



NATIONAL NATIVE
TITLE TRIBUNAL

ANNUAL REPORT
2000 – 2001



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ISSN 1324-9991

ISSN 1445-7776 (Online)

ISSN 1445-7784 (CD-ROM)

ISBN 0-642-48744-8

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5 October 2001

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 2001.

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

Yours sincerely

Graeme Neate
President

About this report

The primary purpose of the annual report of the National Native Title Tribunal is to inform and be accountable to, first, the Parliament, and second, its stakeholders about the services provided.

While required to report to the responsible Minister under section 133 of the *Native Title Act 1993*, the Tribunal is a statutory authority and is therefore not compelled to observe the annual reporting requirements for government departments; however, it chooses to do so.

An index as to how the Tribunal has observed the requirements is on page 198.

This annual report in book form is typeset in Goudy 10/13 point. Copies of it may be purchased from any registry of the National Native Title Tribunal (see back cover for contact details). It is also available as a CD-ROM free of charge over the counter or online at www.nntt.gov.au in HTML format that may be enlarged to suit the reader. The online and CD-ROM versions of the report also include a rich text format document set in 12 point type and a PDF version for downloading.

The online versions are especially useful to those readers who prefer to enlarge the type and who may prefer to choose particular parts of the report for downloading. Upon request, the text of this report in whole or in part can be supplied free of charge in Braille.

The National Native Title Tribunal encourages readers to make comment on the usefulness and contents of the report. Please forward any comments to Helen Bradbury on freecall 1800 640 501 or on email Helen_Bradbury@nntt.gov.au.

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PRESIDENT'S OVERVIEW



The year in review

Introduction

Change and transition was the theme of the previous two annual reports of the National Native Title Tribunal (the Tribunal).

Although there were fewer changes to native title law and practice in the year covered by this annual report, various means of dealing with native title issues were developed further. Accordingly, it was a year marked by movement towards the refinement and consolidation of practices by institutions directly responsible for the resolution of those issues.

The *Native Title Act 1993* (the Act) requires the President of the Tribunal to prepare a report of the management of the administrative affairs of the Tribunal during each financial year. 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’

Changes to the environment in which the Tribunal operates provide challenges to how we perform our statutory functions and are catalysts for developments in aspects of the organisation. Consequently, this overview also looks at various events and trends within the organisation and externally during the year covered by this report.

Trends within the Tribunal

In the reporting period:

- it was necessary to make fewer registration test decisions than in the previous year;
- the Federal Court delivered more decisions on reviews of some of the registration test decisions and, where necessary, the registration test practices were revised in accordance with the Court's decisions;
- the Native Title Registrar (the Registrar) notified individual persons and bodies and the public about more claimant applications than in the previous year;
- the completion of substantial amounts of registration test work and the increase in notification of applications continued the refocussing of the Tribunal's resources and energies towards the mediation of applications and associated agreement-making;
- an increased awareness of, and interest in, the potential of indigenous land use agreements (ILUAs) resulted in a substantial demand for

information and other assistance from the Tribunal as people sought to negotiate agreements and have them registered;

- there was little change to the membership of the Tribunal;
- various changes occurred to the management of the administrative affairs of the Tribunal;
- the Tribunal continued to develop relationships with stakeholders.

Registration, notification and mediation of native title determination applications

The resolution of native title determination applications involves the Tribunal in three main processes — the registration testing, notification and mediation of each application. Details of the Tribunal's performance in delivering these services are contained in the body of this report.

The volume of work in relation to each process indicates successive waves of work since the relevant amendments to the Act commenced to operate on 30 September 1998:

- The wave of registration testing peaked in the 1999–2000 reporting period.
- The wave of notifications peaked in 2000–2001.
- The total number of matters referred by the Federal Court to the Tribunal for mediation was rising at the end of the reporting period.

In the period covered by this report 153 registration test decisions were made — about half the number of decisions made in the previous year. The wave of registration test decision making peaked previously when the bulk of relevant applications lodged before 30 September 1998 ('old Act' applications) were processed together with new applications.

Attention is now focussed on testing new applications and on re-testing (sometimes more than once) those applications which are amended (for example, by reducing the area covered by the application). It is apparent that new applications are made with the legislative conditions in mind and provide sufficient information to satisfy those conditions. Consequently, some 94 per cent of 'new Act' applications have passed the registration test.

Details of registration testing are recorded later in this report in 'Output 1.1.1 — Claimant applications', page 46.

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 (including reviews of decisions to register applications) is provided by the *Administrative Decisions (Judicial Review) Act 1977*.

As in the two previous years, challenges were made to decisions of the Registrar or his delegate. At the start of the year, three applications for review under the Act were on foot. During the year, four new applications were made, three were discontinued, and one was decided. At the end of the year, three applications were outstanding. At the start of the year, three applications for review under the *Administrative Decisions (Judicial Review) Act 1977* were on foot. During the year, 10 new applications were made, one was discontinued, 10 were decided and, at the end of the year, two were outstanding. A summary of the key decisions is available in Appendix III, page 138.

Changes to registration test practices were made, where necessary, in light of those decisions.

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.

During the reporting period, notification occurred in relation to 161 claimant applications, more than three times the 50 applications notified in the previous year. Details about notification are recorded later in this report on page 87.

The Act contains numerous references to mediation as the preferable means of resolving by agreement 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 2001, there were 576 claimant applications at some stage between lodgement and resolution. In the reporting period, 67 claimant applications were discontinued or combined with other applications and 117 new claimant applications were lodged.

As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. An additional 56 matters entered Court-supervised mediation during the past year and the number in mediation is likely to increase significantly next year.

The nature of the Court's supervision of mediation is discussed later in this overview and in the performance report on page 91.

Increased assistance in negotiation of ILUAs

The Act contains a scheme that enables the negotiation of ILUAs 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. As required by the Act, the Registrar maintains the Register of Indigenous Land Use Agreements. 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.

The Tribunal has important functions in relation to ILUAs. People who wish to make an ILUA may request assistance from the Tribunal in negotiating it, 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.

In the year covered by this report, 17 applications were made for the registration of ILUAs. Twenty-four others were in notification and 43 more 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 on pages 59–61.

Of the 41 ILUAs registered, lodged for registration or notified during the reporting period, more than 80 per cent were in Queensland. The difference in the number of ILUAs in various States and Territories is a product of a variety of circumstances, one of which is the policy of the relevant State or Territory government to that type of agreement-making.

Some State legislation, particularly in New South Wales and Queensland, specifically recognises that ILUAs will apply in relation to certain types of activities.

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 forms of assistance included conducting information sessions, providing ILUA guidelines and general information on ILUA processes and negotiation processes, chairing meetings of negotiating parties, reviewing draft documents, and undertaking research.

Increased volume of consent determinations of native title

In the reporting period, the Tribunal registered 18 determinations of native title, 13 of which were made by consent of the parties and five made after trials. In that period the Federal Court also made two determinations of native title which had not been referred to the Registrar for registration

before 30 June 2001. Figure 1 shows the growth in number of native title determinations between 1992 and 30 June 2001. It is important to note that the registration of native title determinations is a direct indicator of the Tribunal's performance and is for the first time a performance output in this report. The making of agreements towards native title determinations and those determinations made by the Federal Court are reported elsewhere in this overview and in the body of the report (see 'Output 1.1.2 — Native title determinations', p.53).

The groups of people whose applications succeeded are listed on pages 55–6 of this report. The native title determinations were of profound significance to them, and the other parties.

Each consent determination was marked by celebrations at the place where the orders were made or subsequently on the land where native title had been held to exist.

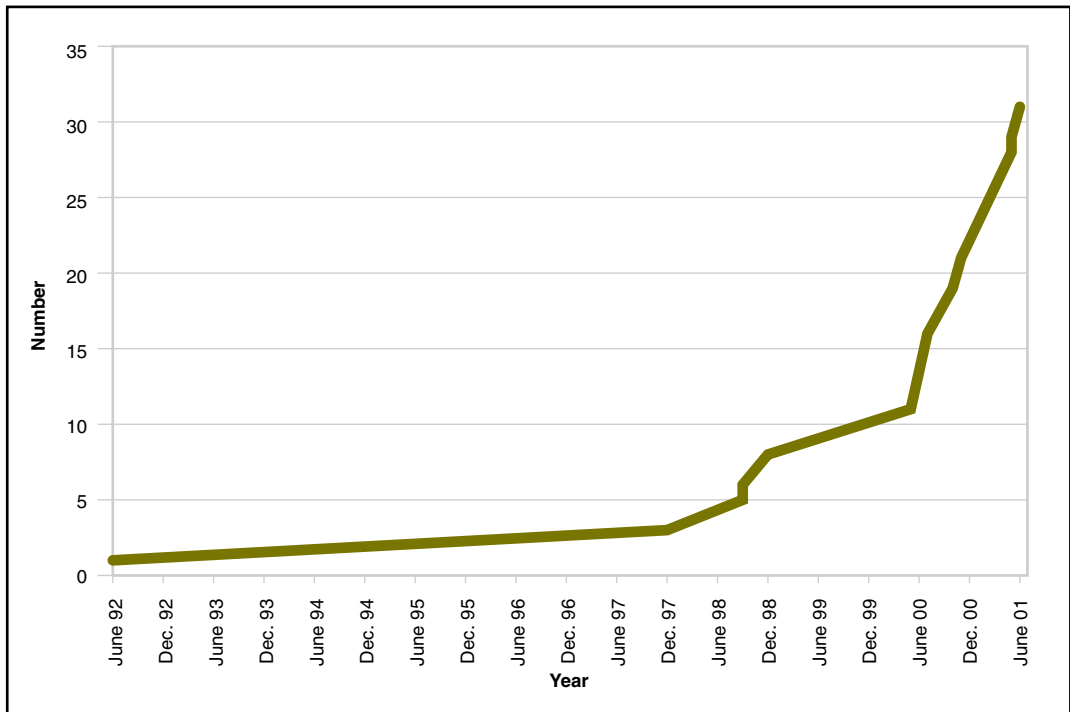
The Tribunal was involved in all these matters at some stage, and assisted the parties in most of them to reach agreement.

These proceedings have been significant not only for the parties and the Tribunal but also in the history of the Federal Court. The first sittings of the Federal Court in the Torres Strait were in July 2000 when Justice Drummond travelled to various islands for the purpose of making the consent determinations. In November 2000, Chief Justice Black travelled



Pictured at the consent determination of native title in respect of Dauar and Waier Islands in the Torres Strait are: (left to right) Father David Passi, Graeme Neate and Chief Justice Michael Black. The islands are near Mer (Murray Island) which was the subject of the High Court's decision in the *Mabo* case. Photograph by Angela Wylie, *The Sydney Morning Herald*, Mer, Torres Strait, Queensland, 14 June 2001.

Figure 1 Growth in number of native title determinations (claimant and non-claimant) including proposed, draft and/or conditional determinations to 30 June 2001



to Tjuntjuntjara in Western Australia, near the border with South Australia, to make the determination in relation to the Spinifex people's application. His Honour went to the Torres Strait to make the determination in relation to Dauar and Waier Islands and participated in the Kaurareg people's celebrations on Ngurupai (Horn Island).

It is worth noting that the Federal Court is actively involved in determining the form of an order made by consent of the parties. If there is an agreement between the parties, the Court must be satisfied that an order 'in, or consistent with, those terms would be within the power of the Court'. The Court must also consider that it is 'appropriate' to make such an order without holding a hearing. The Court may take into account historical and anthropological information when deciding whether a determination of native title is appropriate in each case. In other words, the Court does not necessarily adopt the form of order agreed by the parties.

On each occasion when the Court has made a consent determination of native title the presiding judge has delivered detailed written reasons for the decision, setting out the background to the application and the terms of the determination. Those reasons have been published. They are a valuable source of information for those who are negotiating agreements about native title determination applications elsewhere in Australia.

Membership of the Tribunal

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

At 30 June 2000 there were 15 members, comprising four presidential members (three full-time and one part-time) and 11 other members (four full-time and seven part-time). The number of members of the Tribunal was relatively stable during the reporting period.

Mr Anthony (Tony) Lee, whose original five-year term expired on 30 June 2000, was reappointed as a full-time member from 5 July 2000 for a term of three years.

The three-year term of Ms Patricia Lane, a part-time member of the Tribunal based in New South Wales, expired on 31 December 2000. Before serving as a member of the Tribunal, Ms Lane had served as the Registrar for three-and-a-half years from 11 July 1994.

The three-year term of Mr Geoffrey Clark expired at the end of May 2001. On 28 June 2001, he was appointed as a part-time member for a further term of three years.

Consequently, at 30 June 2001 there were 14 members, comprising four presidential members (three full-time and one part-time) and 10 other members (four full-time and six part-time). For more information about members see 'Corporate governance', page 96.

The members are geographically widely spread, living in places as far apart as Cairns and Melbourne, Sydney and Perth. Usually members meet twice each year to consider a range of strategic, practice and administrative matters. Sub-committees of members, or members who work in the same State or Territory, also meet as required.

It was pleasing to note that in the 2001 Australia Day Honours a Deputy President of the Tribunal, the Hon. Christopher Sumner, was made a Member of the Order of Australia for, among other things, his service to the Tribunal.

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

Staff and management of the Tribunal

At 30 June 2001, the Tribunal had 242 people employed under the *Public Service Act 1999*, an overall increase of 10 from the end of the previous reporting period. Those people were in addition to 15 holders of public office, comprising the 14 members of the Tribunal and the Registrar.

The management and accountability of the Tribunal are discussed in detail on pages 96–124 of this report. For the purpose of this overview it is appropriate to note that various groups involving members and employees were established or continued to operate during the year (a strategic planning advisory group, an ILUA strategy group, a future act liaison group and a research reference group).

The Tribunal's second certified agreement was negotiated during 2000 and was certified on 22 December 2000. It has a term of three years.

Development of relationships with stakeholders

The Tribunal has ongoing relationships at various levels with external stakeholders that bring, or could lead to, productive outcomes.

One example is the Goldfields Native Title Liaison Council (GNTLC), which involves representatives of exploration and mining industries, pastoralists, local government and Western Australian government departments. It meets in Kalgoorlie, most recently under the chairmanship of full-time Tribunal member Bardy McFarlane. Another member, Tony Lee, and I have both been involved. Late last year and early this year there were workshops and meetings which are leading to the development of pastoral access protocols and heritage protection protocols. Members of the GNTLC have shown increasing enthusiasm for the Council, and recent meetings have been very positive and productive as they have focussed on regional solutions to native title issues.

The Tribunal also has been involved in assisting the new Western Australian Government to implement its policy on dealing with future acts. As outlined below, Tribunal member Bardy McFarlane chaired a technical task force, comprising representatives of a range of stakeholders in the State, to progress technical matters arising from, in particular, mining-related future developments in Western Australia.

As President I meet from time to time with leaders of key industry groups and others to keep up to date with the issues of concern to them, assess trends that are emerging that might affect our work, and convey to people the latest state of play in the Tribunal's work.

The Tribunal is also taking initiatives that could provide a more productive environment in which agreement-making can take place. At the end of the reporting period, a Native Title Forum was being organised for 1–3 August in Brisbane under the general topic 'Negotiating Country'. The program was planned to focus on two main topics: ILUAs and the mediation and management of native title applications. We engaged a range of high profile and experienced people to speak at the forum.

External changes 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; and
- 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.

The Tribunal operates differently in each State and Territory because of some of those factors.

So, for example, the decision by the new Western Australian Government to continue to use the future act provisions of the Act (rather than attempt alternative State provisions), together with the decision of the Northern Territory Government to use those provisions, has resource implications for the Tribunal. In prospect, the changed policy in Western Australia in relation to claimant applications (discussed below) is likely to significantly affect the Tribunal's work in that State.

Developments in the law of native title

In the year covered by this report only minor amendments to the Act were made, by the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* and the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*.

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 60 written judgments were delivered by the Federal Court on matters involving native title law during the year. They dealt with such matters as the evidence to be given in native title proceedings, the determination of native title, whether some claimant applications satisfied the statutory conditions for registration, and whether representative bodies were acting in accordance with their statutory obligations.

Summaries of the judgments that were most significant in terms of their impact on the operations of the Tribunal are contained in Appendix III (p.138) of this report.

During the year, the High Court heard argument in two significant sets of appeals against decisions by full courts of the Federal Court.

The appeal in *Western Australia v Ward* raised numerous important issues including:

- the nature of native title (e.g. whether it is a ‘bundle of rights’);
- the circumstances in which native title is or may be extinguished;
- whether native title can be extinguished partially, right by right, and with cumulative effect in the event of a succession of grants or appropriations;
- whether the grant of a pastoral lease with a reservation demonstrates a clear and plain intention to extinguish all incidents of native title not referred to in the reservation and, if so, what those incidents are;
- whether ‘a right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the determination area’ can be the subject of a determination of native title;
- whether any possible native title rights in respect of resources must be confined to resources which, on the evidence, have been customarily or traditionally used or whether those rights extend to minerals or petroleum;
- whether there can be a determination of native title where there was no evidence of use or presence upon the parts of the land by Aborigines; and
- whether spiritual connection to land is sufficient to ground a determination of native title.

The main issues in *Commonwealth v Yarmirr*, the Croker Island case, were:

- whether the Act provides the basis for recognition of native title beyond the limits of the Northern Territory (that is, to areas of sea and sea-bed); and
- whether the native title holders had exclusive native title rights and interests (including an exclusive right to fish, hunt and gather) in the waters and sea-bed in the claim area.

Alternative procedures and bodies 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 successful and others were frustrated.

Queensland

On 21 July 1999, the Queensland Parliament passed legislation that provided modified procedures for alluvial gold and tin mining (s.26B provisions of the Act), and mining and high impact exploration on pastoral leases (s.43A provisions). The legislation also provided for alternative provisions covering mining and high impact exploration on all tenures (s.43) and low impact exploration (s.26A). Having called for and considered submissions in relation to the legislation, the Commonwealth Attorney-General made a total of 13 determinations on 31 May 2000.

On 8 June 2000, the Australian Democrats moved in the Senate to disallow all 13 determinations. After a debate on 30 August 2000 lasting over three hours, the Senate voted 34 to 31 to disallow the six determinations made under s.26B and s.43A of the Act. The motions to disallow the seven determinations made under s.43 and s.26A failed by a vote of 56 to 10.

Consequential amendments were made to Queensland legislation which commenced to operate on 18 September 2000, the date on which the Attorney-General's determinations were published in the Gazette.

Western Australia

In December 1999, the Western Australian Parliament enacted the *Native Title (State Provisions) Act 1999* providing for a scheme of alternative provisions under s.43 and s.43A of the Act. That legislation was assented to on 10 January 2000.

In March 2000, the Western Australian Government requested a determination from the Commonwealth Attorney-General in relation to the s.43A component of the legislation. The proposed scheme would have applied principally to acts creating a right to mine and certain compulsory acquisitions of native title rights and interests on pastoral lease or reserve land.

On 27 October 2000 the Attorney-General determined that the s.43A scheme complied with the provisions of the Act. On 9 November 2000, however, the Senate voted 32 to 28 to disallow the determination.

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 mining and petroleum activities. Having sought and considered submissions from the New South Wales Aboriginal Land Council and the public, the Attorney-General made determinations under s.26A(1) of the Act on 17 October 2000. They were not disallowed and commenced on gazettal on 13 December 2000.

Changes to policies and procedures in States and Territories

Northern Territory

The previous annual report noted that, following the disallowance by the Senate of the Attorney-General's determinations in relation to the Northern Territory alternative provisions, the Northern Territory Government had announced that more than 1,000 exploration and mining tenure applications would be processed under the Act. All the applications were over pastoral lease land.

The first notices were published under s.29 of the Act on 6 September 2000. In the period to 30 June 2001, notices were published fortnightly in relation to a total of 339 applications. Those applications were made in relation to land where there were generally no native title applications. Thus, in most cases, Aboriginal people who wished to object to the expedited procedure being applied, or to obtain the right to negotiate under the Act, had to lodge claimant applications over those areas. The applications were assessed in accordance with the registration test conditions, then the public and persons whose interests might be affected by each application had to be notified.

As at 30 June 2001, 45 claimant applications had been lodged with the Federal Court in response to the notices published since 6 September 2000. Different approaches were adopted in the areas of the Northern Land Council and the Central Land Council. Of the 45 claimant applications, 44 were made in relation to land in the Northern Land Council region.

At the end of the reporting period, there were 129 claimant applications in the Northern Territory, or 11.2 per cent of the national total. This includes an increase of 60 applications from the previous reporting period.

Western Australia

In February 2001 a new State Government was elected in Western Australia. The Premier, Dr Geoff Gallop, has established a cabinet

sub-committee on native title which will seek to implement the Government's policy, published before the election under the heading 'Agreement not argument'.

Ministerial policy statements have indicated (among other things) that the Government:

- will work with any group committed to the resolution of native title issues;
- will not be pursuing legislation for an alternative native title regime in the State; and
- intends to make maximum use of the resources of the Tribunal.

The Government commissioned an overhaul of mediation policy and practice in Western Australia by engaging a consultant, Mr Paul Wand, assisted by a barrister who specialises in native title matters, Mr Chris Athanasiou. In particular, the review was to:

- develop a new set of principles to guide the State Government's negotiations on native title determinations and agreements;
- consider policy options open to the Government (including options in relation to the preparation and status of connection reports, the potential for partial consent determinations, and the joint planning and prioritisation of claims);
- assess the practical impact of the new guidelines on the resources of all the parties involved, the time taken to settle native title claims and stakeholders' acceptance of the processes;
- assess the legal framework associated with negotiating guidelines; and
- review the nature, merits and applicability of the negotiation principles and practices used in other States.

The Wand Review consulted with, and received submissions from, various individuals and organisations and, at the end of the reporting period, was preparing draft guidelines.

The Western Australian Government also established, in April 2001, a Technical Task Force on Mineral Tenement and Land Title Applications. It was to look at ways for the efficient progressing of mineral tenement and land title applications while at the same time protecting the native title rights of Indigenous people. The task force was chaired by Tribunal member Barty McFarlane and included representatives of native title representative bodies, the Ministry of Premier and Cabinet, the Department of Minerals and Energy, the Department of Land Administration, the Amalgamated Prospectors and Leaseholders Association of WA, AMEC, and the Chamber of Minerals and Energy. At the end of the reporting period, the task force was preparing a discussion paper.

Federal Court procedures

The Federal Court has jurisdiction to hear and determine applications filed in the Court that relate to native title. The Court manages those applications on a case-by-case basis and supervises much of the Tribunal's work. In particular, the Court supervises the mediation of native title determination applications and compensation applications, and hears appeals from, or judicially reviews various decisions of, members or the Native Title Registrar.

Native title litigation is still relatively novel. Each case will have a number of distinguishing features. The way in which the Court (through judges and senior court officers) manages the native title list or individual matters may vary from case to case having regard to relevant factors.

Although it is unlikely that uniform case management orders will be developed, the Court is attempting to adopt a nationally consistent approach to the management of native title cases. It does so by way of the Native Title Coordination Committee, which includes the provisional docket judges for each State and Territory. The Committee is concerned with matters of practice and procedure, including the allocation and listing of native title cases. Increasing consistency may also emerge from the development and use of the Native Title Benchbook, a comprehensive guide to all judges and officers of the Court which contains template orders derived from the experience of some judges in native title cases.

Target timeframe for determining native title applications

The Federal Court aims to ensure that native title cases will be managed, heard and determined in a timely and appropriate manner. The Court has set a goal of three years to dispose of the majority of the native title cases currently before it. This is a goal. It is not intended to be prescriptive. In its 1999–2000 annual report, the Court stated:

For many matters this may not be achieved because of their complexity, the issues involved, the number of parties and the location of the native title claim. In addition, in some matters the trial Judge's decision may be appealed to a Full Court, and that Full Court decision itself may then be appealed to the High Court of Australia. The time goal, however, will ensure that all parties involved in native title litigation will be aware, from the commencement of proceedings, that their cases will be actively case managed through all stages of the litigation.

In setting a timetable for progress of a matter the Court may sometimes feel the pressure of competing priorities. For example, the Court may consider that it is in the interests of the broader community as well as the parties for native title matters to be resolved in a timely manner. On the

other hand (and not necessarily in conflict with that objective) is the need for enduring outcomes which, in many if not most instances, may emerge from mediated determinations and supporting agreements.

In a paper delivered in 2000 and published in 2001, Justice North identified a number of external constraints that may limit the Court's ability to process native title cases. These factors include:

- relatively few experienced counsel;
- limited pool or availability of experts;
- the influence of climatic conditions on the timeframes for which evidence can be taken on country;
- funding for applicants; and
- judge availability.

The Court takes into account these factors, if raised by the parties, when the Court is considering making directions requiring procedural steps to be completed.

As at 30 June 2001, however, the Court had declined to grant adjournments of the scheduled start of hearings where parties asserted that the resources available to them were insufficient for them to proceed.

The Federal Court's 1999–2000 annual report states that the average time span from filing to disposition for native title matters determined by consent is three years and five months, and for matters determined by a trial judge it is four-to-five years. The Court expects that the three-year time goal will, in part, be achieved through the active case management of matters.

It is too early to make a statistically valid prediction of how long native title cases will take to resolve. In 2000 the Court listed some matters for hearings to commence up to September 2003. Other cases have been listed for hearing but no dates have been allocated.

Not all of the cases that have been listed for trial may go to trial. Judgments of the High Court in test cases, such as the appeals from the Full Federal Court in *Western Australia v Ward* and *Commonwealth v Yarmirr*, together with increasing experience in resolving applications by consent determinations (and supporting agreements such as ILUAs), and changing attitudes by some governments and major parties may affect the number of matters that go to trial, the range of issues that are tried in each case, or the prospects of settlement during a trial. Those factors may result in changes to the average length of time between the lodgement of a native title claimant application and its final determination by the Court.

Whatever happens, the 'average' is likely to be little more than a statistical calculation rather than a predictive tool in any particular case.

Mediation progress reports

An important aid to the monitoring of progress in a mediation is a mediation progress report provided to the Court by the presiding Tribunal member.

Once the Federal Court has referred an application for mediation by the Tribunal, the Act provides that the presiding member of the Tribunal, in relation to a matter being mediated:

- must provide a written report to the Court setting out the progress of mediation if requested to do so by the Court;
- may provide a written report to the Court setting out the progress of the mediation if the presiding member considers that it would assist the Federal Court in progressing the proceeding in relation to which the mediation is being undertaken; and
- must, as soon as practicable after mediation is successfully concluded, provide a written report to the Court setting out the results of the mediation.

The Court's Native Title Coordination Committee and the Tribunal have given careful consideration to what a mediation report should contain. In summary, the current practice is that:

- each mediation report should usually be in the form agreed to by the Court and the Tribunal which contains basic information about the application;
- the report should include a statement about the progress of mediation to date and an assessment about the prospects of mediation (in particular, whether the mediation should continue, or the mediation should continue with appropriate orders or directions from the Court, or mediation should cease), together with proposals for future meetings or actions to be taken by parties;
- the report should contain relevant background information but should not contain any confidential information unless the parties agree to it;
- if the parties agree, a mediation report must include any agreement on facts between the parties that was reached during the mediation concerned; and
- although practice varies, draft mediation reports are sometimes provided to parties before they are sent to the Court, and each mediation report should be prepared on the basis that it will probably become available to the parties at some stage of the proceeding.

