate |          | Fixed Interest Rate |          |           |          |          |          | Non-Interest Bearing |            | Total        |              | Weighted Average Effective Interest Rate |        |     |
|---|-------|------------------------|----------|---------------------|----------|-----------|----------|----------|----------|----------------------|------------|--------------|--------------|--|--------|-----|
|   |       | One year or less       |          | 2 to 5 years        |          | > 5 years |          | 99-00    |          | 98-99                |            | 99-00        |              | 98-99                                    |        |     |
|   |       | \$'000                 | \$'000   | \$'000              | \$'000   | \$'000    | \$'000   | \$'000   | \$'000   | \$'000               | \$'000     | \$'000       | \$'000       | \$'000                                   | \$'000 |     |
| <b>Financial Assets</b>                         |       |                        |          |                     |          |           |          |          |          |                      |            |              |              |  |        |     |
| Cash at Bank                                    |       | 2,768                  | -        | -                   | -        | -         | -        | -        | -        | -                    | 7          | 21           | 2,775        | 21                                       | 7.0    | 8.0 |
| Receivables for goods and services              | 6A    | -                      | -        | -                   | -        | -         | -        | -        | -        | -                    | 7          | 6            | 7            | 6  | n/a    | n/a |
| Accrued revenues                                | 6B    | -                      | -        | -                   | -        | -         | -        | -        | -        | -                    | 87         | 2,372        | 87           | 2,372                                    | n/a    | n/a |
| Prepaid expenses                                | 6C    | -                      | -        | -                   | -        | -         | -        | -        | -        | -                    | 41         | 78           | 41           | 78                                       | n/a    | n/a |
| <b>Total Financial Assets (Recognised)</b>      |       | <b>2,768</b>           | <b>-</b> | <b>-</b>            | <b>-</b> | <b>-</b>  | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b>             | <b>142</b> | <b>2,477</b> | <b>2,911</b> | <b>2,477</b>                             |        |     |
| <b>Total Assets</b>                             |       |                        |          |                     |          |           |          |          |          |                      |            |              | <b>4,491</b> | <b>5,418</b>                             |        |     |
| <b>Financial Liabilities</b>                    |       |                        |          |                     |          |           |          |          |          |                      |            |              |              |  |        |     |
| Trade creditors                                 | 8B    | -                      | -        | -                   | -        | -         | -        | -        | -        | -                    | 550        | 208          | 550          | 208                                      | n/a    | n/a |
| <b>Total Financial Liabilities (Recognised)</b> |       | <b>-</b>               | <b>-</b> | <b>-</b>            | <b>-</b> | <b>-</b>  | <b>-</b> | <b>-</b> | <b>-</b> | <b>-</b>             | <b>550</b> | <b>208</b>   | <b>550</b>   | <b>208</b>                               |        |     |
| <b>Total Assets</b>                             |       |                        |          |                     |          |           |          |          |          |                      |            |              | <b>3,346</b> | <b>2,975</b>                             |        |     |