During the reporting period, Tribunal members made 608 mediation progress reports to the Court. Nearly half of these were made in Queensland (161) and Western Australia (90), the States where there are most claimant applications.

The approach taken to requesting mediation reports varies between judges and is influenced by the circumstances of each application. Some judges rarely request reports. Generally speaking, the Court appears to be taking a more active approach in supervising mediation and, when judges request reports in relation to matters in active mediation, it is common for those reports to be required on average every three to six months.

As well as noting the progress of mediation of a particular claimant application, the report can provide the Court with a broader context within which the mediation is taking place. In some instances, for example, it might be useful to:

- inform the Court of the overall strategy being adopted in the mediation (such as dealing with some issues or interests before moving onto others); or
- explain to the Court that progress is slower than might be expected because, for example, the native title claim group is simultaneously involved in negotiations regarding apparently unrelated future act negotiations, ILUAs or other claimant application mediations. Such other activity, sometimes under fairly demanding time constraints, affects the time and resources available to a key party to invest in the mediation of the claimant application before the next reporting date.

On the basis of those reports, and information provided to the Court by parties at directions hearings (often scheduled to be held soon after the receipt of mediation progress reports), the Court can assess whether there is any prospect that some or all of the relevant matters will be resolved by agreement between the parties. The Court may direct that parties take certain steps or may indicate that, if the Tribunal cannot present a firm timetable for resolution by a nominated date, the Court will list the application for hearing by a judge.

Case management — mediation and/or preparation for trial

The Court looks to the Tribunal for clear assessments of the prospects of mediated outcomes in relation to native title determination applications and compensation applications. There is an increasing propensity for the Court to direct applications into trial unless a clear and concise timetable for resolution is advanced. In some instances, the Court orders that mediation is to cease. In other cases, the application remains in mediation while the parties prepare for trial. Case management in the latter category is aimed at encouraging the resolution of the issues, or at least the reduction of parties and issues before the trial commences.

Although the Court acknowledges and encourages the desirability of mediated outcomes, the Court manages native title proceedings in light of various perceived imperatives, such as public confidence in the system and public interest in the timely resolution of native title matters. Some judges

have expressed their concern about the length of time some matters are taking, and have indicated that the parties and the Tribunal will need to provide a convincing basis for those matters remaining in mediation. For example, when making a consent determination for part of the Wik peoples' application, Justice Drummond said:

I still accept, at least for the moment, that an agreed resolution of the balance of the Wik peoples' claim is preferable to a Court-imposed result. That is so because that is more likely to provide a more useful framework than a court decision limited to specific issues for dealing with the resolution of conflicting interests of the Wik peoples and particularly the pastoralists over the specific access and usage questions that are likely to arise in the future.

But the Court cannot allow the remainder of the Wik peoples' claim to be the subject of yet more protracted negotiations. The cost benefits of such a negotiated resolution of a case, if that is ultimately achievable, in comparison with the costs of a Court-imposed decision are likely to be largely illusory. The uncertainty for all with interests in the Wik peoples' lands, if allowed to continue for any extended further period, is unacceptable both to the public interest and to the interest of all the parties involved in this litigation. (*Wik Peoples v Queensland* [2000] FCA 1443 at paragraphs 5–6.)

Statements such as that, together with close supervision by the Court, should encourage parties to seriously engage with each other, clarifying what is agreed and what is in dispute between them. One way of expediting the process is the provision of relevant information by the applicants or persons engaged by them, such as anthropologists, particularly in the form of connection reports.

The pace of mediation under the supervision of the Court, as well as the degree of involvement of the parties and their requirements for information, may influence the nature and volume of the information to be provided, and the timing of its production. In practical terms, applicants or their representative bodies may need to adjust the priorities of their research to meet the revised schedules as the Court closely manages some matters and allows others to proceed at a slower pace.

The Court may also convene case management conferences, sometimes presided over by an officer of the Court (such as a Deputy District Registrar), to resolve practical issues and to assist in progressing matters. Orders may be made obliging parties to take specific actions.

As noted later in this overview, case management by the Court will increasingly influence the prioritising of the Tribunal's work and the allocation of the Tribunal's resources.

Re-recognition and roles of representative bodies

Some of the 1998 amendments to the Act in relation to representative Aboriginal and Torres Strait Islander bodies commenced on 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 in accordance with the scheme described in last year's annual report.

Recognition of representative bodies

As a result of the redrawn boundaries for representative bodies, the total number of representative body areas nationally went from 24 to 20.

As at 30 June 2000, 10 representative bodies had been recognised. Representative bodies for the other 10 areas had not been recognised.

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

Under s.203FE of the Act, the Aboriginal and Torres Strait Islander Commission (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.

Some of the original representative bodies were invited to submit additional applications for consideration by the Minister. ATSIC continued 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.

During the year, one of the representative body areas was divided into two areas. Thus, at the end of the reporting period there were 21 representative body areas. At that date, 15 bodies were recognised for 16 areas, the

Yamatji Barna Baba Maaja Aboriginal Corporation being recognised for two areas in Western Australia. There were two areas for which the Minister was considering applications for recognition: the Cairns area in Queensland and the South West area in Western Australia.

In July 2001 (just after the end of the reporting period) North Queensland Land Council Aboriginal Corporation was recognised for the Cairns area. The application of the Noongar Land Council was still being considered.

There were three areas for which there was no recognised body and no current application for recognition being considered: Australian Capital Territory and Jervis Bay Territory; Tasmania; and External Territories (Heard, McDonald, Cocos (Keeling), Christmas and Norfolk Islands and the Australian Antarctic Territory).

Roles and importance of representative bodies

Representative bodies continue to have important functions and powers under the Act. The provisions of the Act that commenced to operate on 1 July 2000 give each representative body:

- certification functions (in relation to native title applications and applications to register ILUAs);
- dispute resolution functions in relation to its constituents (about such matters as native title applications, future acts and ILUAs);
- notification functions;
- an agreement-making function (as a party to ILUAs);
- internal review functions; and
- other functions.

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 ILUAs.

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.

Future prospects

Introduction

It is a risky venture to try to predict future trends in the volatile and changing area of native title law and practice. Indeed it may be the case that, as French playwright Eugene Ionesco put it, you can only predict things after they have happened. However, events and outcomes during the past year, which built on work done under the Act throughout previous years, suggest that the following observations can be made with reasonable confidence:

- The volume of native title work will increase.
- Agreement-making will become the usual method of resolving native title issues.
- The form and content of agreements will vary from place to place.
- Timeframes for negotiating agreements should, on average, be reduced.
- There will be an increased focus on 'second generation' native title issues.
- Resource use will directly influence agreement-making.
- The Federal Court will continue to affect, if not drive, native title processes.
- There will be an increased focus on information management.
- Land planning, land access and land use laws may need to be revised or refined.
- The resolution of native title issues will not, of itself, resolve other social issues.
- International legal developments will continue to be relevant to native title law and practice.

The volume of native title work will increase

The substantial reduction in the total number of claimant applications in the two years from 30 September 1998 has been followed by a steady increase in claimant applications. Although numerous applications were withdrawn, amended or amalgamated, most of those that remain in the system, and new ones that are being lodged, are in registrable form. Those applications, whether registered or not, will be mediated and some will be litigated.

Eventually the number of claimant applications in mediation or in trial will decline. But a reduction in the total number of those matters will not,

of itself, mean that there is less native title work to be done. As more claimant applications are made, registration tested, and mediated or litigated, more people are being identified as potential native title holders. As native title determinations are made, more people are legally recognised as native title holders.

Increasing numbers of registered claimant applications and determinations of native title will result in more people having negotiating rights and other procedural rights in respect of what happens on greater areas of land or waters. There will be an increased level of activity in relation to exploration and mining and other future acts. Thus the volume and variety of native title work will increase in the years ahead.

Agreement-making will become the usual method of resolving native title issues

Developments during the reporting period suggest that the climate for agreement-making about native title is more positive than ever before. At 30 June 2001, there had been 24 determinations that native title exists over at least part of the area of each application. Fifteen of these determinations were made in the previous 12 months. Fourteen of the determinations made in that period were by agreement of the parties. Most of those consent determinations were supported by, or conditional upon, ILUAs.

The outcomes in the past year suggest that agreements will be struck in relation to many claimant applications and (by ILUAs or otherwise) in relation to future activities on land where native title exists or may exist.

This trend is evident because, in some parts of the country, governments and other parties are attempting to resolve claimant applications by agreement. Also, as more determinations of native title are made, there will be greater certainty about who has native title and what are the native title rights and interests in different areas.

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.

Increased certainty about the law and where native title exists should result in more confidence about identifying which groups of Aborigines or Torres Strait Islanders to deal with, and what the likely range of outcomes will be in a variety of negotiations.

The Federal Court has emphasised the benefit of consent determinations of native title matters. In his reasons for judgment in the *Spinifex* matter, for example, Chief Justice Black congratulated the parties for resolving the application by agreement. He continued:

Discussions leading to consent determinations about the existence and workings of native title will often involve very difficult questions for the parties to consider and yet agreement, if it can be reached, is highly desirable.

The courts have always encouraged parties to settle their claims amicably and have often congratulated them when they have done so. I am following a long tradition of common law judges in congratulating the parties to this application; but I would add that it is especially desirable that there be agreed resolutions of applications for the determination of native title cases. These cases involve matters of great importance and great sensitivity to many people. If not resolved by agreement they can be lengthy and very costly to all concerned. They can also cause distress. If an appropriate outcome can be arrived at by agreement, and it is an outcome that represents goodwill and understanding on all sides, that is something to be applauded. (*Anderson on behalf of the Spinifex People v Western Australia* [2000] FCA 1717 at paragraphs 7 and 8.)

A clear example of the trend towards resolving native title applications by agreement was evident at a special sitting of the Federal Court on Dauar Island in the Torres Strait on 14 June 2001. Chief Justice Black made consent determinations that native title exists in relation to Dauar and Waier Islands, the two islands nearest to Mer. The three islands together constitute the Murray Islands. In *Mabo v Queensland (No. 2)*, the High Court declared that, putting to one side the islands of Dauar and Waier and some other land, 'the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands'. Because there was an unanswered question about the effect of sardine factory leases granted in the 1930s (and forfeited a few years later), the High Court left undecided the question whether native title existed over those two islands. A native title application was lodged in 1998 and the matter was referred to the Tribunal for mediation in October 2000. The application was resolved in a matter of months. By contrast, the *Mabo* case had taken approximately 10 years to prepare and argue and for judgment to be given.

In his reasons for his decision on making the native title determination, Chief Justice Black noted the Court's 'great satisfaction when native title claims are settled by agreement rather than through litigation' and noted that the result in that case was achieved because of the provisions of the Act. His Honour contrasted the determination process of the *Mabo* claim and the native title application process, and noted that the contrast 'is a measure of the change that has taken place'. Having noted also the number of consent determinations, he said: 'These numbers suggest that governments and other parties are increasingly cognisant of the benefits of negotiated settlements, which otherwise have the potential to be lengthy, costly and divisive' (*Passi v Queensland* [2001] FCA 697 at paragraphs 9–11).

Outcomes of the type reached in that case indicate that we are moving as a nation from litigation towards mediation for the resolution of many (if not most) native title applications. As more agreements are reached, there is a greater degree of confidence in agreement-making as a viable approach and a greater certainty about what is achievable within such agreements.

The form and content of agreements will vary from place to place

We live in a federal system where there are different laws in each State and Territory. There are, for example, different laws on land tenure, exploration and mining. Governments have different policies on native title agreement-making in different parts of the country. States have different histories of colonisation and subsequent land settlement. Indigenous groups have different aspirations or social circumstances. These and other factors will influence the form and content of agreements.

Timeframes for negotiating agreements should, on average, be reduced

Greater certainty about the law, as well as who has native title and what native title rights and interests are, should influence aspects of the negotiation process. Parties will develop more experience in the process of negotiating agreements, and the existence of more template agreements will provide guidance or illustrate options for others to consider.

The potential for shorter average timeframes will, however, be tempered by at least two issues considered below:

- the availability of appropriate resources to the parties (which may influence when negotiations commence as well as how quickly they proceed); and
- access to relevant information, including template documents.

There will be an increased focus on 'second generation' native title issues

Understandably, most attention in the early years of native title law and practice in Australia has been focussed on ascertaining where native title exists, who the native title holders are, what the native title rights and interests are, and the relationship between native title rights and interests and other interests in areas of land or waters.

As determinations of native title are made, and various forms of native title agreements are negotiated, we have moved onto 'second generation' issues that arise after determinations of native title are made and after ILUAs are registered. For example:

- How are parties to deal with disputes under agreements in ways that avoid the need to invoke the jurisdiction of a court?
- Where ILUAs are being varied, particularly long-term agreements, in what circumstances would the parties need to apply to the Registrar for registration of the changes?
- How does one determine from time to time who is bound by a long-term ILUA which might be effective over a number of generations of native title holders?
- How do we ensure that appropriate training and resources are provided to prescribed bodies corporate who hold native title?

Most of these and other 'second generation' issues can be addressed under the current Act. It remains to be seen whether significant amendments to the Act become desirable or necessary.

Just as parties and institutions have developed and refined ways of dealing with the processing and resolution of claimant applications, future act applications and agreement-making by addressing practical issues as they arise, new challenges will be met as the consequences of native title determinations and agreements are worked out.

It seems that the Tribunal will have a limited direct role in resolving some of the emerging issues.

As a general rule, there is no direct legislative provision for the National Native Title Tribunal to assist parties to resolve disputes under their ILUA. In the absence of an express power, the Tribunal arguably lacks an implied power to mediate or assist with any dispute arising once an ILUA becomes effective.

By contrast, the Land and Resources Tribunal of Queensland (LRT) has express power to be involved in resolving disputes under an indigenous land use agreement in certain circumstances. The *Land and Resources Tribunal Act 1999* (Qld) provides that the LRT has jurisdiction to take

specified action if there is a registered ILUA to which the State is a party, and the agreement provides for a matter arising under the ILUA to be referred to the LRT for such action.

The Tribunal may assist, however, by providing information about meeting some of the challenges ahead. In October 2000, a monograph titled *The design of native title corporations: A legal and anthropological analysis* was published. The book was commissioned by the Tribunal and was written by Christos Mantziaris and David Martin. It followed the publication in the previous year of the *Guide to the design of native title corporations* written by them. These publications are aimed at assisting people set up appropriate bodies to hold native title or act as agents of the native title holders.

Resource use will directly influence agreements

The pace of the resolution of native title issues is influenced by the 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, and the State and Territory governments. The Commonwealth directly or indirectly funds many of the parties.

Since the later amendments to the Act commenced to operate on 1 July 2000, the primary (if not sole) source of funding for native title claim groups is the relevant native title representative body. Increasing attention is given to the demonstrably limited resources of native title representative bodies to perform their functions under the Act, including their functions in relation to claimant applications.

It is increasingly apparent that, at each stage in the process, significant issues arise about the financial and other resources available to the parties and the institutions that facilitate the resolution of native title issues.

Relevant resources can be categorised principally as:

- sufficient *finance* to enable, for example, negotiation and authorisation meetings to occur, advice to be obtained, and the text of any agreement to be prepared;
- adequate *expert advice* (possibly including legal, land management, economic or anthropological advice) *and other assistance* to each party and institution; and
- adequate *time* to negotiate an agreement and have all the necessary steps taken so that it can be given full legal effect, or to prepare for trial.

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.

For the native title scheme to deliver outcomes for all people it is necessary that there be a reasonable relativity of resources between institutions.

Government statements about the 2001–2002 Federal Budget highlight not only increased funding for the native title system over the four years to 2004–2005, but also the Federal Government's decision that coordinated resourcing of the entire system is essential to enable each element of the system to cope with the expected workloads. The Government recognised that the component parts of the system are interdependent, so that the capacity for participation and the level of resources available for implementation of native title processes in one area necessarily have implications for the effective operation of the whole native title system.

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

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 (such as the case management approach adopted by the Federal Court). 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.

Institutions and parties need to think and plan strategically. We need to keep talking to each other so that our activities, if not coordinated, are at least not at crossed purposes, with consequent waste of the limited available resources.

The Federal Court will continue to affect, if not drive, native title processes

The Federal Court is increasingly setting the timeframes for the mediation and litigation of native title applications. Orders of that type may also affect the capacity of parties to engage in other native title activities, such as negotiating ILUAs and future act agreements.

The setting of matters down for trial has significant resource implications for the representative body acting on behalf of the applicants, as well as for parties who may be common respondents to other matters (such as a State or Territory government). The preparation and presentation of a court case draw substantially on resources which (in some instances) would have been directed to attempting a mediated outcome, and will necessarily limit the resources available to mediate other claimant applications in the region as well as to undertake future act and ILUA negotiations.

Thus, although the Court is only directly guiding a limited number of matters with a limited range of outcomes, the case management practices of the Court can profoundly influence a range of other activities or potential activities. The extent of that influence supports the ongoing need for communications between key institutions and stakeholders and the desirability of the strategic listing and management of cases before the Federal Court.

There will be an increased focus on information management

As more information is produced for various native title purposes there will be increased attention on how access to and the use of that information is managed. Issues of information management arise, for example, in relation to:

- connection reports that are prepared for use in mediation, or experts' reports that are prepared for litigation;
- information about agreement-making and the contents of agreements; and
- information that is generated or collated for one purpose but which may (with other information) have regional or more general significance.

Connection reports and experts' reports

Last year's annual report included a discussion of the requirements of State and Territory governments for agreeing to determinations of native title and for entering into negotiations with applicants. The guidelines published by the Queensland and Western Australian Governments were summarised.

As noted earlier in this overview, the new Western Australian Government has commissioned a review to develop a new set of principles to guide the Government's negotiations on native title determinations and agreements. Any significant change to the guidelines in that State is likely to influence the nature, pace and potential outcomes of the mediation process.

There are ongoing discussions nationally about:

- what information should be included in connection reports prepared by applicants for the purpose of mediation;
- who (in addition to the State or Territory government to whom a connection report is provided) should have access to some or all of the information;
- what restrictions should be imposed on the use to which such information may be put; and
- what (if any) use can be made of that information if a mediated agreement is not reached.

During the reporting period, the Federal Court made decisions about the production and use of information on which anthropologists relied in preparing expert reports for native title litigation.

Issues about access to and use of sensitive information about Indigenous Australians are not new. They have been considered under land rights and heritage protection legislation. But they are emerging with some regularity in the mediation and litigation of native title applications. Settled practices may assist in the smoother resolution of such applications.

Agreements

Although more agreements are being negotiated about land access and use issues (including exploration and mining), many agreements are not publicly available. The Register of Indigenous Land Use Agreements, for example, needs only to contain limited information about registered agreements and it is usually for the parties to the agreement to determine whether some or all of the terms of the agreement are in the public domain.

Parties to an agreement may have different reasons for keeping at least parts of the agreement confidential. Some agreements are marked commercial-in-confidence. The project proponents, for example, may not want the amounts paid under the agreement or other benefits to the native title parties (such as the provision of employment, training or infrastructure) to be made known to the proponents' competitors or to be characterised as setting a standard against which other agreements might be negotiated.

Although Indigenous groups may be willing to make concessions to secure a particular agreement, they might not want the extent of those concessions to be known to other groups, and may not want the concessions to be characterised as having precedent value for subsequent negotiations with other groups.

Regional significance of information

As more claimant applications and future act matters are resolved, and as more agreements are made, there will be increased potential for disparate documents prepared for specific purposes to be considered together for regional or more general purposes.

So, for example, connection reports and experts' reports prepared in relation to neighbouring claimant applications, if read together, may provide a useful regional resource which might be used in assessing other applications or in ascertaining which people ought to be involved in certain types of negotiations.

A range of agreements, each of which was struck for a specific purpose, may together provide a basis for determining best practice for resolving issues in a region or in relation to particular types of activity.

For the reasons just noted, however, there are issues about who should have access to documents of those types and the use to which such information may be put.

Basic information

Although there is an increasing recognition of native title, 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. In the reporting period, the Tribunal produced a CD-ROM and videotape titled *Native title in brief*, and produced targeted, plain English fact sheets on 29 topics.

The Tribunal also published question and answer booklets in relation to recent consent determinations of native title towards the end of the reporting period. The booklets provided information on native title and the particular application, including the types of agreements that were entered into as part of the resolution of the application. The text of these booklets is on the Tribunal's web site.

Early in 2001, the Tribunal published a *Guide to future act decisions made under the Commonwealth right to negotiate scheme*. Deputy President Sumner compiled the guide with the assistance of Legal Services staff. It

summarises the right to negotiate provisions of the Act and brings together, for the first time, extracts from the reasons for decisions of the Federal Court and the Tribunal on:

- expedited procedure objection applications;
- negotiation in good faith;
- future act determination;
- jurisdictional issues; and
- procedural and other issues.

The future act regime under the Act is a complex and developing area of the law. The guide in printed form was current up to 31 January 2001. To ensure its currency, updates are available on the Tribunal's web site.

Land planning, land access and land use laws may need to be revised or refined

State and Territory legislation increasingly includes references to native title and sets out the relationship between the Act and such legislation. That is not surprising, given that native title is recognised and protected by the Act, native title is not able to be extinguished contrary to the Act, and the Act binds the Crown in right of the Commonwealth, of each of the States and of each of the Territories.

References to native title and the Act are made in legislation dealing with such matters as land use and land management generally, the acquisition of land, the management of national parks and other protected areas, forests, marine parks, recreational greenways, access to neighbouring land, local government, mineral exploration and mining, petroleum, pipelines, electricity, environmental protection and nature conservation, roads, public works, and the sugar and fishing industries.

As more ILUAs are negotiated and registered under the Act, the significance of such agreements is being expressly recognised in legislation, particularly in New South Wales and Queensland. That legislation deals with such matters as land acquisition, fossicking, mining, petroleum, pipelines, public works, local government and the sugar industry.

The resolution of native title issues will not, of itself, resolve other social issues

There will continue to be a debate about how to address and resolve broader social justice issues in relation to land and waters, especially for those groups in parts of Australia where native title is not legally recognised and where native title law offers little or no benefit. The debate will be influenced by decisions of the High Court about where native title

exists (land and sea), what native title is, and where native title has been extinguished.

However the native title processes operate in the future, there will be an increased role for bodies such as the Indigenous Land Corporation in dealing with other land-related matters.

There will be an ongoing debate for other mechanisms to deal with these broader issues, including consideration of proposals for a treaty or treaties.

International legal developments will continue to be relevant to native title law and practice

The common law recognition of native title in Australia in the *Mabo* (No. 2) judgment was influenced by developments in international law, as well as by the state of domestic law in other countries where aboriginal title had been recognised.

The Federal Parliament enacted the *Racial Discrimination Act 1975* in reliance on the power to make laws with respect to external affairs. The Act gives effect to the International Convention on the Elimination of All Forms of Racial Discrimination. The Native Title Act refers to both the International Convention and the *Racial Discrimination Act 1975*.

In recent years, reference to the International Convention has been made as a basis for critically assessing some provisions of the Native Title Act. Australia reports every two years to the Committee on the Elimination of Racial Discrimination and that Committee has criticised aspects of the legislation. The issue was also the subject of a special inquiry and report by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, and is analysed in reports by the Aboriginal and Torres Strait Islander Social Justice Commissioner under the Act.

These matters are mentioned, not to enter into that debate but to acknowledge that the debate is taking place and that Australia's performance in relation to Indigenous land issues is examined within formal international processes in which Australia is involved.

Conclusion

The volume and variety of native title work are substantial. The challenges are many. The resolution of native title issues involves not only those who are parties to particular proceedings and the institutions which administer the law. The broader Australian community also has a stake in having these issues sorted out on the ground.

The Tribunal is involved in a wide range of those issues. We strive to achieve an Australian community that recognises and respects the relationship between native title and other interests in land and waters. Our primary role is to assist people to resolve native title issues. We try to do that in ways that are impartial, practical, innovative and fair.

This annual report shows how the Tribunal operated in the past year, and looks to the future as we work towards achieving more outcomes that are fair and durable.

The people of Dauan, Mabuiag, Poruma (Coconut), Warraber, Masig and Damuth Islands celebrate the recognition of their native title rights, 7 July 2000.



TRIBUNAL OVERVIEW



Role and function

The *Native Title Act 1993* established the Tribunal and sets out its functions and powers. The *Strategic Plan 2000–2002* (see p.126) defines the Tribunal's main role as assisting people to resolve native title issues. This is done through agreement-making. The Tribunal also arbitrates in relation to some types of proposed future dealings in land (future acts).

The Act requires the Tribunal to carry 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 native title determination applications (claimant and non-claimant applications);
- mediating compensation applications;
- reporting to the Federal Court of Australia on the progress of mediation;
- assisting people to negotiate ILUAs, 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 undertaken and, if so, whether any conditions apply.

Under the Act, the President is responsible for managing the administrative affairs of the Tribunal, with the assistance of the Native Title Registrar. The Act gives the Registrar some specific responsibilities, including:

- 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; and
- 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.

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. He or she may delegate all or any of his or her powers under the Act to Tribunal employees, and may also engage consultants.

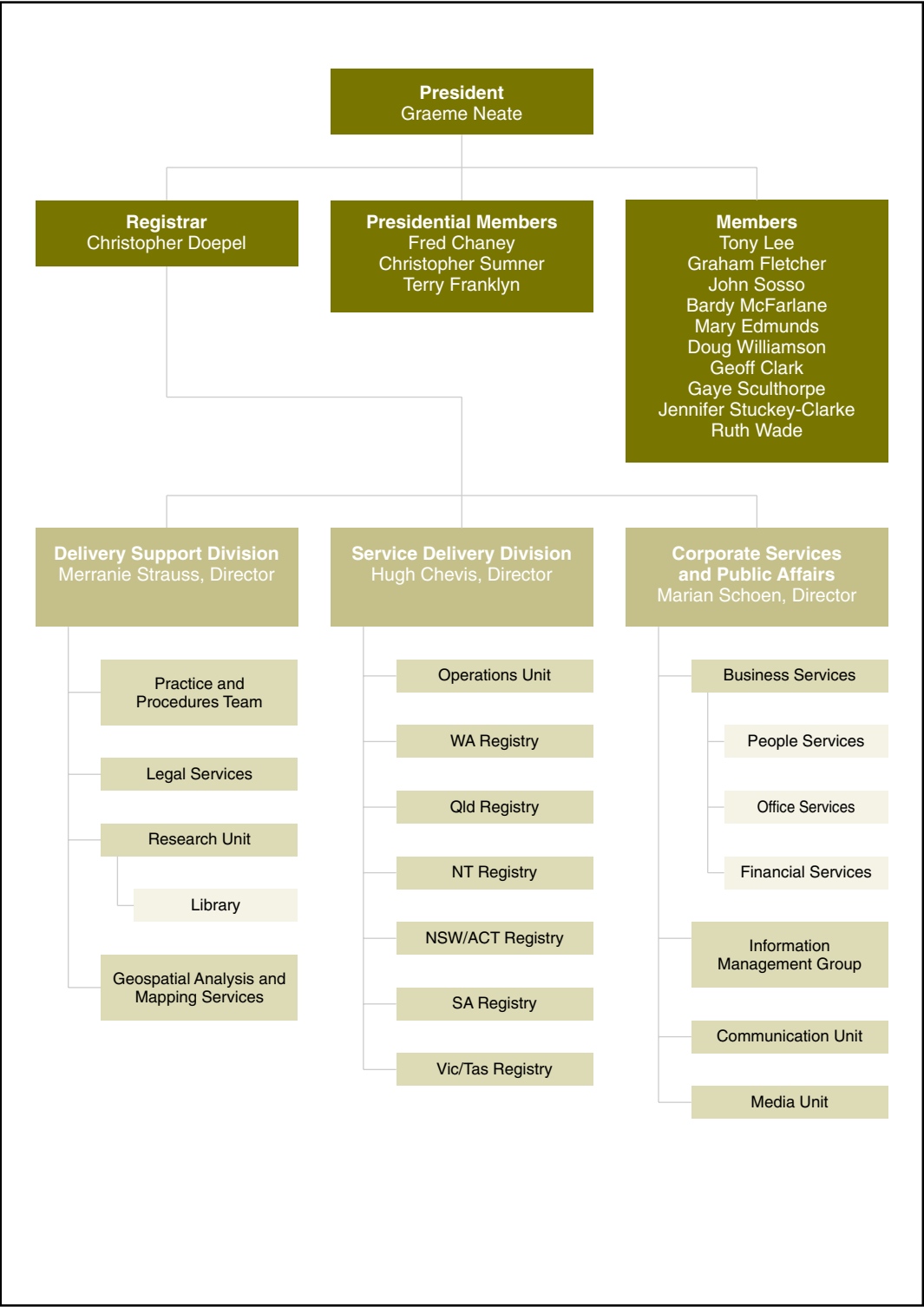
Applications for a native title determination (claimant and non-claimant applications) and compensation applications are filed in and managed by the Federal Court. Although the Court oversees the progress of these applications, the Tribunal performs various statutory functions as each application proceeds to resolution (for more information see 'Output 1.2.2 — Claimant, non-claimant and compensation' p.66).

Future act applications (applications for a determination whether a future act can be done, objections to the expedited procedure and applications for mediation in relation to a proposed future act) are lodged with and managed by the Tribunal (for more information see p.69).

Organisational structure

No changes were made to the organisational structure of the Tribunal during the reporting period (see Figure 2, p.38).

Figure 2 National Native Title Tribunal organisational structure



Outcome and output structure

The Tribunal forms part of 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.

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 retained without change its single outcome — the recognition and protection of native title. To deliver its outcome the Tribunal reports under four output groups, which were changed for this reporting period in order to better account for the broad range of services delivered under the amended Act. The output groups are:

- registrations;
- agreement-making;
- arbitration; and
- assistance, notification and reporting.

Figure 3 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’, commencing on page 41.

REPORT ON PERFORMANCE



Financial performance

The Tribunal's actual expenditure for the 2000–2001 financial year was \$25.334m. The estimated expenditure detailed in the Attorney-General's Portfolio Additional Estimates was not realised due to lower than expected activity levels. This, together with an additional sum of \$0.138m for accumulated surplus and 'services received free of charge', resulted in an increase in the Tribunal's equity of \$1.942m.

In order for the Tribunal to attain the estimated outputs for 2000–2001, the Tribunal:

- established organisational infrastructures to meet the unrealised demand in Queensland and the Northern Territory; and
- undertook activities that involved substantial resources, where outputs have not yet been realised.

Details regarding the Tribunal's performance against outputs are discussed in the following sections.

Table 1 identifies the cost of each output group and output during the reporting period. The table shows the full-year budget including the appropriation of \$3.7m received in the additional estimates for the expected increased workload in the Northern Territory and Queensland.

Table 1 Total resources for outcome

	(1) Full-year budget, including additional estimates (PAEs) 2000–2001 \$'000	(2) Actual 2000–2001 \$'000	Variation (column 2 minus column 1) 2000–2001 \$'000	Budget prior to additional estimates 2000–2001 (\$'000)
Departmental appropriations				
Output group 1.1 — Registrations				
1.1.1 — Claimant applications	3,086	2,509	-577	3,957
1.1.2 — Native title determinations	279	253	-26	45
1.1.3 — Indigenous land use agreement applications	702	1004	302	899
Subtotal output group 1.1	4,067	3,766	-301	4,901
Output group 1.2 — Agreement-making				
1.2.1 — Indigenous land use	3,463	2,008	-1,455	735
1.2.2 — Claimant, non-claimant and compensation	6,938	7,780	842	6,302
1.2.3 — Future act	1,046	1,004	-42	1,245
Subtotal output group 1.2	11,447	10,792	-655	8,282
Output group 1.3 — Arbitration				
1.3.1 — Future act determinations	1,006	753	-253	818
1.3.2 — Objections to the expedited procedure	1,499	2,008	509	2,663
Subtotal output group 1.3	2,505	2,761	256	3,481
Output group 1.4 — Assistance, notification and reporting				
1.4.1 — Assistance to applicants and other persons	3,536	4,768	1,232	1,737
1.4.2 — Notification	4,282	2,259	-2,023	2,169
1.4.3 — Reports to the Federal Court	1,076	752	-324	1,613
Subtotal output group 1.4	8,894	7,779	-1,115	5,519
Total revenue from government (appropriations) contributing to price of departmental outputs	26,913	25,098	-1,815	22,183 or, 99.0%
Revenue from other sources				
Output 1.1.1 — Claimant applications	26	23	-3	48
Output 1.1.2 — Native title determinations	—	—	—	—
Output 1.1.3 — Indigenous land use agreement applications	6	10	4	11
Output 1.2.1 — Indigenous land use	29	19	-10	9
Output 1.2.2 — Claimant, non-claimant and compensation	59	74	15	75
Output 1.2.3 — Future act	9	10	1	15
Output 1.3.1 — Future act determinations	8	7	-1	10
Output 1.3.2 — Objections to the expedited procedure	13	19	6	32
Output 1.4.1 — Assistance to applicants and other persons	30	45	15	21
Output 1.4.2 — Notification	36	22	-14	29
Output 1.4.3 — Reports to the Federal Court	9	7	-2	19
Total revenue from other sources	225	236	11	267
Total price of departmental outputs <i>(Total revenue from government and other sources)</i>	27,138	25,334	-1,804	22 450
Total estimated resourcing for outcome 1 <i>(Total price of outputs and administered expenses)</i>	27,138	25,334	-1,804	22 450
Average staffing level (number)	220	213	-7	208

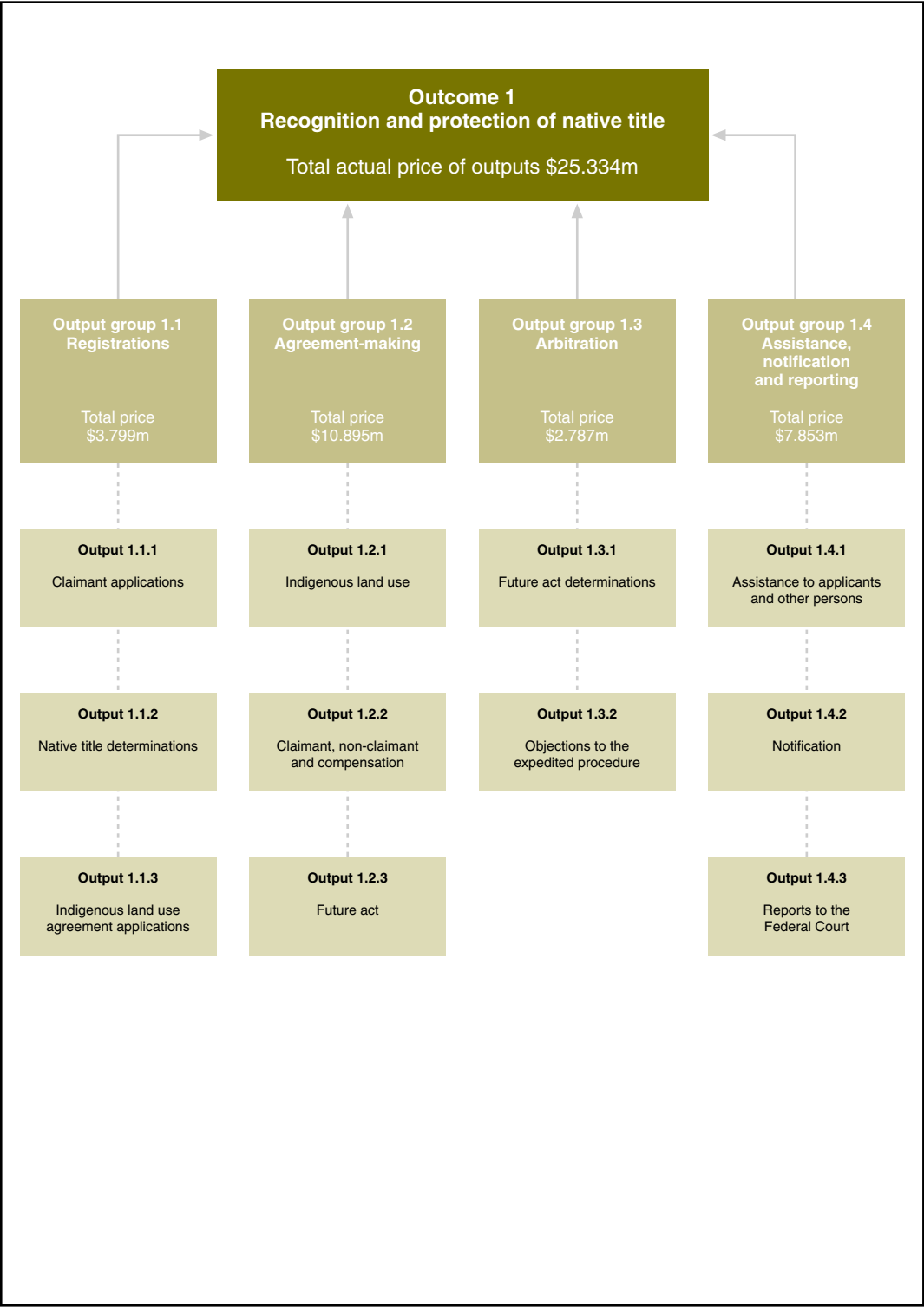
Outcome and output performance

The Tribunal has only one outcome: the recognition and protection of native title. The four output groups — 1.1 Registrations, 1.2 Agreement-making, 1.3 Arbitration and 1.4 Assistance, notification and reporting — are numbered commencing with the numeral 1, which refers to the single outcome. The Tribunal's performance against each output is measured according to quantity, quality and resource usage.

This report includes for every output a performance summary, the Tribunal's 'performance at a glance'. These performance summaries show target performance and what was actually achieved (result). They also give summarised accounts of the main influences affecting the results. The fuller accounts are contained in the text of the performance report.

Resource usage is expressed as a unit cost and any variation to that cost is calculated retrospectively according to the other performance measures; hence the achieved unit costs show clearly the Tribunal's expenditure during the reporting period, rather than a theoretical adherence to what the output should have cost per unit.

Figure 3 Outcome and output framework for 2000–2001



Output group 1.1 — Registrations

In its registration activities the Tribunal delivers its outcome by:

- the application of registration procedures to claimant applications and to applications to register ILUAs; and
- the upkeep of the three public registers required by the Act to record information relating to native title: the Register of Native Title Claims, the National Native Title Register, and the Register of Indigenous Land Use Agreements. The Tribunal strives to record the facts diligently, consistently and accurately, and facilitates public access to the information held on the registers.

The Native Title Registrar is the custodian of the three registers (for more information see ‘Information management’, p.113).

Output group 1.1 consists of the registrations of:

- claimant applications;
- native title determinations; and
- ILUAs.

Output 1.1.1 — Claimant applications

Description of output

The registration of a claimant application is the placement on the Register of Native Title Claims of an application made by Indigenous Australians (claimants) who are seeking a determination that native title exists over an area of land or waters. The application is made to the Federal Court by persons who are authorised on behalf of the native title claim group.

Claimants sometimes have an immediate concern for lodging a claimant application — to obtain the right to negotiate about certain future acts involving, for example, the grant of a mining lease in the area in which they have an interest, or involving the compulsory acquisition of land by government for grant to a third party.

Where a State or Territory government publishes a notice to allow a future act to go ahead in an area covered by a claimant application, the Registrar must endeavour to apply the registration test to the claimant application within four months from the date specified in the notice. Very often only one month is left in which the Registrar can apply the test, as native title claimants can take up to three months from the notification date to lodge their application in response. Native title claimants may also gain procedural rights under State or Territory legislation if they become registered within the timeframe set by that legislation.

For a native title claimant application to become registered, the application must satisfy all of the conditions of the stringent registration test. The Registrar has the statutory function of applying the test to all native title claimant applications lodged since the amendments to the Act were enacted on 30 September 1998 (the ‘new Act’) 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.

Summaries of registration test decisions are 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 registered 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 claimant application is determined.

Reduced registration test workload

In the period covered by this report 153 registration test decisions were made, about half the number of decisions made in the previous year. Of these, 47 claimant applications tested were made under the old Act and 106 were made after the amendments, which introduced the registration test. It is relevant to note that:

- of the applications tested during the year, 137 (90 per cent) satisfied all the conditions of the registration test;
- only 16 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; and
- of the 16 applications that failed the registration test, only four did so after an abbreviated procedure was applied because the applicants did not provide the Registrar with additional information.

At 30 June 2001, 572 applications had been tested since 30 September 1998. About 63 per cent of those applications were lodged with the Tribunal before the 1998 amendments to the Act. The backlog of old Act applications had almost been cleared and the focus in the past year was on testing newer applications.

When claimant applications are amended they need to be registration tested again. Twenty-one claimant applications were tested for the second or third time in the reporting period.

The registration test decisions made in the 33 months since the 1998 amendments demonstrate, in summary, that:

- of the 359 applications lodged with the Tribunal under the old Act and to which the registration test has been applied, 182 (or 51 per cent) satisfied all the conditions;
- of the 213 applications lodged with the Federal Court under the new Act and to which the registration test was applied, 94 per cent satisfied all the conditions; and
- of the applications which did not satisfy all the conditions of the registration test, 132 (or 69 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 were necessary before any application made under the old Act could satisfy every condition of the registration test.

At 30 June 2001, 15 applications made under the old Act and 25 made under the new Act remained to be tested for the first time. 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 each registration test.

Performance

The performance measures for the registrations of claimant applications are:

- quantity — the number processed for registration;
- quality — 70 per cent of registration test decisions made within two months of receipt of the application; and
- resource usage per registration.

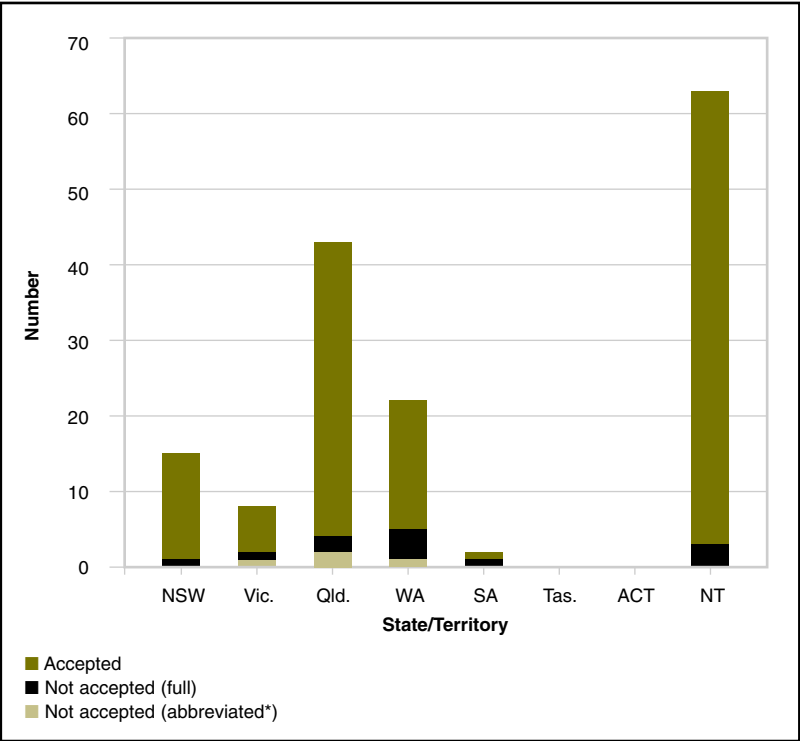
Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	255	153	Conditions in the Northern Territory
Quality	70% decided within 2 months of receipt	Exceeded — 89.7% processed within 2 months at an average of 1.5 months	Tribunal processes now well established
Resource usage	Unit cost per registration test — \$12,205	Unit cost was higher — \$16,558	Set-up costs, particularly in the Northern Territory

Number of claimant applications processed

Figure 4 shows a State and Territory breakdown of numbers of claimant applications processed for registration, resulting in 153 registration decisions. In September 2000 the predicted number was revised from 150 to 255 in response to changed circumstances for processing future act applications in the Northern Territory and Queensland during the reporting period. The resulting increase in future act applications advertised was expected to generate new claimant applications in response.

Figure 4 Number of claimant application registration test decisions by State and 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. Note that in the Northern Territory there were no applications processed using the abbreviated procedure.

Following the Northern Territory Government's decision to use the Commonwealth future act scheme to process its backlog of mineral tenement applications, the number of expected future act notices for the year was 400, at a rate of 16 per fortnight. That rate did occur, but only in the second half of the reporting period. In Queensland the establishment

of an alternative body to deal with exploration, prospecting and mining, which would process the backlog of tenement applications there, resulted in an estimation of up to 130 mining leases and exploration notices per month. In turn, these were expected to generate new claimant applications.

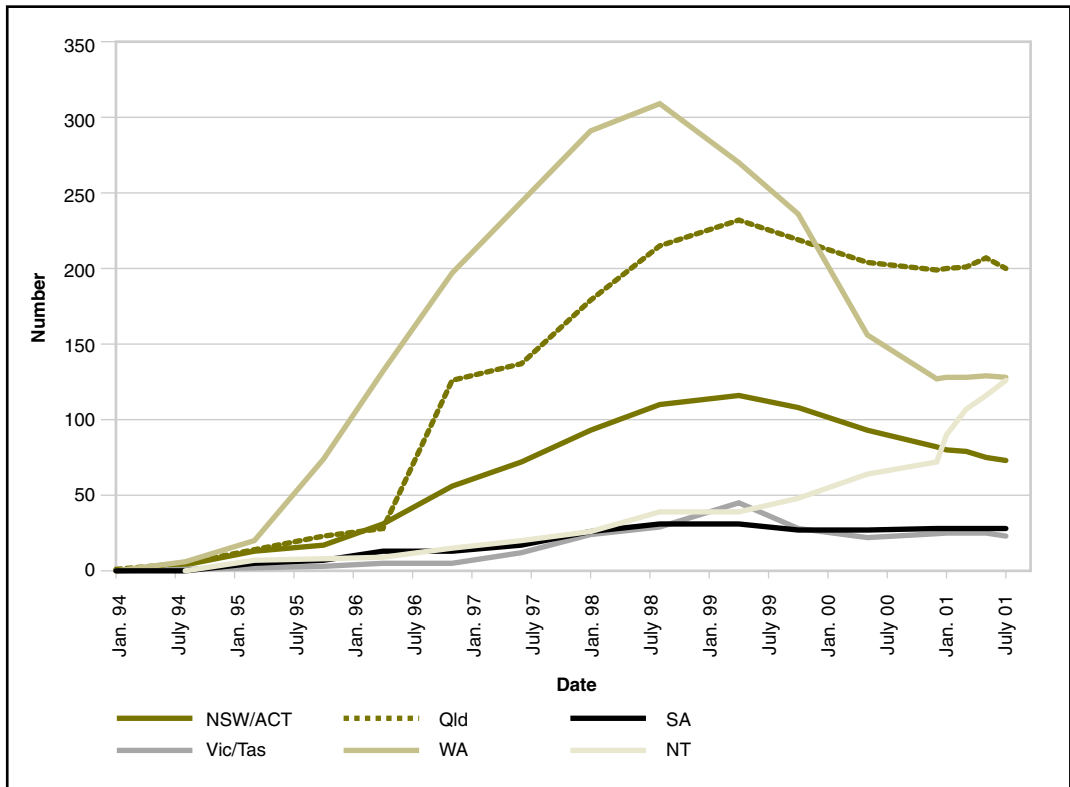
The increase in registrations of claimant applications did not occur as expected for the following reasons:

- Both the Queensland and Northern Territory Governments did not start processing their accumulated tenement applications as soon as originally expected. In Queensland, the work of clearing the backlog of approximately 1,400 tenement applications was not started during the reporting period (as announced on 24 October 2000) because the State Government was investigating the establishment of a framework agreement for 1,200 of those applications. The increase in new claimant applications was therefore expected in the next reporting period.
- Native title representative bodies adopted different strategic responses to Commonwealth or alternative State provision notices. In the Northern Territory, for example, the Northern Land Council said that it would lodge a single response (claim and objection) for each notice issued, yet during the reporting period the Northern Land Council often used one claimant application to cover existing and future notices. The Central Land Council lodged very few claims or objections to the expedited procedure.
- Some applications, particularly in Western Australia, were due to be registration tested but were combined with other applications beforehand. The consideration of a combined application usually requires additional time and resources for the same recorded output — that is, one decision.

The numbers of new claims lodged continued to rise in Queensland, while the numbers of active claimant applications in Western Australia, New South Wales, South Australia and Victoria/Tasmania seemed to have peaked. In the Northern Territory there was a significant increase in the number of new claimant applications during the year. Most were made in response to future act notices in areas where no applications had been lodged previously. These numbers are likely to increase steadily (see Figure 5, p.51) despite the initial slower-than-expected rate during the reporting period.

At 30 June 2001, there were 576 claimant applications at some stage between lodgement and resolution. In the reporting period, 67 claimant applications were discontinued or combined with other applications, and 117 new claimant applications were lodged.

Figure 5 Active native title claimant applications 1994–2001



Processing of claimant applications in Western Australia, as in other States and Territories, continued to be affected by two factors, which required the reapplication of the registration test to previously tested applications:

- Claims were amended in response to Federal Court decisions or in order to modify claim groups or areas.
- Applications were combined as a result of the resolution of disputes between claimants or recognition of other groups. There were eight single registration test decisions which dealt with 32 pre-combination applications.

Although these factors reduced the overall number of applications, a continuing workload was maintained during the process of that reduction.

Timeliness of decisions

The Tribunal aims to process 70 per cent of applications through the registration test within two months of receipt of the applications. This target was exceeded by 19.7 per cent. Decisions that were not made within the timeframe were generally delayed because the applications were made

by claimants (for example, in Western Australia and New South Wales) who were not represented by a native title representative body. In these cases, the standard of the information in the applications was poor, and usually required clarification or supplementation.

One decision was made outside the future act statutory deadline of four months from the date stipulated in the notice in Western Australia, and operational procedures were tightened up in response to that delayed decision.

The Tribunal operated within tight timeframes to test claimant applications that were lodged in response to actions taken to clear the backlogs of future act applications in the Northern Territory and Queensland. Often a registration test decision was required within four weeks of receipt of the application from the court. In these two regions all the applications subject to a future act statutory timeframe were processed through the registration test within time.

This timeliness of decision-making in the Northern Territory was a result of extra resources being allocated to the Darwin registry, the presence of a delegate in Adelaide to test Northern Territory applications, and the increased geospatial capacity of the Tribunal and other agencies. The regularity of the claim boundaries, which were defined by one or more proposed mining tenements, also aided the Northern Land Council, which represented almost all applicants lodging claims in response to future act notices.

In Queensland the timeliness was helped by an increase in resources to the Cairns and Brisbane offices, together with quicker responses to the future act deadlines by the claimants. In a bid to secure as much time as possible for registration testing, at least one native title representative body in Queensland was submitting applications to the Tribunal at the same time the application was filed in the Federal Court.

Resource usage

The national average unit cost per registration test was \$16,558. A total of 10 per cent of budget was spent on this output, including set-up costs (see Table 1, p.43).

Most of the Northern Territory budget and a majority of the hours worked by staff in that registry were related to this output. They were spent in establishing new premises, recruiting staff to administer the registration procedures, and in anticipation of the future act work to flow from the registration testing conducted during the reporting period. In Queensland the registration test work was expected to increase in response to the State backlog of 1,400 mining and related tenements. By the end of the financial year, plans were in place to employ more registration test officers in the Cairns office and Brisbane registry to meet the anticipated additional workload.

Output 1.1.2 — Native title determinations

Description of output

When a determination that native title does or does not exist is made by an Australian court or other recognised body, the details of the determination are sent by the court to the Tribunal in writing to be recorded on the National Native Title Register. This process is called the registration of a native title determination, and, of all the outputs, this is the one that relates most literally to the Tribunal’s outcome of the recognition and protection of native title. The security of the register is of paramount importance, as is its accuracy.

The details of a determination recorded by the Registrar must include the date of the determination, information about the native title rights and interests, who holds the native title, and where it exists (for more information see Table 2, p.55 and Figure 6, p.58).

During the year the Tribunal commenced the development of the National Native Title Register as a stand-alone register, separate from its case management system. This will facilitate access to it by the public once the online strategy is in place (for more information see ‘Information management’, p.113) and allow extracts of the register to be more easily produced.

Performance

The performance measures for the registrations of native title determinations are:

- quantity — the number of determinations registered;
- quality — registrations are to be registered within two days of receipt from the Federal Court; and
- resource usage per registration.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	26	18	Federal Court Drafting of agreements
Quality	Registration within 2 days of receipt from the Federal Court	Achieved	Tribunal processes efficient
Resource usage	Unit cost per registration of a determination — \$10,727	Unit cost was higher — \$14,055	Development of the register



Members of the Tjuntjuntjara community in the Great Victoria Desert celebrate after Chief Justice Michael Black signed the consent determination of the Spinifex claim.

Number of determinations registered

Although the number of determinations made is not a direct performance measure of the Tribunal, the number of registrations of details is. Thirteen consent determinations and five litigated determinations were registered during 2000–2001. This total of 18 is an increase of 15 from the previous reporting period (see Figure 1, p.7). During 2000 the estimated number of registered determinations was revised to 26, consistent with the Federal Court’s estimated determination rate. A number of applications were in draft or conditional form at the close of the reporting period and two determinations (including the Bar-Barrum people’s), although made within the period, were not received from the Court in time to be registered (for more information about Federal Court processes see ‘Target timeframe for determining native title applications’, p.15 in the ‘President’s overview’).

The Tribunal registered several non-claimant determinations of native title in New South Wales during the period. These determinations were made because the New South Wales *Aboriginal Land Rights Act 1983* requires Aboriginal land councils to have an ‘approved determination of native title’ before they can proceed with the freehold sale or lease of particular land under their ownership.

This will be an increasing trend in New South Wales and is likely to result in a significant number of determinations that native title does not exist in particular areas. The Federal Court is treating these as procedural determinations, not requiring evidence of extinguishment. The Court relies instead on the procedural notice period having expired and no person claiming native title coming forward.