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2000

**NOTE 17—FINANCIAL INSTRUMENTS (CONT.)**

**(c) Net fair values of financial assets and liabilities**

|                                      | Note | 1999–00               |                          | 1998–99               |                          |
|--------------------------------------|------|-----------------------|--------------------------|-----------------------|--------------------------|
|                                      |      | Total carrying amount | Aggregate net fair value | Total carrying amount | Aggregate net fair value |
| <b>Departmental Financial Assets</b> |      |                       |                          |                       |                          |
| Cash at Bank                         |      | 2,775,371             | 2,775,371                | 21,181                | 21,181                   |
| Receivables for Goods and Services   | 6A   | 7,336                 | 7,336                    | 6,064                 | 6,064                    |
| Accrued revenues                     | 6B   | 87,301                | 87,301                   | 2,372,000             | 2,372,000                |
| <b>Total Financial Assets</b>        |      | <b>2,870,008</b>      | <b>2,870,008</b>         | <b>2,399,245</b>      | <b>2,399,245</b>         |
| <b>Financial Liabilities</b>         |      |                       |                          |                       |                          |
| Trade creditors                      | 8B   | 549,811               | 549,811                  | 208,153               | 208,153                  |
| <b>Total Financial Liabilities</b>   |      | <b>549,811</b>        | <b>549,811</b>           | <b>208,153</b>        | <b>208,153</b>           |
| <b>Administered Financial Assets</b> |      |                       |                          |                       |                          |
| Fees Receivable                      | 6C   | 6,558                 | 6,558                    | 7,366                 | 7,366                    |
| <b>Total Financial Assets</b>        |      | <b>6,558</b>          | <b>6,558</b>             | <b>7,366</b>          | <b>7,366</b>             |
| <b>Total Financial Liabilities</b>   |      | <b>–</b>              | <b>–</b>                 | <b>–</b>              | <b>–</b>                 |

**Financial Assets**

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts.

**Financial Liabilities**

The net fair values for trade creditors are approximated by their carrying amounts.

**(d) Credit risk exposure**

The Tribunal's maximum exposure to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The Tribunal has no significant exposure to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

## APPENDIX XII

### GLOSSARY

For ease of reading the use of abbreviations and acronyms has been kept to a minimum in the report.

**Act of grace payment:** a payment of an amount for which the Commonwealth is under no legal liability to make.

**ALGA:** Australian Local Government Association

**Appropriations:** amounts authorised by Parliament to be drawn from the Consolidated Revenue Fund or Loan Fund for a particular purpose, or the amount so authorised. Appropriations are contained in specific legislation—notably, but not exclusively, the Appropriation Acts.

**APS:** Australian Public Service

**APS employee:** a person engaged under section 22 or a person who is engaged as an APS employee under section 72 of the *Public Service Act 1999*

**Arbitration:** the hearing or determining of a dispute between parties

**ATSIC:** Aboriginal and Torres Strait Islander Commission

**Claimant application/claim:** see native title claimant application/claim

**Coexistence:** the existence and exercise of native title rights alongside the rights of others

**Commonwealth public account (CPA):** the Commonwealth's official bank account kept at the Reserve Bank. It reflects the operations of the Consolidated Revenue Fund, the Loan Funds, the Reserved Money Fund and the Commercial Activities Fund.

**Competitive tendering and contracting:** the process of contracting out the delivery of government activities previously performed by a Commonwealth agency to another organisation. The activity is submitted to competitive tender, and the preferred provider of the activity is selected from the range of bidders by evaluating offers against predetermined selection criteria.

**Compensation application:** an application made by indigenous Australians seeking compensation for loss or impairment of their native title

**Consolidated Revenue Fund; Reserved money fund; Loan Fund; Commercial Activities Fund:** these funds comprise the Commonwealth Public Account

**Consultancy services:** consultancy services are one particular type of service delivered under a contract for services. A consultant is an entity, whether an individual, a partnership or a corporation, engaged to provide professional independent and expert advice or services.

**Corporate governance:** the process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.

**Current assets:** cash or other assets that would, in the ordinary course of operations, be readily consumed or convertible to cash within 12 months after the end of the financial year being reported.

**Current liabilities:** liabilities that would, in the ordinary course of operations, be due and payable within 12 months after the end of the financial year under review.

**Determination:** a decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

**Expenditure:** the total or gross amount of money spent by the Government on any or all of its activities.

**Expenditure from appropriations classified as revenue:** expenditures which are netted against receipts. They do not form part of outlays because they are considered to be closely or functionally related to certain revenue items or related to refund of receipts, and are therefore shown as offsets to receipts.

**Financial Management and Accountability Act 1997 (FMA):** the principal legislation governing the collection, payment and reporting of public moneys, the audit of the Commonwealth public account and the protection and recovery of public property. FMA Regulations and Orders are made pursuant to the Act. This Act replaced the *Audit Act 1901* on 1 January 1997.