Table 2 Registered determinations of native title

Claimant applications

Claim name	Location	Date of court decision	Process	Number of claims affected in whole or part by the determination
Dauan People <i>Dauan People v Q'land</i> [2000] FCA 1064	Dauan Island, Torres Strait, Qld	6 July 2000	Consent determination	1
Gumulgal Mabuiag People <i>Mabuiag People v Q'land</i> [2000] FCA 1065	Mabuiag, Aipus, Widul, Warukuikul Talab & Talab (Florence) Islands and other islets, Torres Strait, Qld	6 July 2000	Consent determination	1
Warraber People <i>Warraber People v Q'land</i> [2000] FCA 1066	Warraber (Sue), Ulu (Saddle), Bara & Miggi-Maituin (Meggi-Maituine) Islands and other islets, Torres Strait, Qld	7 July 2000	Consent determination	1
Porumalgal Poruma People <i>Poruma People v Q'land</i> [2000] FCA 1066	Poruma (Coconut Island), Torres Strait, Qld	7 July 2000	Consent determination	1
Masig People Damuth People <i>Masig People v Q'land</i> [2000] FCA 1067 <i>Damuth People v Q'land</i> [2000] FCA 1067	Masig (Yorke), Umaga (Keats), Igaba (Marsden), Mauar (Rennel) & Bak (Bourke) Islands and other islets, Torres Strait, Qld	7 July 2000	Consent determination	2
Wandarang, Alawa, Marra & Ngalakan Peoples <i>Wandarang, Alawa, Marra & Ngalakan Peoples v NT</i> [2000] FCA 923	St Vidgeon's Station, Roper River, NT	25 July 2000	Litigated outcome	1
Wik and Wik-Way Peoples <i>Wik People v Q'land</i> [2000] FCA 1443	Western Cape York Peninsula, Qld	3 Oct. 2000	Consent determination	1

Table 2 Registered determinations of native title (cont.)

Claimant applications (cont.)

Claim name	Location	Date of court decision	Process	Number of claims affected in whole or part by the determination
Bodney <i>Bodney v Westralia Airports Corp Pty Ltd</i> [2000] FCA 1609	Perth Airport, Perth, WA	13 Nov. 2000	Litigated outcome	1
Spinifex People <i>Mark Anderson on behalf of the Spinifex People v WA</i> [2000] FCA 1717	Central Desert region, WA	28 Nov. 2000	Consent determination	1
Kaurareg People <i>Kaurareg People v Q'land</i> [2001] FCA 657	Ngurupai (Horn Island), Torres Strait, Qld	23 May 2001	Consent determination	1
Kaurareg People <i>Kaurareg People v Q'land</i> [2001] FCA 657	Murulag #1 (Prince of Wales Island East), Torres Strait, Qld	23 May 2001	Consent determination	1
Kaurareg People <i>Kaurareg People v Q'land</i> [2001] FCA 657	Zuna (Entrance Island), Torres Strait, Qld	23 May 2001	Consent determination	1
Kaurareg People <i>Kaurareg People v Q'land</i> [2001] FCA 657	Murulag #2 (Prince of Wales Island West), Torres Strait, Qld	23 May 2001	Consent determination	1
Kaurareg People <i>Kaurareg People v Q'land</i> [2001] FCA 657	Mipa (Pipa Islet or Turtle Island), Tarilag (Packer Island), Yeta (Port Lihou Islands) & Damaralag (Dumuralug Islet), Torres Strait, Qld	23 May 2001	Consent determination	1
Meriam people <i>Andrew Passi on behalf of the Meriam People v Q'land</i> [2001] FCA 697	Waier & Dauar Islands (Murray Islands), Torres Strait, Qld	14 June 2001	Consent determination	1

FCA: Federal Court of Australia judgment number

Table 2 Registered determinations of native title (cont.)

Non-claimant applications

Claim name	Location	Date of court decision	Process	Number of claims affected in whole or part by the determination
Darkinjung Local Aboriginal Land Council <i>Darkinjung Local Aboriginal Land Council v NSW Aboriginal Land Council</i> [2001] FC matter no. 6023/99	Kincumber, near Gosford, NSW	11 Oct. 2000	Unopposed	1
Metropolitan Local Aboriginal Land Council <i>Metropolitan Local Aboriginal Land Council</i> [2001] FCA 605	Forestville, NSW	23 May 2001	Unopposed	1
Deniliquin Local Aboriginal Land Council <i>Deniliquin Local Aboriginal Land Council</i> [2001] FCA 657	Deniliquin, NSW	23 May 2001	Unopposed	1

FCA: Federal Court of Australia judgment number

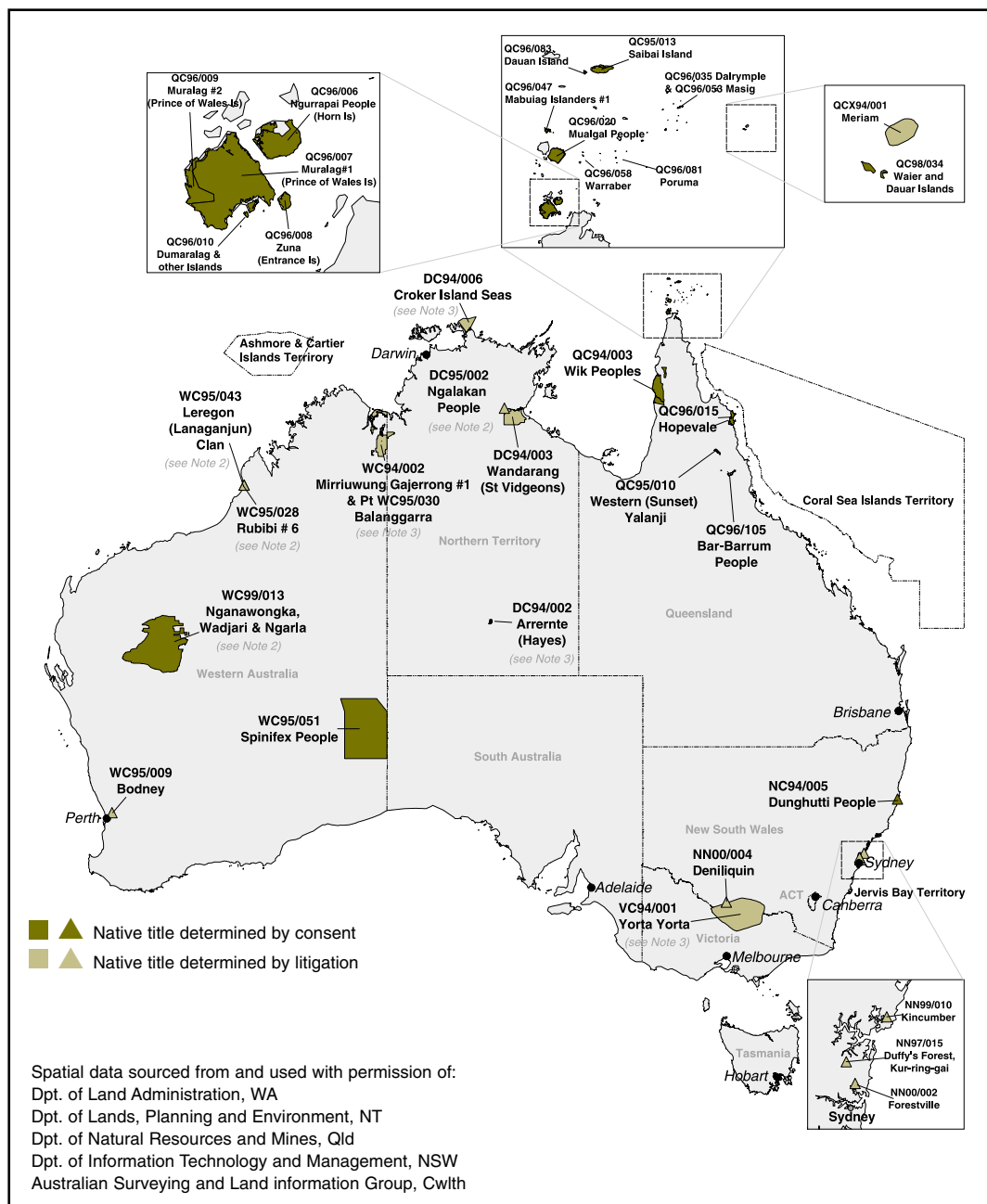
Timeliness of registrations

The Tribunal aims to register the details of a native title determination within two days of receipt from the Federal Court. During the reporting period all registrations of determinations received from the Federal Court were made within this timeframe.

Resource usage

The average unit cost per registration of a determination was \$14,055. The total spent on this output was 1.0 per cent of budget. The unit cost was higher than forecast, reflecting overhead costs associated with the infrastructural development of the register (for more information about the register see p.113).

Figure 6 Map showing external boundaries for areas over which native title has been determined as at 30 June 2001



* Note

1. Areas shown represent either the geographic extent of the application or those parts of an application determined.** They do not necessarily depict areas specifically determined.

** Note

2. Some determinations shown are considered draft, proposed or conditional.
3. Determinations subject to appeal are indicated.
4. Small areas are symbolised.

Output 1.1.3 — Indigenous land use agreement applications

Description of output

ILUAs are voluntary agreements made between people who hold, or claim to hold, native title in an area and people who have, or wish to gain, an interest in that area. Parties to the ILUA apply to the Native Title Registrar to register their agreement on the Register of Indigenous Land Use Agreements. Under the Act, each registered ILUA has effect as if it were a contract among the parties and binds all persons who hold native title for the area to the terms of the agreement whether or not they are parties to the agreement.

To process an ILUA application the Tribunal must:

- check for compliance against the registration requirements of the Act;
- notify individuals and organisations with an interest in the area of the proposed ILUA;
- mediate or inquire into any objections to registration.

During the course of the year, the Tribunal increased its efforts to assist applicants before lodgement, and this greatly facilitated registration for all concerned (for more information about ILUA agreement-making see p.63).

Performance

The performance measures for registrations of ILUAs are:

- quantity — the number of decisions made in processing ILUAs;
- quality — 70 per cent of applications to register an ILUA are decided within eight months of lodgement; and
- resource usage per application processed for registration.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	90	42	Agreement-making activity before lodgement is affected by many factors (see Output 1.2.1, p.63).
Quality	70% decided within 8 months of lodgement	Exceeded	Tribunal processes became more streamlined
Resource usage	Unit cost per ILUA application processed for registration — \$7,866	Unit cost was higher — \$24,128	

Number of decisions made in processing ILUAs

Table 3 shows the number of decisions made in assessment of ILUAs during the reporting period. The shortfall in the number of decisions made in processing ILUAs was caused by the conditions affecting agreement-making (for more information about ILUA agreement-making see p.63).

Table 3 Number of decisions made in assessment of ILUA applications

Type of decision	Total
To register	17
On objections to ILUAs	4
About compliance for notification	21
Total	42

Timeliness

Previously regarded by some parties as a ‘tick box’ compliance exercise, the process of registration does take time. Given the commercial aspects of many ILUAs, the Tribunal is very conscious of the need to streamline registrations where it can. The time estimated for registration is six-to-eight months after lodgement, including the statutory three-month notification period for area agreements and alternative procedure agreements that cannot be streamlined. If there are any objections to the registration of the ILUA, the time taken to settle the ILUA can be extended, which happened in New South Wales where, at the close of the reporting period, one agreement was still not registered.

Although the Tribunal exceeded its performance target for processing ILUA applications to registration within eight months of lodgement, these processes continue to be improved. Some delays during the year were experienced, which mainly resulted from errors in the description of the area by the parties, published in some notification advertisements (for further information see ‘Output 1.4.2 — Notification’, p.87). Errors of this kind meant that the notification period was extended.

During the year the Tribunal facilitated the ILUA registration process by:

- establishing the ILUA strategy group to coordinate all aspects of ILUA management within the Tribunal;
- providing a dedicated ILUA officer in Queensland to assist parties prior to lodgement of their ILUAs;
- providing parties with very clear, revised guidelines for the registration of each of the three types of ILUAs, and publishing these guidelines on the web site;
- increasing the number of Registrar’s delegates able to assess the ILUA applications; and

- increasing the number of geospatial staff members able to assess the accuracy of area descriptions contained in the draft agreements and provide maps for inclusion in the notification advertisements.

Resource usage

The unit cost per registration of an ILUA was \$24,128. A total of 4.0 per cent of budget was spent on this output. The higher unit cost reflects a sizeable commitment of resources during the reporting period to building the Tribunal’s capacity to deal with ILUA registrations and to providing pre-registration advice to parties contemplating lodging an agreement for registration. The Tribunal provided its staff with extensive training on the statutory basis for ILUAs and reworked and reissued its ILUA registration procedures.

In addition, the Tribunal prepared and issued guidelines on registration requirements for use by ILUA parties and provided an early compliance-checking service for parties. The early compliance-checking service was extended to many agreements under negotiation that had not been lodged for registration by the end of the reporting period.

The highest resource usage on the registration of ILUAs was in Queensland, where the majority of agreements were made during the year and where the ILUA work was increasing rapidly (see Table 4 for the proportion of ILUAs made in Queensland as compared with other States and Territories). Although it was expected that ILUA activity in Western Australia would also increase, only two were lodged there in the reporting period. In Victoria two ILUA applications previously stalled were reactivated, greatly aided by the improved technical directions from the Tribunal about what is required for registration. In South Australia one ILUA was being considered for registration at the close of the financial year. In the Northern Territory the expenditure on ILUAs related to exploration and mining was expected to increase as stakeholders became aware of the advantage of agreement-making over the future act processes for some developments.

Table 4 Number of ILUA applications registered by State and Territory

State or Territory	Total
New South Wales	-
Victoria	2
Queensland	12
Western Australia	-
South Australia	-
Tasmania	-
Australian Capital Territory	-
Northern Territory	3
Total	17

Output group 1.2 — Agreement-making

In order to deliver its outcome — the recognition and protection of native title — the Tribunal has agreement-making activities at the core of its *Strategic Plan 2000–2002* (see p.126). Agreement-making is defined as the work in achieving a result in the native title context that is reached with the active participation of two or more parties, and in which the Tribunal has assisted by way of mediation or other assistance.

The number of determinations of native title made by the Federal Court (see ‘President’s overview’, p.5) during 2000–2001 reflects the Tribunal’s work of this output group. In Queensland in particular, the agreement-making work of past years came to fruition during this reporting period. The increase in ILUA activity in Queensland was related, in part, to the increase in number of determinations of native title. The trend is that the two occur together.

Output group 1.2 consists of:

- indigenous land use agreement-making;
- claimant, non-claimant and compensation agreement-making; and
- future act agreement-making.



Tribunal member Doug Williamson and Mervyn Street discuss the Gooniyandi native title application, Muludja Community, near Fitzroy Crossing, August 2000.

Output 1.2.1 — Indigenous land use agreement-making

Description of output

There are three types of ILUAs: area agreements, body corporate agreements and alternative procedure agreements. The ILUA scheme facilitates agreement by allowing a flexible and broad scope for negotiations about native title and related issues, including future acts.

ILUAs are currently being considered by some proponents as a possible alternative to future act processes for exploration and mining. The complexity of ILUA negotiation and authorisation means that, at least in New South Wales, ILUAs are only being used where other ‘future act’ methods are not appropriate or do not provide sufficient flexibility for complex projects, long-term relationships, or comprehensive agreements. In Queensland the alternative State provisions for exploration and mining tenement applications are expected to trigger ILUA negotiations in some cases.

Performance

The performance measures for indigenous land use agreement-making are:

- quantity — number of agreements finalised in which the Tribunal assisted;
- quality — the level of client satisfaction; and
- resource usage per agreement.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	38	20	Government policies Parties’ ability to respond
Quality	Client satisfaction	Monitored, not measured	ILUAs are still a very new form of agreement-making for most parties
Resource usage	Unit cost of ILUA agreement-making — \$91,902	Unit cost was higher — \$101,336	43 ILUAs were progressed, but not finalised during the period

Number of agreements finalised

The level of ILUA-related activity around the nation varied widely mostly because of State and Territory government policies (see ‘President’s overview’, p.13). Other factors to have affected the number of ILUAs

finalised during the reporting period were the resources available to native title representative bodies, the policies of these bodies, and the level of knowledge of the parties (for more information see 'Roles and importance of representative bodies' in the 'President's overview', p.21). Table 5 shows the number of ILUAs finalised during the reporting period with the Tribunal's assistance, and those in progress.

Table 5 ILUAs negotiated with Tribunal assistance

State or Territory	ILUAs reached with Tribunal assistance	ILUAs in progress with Tribunal assistance	Total
New South Wales	1	-	1
Victoria	2	5	7
Queensland	15	33	48
Western Australia	1	4	5
South Australia	1	1	2
Tasmania	-	-	-
Australian Capital Territory	-	-	-
Northern Territory	-	-	-
Total	20	43	63

Of note was an increase in requests for negotiation assistance in Victoria as a result of an increased willingness on the part of the Victorian Government to seek the Tribunal's assistance in agreements that were complicated or which involved disputes within Indigenous groups.

By the end of the reporting period the Tribunal was aware of 112 ILUAs in negotiation in Queensland. This was approximately 87 per cent of the national ILUA activity. Table 5, however, shows only those agreements or negotiations in which the Tribunal has provided significant assistance.

The majority of the other ILUA negotiations in Queensland received some form of non-member assistance, which included provision of the ILUA guidelines and general information on ILUA processes and negotiation processes; review of draft documents; and research on potential registration questions. The dedicated ILUA officer in Queensland spent an aggregate of at least six weeks in preliminary day-long meetings with potential ILUA parties.

Level of client satisfaction

Client groups include peak bodies from mining and local government; State and Commonwealth agencies; native title representative bodies; individual native title claimants; businesses engaged in mining; development and environmental consultancies; individual local

governments; large commercial developers; pastoralists; environmental non-profit groups; various elected officials at all levels of government; and lawyers and consultants working in native title.

Client satisfaction was affected by the timeliness of registrations of agreements (for more information see Output 1.1.3, p.59), usually within a commercial environment, and the time it takes to negotiate an agreement. Lead times need to be built-in to ILUA negotiations to allow sufficient time for authorisation, notification, compliance testing and possible objections. Large, complicated, or one-off agreements will always take time. Other types of projects, which are likely to have a low impact on native title rights and interests, need not be so time consuming. In Queensland the Tribunal was assisting parties to create regional process agreements that remove the need to renegotiate exploration or mining activities on a case-by-case basis. Local government projects, where town planning policies can be used in conjunction with ILUAs to validate a range of potential projects for a local government, could also be considered in a framework agreement model.

ILUAs are still a relatively new process and many of the participants in such negotiations do not yet have the familiarity with the ILUA process or the skills that make for fast agreement-making. This is a factor not only for native title holders but also for other stakeholders. Unfamiliarity with the ILUA process is compounded by a lack of understanding of native title issues generally and a lack of knowledge about the options available.

During the reporting period, out-going member Patricia Lane delivered a series of information sessions on ILUAs in Melbourne, Sydney and Cairns. Formal evaluation sheets were distributed and returned enthusiastically. Results of the evaluations showed a high level of satisfaction at the information delivered in the workshops but a real need for more information about agreement-making in the native title context. In response to the general lack of knowledge, a national project was commenced to develop information materials to assist members and parties in negotiating ILUAs. By the close of the reporting period, this project was in initial draft form.

In the Northern Territory the number of inquiries from parties other than the native title representative bodies and the Northern Territory Government indicated the usefulness of information sessions given by the staff of the Darwin registry during the period. More sessions are planned in the coming year.

Resource usage

Agreement-making is resource intensive. The unit cost of ILUA agreement-making was \$101,336. A total of 8.0 per cent of budget was spent on this output. The unit cost was higher than forecast because of the

attribution of Tribunal activity in relation to 43 incomplete agreements against the total output cost for completed agreements. The unit cost for this activity will be reviewed in the next reporting period. It may be found to be lower as the Tribunal becomes more experienced and efficient in carrying out this activity, and as more ILUAs are entered into in Western Australia, Victoria and Queensland.

Output 1.2.2 — Claimant, non-claimant and compensation agreement-making

Description of output

Recorded under this output are a range of agreements — claimant, non-claimant and compensation — in which the Tribunal has provided mediation assistance to the parties. Agreements may include full consent determinations that provide for the recognition of native title, as well as framework agreements between parties that provide the groundwork for more substantive outcomes in the future. The output includes agreements for compensation of the loss of native title rights and interests, and agreements that allow for and regulate access by native title holders to certain areas of land.

These types of agreements can be negotiated at the same time as ILUAs (for more information on ILUA agreement-making see Output 1.2.1, p.63).

Performance

The performance measures for claimant, non-claimant and compensation agreement-making are:

- quantity — the number of claimant, non-claimant and compensation agreements finalised;
- quality — the level of satisfaction; and
- resource usage associated with each agreement.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	110	93 (see Table 6)	Conditions in the Northern Territory
Quality	Client satisfaction	Monitored, not measured	Change of government in Western Australia — new orientation towards mediation
Resource usage	Unit cost per claimant, non-claimant and compensation agreement-making — \$63,605	Unit cost was higher — \$84,452	Set-up costs, particularly in the Northern Territory

Number of claimant, non-claimant and compensation agreements finalised

The majority of agreement-making under this output was towards claimant agreements, and there were many factors that influenced the workload associated with them. The agreements covered a range of matters, including the settlement of claim boundaries and removal of overlaps, amalgamation of claims, and matters agreed to by claimants at the same time as ILUAs being negotiated between the claim groups and other parties. Table 6 shows the number of these agreements negotiated with the assistance of the Tribunal.

In the Northern Territory there are well-established avenues for agreement-making under legislation other than the Native Title Act, so the key parties in negotiations — the native title representative bodies and the Northern Territory Government — did not seek the assistance of the Tribunal in their negotiations over native title matters. In the absence of a commitment to mediated outcomes by the key stakeholders, it became increasingly likely during the year that more Northern Territory matters would be programmed for hearing in the Federal Court. However, there were indications that mediation will be requested as other stakeholders become involved in native title negotiations. Tribunal members were involved in mediating 23 applications in the Territory, two of which were compensation applications and the remainder were claimant applications. None was finalised during the period.

Table 6 Claimant, non-claimant and compensation agreements negotiated with Tribunal assistance

State or Territory	Fully mediated by the Tribunal	Partially mediated by the Tribunal	Total
New South Wales	13	3	16
Victoria	-	-	-
Queensland	26	7	33
Western Australia	2	32	34
South Australia	5	4	9
Tasmania	-	-	-
Australian Capital Territory	1	-	1
Northern Territory	-	-	-
Total	47	46	93

In New South Wales the native title representative body was developing and implementing a new strategic direction by allocating a large part of its resources to the preparation of a small number of applications for hearing in the Federal Court rather than to the negotiation of agreements. Four (originally five) applications were being handled in this way. Few resources

from the representative body were available for mediation meetings and for other support of mediation. Despite this, a number of mediations did progress and a number of agreements were entered into in New South Wales.

In South Australia there were no agreements finalised during the period. The Adelaide registry's agreement-making focus is likely to be on assistance to parties and the resolution of overlapping claims in the coming period.

Level of client satisfaction

Constructive working relationships between the Tribunal and clients are the hallmark of the Tribunal's activities in assisting the agreement-making process. The changes in government policy in Western Australia resulted in the establishment of two native title task forces which will directly affect the Tribunal's relationships with clients. In April 2001, member Bardy McFarlane was invited to chair the Technical Task Force on Mineral Tenement and Land Title Applications, set up to streamline future act processing using the Native Title Act. The second one, known as the Wand Review, was set up to overhaul mediation policy and practice. The Tribunal made detailed submissions to both those reviews. The full effect of this new orientation towards mediation in Western Australia had not been felt by the close of the reporting period.



Photographed following the announcement of the establishment of the technical task force are (left to right): Patrick Dodson (spokesperson, Western Australian Aboriginal Native Title Working Group), Bardy McFarlane (Tribunal member and task force chair) and David Griffiths (Western Mining Corporation Divisional Manager — Corporate Affairs) at the Moving Forward: Best Practice for Indigenous Relations in Western Australia Conference, Perth, 19 April 2001.

In Queensland the consistently high number of requests for assistance indicates a high level of client satisfaction with the mediation provided by Tribunal members, although there are limitations on the resource capability of the native title representative bodies to participate in agreement-making. During the year the Tribunal developed a policy for greater coordination of resources and mediation effort in a way that is most likely to produce agreed outcomes.

Resource usage

The unit cost for claimant, non-claimant and compensation agreement-making was \$84,452 per agreement. A total of 31 per cent of budget was spent on this output. The higher unit cost reflects the lower-than-expected number of agreements reaching completion. It included, however, as an attribution to output costs, the resources expended by the Tribunal on matters still in mediation at the end of the reporting period. In Queensland where the pressure is greatest on the agreement-making services of the Tribunal, strategies were put in place to achieve greater efficiency and delivery of mediated outcomes. In addition to the mediation models being developed for different clients and different agreements, the work practices of case managers were rationalised to coordinate travel more efficiently. Further savings may be made in the future through more effective liaison with representative bodies in regard to scheduling meetings and cost sharing arrangements for travel, venue hire and catering.

Output 1.2.3 — Future act agreement-making

Description of output

This output is concerned with the negotiation of agreements that allow a future act to proceed, where the Tribunal has assisted by way of member mediation or staff assistance. The Tribunal can only mediate when it is requested to do so by the interested parties (including State or Territory governments). Any of the parties can ask the Tribunal to mediate.

Under the Act there are two main types of future act agreements. One agreement relates to whether or not the proposed future act should proceed, with or without conditions. The other agreement relates to whether or not the proposed future act should be expedited (fast-tracked) through native title processes.

Parties seeking to reach agreement on whether or not the future act should proceed, must negotiate in good faith with each other.

Where the Tribunal is holding an inquiry into whether or not the proposed future act should be fast-tracked, the member presiding over the inquiry may choose to recommend that a conference of the parties be held, with a view to reaching agreement about the fast-tracking.

Performance

The performance measures for future act agreement-making are:

- quantity — the number of future act mediations conducted;
- quality — 70 per cent of mediations to be concluded within a six-month period; and
- resource usage associated with each future act agreement.

Agreement-making activity is undertaken by the Tribunal also in regard to decisions made that the expedited procedure does not apply (for more information see Output 1.3.2, p.77).

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	87 (one tenement per agreement)	26 (involving 44 tenements)	Judicial decision (see below)
Quality	70% of mediations concluded within 6 months	Achieved (estimated, not measured)	Allocation of a dedicated member
Resource usage	Unit cost for mediation and assistance for future act agreements — \$12,122	Unit cost was higher — \$38,975	Set-up costs, particularly in the Northern Territory

Number of future act mediations

Table 7 shows that the majority of future act agreements, both assisted and not assisted by the Tribunal, were in Western Australia. In Queensland the new alternative State provisions had an immediate impact on future act matters dealt with under the Native Title Act. Those matters are now dealt with under the State legislation.

The allocation of a Tribunal member dedicated to conducting future act mediations improved the Tribunal's capacity to deal with requests for mediation assistance.

The judgment of a Full Federal Court in May 2000 (*Western Australia v Ward*) about where native title had been extinguished was a notable factor in a number of mediations being terminated during the first half of the reporting period. The reduced number of mediations affected the number of agreements being reached. However, the level of activity associated

with the terminations of these agreements was high. Despite this, a total of 225 agreements were negotiated in Western Australia.

In the early part of 2001, additional State resources (in the form of extra case managers in the Land Access Branch of the Western Australian Department of Minerals and Energy) were allocated to the formal right to negotiate process. As more cases are negotiated by the State, it is expected that the Tribunal will see a flow-on effect in the form of increased numbers of requests for mediation assistance.

The option of using a conference, over which the Tribunal presided, to inquire if a proposed future act application could be fast-tracked was increasingly used to help the parties reach agreement about the expedited procedure.