**Financial results:** the results shown in the financial statements.

**Future act:** a proposed activity or development on land and/or waters that may affect native title.

**Future act determination application:** an application requesting the Tribunal to determine whether a future act can be done (with or without conditions).

**ILUA:** indigenous land use agreement—a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).

**IT:** information technology

**Liability:** the future sacrifice of service potential or economic benefits that the Tribunal is presently obliged to make as a result of past transactions or past events.

**Mediation:** the process of bringing together all people with an interest in an area covered by an application to help them reach agreement.

**Member:** a person who has been appointed by the Governor General as a member of the Tribunal under the Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

**NAIDOC:** National Aboriginal and Islander Day Observance Celebrations

**National Native Title Register:** a record of native title determinations

**Native title application/claim:** see native title claimant application, compensation application or a non-claimant application.

**Native title claimant application/claim:** an application made for the legal recognition of rights and interests held by indigenous Australians.

**Native title representative body:** a regional organisation recognised by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs, and funded by the Aboriginal and Torres Strait Islander Commission (ATSIC) to represent Indigenous Australians in native title issues in a particular region.

**Non-claimant application:** an application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.

**Non-current assets:** assets other than current assets

**Non-current liabilities:** liabilities other than current liabilities

**Notification:** the act of formally making known or giving notices

**Party:** an individual, group, or organisation that has an interest in an area covered by a native title application, and (in most cases) has been accepted by the Federal Court of Australia to take part in the proceedings.

**PBC:** prescribed bodies corporate—bodies incorporated for the purpose of holding native title or acting as the agents of the native title holders.

**PBS:** portfolio budget statements

**PJC:** Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund

**Principal registry:** the central office of the Tribunal. It has a number of functions that relate to the operations of the Tribunal nation-wide.

**Receipts:** the total or gross amount of moneys received by the Commonwealth (i.e. the total inflow of moneys to the Commonwealth Public Account including both ‘above the line’ and ‘below the line’ transactions). Every receipt item is classified to one of the economic concepts of revenue, outlays (i.e. offset within outlays) or financing transactions. See also ‘Revenue’.

**Receivables:** amounts which are due to be received by the Tribunal but are uncollected at balance date.

**Register of Native Title Claims:** a record of native title claimant applications filed with the Federal Court, referred to the Native Title Registrar and that generally have met the requirements of the registration test.

**Register of Indigenous Land Use Agreements:** a record of indigenous land use agreements. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

**Registrar:** an office holder who heads the Tribunal's administrative structure, helps the President run the Tribunal and has prescribed powers under the Act.

**Registration test:** a set of conditions under the *Native Title Act 1993* that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the native title claimants then gain the right to negotiate together with certain other rights, while their application is under way.

**Revenue:** above the line transactions (those that determine the deficit/surplus), mainly comprising receipts. It includes tax receipts (net of refunds) and non-tax receipts (interest, dividends etc.) but excludes receipts from user charging, sale of assets and repayments of advances (loans and equity), which are classified as outlays.

**RFT:** request for tender

**Running costs:** includes salaries, administrative expenses (including legal services and property operating expenses). For the purposes of this document, running costs refers to amounts consumed by an agency in providing the government services for which it is responsible (i.e. not only those elements of running costs which are funded by Appropriation Act No. 1 but also Special Appropriations and receipts that are raised through the sale of assets or inter-departmental charging and are permitted to be deemed to be appropriated, known as 'section 31 receipts' and received via annotated running costs appropriations.

**S.29 notice:** a notice under section 29 of the Act by the government of its intention to allow a proposed activity or development on land and/or waters that may affect native title.

**SES:** senior executive service

**Unopposed determination:** a decision by an Australian court or other recognised body that native title does or does not exist, where the determination is made as a result of a native title application that is not contested by another party.

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