Timeliness of future act agreements

As for the quantity of mediations conducted, the quality of the Tribunal's performance was improved by the allocation of one Tribunal member dedicated to conducting future act mediations in Western Australia. This increased the ability of the Tribunal to resolve matters by agreement within a six-month period.

Procedures were amended to streamline the administrative work required in support of mediations and this also contributed to more timely outcomes.

In those mediation matters that took longer to settle, some common issues emerged. These included the practical difficulties experienced by parties in collecting signatures of all native title applicants, and delay in some cases where parties were considering a regional approach to agreements rather than tenement or project-specific agreements.

Table 7 Future act agreements negotiated with Tribunal assistance

State or Territory	Fully mediated by the Tribunal	Partially mediated by the Tribunal	Total	Not mediated by the Tribunal	Grand total
New South Wales	-	-	-	9	9
Victoria	1	2	3	1	4
Queensland*	-	1	1	-	1*
Western Australia	14	8	22	203	225
South Australia**	-	-	-	3	3**
Tasmania	-	-	-	-	-
Australian Capital Territory	-	-	-	-	-
Northern Territory	-	-	-	-	-
Total	15	11	26	216	242

* Queensland commenced operation of its own alternative body during the reporting period

** South Australia operated its own alternative body

Resource usage

The unit cost for mediation and assistance for future act agreements was \$38,975. A total of 4.0 per cent of budget was spent on this output. The higher unit cost reflects the lower-than-expected number of matters proceeding through mediation and includes some set-up costs for the Northern Territory. Resources were allocated to this output during the year, which will have a cost-saving benefit in years to come, particularly in the Northern Territory. The Future Act Reporting and Statistical System became fully operational but required further developments to enable accurate calculation of time taken for reportable events.

Output group 1.3 — Arbitration

In order to deliver its outcome — the recognition and protection of native title — the Tribunal arbitrates on certain future act matters. It thus recognises the right of native title claimants to be consulted over developments on land or waters while their application for a determination of native title is under way. Tribunal members decide whether or not a planned future act can go ahead (and, if so, whether specific conditions should apply) or whether it can go ahead by being fast-tracked through the expedited procedure. Previously referred to simply as determinations, in this report these rulings are referred to as future act determinations in order to distinguish them from determinations of native title.

Output group 1.3 consists of:

- future act determinations; and
- objections to the expedited procedure.

Output 1.3.1 — Future act determinations

Description of output

This output is concerned with determinations made by the Tribunal that a proposed future act may or may not proceed. When it is decided that the proposed future act can proceed, conditions may apply.

Any party to the future act application may apply to the Tribunal for such a determination if at least six months have passed since the notification day. The Tribunal will proceed to make its determination if it is satisfied that, in that six-month period, parties have negotiated in good faith.

The Darwin registry commenced its management of future act applications during the reporting period (for further information about native title activity in the Northern Territory see Output 1.1.1, p.46). On 6 September 2000, the Northern Territory Government published the first set of future act notices, and most claimant applications were received in the second half of the reporting period.

Performance

The performance measures for future act determinations are:

- quantity — the number of future act determinations made by the Tribunal during the reporting period;
- quality — 70 per cent are made within six months of application; and
- resource usage associated with each future act determination.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	11	Exceeded — 43	Administrative decisions
Quality	70% made within 6 months of application	67% reached the target	Jurisdictional matters
Resource usage	Unit cost of future act arbitration — \$92,239	The unit cost was lower— \$63,334 12 incurred full unit cost	Full unit cost was not expended on 31 of the outputs

Number of future act determinations

Table 8 shows the number of future act determinations made on applications lodged and finalised during the reporting period. It should be noted that there was an actual total of 43 future act determinations, which included 31 made on applications filed in 1998 but not finalised administratively until this reporting period. These are not included in the table. Most of those 31 applications were filed by the Goldfields Land Council in Western Australia (in anticipation of the 1998 amendments) and were decided by dismissal.

As in past years, applications for future act determinations this financial year were relatively few. The national total was 12 (see Table 8, p.75), one more than the estimate. Future act matters were typically resolved by parties continuing to negotiate rather than opting to initiate arbitral processes. Some of the factual and legal issues raised in future act determination applications have been both novel and complex, demanding a high level of resources at the member, case manager and support levels.

The apparent extinguishment of native title over substantial areas of Western Australia has had a significant impact on the number and geographic extent of future act determination applications in Western Australia (for further information about future act agreement-making see p.69). The former State Government's approach was to proceed to grant tenements where, in its view, extinguishment had occurred. As a result of this, some partly progressed determination applications before the Tribunal were withdrawn. In some determination applications, notably *Anaconda Nickel Ltd & Ors v Wongatha & Ors v State of WA*, the Tribunal (constituted by Deputy President Sumner and members John Sosso and Jennifer Stuckey-Clarke) was required to make a further detailed assessment of extinguishment. The Anaconda case involved 16 mining leases which formed part of the Murrin Murrin nickel laterite project in the Goldfields region of Western Australia. In relation to those leases

where it found that extinguishment had occurred, the Tribunal concluded that it did not have the jurisdiction to make a determination. The Tribunal's decision in this matter was appealed to the Federal Court; however, that appeal was subsequently discontinued.

It is never easy to predict the number of future act determination applications that might be lodged. The number of matters lodged depends on many factors, such as the intending applicant's access to resources, the ability of the applicant to establish the jurisdictional precondition of negotiating in good faith, and the advice provided to grantees by industry and State government.

Some parties explored the option of lodging future act determination applications and then requesting the Tribunal to make a determination by consent of the parties. This occurred in matters where there were negotiations and sometimes a part-heard inquiry, and parties did reach agreement. This option was regarded by some parties as a convenient alternative to other Tribunal-mediated options for finalising a matter. The Tribunal found that it has power to make a future act determination by consent of the parties and will do so where it is appropriate. Therefore, it is possible that parties will seek to use this option more frequently in the future.

During the reporting period, the Tribunal received its first future act determination application relating to the grant of a petroleum production licence in Western Australia. The impact of the exercise of rights associated with the grant of petroleum production licences warranted the Tribunal taking into account factors different to those that would apply to the grant of mineral tenements. Although this matter had been in negotiation for some time, parties were unable to resolve the issues. At significant cost to the parties, on top of those incurred through the negotiation process, the native title party asserted that the grantee party

Table 8 Comparison of future act applications lodged and determined in previous and current reporting periods

State or Territory	1999–2000	2000–2001
New South Wales	-	1
Victoria	2	-
Queensland*	-	4*
Western Australia	11	6
South Australia**	-	1**
Tasmania	-	-
Australian Capital Territory	-	-
Northern Territory	-	-
Total	13	12

* Queensland commenced operation of its own alternative body during the reporting period

** South Australia operated its own alternative body

had not conducted negotiations in good faith. This challenge was not sustained, and the matter proceeded to inquiry where a determination by the Tribunal was made that the grant could proceed, with conditions attached. The reasons for decisions in that matter and all other future act matters are available on the Tribunal's web site.

It is expected that there will be a greater number of cases negotiated by the Western Australian Government as a result of its changed policy relating to the *Ward* case. Therefore, an increase in the number of future act matters referred to the Tribunal for a determination is expected.

In the Northern Territory the first notification period of the Commonwealth right to negotiate scheme closed on 6 January 2001 and the Tribunal initiated the future act process in early February 2001. Two jurisdictional matters were raised at the first mediation conference of this process (for a description of these issues see 'Output 1.3.2 — Objections to the expedited procedure', p.77) and, as a result, the Tribunal was required to delay consideration of the future act matters while the jurisdictional issues were resolved. It is anticipated that full implementation of the future act scheme (consideration of the expedited procedure in exploration applications, and matters arising from the right to negotiate) will proceed at an accelerated rate through the next reporting period.

Timeliness

Some delays to the processing of future act decisions were experienced as a result of jurisdictional uncertainties; hence the quality target fell short by three per cent.

Erratum: In last year's annual report, Figure 15 on page 95 incorrectly showed the time taken to process future act determinations as being a maximum of 100 weeks for one application (WF98/005), whereas the time taken was actually 62 weeks. The HTML version of the *Annual Report 1999–2000* on the Tribunal's web site was updated to show the correct information as soon as the error was noted.

Resource usage

Future act determinations are highly resource intensive, involving up to three members at the inquiry stage. The unit cost of future act arbitration for the 12 matters determined in this way was \$63,334, lower than forecast. The further 31 matters that were dismissed did not impact on the Tribunal's resource usage significantly and therefore are not included in the resources by outcome table (Table 1, p.43). Future act determinations accounted for 3.0 per cent of the Tribunal's total resource use, compared with 3.1 per cent in the previous reporting period.

Output 1.3.2 — Objections to the expedited procedure

Description of output

The expedited procedure is a fast-tracking process for the granting of certain types of tenements and licences. Future act activities can be fast-tracked 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 major disturbance to any land or waters concerned, or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

The expedited procedure is triggered when a government party, in a public notice, asserts that the procedure applies to a tenement application; that is, the tenement application can be fast-tracked without negotiation with the native title claimants. The Act includes a mechanism for native title parties, whose claimant applications are registered, to make an objection to this assertion. This output is concerned with the processing by the Tribunal of the objections. Claimants may gain the right to object to the fast-tracking of a tenement application; however, they do not have the right of veto over any proposed activity on land or waters.

Performance

Performance measures for objections to the expedited procedure are:

- quantity — the number of objections processed;
- quality — 80 per cent are decided within six months of application; and
- resource usage.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	950	517	Judicial decision
Quality	80% decided within 6 months of application	Not formally measured	Judicial decisions and inability of the representative bodies to respond within the timeframes
Resource usage	Unit cost — \$1,591	Unit cost was higher — \$3,920	Set-up costs, particularly in the Northern Territory

Number of objections to the expedited procedure processed

A Full Federal Court judgment in May 2000 (*Western Australia v Ward*) raised the possibility that native title may be extinguished in more circumstances than previously thought. This resulted in tenement applications being advertised by the Western Australian Department of Minerals and Energy only where there was no possibility of extinguishment (see Table 9 for the number of objections lodged and finalised during the reporting period).

Table 9 Objection applications processed

Description	Applications lodged and finalised during 2000–2001	Applications lodged in a previous reporting period but finalised in 2000–2001	Total
Future act — dismissed	1	1	2
Objection — dismissed	19	61	80
Objection — not upheld	2	11	13
Objection — upheld	13	85	98
Objection — not accepted	15	31	46
Objection withdrawn — agreement	27	134	161
Objection withdrawn — no agreement	19	83	102
Objection — withdrawn prior to acceptance	10	4	14
Tenement withdrawn — not dismissed	-	1	1
Total	106	411	517

Where the Department decided that native title had been extinguished, it proceeded to grant tenements without subjecting them to native title processes. Following the change of government in Western Australia, this policy was suspended.

By comparison with previous years, the number of objections in Western Australia dropped during 2000–2001 for the reasons stated above and also because of a resource shortage experienced in native title representative bodies. Additionally, in some regions, native title claimants and certain mining companies had pre-existing agreements which facilitated the grant of tenements; hence, there were no objections to them.

This decrease in objection rates was accentuated in the latter part of the reporting period as a result of a decision by Deputy President Franklyn (23 April 2001) that objection applications must include statements specific to the objectors' activities and the likely impact on them of the proposed future act. This resulted in the preparation of objections becoming a much more resource-intensive activity.

In the Northern Territory, no objections to the expedited procedure were processed, for the same reasons as those explained in Output 1.2.3 (p.53). The Tribunal dismissed the first group of seven objections when it was found that the notices advertised by the Northern Territory Government did not conform with the requirements of the Act. The decision was appealed but, at the close of the financial year, no judicial decision had been made. A further 37 objections were affected by the second matter relating to the form of the objections.

Timeliness

The expected timeliness for processing objection inquiries in Western Australia was not achieved as a result of the Federal Court determination of the extinguishment of native title in *Western Australia v Ward*. This resulted in a number of matters being held over, pending clarification of results from test case outcomes, together with extra time needed to conduct investigations in relation to enclosure of pastoral leases and previous mining tenure on particular tenements.

Another factor to delay the objection process was whether parties were able to respond quickly to negotiations or Tribunal directions. Further, most parties showed a preference for resolving objections by negotiation. Where these were proceeding satisfactorily with a reasonable chance of success the Tribunal, where all parties consented, was prepared to adjourn compliance with directions and hearings to enable negotiations to be concluded. Because of resource constraints, native title parties preferred to negotiate without being required to commit time and resources to an inquiry at the same time.

Resource usage

The unit cost of this output was \$3,920. A total of 8.0 per cent of budget was spent on this output. The higher unit cost reflects expenditure in setting up a larger registry in Darwin to deal with anticipated workloads together with a shortfall in numbers this reporting period. The causes of the reduction in number of outputs were not administrative. The future act unit of the Perth registry spent an estimated 60 per cent of its time on achieving objection outputs during 2000–2001. In the Darwin registry the work associated with the objections was approximately 10 per cent of the total workload of staff and members.

Output group 1.4 — Assistance, notification and reporting

Output group 1.4 delivers the Tribunal's outcome — the recognition and protection of native title — by assisting people to resolve native title issues, and by providing accurate and comprehensive information about native title matters to clients, governments and communities.

Output group 1.4 consists of:

- assistance to applicants and other persons;
- notification; and
- reports to the Federal Court.

Output 1.4.1 — Assistance to applicants and other persons

Description of output

Under the Act the Tribunal assists applicants and other persons with the preparation of applications, which includes providing maps, register information, research reports, and information about native title and agreement-making processes, as well as conducting seminars and workshops.

The Tribunal's geospatial unit is a key national provider of assistance to claimants in the preparation of native title determination applications. This includes all the geospatial aspects of an application; for example, a map, past and current future act notices intersecting or within the application, overlap analyses with other claimant applications, and identification of native title representative body areas in the area of the claim. The unit also provides other spatial descriptions of administrative areas, such as local government boundaries and ATSIC regions.

Geospatial assistance to non-claimants primarily is associated with reporting on spatial relationships of their business interests against Tribunal registers and other application information. The supply of application boundary spatial data (for which the Tribunal or the Commonwealth holds copyright) assists persons in undertaking this assessment themselves.

Another feature of the Tribunal's work in providing assistance during the reporting period was its increased ability to target information about native title to specific interest groups. This was achieved through seminars and workshops conducted out of regional registries, and in the publication of targeted information. Appendix IV (p.143) shows the number and type of information products and sessions provided by the Tribunal during the year.

Information and advice were provided to media outlets across Australia about the progress of native title claims, notifications and determinations.

The Research Unit ran four programs during the year aimed at assisting in the technical understanding of native title processes and issues. The unit also assisted parties involved in the mediation process through the compilation of researched background reports that were tabled during mediations (for more information see Appendix VI, p.155).

Performance

The performance measures for assistance to applicants and other persons are:

- quantity — number of ‘events’ (instances of assistance);
- quality — level of client satisfaction; and
- resource usage for each event.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	10,097	Exceeded — 12,070	Increased numbers of requests for assistance Increased production of information products
Quality	Client satisfaction	Achieved where measured	
Resource usage	Unit cost per event as recorded in the assistance database — \$353	Not reconciled	Recorded events did not reflect total assistance provided

Number of assistance events

The number of events is recorded through:

- the assistance database in which individual contacts made to clients may be recorded;
- the number of published information products sent or given to clients or made available on the web site;
- the number of media calls logged;
- contact at workshops and seminars; and
- researched information aimed at specific technical needs.

The total number of recorded assistance events, not including the Tribunal’s publishing and media activities, was 12,070 — 20 per cent higher than the estimated 10,000. This high number reflects the

movement of Tribunal activity into agreement-making and away from the heavy registration test workload of past years. Figure 9 on page 86 shows that assistance in Queensland was greatest, closely followed by Western Australia.

There were 582 logged requests for assistance from the media, mainly from Queensland, Western Australia and New South Wales. A total of 43.9 per cent were queries related to specific claims.

A total of 214,581 information products were distributed to Tribunal clients and the wider public. These included brochures, booklets, CD-ROMs, videos and audio-tapes. More than 95 per cent were new products launched during the reporting period (for more information see the 'President's overview', p.31).

All printed information was also available online on the Tribunal's web site (for more information about documents on this web site see 'Documents available free of charge', p.161). Hit reports indicated an average of more than 7,000 visitor sessions per month to the site during the financial year. Forty-one visitors requested additional information via



Tribunal employees, Rowena Finnane and Berenice Carrington, staff the Tribunal's information stall at the Survival Day Concert, Sydney, January 2001.

web site feedback. Tribunal procedures in relation to registration testing, the registration of ILUAs and future act procedures are published on the web site and their refinement continued through the year.

Public affairs staff assisted business units in communicating clearly and effectively with clients. For example, they provided advice on local communication strategies, the use of plain English and the production of targeted information products such as the *Kaurareg People's native title determinations — Questions and answers*, which was distributed to communities in the Torres Strait. Services also included publishing (in print and online) research papers and guides and facilitating the co-publishing venture of the *Design of native title corporations: A legal and anthropological analysis*. This 366 page monograph was commissioned by the Tribunal, written by Christos Mantziaris and David Martin, and published by the Tribunal and The Federation Press in October 2000.

The demand for native title information in accessible language and user-friendly formats remained high. The Tribunal produced 32 products during the year aimed at providing a basic level of understanding of native title, including the series of fact sheets titled *Native Title Facts*. The Tribunal expanded its range of materials about native title law and processes for specific client groups and the wider public.

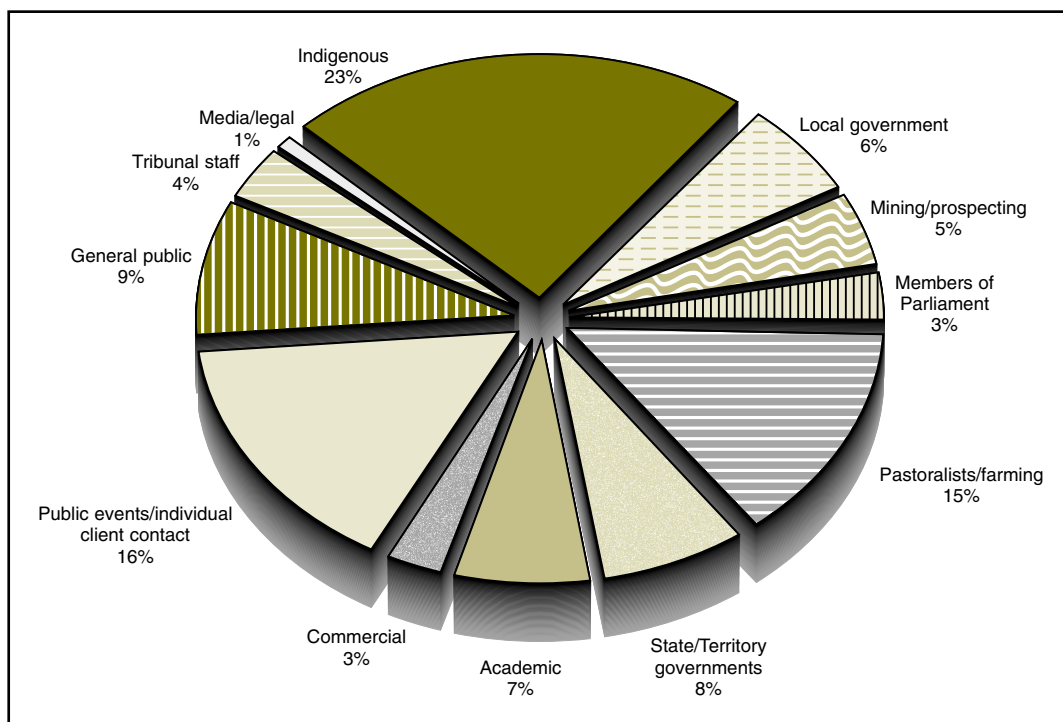
Two examples illustrate the type of products developed during the reporting period:

- *Native title in brief*: a visual presentation on native title and the role of the Tribunal was produced on CD-ROM and video, and launched in August 2000. It was promoted to all Tribunal clients and distributed free of charge. The initial stock of 1,000 CD-ROMs and 750 videos was exhausted by the end of September 2000. Additional copies were produced to meet continuing demand.
- *Native Title Facts*: a series of 29 fact sheets aimed at all clients and the general public — with some fact sheets developed specifically for Indigenous clients, miners and developers — was launched in August 2000. A total of 190,499 copies were distributed, with Indigenous clients and clients from rural areas in New South Wales and Queensland receiving the largest numbers of fact sheets (see Figure 7, p.84).

A total of 18 background reports were produced during the period (for a list of reports see p.155).

Level of client satisfaction

As a result of the Tribunal's national strategy on maintaining spatial records and associated spatial reference data on those native title matters administered by the Registrar, the Tribunal's geospatial unit has evolved

Figure 7 Distribution of *Native Title Facts* by client group

into the single, national service provider of this information. The private sector in most cases is not able to readily bring together the necessary information in order to provide the required assistance. State and Territory governments have taken different stances on whether or not they provide such a service. For example, the Western Australian Government, through the Land Claims Mapping Unit, does provide detailed assistance in mapping and application descriptions. The Northern Territory Government, however, refers applicants to the private sector as they have interpreted providing such assistance as a conflict of interest.

Thus, significant demand for geospatial assistance far outstripped the Tribunal's available resources to respond. There were 306 recorded requests for geospatial assistance from clients.

Figure 8 shows that the most common type of assistance was register information, which usually includes a geospatial component.

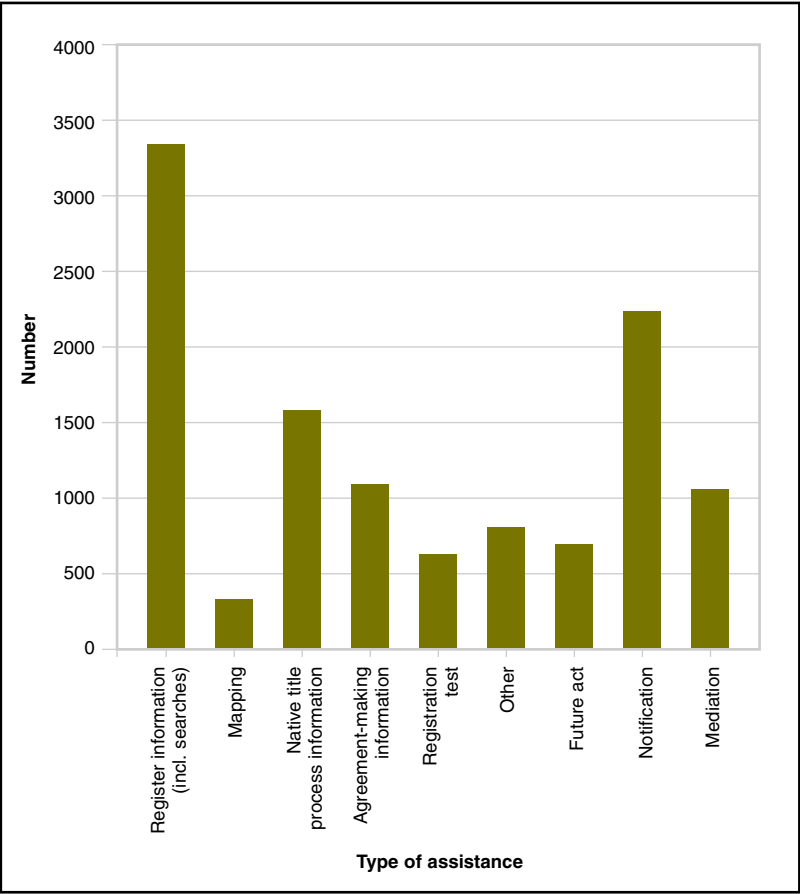
Client satisfaction was measured for some workshops and information products: the ILUA workshops presented out of the Melbourne and Sydney registries and Cairns office (see 'Output 1.2.1 — Indigenous land use agreement-making', p.63) and *Native title in brief*. Ninety-seven feedback cards were returned for this multimedia presentation. A total of

81 per cent rated the presentation as excellent or good, and 98 per cent said that it was easy to understand.

As part of the initiative to gauge client needs for information about native title, a pilot scheme was instigated during the year. Reply paid cards highlighting a choice of options for more information were sent out with notification letters in Victoria and New South Wales for the first time. Of the 11,000 cards sent out, 136 were returned requesting a total of 1,063 fact sheets.

The *Occasional Papers Series*, which is aimed at an audience with a high level of technical or academic understanding of native title, was the second-most downloaded page on the Tribunal’s web site. The most downloaded page was *Native Title Facts*, in particular ‘What is native title?’, the first fact sheet. The pages are at opposite ends of the scale of client understanding of the subject area. These statistics possibly reflect a demographic profile more associated with online technology than with the

Figure 8 Assistance to applicants and other persons by type



focussed delivery of native title information to those people involved in native title processes. The evaluation of client and stakeholder needs planned at the end of the reporting period, together with the implementation of the online development strategy, will supply detailed information about the levels of understanding of native title processes in the community (for further information see ‘Evaluation of client and stakeholder needs and satisfaction’, p.118).

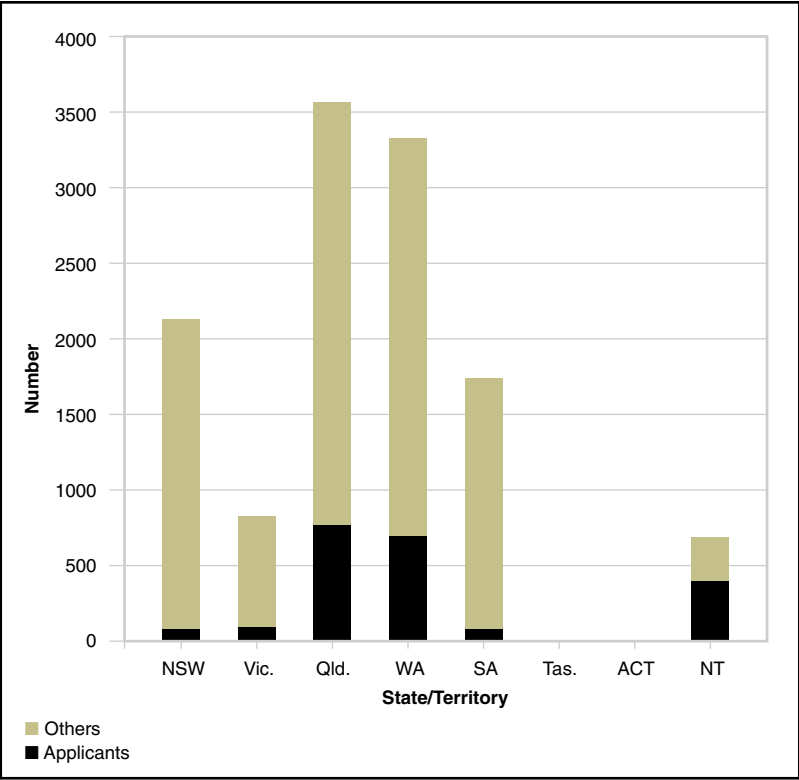
Resource usage

The average unit cost per assistance event was \$353; however, this figure does not take into account some types of assistance. In the next reporting period this output description may be revised to better reflect the range of assistance activity carried out by the Tribunal.

A total of 19 per cent of budget was spent on this output.

The increase in assistance activity can be attributed to increased interest in native title and increased levels of mediation. The Tribunal increased production of all information products. The Tribunal’s publishing activities were greatly enhanced by the development of the Express, an

Figure 9 Assistance to applicants and other persons by State and Territory



electronic intranet tool for distribution of information, warehousing, stock control and access to information products. GeoTrack, the electronic tool for processing geospatial requests, also contributed to this output, although the capacity of the geospatial unit to keep up with demand was still a management concern by the end of the reporting period. It is expected that there will be an increase in the levels of resource use for this output as application and register information assistance increases.

Output 1.4.2 — Notification

Description of output

Notification is written notice given by the Registrar to the general public and those interested in an area affected by native title claims (both claimant and non-claimant applications), compensation applications or applications to register an ILUA. The Registrar also gives notice of amendments to native title claims.

The main purpose of notification of native title applications is to ensure that relevant people and organisations have the opportunity to apply to the Federal Court to become a party to the proceeding and to participate in mediation. The Registrar's notification objective is to provide relevant information to persons who may have an interest in any part of the area covered by an application.

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 of the area covered by the application, where that interest 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, has 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 landowner or landholder, 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 may apply to the Federal Court for orders concerning the operation of the notification requirements in relation to a claimant application.

In the *Gundungarra* #6 application (Federal Court file number NG6060 of 1998), the Registrar sought orders from the Federal Court under s.66 of the Act to dispense with personal notification of interest holders on the basis that the State of New South Wales could not provide timely tenure information. The Court took the view that its orders in response to the Registrar's application would have significant precedent value for the notification of other claims where tenure information was not readily available.

Justice Wilcox ordered the Registrar to carry out a two-stage notification process by using extensive advertising in the media, and if tenure information later became available, by sending written notice to interest holders who had not applied to become parties in response to the general advertisements. The notification proceeded on this basis.

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 parts of the country.

It is the policy of the Registrar to notify all interest holders directly where possible, rather than just conducting a general notification of the public through advertisements.

The Tribunal has carried out some 'broad' notifications where costs and timeframes for individual notification have been an issue, particularly in Queensland. In these situations, other means of disseminating information about the notification have been employed in addition to newspaper advertisements; for example, in the provision of maps to local government offices for display, the conducting of radio interviews by Tribunal managers and in press releases.

Performance

The performance measures for notification of native title applications are:

- quantity — the number of applications advertised and notification letters sent;
- quality — less than five per cent of those applications to be renotified; and
- the resources used for each advertisement and each letter.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	379 applications	197	(for more details on the number of applications see 'Output 1.1.1 — Claimant applications', p.46)
Quantity	27,689 letters for 379 applications	Exceeded — 43,470 letters for 197 applications	
Quality	Less than 5% to be renotified	Exceeded — 3.5% were renotified	Efficient administrative procedures
Resource usage	Unit cost per application — \$2,362	Unit cost was higher — \$2,572	Fewer outputs
Resource usage	Unit cost per notification or renotification letter — \$124	Unit cost was lower — \$41	There are lower marginal costs incurred by producing greater numbers

Number of applications advertised and number of notification letters sent

During the reporting period the applications notified consisted of 161 claimant applications, 12 non-claimant applications and 24 ILUA applications. This is an increase of 96 claimant applications notified compared with the previous reporting period.

The Tribunal sent 43,374 notification letters in respect of the 161 claimant applications (see Table 10, p.90). The numbers of notices varied between applications depending on such factors as the areas covered by the applications and the number of private interests directly affected by each application.

In general, notification of the claims in the Northern Territory proceeded smoothly as a result of uncomplicated tenure in most cases and accurate records maintained by Northern Territory agencies.

Table 10 Number of persons individually notified and renotified

State or Territory	Number of persons notified
New South Wales	11,795
Victoria	2,039
Queensland	2,828
Western Australia	2,401
South Australia	23,862
Tasmania	-
Australian Capital Territory	-
Northern Territory	449
Total for claims	43,374
ILUAs notified nationally	96
Grand total	43,470

Renotification

During the reporting period six applications or 3.5 per cent were renotified. Renotification was caused by:

- errors in the information published in the advertisements; or
- the provision of incorrect information to the Tribunal from State instrumentalities.

The Tribunal's geospatial unit is under constant pressure to deliver maps on short deadlines. The geospatial capacity of the Tribunal is the most significant factor dictating the rate of notifications.

Some current tenure information provided by the State instrumentalities in New South Wales was found to be inaccurate, and this resulted in a number of situations where people were incorrectly notified. Decisions made by courts have also impacted on the notification of applications. For example, in Western Australia, the judgment of a Full Federal Court in *Western Australia v Ward*, that native title was extinguished on certain areas, needed to be taken into account when deciding what tenure information was sought and who would be notified. The Tribunal ensured that notification occurred in accordance with the state of the law. In addition, all Tribunal registries cooperate constructively with tenure holders to maximise the accuracy and timeliness of data provision.

During the first half of the reporting period the Tribunal notified over 13,000 potential interest holders in South Australia in relation to 10 native title applications. Some 3,000 of those did not need to be notified because it was established that their interests fell outside the boundaries of the applications. The South Australian department responsible for providing the Tribunal with contact details of interest-holders subsequently corrected their contact lists. The Tribunal then wrote

directly to those affected people explaining the error, and noting that they need not consider becoming a party to any native title claimant application.

In January 2001, the South Australian *Native Title Validation and Confirmation Act 2000* came into effect, and clarified that native title had been extinguished on several kinds of leases. Those affected leaseholders were subsequently advised that native title no longer existed in their lease areas and were invited by the Federal Court to withdraw as parties from any claimant application to which they had, correctly at the time, been invited to join.

Two claims, one in Queensland and one in Victoria, had the notification period extended as additional interest holders were identified once the claims had been notified.

Resource usage

The unit cost per advertisement per application was \$2,572. The unit cost per notification or renotification letter was \$41. A total of 9.0 per cent of budget was spent on this output (for information about the cost of advertising notifications see p.164).

Output 1.4.3 — Reports to the Federal Court

Description of output

This output concerns mediation and status reports to the Federal Court of Australia concerning the progress of applications. Native title applications are made to the Court which subsequently refers them to the Tribunal for registration by the Registrar (if they are native title claimant applications) and mediation by Tribunal members. 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;
- the Court requests information about the progress of the mediation; or
- the presiding member considers that a report would assist the Federal Court in progressing the proceedings.

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.

The number of orders made by the Federal Court largely determines the number of mediation reports prepared by the Tribunal.

In addition to mediation reports, the Tribunal provides the Federal Court with status reports where the Court and Tribunal agree that reports would be beneficial to the proceedings. Status reports inform the Court of the current situation of an application prior to each directions hearing and deal with issues such as registration testing or notification.

During the reporting period, the Tribunal continued to work closely with the Court’s native title coordinator to maintain mutually convenient and efficient reporting processes.

Performance

Performance measures for reports to the Federal Court are:

- quantity — the number of reports provided to the Court;
- quality — the timeliness of the reports; and
- resources usage for each report.

Performance at a glance

Measure	Target	Result	Main influences affecting result
Quantity	985	608	Federal Court did not refer claims to mediation as quickly as expected
Quality	95% within the timeframe set by the Court	94%	Efficient administrative processes
Resource usage	Unit cost per mediation report — \$1,102	Unit cost was higher — \$1,250	Less outputs than estimated

Number of reports

There were 608 mediation and status reports provided to the Court during the reporting period. The target of 985 was not achieved because the Court did not request the number of reports anticipated. Nevertheless, this is double the figure that was reported last year. In general, the Court appears to be taking a more active approach in supervising mediation, with statistics for the reporting period revealing a steady increase in the number of reports requested by and provided to the Court.

In some jurisdictions, the Federal Court has undertaken a limited range of mediation in an effort to find resolution of particular issues. The matters are generally then referred back to the Tribunal for mediation under s.86B(1) of the Act.

In New South Wales, cases few of the judges have been requesting mediation reports, relying instead on the parties to update them on progress. The Sydney registry has been active in attempting to encourage the request for and use of mediation reports.

Table 11 shows mediation and status reports made to the Federal Court in each region (for more information see ‘Mediation progress reports’ in the ‘President’s overview’, p.17).

Table 11 Reports to the Federal Court

State or Territory	Mediation reports	Status reports
New South Wales	21	-
Victoria	1	9
Queensland	161	27
Western Australia	90	204
South Australia	8	-
Tasmania	-	-
Australian Capital Territory	1	-
Northern Territory	22	64
Total	304	304

Timeliness of the reports

The Tribunal aims to make mediation reports to the Federal Court within the timeframe established by the Court. Generally, the reporting process and the format of the reports are now well established. Almost all reports were delivered to the Court within the time period.

Factors that affected performance in providing reports to the Court this year included:

- the frequency with which reports were requested;
- an increase in the number of matters being referred to the Tribunal for mediation;
- the large number of parties involved in some applications;
- the number of overlapping claims;
- requests from the Court for reports to address efforts undertaken to reduce parties and issues in matters referred to in litigation;
- requests from the Court for the Tribunal to report on prospects for mediation of discreet issues; and

- short timeframes from the Court in some cases which did not allow a proper set of meetings to be held, given the stretched resources of all parties.

Reports are generally timely and well received, with the Court regularly allowing adjournment of matters in order that mediation may continue.

Resource usage

The unit cost for mediation reports was \$1,250. A total of 3.0 per cent of budget was spent on this output. The level of mediation activity is likely to increase in the next reporting period, with more mediated outcomes expected and a higher rate of reporting to the Court.

MANAGEMENT



Corporate governance

Tribunal members

Members of the Tribunal are appointed by the Governor-General for specified terms. Member classifications include presidential and non-presidential, full-time and part-time (for more information about Tribunal members see the 'President's overview', p.8 and p.137).

Roles and responsibilities

The role of members is defined in various sections of the Act.

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.

While the principal workload of members is in claim mediation, ILUA negotiations and future act hearings and processes, there are increasing requests for members to provide assistance to parties involved in the native title process.

Members' meetings

The President and members held two members' meetings in the reporting period: one in Melbourne in October 2000 and the other in Brisbane in March 2001. Members were joined by the Registrar at each meeting.

The participants discussed a range of issues relevant to the strategic direction of the Tribunal and members' practice in the areas of assistance, arbitration and agreement-making. Members discussed practice issues that affected both the Federal Court and the Tribunal. They made recommendations to the President and guided the Tribunal's Federal Court liaison team in their dealings with the Court on a number of issues. Members addressed special operational issues associated with bringing highly prospective claimant mediations to satisfactory conclusion. They also began developing materials which will assist members and parties to ILUA negotiations.

Members made significant progress in developing a members' code of conduct and took part in diversity training as part of their March 2001 meeting.

Members of the National Native Title Tribunal at 30 June 2001



Graeme Neate,
President



Fred Chaney



Christopher Sumner



Terry Franklyn



Tony Lee



Graham Fletcher



John Sosso



Bardy McFarlane



Mary Edmunds



Doug Williamson



Geoff Clark



Gaye Sculthorpe



Jennifer
Stuckey-Clarke



Ruth Wade

Strategic planning advisory group

In order to integrate the management and administration with the strategic direction of the Tribunal, a strategic planning advisory group was established in June 2001. The group comprises the President (Graeme Neate), three members (Chris Sumner, Ruth Wade and Tony Lee), the Registrar (Christopher Doepel) and the three directors (Hugh Chevis, Merranie Strauss and Marian Schoen). In its first meeting the group advised on budget issues for 2000–2001. It is envisaged that this group will provide at least a quarterly forum for the corporate governance of the Tribunal under the authority of the President and Registrar. Areas of focus in the short term will be to review and re-state high-level budget priorities, monitor the Tribunal's performance and make recommendations to support and build on strategic Tribunal projects, such as the evaluation of client satisfaction.

ILUA strategy group

During the reporting period the Tribunal established an ILUA strategy group comprising the Registrar, part-time member Ruth Wade (who is responsible for national coordination of the members' roles in the ILUA program), the three directors and the operations manager. The ILUA program is diverse, coordinating negotiation assistance, other assistance and the registration of ILUAs. ILUA activity is increasingly linked with the mediation of claimant applications. This group develops policy and strategies and oversees all aspects of the program to ensure optimum coordination and alignment of the various operational activities that deliver the program.

Future act liaison group

The national future act liaison group was formed in November 2000, and comprises an officer from the national Operations Unit, the Director of Service Delivery, Deputy President Sumner, member Bardy McFarlane and senior staff involved in future act work in Western Australia, the Northern Territory and Queensland. Other people may also attend the meetings to address or inform on various agenda items.

The meetings were held monthly by telephone link-up during the reporting period. The role of the group was to monitor and address national future act issues (some may have arisen locally but had national implications), drive various national future act initiatives, ensure consistent practice when appropriate, and monitor national trends to assist in strategic planning.

Research reference group

The research reference group comprises all directors, five members, the managers of the Research Unit and Legal Services, the President's research officer and the Tribunal's senior librarian. It advises on research strategies and directions. The group met on two occasions and reviewed the four research programs currently being run from the Research Unit.

The research program objectives fall into two main groups. The first group is directed to assisting the parties to mediation, principally through researched information that is tabled during mediations. This includes background reports relating to the literature on geographic area and claimant group identities (for more information see Appendix VI Background reports, p.155). The second group of research initiatives is directed to improving industry information and understandings of native title processes and issues.

Tribunal executive

Role and responsibilities

The Tribunal's executive comprises the President, Registrar and three directors who head the Tribunal's divisions of Service Delivery, Delivery Support, and Corporate Services and Public Affairs (for more information see Figure 2, p.38). A description of the qualifications and experience of the members of the Tribunal executive is available on the Tribunal's web site at www.nntt.gov.au.

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 or her powers under the Act to Tribunal employees. During the reporting period delegates of the Registrar assessed claimant applications and ILUAs for registration, notified interested persons in the various types of applications and managed the three statutory registers.



The Registrar's group: (left to right) Christopher Doepel (Registrar), Merranie Strauss (Director, Delivery Support), Hugh Chevis (Director, Service Delivery), Marian Schoen (Director, Corporate Services and Public Affairs), Perth, June 2001.

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 address 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.

A number of regular forums assist in the planning for, and implementation of, new and ongoing business.

The national operations group meets fortnightly and plans for and oversees service delivery through the Tribunal's regional registries. It comprises State and Territory managers and senior principal registry staff, such as the Director, Service Delivery; the operations manager; and other directors and senior staff from the support divisions according to the issues at the time.

State and Territory managers meet in the principal registry in Perth twice yearly. They are joined by other senior managers for training/development and planning activities. This has proved to be an extremely useful forum to capitalise on cross-divisional communication and focus on planning and implementation issues.

Remuneration and Australian Workplace Agreements

Members' and the Registrar's remuneration entitlements are fixed by the Remuneration Tribunal. Senior executive service (SES) employees are employed under Australian Workplace Agreements (AWAs). During the reporting period AWAs were renegotiated with three SES employees and two State managers. The SES Band 1 salaries are set by the Registrar.

Corporate planning

In order to implement its three-year strategic plan, the Tribunal further developed its planning cycle to better align key internal and external events in relation to the achievement of the key success areas of the strategic plan (for more information see Appendix I, p.126). This included the review of the performance management framework, which was a feature of the new certified agreement (for more information see p.103).

As well as developing their own divisional business plans, the directors worked on a cross-divisional plan to achieve better alignments between the three divisions. The divisional plans recognised the importance of cross-divisional projects in the Tribunal's environment.

Although the various Tribunal sections completed operational plans, these were developed at different times during the reporting year and in a range of styles and formats. Having revised its planning cycle and developed the cross-divisional plan for the first time, the Tribunal will implement a more structured planning process across the whole of the organisation in the next reporting period.

Management of human resources

A key success area of the strategic plan is to have a highly skilled, flexible, diverse and valued workforce. The Tribunal's objective in the management, leadership and development of employees is to have a framework in place to realise this key success area.

This was managed effectively in December 2000 when the Tribunal successfully concluded negotiations for a new comprehensive certified agreement.

Certified agreement

The agreement places a strong emphasis on a continuing commitment to building a culture that values the health and well being of employees and encourages a balance between work and personal commitments. Features of the agreement include some innovative employment conditions, improved levels of remuneration, and staff commitment to a number of new initiatives in order to increase productivity. The outcome of the agreement was to establish the working conditions and productivity for all employees for the next three years, and to link other human resource strategies to it, for example the performance management scheme.



Pictured at the signing of the Tribunal's *Certified Agreement 2000–2003* are: (left to right) Michael Sinclair-Jones (Media, Entertainment and Arts Alliance), John Theodorsen (Community and Public Sector Union), Christopher Doepel (Registrar), Lisa Wright (CPSU workplace delegate), Melissa Dolman (workplace relations coordinator), Karen Suarez (assistant workplace relations coordinator), and Stuart Reid (employee representative).

Certified on 22 December 2000, the agreement identifies key aspects of organisational structure and work practice where there is a mutual commitment on the part of the Tribunal's management and employees to achieve improvements in efficiency and productivity. It also provides for a number of innovative employment conditions and takes due account of the external environment in which the Tribunal operates. This includes management of risks arising from the changeable external environment which may, from time to time, require a reallocation of resources to activities where outcomes can be better achieved.

Some key provisions of the agreement include:

- conducting a Tribunal-wide operational review;
- improving internal communication through the more efficient use of telephone and email for internal communications;
- further streamlining of People Services' functions such as:
 - moving to a common salary advancement date (for information about salary ranges see Table 13, p.133);
 - reverting to an annual leave accrual date of 1 January for all employees;
 - rolling in the senior officer expense allowance into executive level employees' salaries; and
 - introducing a minimum period before the higher work level allowance will be paid to employees;
- offering a once-off cash-out of annual leave option to reduce the Tribunal's leave liability;
- reducing the travel allowance payable to employees who choose to stay in private accommodation while travelling on Tribunal business; and
- reducing the use of temporary staff from private employment agencies.

The *Certified Agreement 2000–2003* is available online at www.nntt.gov.au. For a description of the range of non-salary benefits negotiated under the agreement see page 136.

Performance management

The Tribunal is committed to performing at a peak level to achieve its outcome — the protection and recognition of native title. During the reporting period the performance management cycle was reviewed with the aim of integrating the work plans of individual employees with team, operational and strategic plans of the organisation. Several training sessions were given in preparation for the implementation of the scheme during the next reporting period. The performance management scheme was underpinned by the certified agreement, which provided a solid framework for the key principles of managing individual performance.

By 30 June 2001 the performance management planning cycle had commenced with infrastructure in place in People Services to manage the transition to a common planning cycle with a common salary advancement date. Employees in People Services identified and developed a range of training, tools and products to support and assist supervisors and employees in effectively working with the performance management scheme. Some of these included:

- a national training program for supervisors on giving feedback and, for all staff, in receiving feedback;
- a performance management tool kit;
- a performance management presentation;
- a help-desk service; and
- weekly messages relating to the performance management scheme.

The certified agreement provided for some specific initiatives including a trial of the giving of feedback by employees to their supervisors (known as upward feedback). By the end of the reporting period 20 senior employees in the Tribunal were participating in the trial. If deemed successful by the consultative committee, upward feedback will be implemented during the next reporting period.

Workforce planning, and employee retention and turnover

At 30 June 2001, the Tribunal had 15 Holders of Public Office (President, Registrar and members) and 242 people employed under the *Public Service Act 1999* (PSA), an overall increase of 10 from the end of the previous reporting period.

During the reporting period 31 PSA employees resigned. This represented 14.4 per cent of the workforce (calculated on staff numbers at 30 June 2000). In the previous reporting period 30 PSA employees had resigned, which represented 12.9 per cent of the workforce (calculated on staff numbers at 30 June 1999). The slight increase in the percentage of turnover can be attributed to a reduction in the number of PSA employees during the reporting period 1999–2000.

The increase in number of employees in this reporting period was the result of an increase in workload in Queensland and the Northern Territory. The number of employees in Geospatial Analysis and Mapping Services has also grown considerably to cope with increasing demand for their products.

Of the 242 people employed under the PSA, 164 were female and 78 were male, 219 were full-time and 23 part-time, 209 were ongoing staff and 33 non-ongoing. Twenty-two people identified themselves as being either

Aboriginal or Torres Strait Islander, six people identified themselves as having a disability, and 11 people as coming from a linguistically diverse background (for more information see Table 12, p.101). Total expenditure on the salaries of the members, Registrar and employees for 2000–2001 was \$13,715,295 compared with \$12,880,628 for the previous reporting period, an increase of 6.48 per cent.

The increase in expenditure was largely due to:

- an increase in the total number of employees;
- a certified agreement pay increase;
- a pay increase for members and the Registrar determined by the Remuneration Tribunal; and
- a once-off cash-out of annual leave to assist in reducing the Tribunal's leave liability.

In order to strengthen the Tribunal's capability to meet changing needs, plans to improve workforce management were being developed. The establishment and implementation of a workforce plan was identified as a key priority for the next reporting period.

To improve the working environment for members and staff, the Tribunal:

- acquired additional floor space for the Melbourne and Brisbane registries;
- completed minor fit-out works in the Sydney registry;
- relocated the Cairns office to new premises, not only to accommodate additional members and staff but also to provide improved conference facilities; and
- relocated the Darwin registry (to larger premises within the same building).

In Western Australia, the Tribunal secured new premises for the Perth registry to be separated from the principal registry. The move to the new premises will occur in the next reporting period. The principal registry will remain in the Commonwealth Law Courts building.

Industrial democracy initiatives and performance

The Tribunal is committed to the objectives and principles of workplace participation, and encourages and supports employees in the management of the Tribunal. The Tribunal's consultative committee remains the main consultative forum.

All staff are invited to participate in or observe meetings, either in person or by telephone link-up, and are invited to submit agenda items.

Employing Indigenous Australians

The Tribunal recognises and values the unique knowledge and skills that Indigenous Australian employees contribute to an organisation whose primary role engages it with Indigenous issues on a daily basis. The Tribunal acknowledges the need for commitment to the continued recruitment, development and retention of Indigenous Australian employees. All recruitment advertisements state that Indigenous people are encouraged to apply. The Tribunal advertises in Indigenous newspapers, such as the *Koori Mail*. For positions that involve a significant amount of Indigenous client contact, selection criteria are designed to attract Indigenous applicants. Indigenous Australian employees may have specific workplace related issues or needs which will require ongoing, priority attention.

During the reporting period the Tribunal established an Indigenous advisory group. The group meets with the Registrar every two months, or more frequently if required, to address specific issues over a wide range of matters. The group consists of Indigenous employees only, although it has agreed to invite specialist advice as needed.

NAIDOC

Since 1995, the Tribunal has organised or participated in the events and celebrations that take place during National Aboriginal and Islander Day Observance Celebrations, commonly known as NAIDOC week.

In the Tribunal, NAIDOC gives the Tribunal's Indigenous staff the opportunity to share the richness of their culture and heritage. It is also an opportunity for Tribunal staff to meet with Indigenous people and the wider community, providing information about native title and explaining what the Tribunal does.

The Tribunal participated in NAIDOC celebrations in Adelaide, Townsville and Brisbane by holding information stalls. In Sydney, the Tribunal, together with the New South Wales Aboriginal Land Council and a number of native title claimants, attended an event hosted by State Records, which gave a presentation about the information it holds, particularly in relation to land tenure and Aboriginal records. The Tribunal delivered a presentation about the native title process and a native title applicant gave a talk about his use of the State archives in researching his claim.

In Perth, Pastor Arthur Pitt gave a compelling delivery about growing up on Darnley Island in the Torres Strait.

Learning and development strategies

The Tribunal is committed to fostering a culture of learning in the workplace by providing opportunities for all employees and members to develop and enhance their skills and knowledge to meet the current and future requirements of the Tribunal and the Australian Public Service. Meeting the learning and development needs of employees is part of the Tribunal's performance management scheme.

Tribunal employees, in consultation with their supervisors, take responsibility for acquiring and maintaining higher level skills by identifying areas where further development would benefit themselves and the Tribunal.

The Tribunal also offers the opportunity for members to enhance their training or development. During the reporting period:

- three members attended four-wheel drive training;
- four attended 'Lawyers Engaged in Alternative Dispute Resolution – Mediation' training;



Pictured following a training session to discuss Western Australian State Government policy initiatives and developments are: (*left to right*) Peter Sharp (Presenter, Department of Conservation and Land Management), Tony Lee (Tribunal member), Carol Martin MLC (Member for Kimberley), Maxine Chi (Department of Conservation and Land Management) and Andrew Jagers (Tribunal State Manager, Western Australia), Perth, 21 June 2001.

- five attended various modules of the internally conducted induction training;
- one member attended the Native Title Representative Bodies legal conference; and
- two members attended the Australian Institute of Judicial Administration Tribunal's conference.

A training reference group was established during the reporting period. The group is led by a training specialist with the aim of developing and implementing a coordinated learning and development strategy in consultation with employees.

Significant progress was also made in the development of a foundation training program for staff. At the end of the reporting period an appropriate curriculum to support the program, using core values, capabilities, and behavioural indicators was being developed.

Training in native title processes and other areas specific to the Tribunal was delivered by the Tribunal's more experienced staff. For example, the Tribunal provided a week-long course on data collection for Australian Public Service (APS) level 4 officers responsible for the accuracy of data input in all registries. The outcome of this training was an increased awareness of the importance of data custodianship and greater accuracy in data collection related to the output structure, in particular, assistance to applicants and others, registrations, and future act related outputs.

To make best use of the Tribunal's available training resources, priority in this reporting period was given to developing:

- leadership and management skills;
- training skills;
- service delivery knowledge and skills; and
- cross-cultural awareness and communication skills.

Studies assistance

The Tribunal continues to offer employees study assistance under both the Studies Assistance and Professional Development, and Study Award for Indigenous Employees schemes.

At the end of the financial year 32 employees were being supported in part-time tertiary study under the Studies Assistance scheme. Of these, eight were Indigenous employees. Additionally, three employees were supported in full-time tertiary study under the Indigenous Employee Study Award scheme.

A staff committee commenced a review of the Studies Assistance and Study Award guidelines during the year, which was necessary to ensure that these schemes addressed the Tribunal's changing needs and were

aligned with the *Strategic Plan 2000–2002*. The reviews will be completed during the next reporting period.

In the certified agreement, the Registrar and staff agreed to develop a non-remunerative award, which will recognise and reward employees for outstanding achievements and/or contributions to the work of the Tribunal. The reward will also provide special development opportunities for the recipients. Although a staff committee started work on this award during this reporting period, the criteria and process for accessing the award will be finalised in the next reporting period.

Disability strategies

Together with all other Commonwealth departments and agencies, the Tribunal is, for the first time, required to report against the prescribed indicators in the Commonwealth Disability Strategy performance reporting framework. The purpose of the Commonwealth Disability Strategy is to make sure that people with disabilities have the same level of access to all Commonwealth policies, programs and services as do other members of the Australian community.

The prescribed indicators of the framework form the outline of a disability action plan. During this first year of reporting against the performance indicators, the Tribunal commenced a consolidation and audit of the services it provides to people with disabilities in relation to its role as an employer. The services are as follows:

- All the Tribunal employment policies and procedures comply with the *Disability Discrimination Act 1992* and refer to this Act as a source document.
- The consultative committee meets regularly and assesses changes to any of the Tribunal's policies, practices and procedures. If there are any changes, they must be endorsed by the consultative committee (for more information see 'Industrial democracy initiatives and performance', p.106).
- The Tribunal has a workplace diversity program which incorporates a disability strategy.
- Recruitment and other information is available in a variety of accessible formats (including in Braille) upon request and at no cost to the public; this can be supplied within 10 days of a request being made.
- The Tribunal applies the principle of 'reasonable adjustment' to the workplace, acknowledging that the work environment must be made to accommodate the individual as reasonably as possible. In support of this policy, ergonomic assessments of the workplace are provided as a matter of course, and specialised equipment is purchased where appropriate. Between January 1994 and June 2001 (the life of the

Tribunal) there have been four clearly identifiable examples where reasonable adjustment was applied.

- Although the ongoing education and awareness of managers are practised, this policy is yet to be formalised and will be addressed in the next reporting period.
- Training and development programs consider and respond to the needs of people with disabilities. During the reporting period a new foundation training program was commenced (for more information see 'Learning and development strategies', p.108) but without reference to the incorporation of the needs of employees with disabilities into the training delivery. This omission will be addressed in the next reporting period.
- The Tribunal has in place grievance procedures, which allow access for those people within and outside the Tribunal to complain or raise issues of concern in relation to its services to those with disabilities. These mechanisms are explained in the Australian Public Service Code of Conduct, the *Customer Service Charter* and the *Certified Agreement 2000–2003*. During the reporting period there were no complaints of this nature recorded.

At 30 June 2001 six employees identified themselves as having a disability.

Risk management

In previous reporting periods the Tribunal had, during its normal operations, identified a number of areas of risk and had implemented strategies to address risk as particular issues were identified. However, the Tribunal had not systematically assessed all areas of risk and the extent of risk. It did not have a Tribunal-wide risk management plan.

During the reporting period the Tribunal commenced a more systematic approach to risk management. The Tribunal executive decided that risk management plans should first be developed in five priority areas: occupational health and safety and travel; statutory registers; recruitment, selection and development; achieving outputs and outcomes; and information management and technology.

Workshops were held with senior supervising staff, some of whom were also identified to take part in particular risk management project teams because of their particular expertise. The workshops involved participants identifying categories and levels of risks. They also provided an opportunity to train managers in developing a risk management plan, which will be implemented during the next reporting period.

Information management

The Tribunal maintains a number of registers of information and databases that hold 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 strategic plan. 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. The information management plan developed in May 2000 supports these strategies.

Registers

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

- the Register of Native Title Claims, which contains information about all claimant applications that have been registered under s.190A of the Act or were registered prior to the 1998 amendments to the Act;
- the National Native Title Register, which contains information about determinations of native title (for more information see 'Output 1.1.2 — Native title determinations', p.53); and
- the Register of Indigenous Land Use Agreements, which contains information about all ILUAs that have been accepted for registration (for more information see 'Output 1.1.3 — Indigenous land use agreement applications p.59).

Databases

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

- The 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;
- The ILUA database, which contains details of ILUAs covering pre-lodgement assistance and application details and was scheduled to go into production in August 2001;
- 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.

FARSS and Reporter 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.

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 plan adopted in May 2000. The main thrust of the plan was to target the Tribunal's key success area that relates to the provision of 'accurate and comprehensive information about native title matters to clients, governments and communities'. During the reporting period the Tribunal continued to work towards achieving the goals laid out in that plan.

Towards this end, the Tribunal has adopted the following strategies:

- Review and rationalise existing data sources with the aim of developing a consolidated database and systems architecture.
- Maintain a reliable and consistent technical infrastructure on which accurate and comprehensive information can be made available in accordance with the strategic plan.
- Develop an online capability in accordance with the Commonwealth Government's Online Strategy (see the Tribunal's web site at www.nntt.gov.au for more information about the Tribunal's online action plan).
- Implement an integrated document and records management system to ensure corporate responsibility in terms of record keeping is maintained.

In 2000–2001 major achievements towards these strategies included:

- significant progress towards identifying and documenting the required information in the Tribunal's databases and systems;
- the replacement of all outdated and unreliable network and server hardware;
- the development of a desktop software migration strategy for implementation in the next reporting period;
- the development of an online action plan and the calling of expressions of interest for the implementation of online services; and
- identification of suitable document/records management software together with its planned implementation in the next reporting period.

ACCOUNTABILITY



Ethical standards and accountability

Code of conduct

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. Appointment must be terminated on bankruptcy or other related circumstances, and members may be suspended or their appointment may be terminated on the grounds of misbehaviour or physical or mental incapacity. In addition, there are provisions in s.122 of the Act which deal with conflict of interest in relation to certain aspects of a member's work. As Tribunal members are not members of the Commonwealth Public Service, they are not directly governed by the Australian Public Service Code of Conduct, although they may be subject to it if they are involved in the supervision of staff.

Members have voluntarily adopted a code of conduct and are developing a set of procedures to be followed when dealing with any alleged breaches of that code of conduct. They have also considered the application of conflict of interest rules beyond the areas which are specifically governed by s.122. It is anticipated that these matters will be finalised early in the next reporting period.

The Tribunal continued to implement relevant aspects of the *Public Service Act 1999* with a range of strategies that assisted employees to understand and manage their rights and responsibilities under the APS Values and Code of Conduct.

During the reporting period the Registrar formally investigated five complaints under the Tribunal's procedures for determining potential breaches of the Code of Conduct. In three of those cases the determining officer decided that a breach of the code had occurred and sanctions were imposed.

The Tribunal's experience in conducting these investigations was that they were difficult to manage. Providing procedural fairness to all parties was especially time consuming. Although the processes remained confidential, there was an awareness within the Tribunal that these procedures would be applied to ensure Tribunal staff upheld the Code of Conduct. In this respect, the combination of the Code of Conduct and the procedures for determining potential breaches was effective in reinforcing the code as the standard of behaviour required of all Tribunal employees.

External scrutiny

Judicial decisions

Although there has been continuing judicial scrutiny of the Tribunal's decisions (see 'President's overview', p.3–4) and other decisions made regarding native title matters, only 10 decisions had a significant impact on the operations of the Tribunal during this reporting period. Details of these decisions are provided in Appendix III, page 138.

Parliamentary Joint Committee

The Tribunal is subject to examination by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the PJC) under s.206 of the Act.

During the reporting period, the Tribunal made two appearances before the PJC to give evidence. The first appearance took place on 3 July 2000 in Cairns when Andrew Kerr, Acting Regional Manager, and Simon Nish, State Manager, Queensland, appeared before the PJC at a public meeting. The second appearance took place on 3 April 2001 when the President and Registrar appeared before the committee in accordance with the PJC's obligation to examine the Tribunal's *Annual Report 1999–2000*.

As part of the PJC's inquiry into the operation and effectiveness of ILUAs, the Tribunal provided two written submissions during the reporting period to the committee. In order to assist the committee further with its inquiries, the Tribunal's ILUA officer accompanied the PJC to hearings in Queensland at Roma, Winton, Blackall, and Townsville over three days in March 2001. The committee took testimony about ILUAs from those people involved or interested in these types of agreements.

At the close of the reporting period the PJC had not reported to the Parliament on the committee's findings.

The seventh report of the PJC, *Examination of Annual Reports for 1998–1999*, was tabled in Parliament during the reporting period and is online at http://www.aph.gov.au/senate/committee/ntlf_ctte/index.htm

Other scrutiny

There were no reports into the Tribunal's operations by the Australian National Audit Office, Administrative Appeals Tribunal, Commonwealth Ombudsman or Privacy Commissioner during the reporting period.

Accountability to clients

Evaluation of client and stakeholder needs and satisfaction

As part of its budget and performance reporting system, the Tribunal is required to research and provide quantitative and qualitative information on client satisfaction in a number of service areas: registration, agreement-making, arbitration, assistance, notification and reporting to the Federal Court. The information obtained by this evaluation project will be critical to the implementation of service delivery, information management and public affairs strategies.

The Tribunal called for quotations and proposals from six consultants to undertake the client satisfaction research. This selective quotation process was based on an assessment of consultants provided through the Australian Institute of Social Researchers and the Communication Unit of the Department of the Prime Minister and Cabinet. The tender was still open at the end of the reporting period.

Customer Service Charter

The *Customer Service Charter* and customer feedback procedures continued to form the basis for capturing responses to the Tribunal's service delivery from its customers. This policy was under review in the reporting period, as it was noted that some responses were not captured through the various means outlined in the procedures. The suitability of existing standards to measure the success of service delivery was under review in line with the Tribunal's changing business environment and the strategic plan.

Feedback recorded through the Tribunal procedures dropped slightly from that recorded during the previous year. Feedback received continued to identify positive comments regarding the services of Geospatial Analysis and Mapping Services, as well as an increase in compliments for individual staff involved in providing assistance to parties.

Performance against charter

- Sixteen feedback events were recorded during the year. Of these, one was a criticism of the Tribunal's web site, and the remainder were compliments about the quality of service provided by employees of the Tribunal.
- The standards as identified in the charter continued to provide the benchmark for the provision of services, however, it is envisaged that these will change as an outcome of the review.

Complaints

The Registrar received two complaints, external to the organisation, against employees and in both cases the employees were found not to have breached the Code of Conduct (for more information see p.116).

Social justice and equity in service delivery

The Tribunal takes every care to ensure that when dealing with the organisation all Australians are treated fairly and justly. Active participation from the community is sought by the Tribunal in its activities, as is feedback in various forms. The Tribunal provides a freecall 1800 telephone service that allows people to contact the nearest office free of charge. The freecall number is promoted on the web site and in all publications, public notices, and correspondence.

The Tribunal recognises the importance of ensuring that all clients and stakeholders have equal and full access to Tribunal information and services. This includes people who live in remote locations, have a disability, are from Aboriginal or Torres Strait Islander communities, and who are generally not 'information rich'.



Tribunal member Ruth Wade discusses site boundaries with parties to the Kamilaroi native title application, Coonabarabran, March 2001.

The Tribunal continued to develop information products, correspondence and publications to meet the needs of target audiences, with particular effort being given to the use of plain English for audiences who find the processes associated with the administration of the Act very difficult to understand. During the reporting period 29 fact sheets were published with this objective in mind, some of which were targeted specifically at claimants. The common paragraphs in notification letters sent to all stakeholders were rewritten in clearer language, and media releases accompanied every notification in an attempt to contact everyone affected by the Tribunal's activities.

Members and case managers conducted meetings, where practicable, 'on country' or in the field, and provided refreshments in order to minimise costs and inconvenience to clients.

Internet

The Tribunal makes as much information as possible available via its site on the world wide web. This information is published in compliance with the *Guidelines for Commonwealth information published in electronic formats*. The Tribunal's web site meets the basic web content accessibility standards to ensure that most people with internet access are able to use its online documents.

If people do not have internet access, the Tribunal will provide any information available on the web site free of charge in an alternative format (for more information see 'Documents available free of charge', p.161). To date, this has usually been in hard copy or electronically (rich text, portable document or Microsoft Word format on CD-ROM, disk or via email), which can be provided without delay. Other formats (for example Braille) can be provided upon request within 10 days.

Freedom of information

During the reporting period, two formal requests were made under the *Freedom of Information Act 1982* for access to documents associated with the administration of the registration test (for more information see Appendix VIII, p.158).

Performance against purchasing policies

Procurement

An objective of the Tribunal's purchasing activity 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. Procurement guidelines are outlined in the Tribunal's 'Engagement of Consultants' handbook. These guidelines address key steps in the procurement process; for example, market testing before approval of a preferred provider of goods and services.

The Tribunal's purchase request form was redrafted during the reporting period to include a comment section on all the procurement principles, and the completion of this form will be a prerequisite for approval to proceed with a particular purchase.

Asset management

No change occurred to the Tribunal's procurement procedures or disposal of assets policy during the reporting period; however, a more rigorous fraud prevention policy was in development.

Information technology outsourcing

As part of the Government's initiative on outsourcing information technology infrastructure, the Tribunal outsourced its information technology services to Unisys Australia Pty Ltd (Unisys) for three years from February 2000 (for information about the tendering process see last year's annual report, pp.42–3, available online at www.nntt.gov.au). During the reporting period Unisys entered into a joint venture with the Western Australian based bank, BankWest, to form Unisys West. As a result, the Tribunal's contract was formally novated to the new company, as is provided for in the contract.

Unisys is responsible for managing the information technology infrastructure to an agreed level of performance. Service credits apply if the availability of the nominated critical systems drops below 99.5 per cent in any one month. To date, no service credits have been applied and the average availability is above 99.8 per cent.

Customer satisfaction is measured through weekly staff surveys that seek both quantitative and qualitative feedback. The surveys show that staff are satisfied with the service.

Expenditure has been in accordance with the contract and there have been no unexpected variations. Additional costs have arisen through the leasing of additional hardware but these were anticipated in the Tribunal's budget.

The relationship between the Tribunal and Unisys is very solid and is attributable to the fact that both parties recognise that relationship management is the key to a good outcome.

Comparing the cost between pre-outsourcing and post-outsourcing is difficult because they are different models with different variables. A very simple analysis indicates that the cost of providing information technology services has risen under the outsourcing regime. However, this does not account for the increase in the stability of the information technology environment, the benefits of the contractor's technical expertise, and the fact that the Tribunal does not have to concern itself with the recruitment and retention of information technology staff.

The Tribunal will undertake an independent review of the contract before the end of 2001. One of the objectives will be to recommend how information technology services should be provided following the expiry of the contract in early 2003.

Consultancies

The *Native Title Act 1993* 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*.

Actual expenditure on consultancies for the reporting period was \$1,141,000, which was made up of the following:

- Information technology \$963,175
- Mediation (s.131A of the Act) \$ 31,304
- Other \$137,837
- Training \$ 8,685

There was a decline in expenditure associated with the engagement of consultants when compared with that reported in the previous year.

The use of consultants for s.131A mediation work declined considerably during the year, while the use of consultants for information technology related work increased by approximately 40 per cent.

The Tribunal's processes for managing consultancies were under review as part of its risk management planning (for more information see p.112).

Consultants engaged under s.131A

During the reporting period seven consultants in total were engaged to undertake 11 consultancies under s.131A of the Act. Three of these were in excess of \$10,000 (for more information see Table 21, p.156).

The total contract cost of the consultancies engaged during the reporting period was \$101,553, a reduction on the amount contracted during the previous reporting period. Of that contracted amount, only \$31,304 was expended during the reporting period. The expenditure comprised fees to the consultants and support costs incurred by the Tribunal.

Consultants engaged under s.132

During the reporting period eight consultants were engaged under s.132 to undertake 14 consultancies, the majority of which were involved with information technology services. The total contract cost of these consultancies was \$868,258. Details of the 12 consultancies that exceeded \$10,000 are provided in Table 22, page 157.

Competitive tendering and contracting

During the reporting period the Tribunal contracted with Ansett Australia for the provision of airline services for its travel requirements. The contract was for a period of three years with a contract price of approximately \$3,000,000.

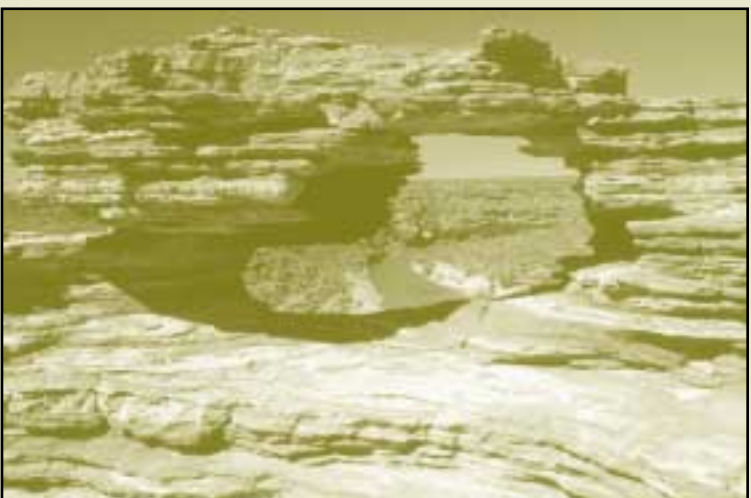
This contract was generated through a process of partnering with a 'cluster group' of Commonwealth courts and tribunals that involved the joint advertising, negotiation and evaluation of the public tender process. The subsequent agreement resulted in significant savings for all participating agencies.

It was anticipated that this new contract would generate savings for the Tribunal of approximately \$100,000 for each year of the agreement.

Environmental performance

Although the Tribunal does not administer legislation that requires the application of the ecologically sustainable development principles of the *Environment Protection and Biodiversity Conservation Act 1999*, it takes seriously its obligations to promote environmentally responsible best practice throughout all of its operations. These are explained in Appendix X (p.165).

APPENDICES



Appendix I

Strategic Plan 2000–2002

Introduction

The recognition and protection of native title poses many challenges to the Australian community.

Ways for meeting those challenges and resolving native title issues are set out in the *Native Title Act 1993*. They provide the foundation of the work of the National Native Title Tribunal.

The objects of that Act include:

- to provide for the recognition and protection of native title;
- to establish ways in which future dealings affecting native title may proceed; and
- to set standards for those dealings to establish a mechanism for determining claims to native title.

The National Native Title Tribunal was established under the Native Title Act. The Act sets out what the Tribunal does and how the Tribunal operates.

The Tribunal's main functions are:

- to mediate between parties to native title applications and assist the parties reach agreement about relevant matters;
- to mediate between parties to assist them reach agreement about certain acts that might take place on an area where native title exists;
- to arbitrate in relation to certain future acts where parties are unable to reach agreement; and
- to assist parties negotiate legally binding agreements (such as indigenous land use agreements) that resolve a variety of native title issues.

In carrying out its functions, the Tribunal:

- must try to be fair, just, economical, informal and prompt; and
- may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

To meet the requirements set out in the Act, the members, Registrar and staff of the Tribunal can provide various forms of assistance to parties. The Registrar must maintain publicly accessible registers of native title claims, native title determinations and indigenous land use agreements.

Although the Act states what the Tribunal can and must do, our work is influenced by a range of external factors, including the attitude and degree of involvement of key parties to native title processes. In the first six years of the Tribunal's life various judicial decisions and legislative changes affected the content and administration of native title law.

The Tribunal grew, and so did the range of functions it performed. Importantly, the administrative role of the Tribunal was clarified and made more explicit by court decisions and amendments to the Native Title Act in 1998. A new relationship with the Federal Court was created by the amended Act, and much of the Tribunal's work was brought under the direct supervision of the Court. Published in 1997, the *Three Year Business Plan 1997–2000* needed revision in light of those changes.

This *Strategic Plan* has been developed by members and staff of the Tribunal to help us meet a range of foreseeable challenges. It does not summarise the statutory functions and obligations of the members, Registrar and staff of the Tribunal. Rather, it states concisely our vision, our purpose, our values and the key success areas on which the Tribunal will focus in the next three years. In other words, the *Strategic Plan* describes how we go about doing what the Federal Parliament has entrusted to us, rather than identifying what we do.

We will strive to achieve our purpose by setting clear strategic directions, and by encouraging our teams to be innovative, creative and accountable. The *Strategic Plan* highlights the relationship we have with the Australian community and invites people affected by native title issues to use the services offered by the Tribunal.

Although important aspects of native title law and practice are settled, and there is an increasing awareness of what native title is and how it affects a range of activities, the Tribunal operates in a changing environment. For example, some State and Territory bodies may take on certain roles that are currently performed by the Tribunal.

How and when much of the Tribunal's work is undertaken is increasingly influenced by judgments and orders of the Federal Court, as well as by changes to legislation and government policies in different parts of Australia.

Despite continuing changes to our operating environment, and the complexity and volume of our work, this document will help to maintain our focus on the purpose for which the Tribunal was established and the tasks that Parliament has entrusted to us.

Our vision

This is what we will strive to achieve:

The Australian community recognises and respects the relationship between native title and other interests in land and waters.

Our purpose

This is our primary role and the reason why we exist as an organisation:

We assist people to resolve native title issues.

Our values

We are a highly informed, competent organisation that values being:

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.

Our key success areas

To assist people to develop agreements that resolve native title issues

Strategies

- Provide professional, prompt and practical mediation services that:
 - recognise the particular social and cultural features of multi-party native title mediation, including the customary and cultural concerns of Indigenous Australians;
 - recognise the variety of rights and interests in land and waters; and
 - meet the needs of the parties involved and assist them to resolve native title issues.
- Provide assistance to parties to native title proceedings and other negotiations involving native title issues by:
 - meeting their needs for information about native title and ways to resolve those issues;
 - facilitating the negotiation of agreements;
 - assisting industry, professional and other representative groups to inform their members; and
 - informing public debate about native title.

We will know we have been successful if:

- increasing numbers of native title issues are resolved by agreement;
- parties ask us to assist them to make agreements; and
- strategic partnerships are established with key client groups and those partnerships help to bring about agreements.

To have fair and efficient processes for making arbitral and registration decisions**Strategies**

- Maintain high standards of timeliness and efficiency in making arbitral and registration decisions.
- Provide clients with sufficient information about native title processes so they can make informed decisions.
- Respond appropriately to client feedback, court decisions, legislative changes and the establishment of State or Territory bodies.

We will know we have been successful if:

- our decisions meet statutory timeframes;
- our processes or decisions are endorsed by the courts;
- we respond quickly to court decisions and legislative changes that affect decision-making; and
- our processes are coordinated with those of relevant State and Territory bodies.

To provide accurate and comprehensive information about native title matters to clients, governments and communities**Strategies**

- Ensure that the statutory registers and our other records about the location, content and status of applications, determinations and agreements are accurate, comprehensive and accessible.
- Maintain high standards in the collection, management and communication of information.
- Adopt effective communication practices, having regard to the diverse needs of clients.

We will know we have been successful if:

- people have ready access to information about the location, content and status of applications, determinations and agreements;
- people ask us for that information;
- clients are provided with timely, relevant and accurate information on native title issues; and
- research demonstrates that information provided by the Tribunal in various forms is clear, accurate, accessible, and meets the needs of clients.

To have a highly skilled, flexible, diverse and valued workforce**Strategies**

- Adopt optimum and innovative recruitment and career development strategies, including specific strategies for Aboriginal and Torres Strait Islander staff.
- Provide continuing training, including in the areas of cross-cultural awareness and Tribunal functions.
- Treat each other with respect, fairness and honesty.
- Maintain a high level of corporate knowledge in dealing with native title issues, by encouraging members and staff to record and share their practical experiences.

We will know we have been successful if:

- we have higher levels of recruitment and retention of Aboriginal and Torres Strait Islander staff at a range of levels and across a range of positions;
- our actions and decisions are consistent with the values of the Tribunal;
- we have a respectful and positive work environment where individuals and groups are recognised for their diverse contributions;
- we anticipate, and readily adapt our work practices to, changing circumstances; and
- evaluations conducted with members and staff confirm the success of the above strategies.

Appendix II Staffing and occupational health and safety

Occupational health and safety

The National Native Title Tribunal's occupational health and safety policy and agreement has been in place since 30 April 1996. The agreement provides for elected occupational, health and safety representatives who assist with ensuring the Tribunal is a safe place to work. These representatives are provided with training, and occupational health and safety remains a standing agenda item for the Tribunal's consultative committee. Regular reports are provided by nominated occupational health and safety representatives and the Tribunal's occupational health and safety coordinator.

During the reporting period there was one accident that was notifiable under s.68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. The incident did not result in a compensation claim. There were no specially commissioned tests in any of the Tribunal offices.

The Tribunal's certified agreement reinforces the commitment that all reasonable steps will be taken to provide a healthy and safe workplace. Specific guidelines were developed during the reporting period for employees who travel to remote areas. These guidelines focus on safety whilst working in remote areas and have an emphasis on training. The emphasis in developing the guidelines was to ensure that:

- there is appropriate sequencing of mediation meetings so that proper breaks can be taken between field trips;
- all driving while on Tribunal business should be undertaken during daylight hours; and
- reasonable work hours should be kept while undertaking field work, including time taken for travelling.

All ongoing employees who use screen-based equipment are required to undertake an eyesight test on engagement. Non-ongoing employees engaged for more than three months are also required to undertake an eyesight test.

Arrangements are also made for the provision of influenza vaccinations for all employees. Other vaccinations (for example, tetanus, hepatitis A, hepatitis B and Japanese encephalitis) are available for those employees who are at risk of exposure to disease because they are required to travel into the field on Tribunal business.

Staffing

Table 12 Employees by classification, location and gender at 30 June 2001

Classification	Location													
	Male							Female						
	WA	NSW	Qld	Vic	SA	NT	Total	WA	NSW	Qld	Vic	SA	NT	Total
APS level 1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
APS level 2	8	1	–	–	–	1	10	18	3	7	1	2	3	34
APS level 3	3	–	–	–	–	–	3	13	1	1	–	–	–	15
APS level 4	7	–	3	–	2	–	12	20	3	10	1	1	1	36
APS level 5	3	–	–	–	–	–	3	3	–	2	–	–	–	5
APS level 6	16	1	3	1	1	–	22	21	4	10	1	1	3	40
Legal 1	–	–	–	–	–	–	–	5	–	–	–	–	–	5
Legal 2	1	–	–	–	–	–	1	–	–	–	–	–	–	–
Media 1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Media 2	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Library 1	–	–	–	–	–	–	–	2	–	–	–	–	–	2
Library 2	–	–	–	–	–	–	–	–	–	1	–	–	–	1
Executive level 1	8	2	3	1	–	1	15	15	–	5	1	–	–	21
Executive level 2	6	1	2	1	1	–	11	2	–	–	1	–	–	3
Senior executive	1	–	–	–	–	–	1	2	–	–	–	–	–	2
Total employees	53	5	11	3	4	2	78	101	11	36	5	4	7	164

Table 13 Certified agreement salary ranges by classification

Classification	Salary point	Before certification	Increase on certification 4.5%	2001 increase 4.5%	2002 increase 4.0%
APSL 1					
Under 18	1.08	\$15,619	\$16,322	\$17,056	\$17,738
At 18	2.08	\$18,222	\$19,042	\$19,899	\$20,695
At 19	3.08	\$21,085	\$22,034	\$23,026	\$23,947
At 20	4.08	\$23,688	\$24,754	\$25,868	\$26,903
Adult	5.08	\$26,031	\$27,202	\$28,426	\$29,563
	6.08	\$26,905	\$28,116	\$29,381	\$30,556
	7.08	\$27,634	\$28,878	\$30,178	\$31,385
	8.08	\$28,770	\$30,065	\$31,418	\$32,675
APSL 2					
	1.05	\$29,459	\$30,785	\$32,170	\$33,457
	2.05	\$30,271	\$31,633	\$33,056	\$34,378
	3.05	\$31,066	\$32,464	\$33,925	\$35,282
	4.05	\$31,872	\$33,306	\$34,805	\$36,197
	5.05	\$32,668	\$34,138	\$35,674	\$37,101
APSL 3					
	1.04	\$33,555	\$35,065	\$36,643	\$38,109
	2.04	\$34,427	\$35,976	\$37,595	\$39,099
	3.04	\$35,301	\$36,890	\$38,550	\$40,092
	4.04	\$36,216	\$37,846	\$39,549	\$41,131
APSL 4					
	1.04	\$37,398	\$39,081	\$40,840	\$42,474
	2.04	\$38,587	\$40,323	\$42,138	\$43,824
	3.04	\$39,591	\$41,373	\$43,235	\$44,964
	4.04	\$40,606	\$42,433	\$44,342	\$46,116
APSL 5					
	1.03	\$41,713	\$43,590	\$45,552	\$47,374
	2.03	\$43,020	\$44,956	\$46,979	\$48,858
	3.03	\$44,231	\$46,221	\$48,301	\$50,233
APSL 6					
	1.05	\$45,052	\$47,079	\$49,198	\$51,166
	2.05	\$46,173	\$48,251	\$50,422	\$52,439
	3.05	\$47,438	\$49,573	\$51,804	\$53,876
	4.05	\$49,823	\$52,065	\$54,408	\$56,584
	5.05	\$51,752	\$54,081	\$56,515	\$58,776
Executive Level 1					
	1.02	\$57,756	\$60,355	\$63,071	\$65,594
	2.02	\$62,365	\$65,171	\$68,104	\$70,828
Executive Level 2					
	1.04	\$66,612	\$69,610	\$72,742	\$75,652
	2.04	\$70,274	\$73,436	\$76,741	\$79,811
	3.04	\$75,520	\$78,918	\$82,469	\$85,768
	4.04	\$78,045	\$81,557	\$85,227	\$88,636

Table 13 Certified agreement salary ranges by classification (cont.)

Local designation	Classification	Salary point	Before certification	Increase on certification 4.5%	2001 increase 4.5%	2002 increase 4.0%
Legal 1	APSL 3	1.10	\$34,573	\$36,129	\$37,755	\$39,265
		2.10	\$36,879	\$38,539	\$40,273	\$41,884
	APSL 4	3.10	\$39,457	\$41,233	\$43,088	\$44,812
	APSL 5	4.10	\$41,987	\$43,876	\$45,850	\$47,684
	APSL 6	5.10	\$45,052	\$47,079	\$49,198	\$51,166
		6.10	\$47,617	\$49,760	\$51,999	\$54,079
		7.10	\$50,348	\$52,614	\$54,982	\$57,181
	Exec. Level 1	8.10	\$57,756	\$60,355	\$63,071	\$65,594
		9.10	\$62,365	\$65,171	\$68,104	\$70,828
		10.10	\$69,086	\$72,195	\$75,444	\$78,462
Legal 2	Exec. Level 2	1.02	\$76,717	\$80,169	\$83,777	\$87,128
		2.02	\$80,040	\$83,642	\$87,406	\$90,902
Library 1 (Professional Officer)	APSL 3	1.07	\$31,416	\$32,830	\$34,307	\$35,679
		2.07	\$32,668	\$34,138	\$35,674	\$37,101
		3.07	\$34,573	\$36,129	\$37,755	\$39,265
		4.07	\$36,879	\$38,539	\$40,273	\$41,884
	APSL 4	5.07	\$39,457	\$41,233	\$43,088	\$44,812
	APSL 5	6.07	\$41,987	\$43,876	\$45,850	\$47,684
		7.07	\$44,074	\$46,057	\$48,130	\$50,055
Library 2 (Senior Professional Officer)	APSL 6	1.05	\$45,052	\$47,079	\$49,198	\$51,166
		2.05	\$46,419	\$48,508	\$50,691	\$52,719
		3.05	\$47,715	\$49,862	\$52,106	\$54,190
		4.05	\$48,858	\$51,057	\$53,355	\$55,489
		5.05	\$50,348	\$52,614	\$54,982	\$57,181
Media 1 (Public Affairs Officer)	APSL 6	1.03	\$46,928	\$49,040	\$51,247	\$53,297
		2.03	\$49,533	\$51,762	\$54,091	\$56,255
		3.03	\$53,326	\$55,726	\$58,234	\$60,563
Media 2 (Senior Public Affairs Officer)	Exec. Level 1	1.03	\$60,754	\$63,488	\$66,345	\$68,999
		2.03	\$65,792	\$68,753	\$71,847	\$74,721
		3.03	\$69,086	\$72,195	\$75,444	\$78,462

Table 14 Certified agreement salary ranges by classification (trainees)

	Before certification \$ pw	Increase on certification \$ pw	2001 increase \$ pw	2002 increase \$ pw
Highest Year of School — Year 10				
School leaver	\$149.70	\$156.43	\$163.47	\$170.01
School leaver	\$199.60	\$208.58	\$217.96	\$226.68
Plus 1 year out of school	\$224.55	\$234.65	\$245.21	\$255.02
Plus 2 years	\$279.44	\$292.01	\$305.15	\$317.35
Plus 3 years	\$324.35	\$338.94	\$354.19	\$368.36
Plus 4 years	\$364.27	\$380.65	\$397.78	\$413.69
Plus 5 years or more	\$399.20	\$417.16	\$435.93	\$453.36
Highest Year of School — Year 11				
School leaver	\$199.60	\$208.58	\$217.96	\$226.68
School leaver	\$224.55	\$234.65	\$245.21	\$255.02
Plus 1 year out of school	\$279.44	\$292.01	\$305.15	\$317.35
Plus 2 years	\$324.35	\$338.94	\$354.19	\$368.36
Plus 3 years	\$364.27	\$380.65	\$397.78	\$413.69
Plus 4 years	\$399.20	\$417.16	\$435.93	\$453.36
Plus 5 years or more	\$399.20	\$417.16	\$435.93	\$453.36
Highest Year of School — Year 12				
School leaver	\$279.44	\$292.01	\$305.15	\$317.35
Plus 1 year out of school	\$324.35	\$338.94	\$354.19	\$368.36
Plus 2 years	\$364.27	\$380.65	\$397.78	\$413.69
Plus 3 years	\$399.20	\$417.16	\$435.93	\$453.36
Plus 4 years	\$399.20	\$417.16	\$435.93	\$453.36
Plus 5 years or more	\$399.20	\$417.16	\$435.93	\$453.36

Non-salary benefits

The range of non-salary benefits negotiated under the Tribunal's certified agreements include:

- learning and development opportunities, such as studies assistance, in-house training, external training courses and on-the-job training;
- access to the employee assistance program where appropriate;
- access to flu and other vaccinations required in the field;
- eyesight testing where appropriate;
- remote localities allowances;
- media (on-call with restrictions) allowance;
- 20 days of personal leave per year with no limit on the combination of leave type;
- flexibility of working arrangements to balance work and personal commitments (i.e. use of the quarterly settlement system);
- provision for carers responsibility (i.e. expenses are paid for caring responsibility whilst travelling or on a course, and provision of a carers room for respite for emergency care in the workplace);
- access to part-time work;
- access to informal home-based work arrangements;
- option for maternity and long service leave at half-pay;
- provision for miscellaneous leave with or without pay for a variety of reasons; and
- provision for child-care leave arrangements where the employee can access this entitlement once every three years to be the primary carer of his/her child for the period of 52 weeks until the child is 18 years of age at the commencement of leave.

Performance pay

The Tribunal has not had a performance based pay program in place for a number of years. No performance based pay was approved during the reporting period.

Members

Table 15 Tribunal members at 30 June 2001

Name	Title	Appointed	Term	Location
Mr Graeme Neate	President	1 Mar. 1999*	Five years	Brisbane
The Hon. Frederick (Fred) Chaney AO	Full-time Deputy President	18 Apr. 2000*	Three years	Perth
The Hon. Christopher Sumner AM	Full-time Deputy President	18 Apr. 2000*	Three years	Adelaide
The Hon. Edward M (Terry) Franklyn QC	Part-time Deputy President	17 Dec. 1998	Three years	Perth
Mr Anthony (Tony) Lee	Full-time member	30 June 1995	Five years, reappointed for three years	Perth
Mr Graham Fletcher	Full-time member	28 Feb. 2000	Three years	Brisbane
Mr John Sosso	Full-time member	28 Feb. 2000	Three years	Cairns
Mr Alistair (Bardy) McFarlane	Full-time member	20 Mar. 2000	Three years	Adelaide
Dr Mary Edmunds	Part-time member	4 Apr. 1995	Five years, reappointed for three years	Canberra
Prof. Douglas Williamson QC	Part-time member	4 Dec. 1996	Two years, reappointed for three years	Melbourne
Mr Geoffrey Robert Clark	Part-time member	1 June 1998	Three years, reappointed for three years	Cairns
Dr Gaye Sculthorpe	Part-time member	2 Feb. 2000	Three years	Melbourne
Mrs Jennifer Stuckey-Clarke	Part-time member	2 Feb. 2000	Three years	Sydney
Mrs Ruth Wade	Part-time member	2 Feb. 2000	Three years	Brisbane

*Term does not take into account previous term as a Tribunal member

Table 16 Tribunal members completing their term during the reporting period

Name	Title	Appointed	Term	Location
Ms Patricia Lane	Part-time member	1 Jan. 1998	Three years	Sydney

Appendix III

Significant decisions

During the reporting period the following decisions of the Federal Court and National Native Title Tribunal members were the most significant in terms of their impact on operations of the Tribunal.

General developments in native title law

Federal Court decisions

Bodney v Westralia Airports Corporation Pty Ltd [2000] FCA 1609, (200) 180 ALR 91, Federal Court, Lehane J, 13 November 2000. This case related to a native title determination application that included land at the Perth Airport. The main argument was about the effect of Crown to Crown grants of freehold on native title. Lehane J held a grant of a fee simple estate to the Crown, or the acquisition by the Crown of such an estate, extinguishes native title to the same extent, and for the same reasons, as a similar grant to a private person does. This case clarifies extinguishment issues and is relevant to mediation and the registration test.

Dieri People v State of South Australia [2000] FCA 1327, Federal Court, Mansfield J, 15 September 2000. This hearing concerned whether the applicants had complied with orders for further and better particulars in relation to aspects of the applicants' claim. The State alleged that the applicants had not provided the information required pursuant to the orders. Generic descriptions of classes of act were used to exclude areas from the claim. The applicants cited *Strickland v Native Title Registrar* (1999) 168 ALR 242 as authorising this approach. However, the State had provided historical and current information about other interests in the area claimed. Mansfield J held that the applicants should have relied on this information to specifically exclude certain areas. It was held that the descriptions of the composition of the applicant group and any sub-groups were unclear and required greater particularisation. Further details of the constitution and membership of the Dieri tribe, or of the traditional laws, rules or customs governing the passing of rights from generation to generation, were also required. This decision is relevant to the registration test.

Lardil, Kaiadilt, Yangkaal & Gangalidda Peoples v State of Queensland [2001] FCA 414 Federal Court, French, Merkel and Dowsett JJ, 11 April 2001. This was an appeal from the decision of Cooper J (1999) 95 FCR 14 in regard to the future act regime. The appellants had sought a declaration

that a future act (the issue of a mooring authority) was invalid, and final injunctive relief on the basis that Pasminco (a mining company) had not complied with the future act provisions of the Native Title Act. It was also alleged that there was non-compliance with the laws of Queensland governing the issue of mooring authorities. The appellants' argument, at first instance, was primarily based on the fact that they were registered native title claimants and that the act in question would be done in relation to an area covered by their native title application. They had not sought a determination of native title — instead they argued that the State of Queensland had not complied with the procedural requirements (such as to give notice of a proposed future act) in s.24HA and s.24NA of the Act.

Cooper J held the scheme of the Act is not to prohibit conduct and the future act regime (Division 3 of Part 2 of the Act) 'does not purport to impose upon a State Parliament or other Government party' any positive obligation or duty to do anything or to follow particular procedures' (*Western Australia v The Commonwealth* (1995) 183 CLR 373 at 471–472 per the majority). The procedural rights given by the future act regime only arise where a proposed act is a future act defined by s.233 of the Act. As the applicants' native title had not been determined, the statutory procedures in s.24HA and s.24NA imposed no duties and could not be enforced by injunction or declaratory relief. The Full Court, in dismissing the appeal, noted a future act is an act that affects native title and not an act that might affect native title. This case is relevant to mediation and the future act process.

Wandarang, Alawa, Marra & Ngalakan Peoples v Northern Territory [2000] FCA 923, (2000) 104 FCR 380, 177 ALR 512, Federal Court, Olney J, 25 July 2000. This determination of native title found non-exclusive native title to exist over the balance of the area claimed, including riverbanks and beds where the rivers were tidal. No determination was made over the waters of the rivers as the applicants limited their claim to tidal riverbeds and banks. Olney J held a Crown Lease Perpetual granted to the Northern Territory Development Land Corporation was not a 'previous exclusive possession act', was not a scheduled interest and did not confer exclusive possession, nor did it extinguish native title. Pastoral leases granted over the area extinguished exclusive native title rights and interests. Legislation affecting traditional Aboriginal rights of hunting, fishing and gathering preserved those activities, but by its regulatory nature the legislation is inconsistent with an exclusive right to engage in these activities. The declaration of a stock route, being a public work as defined under s.229(4) of the Act, was a category A past act which extinguished native title. The decision clarifies some extinguishment issues and leaves the question of native title rights to flowing water unresolved. This case is relevant to mediation and registration testing. This decision is on appeal to the Full Federal Court.

Woodridge v Minister for Land and Water Conservation NSW [2001] FCA 419, Federal Court, Katz J, 11 April 2001. The New South Wales Aboriginal Land Council objected to the New South Wales Farmers' Association's application to become party pursuant to s.84(3)(b) of the Act. Party status was initially sought on the basis that the claim area may cover leasehold or other interests held by its members. At the hearing, the Association sought to rely on interests which included the promotion of the development of the pastoral and agricultural industries and the advancement, promotion and protection of the interests of the pastoral and agricultural industries in legal matters. Katz J held that the Association was not entitled to party status by reason of the matters on which it relied in its notification to the Court nor those relied upon in the proceedings. They were mere indirect interests and insufficient, following the reasoning in *Byron Environment Centre Inc v Arakwal People* (1997) 78 FCR 1. This case clarifies who is a person whose interests may be affected, and is relevant to notification and mediation.

Registration test

Federal Court decisions on applications for review of registration test

Martin v Native Title Registrar [2001] FCA 16, Federal Court, French J, 19 January 2001. This review under both the *Administrative Decisions (Judicial Review) Act 1977* and s.190D of the Act found that the delegate was entitled to take the view that the applicant's expressed belief that she was properly authorised by the native title group should not be taken as proof that this was, in fact, the case. The delegate had to address the authorisation criteria of s.251B and be satisfied about the process behind that authorisation. French J noted that the provision of material disclosing a factual basis for the purposes of registration is, ultimately, the responsibility of the applicant. The Registrar is not required to undertake a search for such material. There was not sufficient material to support an association — physical or spiritual — with the entire area claimed. Further, there was little information about the relationship between the claim group and its predecessors. The delegate was not obliged to accept 'the very general assertion' in the application as disclosing the requisite factual basis.

Queensland v Hutchison [2001] FCA 416, Federal Court, Kiefel J, 12 April 2001. This matter turned on the delegate's consideration of information provided in two affidavits which did not form part of the native title determination application for the purposes of s.62(2)(e) and s.190C(2) of the Act. Kiefel J found that the additional information provided as required by s.62(2)(e) was clearly a part of the application and should

have been filed in Court. Any changes to the application should be notified to the Court and parties by a process of amendment. Kiefel J also commented on the sufficiency of the factual basis for the assertions of the existence of the claimed native title rights and interests, and the relationship of s.62 and s.190B(5). The matter was remitted to the Registrar for a determination according to law. Kiefel J made similar findings in *Queensland v Shelley* [2001] FCA 416.

Risk v NNTT [2000] FCA 1589, Federal Court, O'Loughlin J, 10 November 2000. This review challenged a decision of the delegate where the applicant for a claim group of eight people had stated that there were up to 140 or 150 clan members. O'Loughlin J found two errors in the delegate's reasons in relation to subsections 190C(2), (3) and (4) of the Act: firstly, the delegate assumed, without inquiry, that a family group of eight was a native title claim group; and secondly, the delegate had accepted a claim for registration when it was clear that the claim group was only part of a larger group and there was no evidence of authorisation by, or identification of, the other members of the larger group. His Honour held that a delegate applying s.190C(2) of the registration test must consider whether the people identified as the native title claim group are people who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title that is claimed in their application. The matter was remitted to the Registrar for a determination according to law.

Future acts

Federal Court decisions on appeal from Tribunal

Smith on behalf of the Gnaala Karla Booja People v State of Western Australia [2001] FCA 19, Federal Court, French J, 19 January 2001. This is the first Federal Court decision on the application of the amended provisions of s.237 of the Native Title Act. The native title party appealed under s.169 of the Act against a Tribunal decision that the act attracted the expedited procedure. French J held that the Tribunal was correct in its approach, adding that the word 'likely' in s.237 requires a 'risk assessment by the Tribunal that will exclude from the expedited procedure any proposed act which would involve a real chance or risk of interference or major disturbance of the kind contemplated in that section'.

Decisions of Tribunal members

During the reporting period the following two notable future act decisions were handed down by Tribunal members.

Anaconda Nickel Ltd & Ors & State of Western Australia & Harrington-Smith (Wongatha People) & Evans (Koara People) WF00/2, WF00/3, WF00/4 & WF00/5 Deputy President C J Sumner, and members Mr J Sosso and Mrs J Stuckey-Clarke, 8 December 2000. Following the decision of the Full Federal Court in *Western Australia v Ward* (2000) 170 ALR 159, the Tribunal considered the *Ward* decision's impact on the Native Title Act right to negotiate inquiries conducted by Tribunal members. Should the s.35 applications be dismissed, as proposed by the State, on the basis that native title had been extinguished in the areas of the proposed mining tenements? What sort of inquiry should the Tribunal undertake? After examining the authorities, the Tribunal held that, where jurisdiction is challenged, it had a positive obligation to investigate and be satisfied that it has jurisdiction to consider whether the proposed future act can be done. The Tribunal will inquire where its jurisdiction is challenged.

Dixon and Ors/Ashton Mining Limited/Northern Territory of Australia DO00/1–DO00/7, Deputy President E M Franklyn QC, 23 April 2001. The applicants challenged the jurisdiction of the Tribunal on the basis of the invalidity of the s.29 notices. It was asserted that the public notice did not comply with s.29(3) of the Act and the area descriptions were not clear. Finding the published s.29 notices did not comply with the requirements of the Act and that valid notice pursuant to s.29(3) is a precondition to the Tribunal's jurisdiction, Deputy President Franklyn held that the Tribunal did not have jurisdiction to consider the objections lodged with the Tribunal. Deputy President Franklyn found that although the objections did not comply with the statutory requirements, as they had been accepted by the Tribunal they were validly before the Tribunal. An appeal to the Federal Court is pending. The validity of s.29 notices is significant for the future act process.

Appendix IV

Information products and activities

Table 17 Seminars and/or workshops wholly or partly sponsored by the Tribunal

Event	Place	Date	Audience	Audience numbers
Seminar ILUAs	Sydney, NSW	4 July 2000	Government departments, local government, legal practitioners, industry members	30
Seminar ILUAs	Sydney, NSW	18 July 2000	Government departments, local government, legal practitioners, industry members	30
Presentation Lawyers Engaged in Alternative Dispute Resolution (LEADR) International Conference	Sydney, NSW	29 July 2000	Legal practitioners	No figure provided
Seminar ILUAs	Sydney, NSW	10 Aug. 2000	Government departments, local government, legal practitioners, industry members	30
Workshop ILUAs	Melbourne, Vic.	13 Sept. 2000	State government	30
Address Native title and notification in partnership with Eyre Peninsula Rural Councillors	Wudinna, SA	3 Oct. 2000	Local government	50
Seminar Notification	Jervois, SA	4 Oct. 2000	General public	30
Workshop Notification in partnership with South Australian Fishing Industry Council	Port Lincoln, SA	5 Oct. 2000	Fishing industry members	30
Information session Barkandji notification in partnership with NSW Farmers' Association	White Cliffs, NSW	23 Oct. 2000	Graziers	12

Table 17 Seminars and/or workshops wholly or partly sponsored by the Tribunal (cont.)

Event	Place	Date	Audience	Audience numbers
Information session Barkandji notification	White Cliffs, NSW	23 Oct. 2000	Mining industry members	20
Information session Barkandji notification	Cobar, NSW	23 Oct. 2000	Shire councillors and senior staff	10
Information session Barkandji notification in partnership with NSW Farmers' Association	Wilcannia, NSW	24 Oct. 2000	Graziers	25
Information session Barkandji notification	Wilcannia, NSW	24 Oct. 2000	Shire councillors and senior staff	18
Information session Barkandji notification in partnership with NSW Farmers' Association/ Pastoralists' Association of West Darling	Broken Hill, NSW	25 Oct. 2000	Graziers	35
Information session Barkandji Notification	Broken Hill, NSW	25 Oct. 2000	Local government	20
Information session Barkandji notification in partnership with NSW Farmers' Association	Wentworth, NSW	26 Oct. 2000	Graziers	40
Information session Barkandji notification	Wentworth, NSW	26 Oct. 2000	Shire councillors and senior staff	15
Information session Barkandji notification in partnership with NSW Farmers' Association	Ivanhoe, NSW	26 Oct. 2000	Graziers	38
Presentation Gurang Summit in partnership with Gurang Land Council	Bundaberg, Qld	1 Nov. 2000	Indigenous clients	70
Information session Native title in partnership with 'Water for Growth' community committee and Goulburn-Murray Water	Serpentine and Tatura, Vic.	2 Nov. 2000	General public	20
Information session Fishing industry and native title (sea rights)	Portland, Vic.	15 Nov. 2000	Fishing industry members	30
Seminar ILUAs	Cairns, Qld	21 Nov. 2000	Government departments, Land Councils, solicitors, council representatives	80

Table 17 Seminars and/or workshops wholly or partly sponsored by the Tribunal (cont.)

Event	Place	Date	Audience	Audience numbers
Seminar ILUAs	Cairns, Qld	23 Nov. 2000	Government departments, Land Councils, solicitors, council representatives	45
Information session Muthi Muthi notification in partnership with Balranald Shire Council	Balranald, NSW	30 Nov. 2000	Shire councillors and senior staff	15
Information session Muthi Muthi notification in partnership with NSW Farmers' Association	Balranald, NSW	30 Nov. 2000	Graziers and affected farmers	27
Information session Muthi Muthi notification in partnership with NSW Farmers' Association	Hatfield, NSW	30 Nov. 2000	Graziers and affected farmers	20
Information session Barkandji notification in partnership with NSW Farmers' Association	Menindee, NSW	1 Dec. 2000	Graziers	20
Information session Barkandji notification in partnership with NSW Farmers' Association	Wanaaring, NSW	1 Dec. 2000	Graziers	20
Workshop Native Title Act overview	Hobart, Tas.	4 Dec. 2000	Local government, State government	50
Workshop Native Title Act overview	Hobart, Tas.	5 Dec. 2000	Local government, State government	35
Workshop Native title	Ceduna, SA	12 Dec. 2000	General public	60
Workshop Native title in partnership with South Australian Fishing Industry Council	Ceduna, SA	12 Dec. 2000	Local government	30
Workshop Our region — searching for our future: Opportunities for regional approaches to native title	Kalgoorlie, WA	13 Dec. 2000	Land councils	25
Workshop Native title procedures in partnership with the Tasmanian State Government	Hobart, Tas.	18 Dec. 2000	State government	15

Table 17 Seminars and/or workshops wholly or partly sponsored by the Tribunal (cont.)

Event	Place	Date	Audience	Audience numbers
Presentation Native title in partnership with Edith Cowan University	Perth, WA	16 Jan. 2001	Students	17
Information session Euahlayi, Moorawarri & Ngempa notification in partnership with NSW Farmers' Association	Brewarrina, NSW	5 Feb. 2001	Graziers	37
Information session Euahlayi, Moorawarri & Ngempa notification	Brewarrina, NSW	5 Feb. 2001	Shire councillors and senior staff	8
Information session Moorawarri & Ngempa notification	Bourke, NSW	5 Feb. 2001	Shire councillors and senior staff	10
Information session Moorawarri & Ngempa notification in partnership with NSW Farmers' Association	Bourke, NSW	5 Feb. 2001	Graziers	45
Information session Wangkamurra notification in partnership with NSW Farmers' Association	Tibooburra, NSW	6 Feb. 2001	Graziers	45
Information session Moorawarri notification	Cunnamulla, NSW	6 Feb. 2001	Shire councillors and senior staff	6
Information session Moorawarri notification in partnership with Agforce	Cunnamulla, NSW	6 Feb. 2001	Graziers	40
Workshop Native title in partnership with Goldfields Land Council	Kalgoorlie, WA	7 Feb. 2001	Native title stakeholders	12
Workshop Native title in partnership with Goldfields Native Title Liaison Council	Kalgoorlie, WA	8 Feb. 2001	Council members	24
Workshop Goldfields Heritage Protocol	Kalgoorlie, WA	8 Feb. 2001	Mining industry members, land councils, State government	12
Workshop Pastoral access	Kalgoorlie, WA	15 Feb. 2001	Farmers, native title applicants	15

Table 17 Seminars and/or workshops wholly or partly sponsored by the Tribunal (cont.)

Event	Place	Date	Audience	Audience numbers
Address Pastoralists and Graziers' Association conference	Perth, WA	21 Feb. 2001	Graziers, State government	60
Presentation Native title in partnership with ABMusic Corporation	Perth, WA	23 Feb. 2001	Students	16
Information session Muthi Muthi notification in partnership with Balranald Shire Council	Balranald, NSW	23 Feb. 2001	Graziers, local government	40
Information session Notification	Barmera, SA	6 Mar. 2001	Fishing industry members	25
Information session Native title	Adelaide, SA	8 Mar. 2001	Fishing industry members	20
Information session ILUAs	Adelaide, SA	12 Mar. 2001	State government	20
Address Native title and role of the Tribunal in partnership with ATSIC	Ceduna, SA	14 Mar. 2001	Native title applicants and ATSIC staff	50
Address Inaugural National Native Title Tribunal — Federal Court Lecture on Native Title	Hobart, Tas.	23 Mar. 2001	Federal Court staff, Tribunal staff	30
Information session Native title in partnership with Fisheries Advisory Committee	Cronulla, NSW	28 Mar. 2001	Fisheries Advisory Committee members	No figure provided
Information session Barkandji notification in partnership with Wentworth Shire Council	Mildura / Wentworth, NSW	9 Apr. 2001	Affected farmers, local government	35
Information session Native title mediation	Edenhope, Stawell, Vic.	1 May 2001	Local government	6
Information session Native title	Dunolly, Vic.	7 May 2001	Tribunal clients	60
Information session Native title process and the Barkandji applications	Wilcannia, NSW	9 May 2001	Shire councillors and senior staff	8

Table 17 Seminars and/or workshops wholly or partly sponsored by the Tribunal (cont.)

Event	Place	Date	Audience	Audience numbers
Information session Barkandji notification	White Cliffs, NSW	10 May 2001	Mining industry members	20
Information session Barkandji notification in partnership with NSW Farmers' Association	Tilpa, NSW	10 May 2001	Graziers	37
Information session Fishing	Lakes Entrance, Vic.	24 May 2001	Fishing industry members	40
Information session Bandjalang #2 & Yaegl notification	Grafton, NSW	25 May 2001	Leaseholders and licence holders	40
Address Native title in partnership with RMIT University	Melbourne, Vic.	28 May 2001	Students	40
Workshop Prescribed Body Corporate in partnership with North Queensland Land Council and Department of Natural Resources & Mines	Mareeba, Qld	31 May 2001	Western Yalanji native title holders	30
Information session Native title	Dunolly, Vic.	7 June 2001	Tribunal clients	10
Information session Native title	Maryborough, Vic.	7 June 2001	Central Goldfields Shire Council, local government	20
Forum Native title in partnership with Municipal Association of Victoria	Melbourne, Vic.	12 June 2001	Local government	30
Information session Native title	Cooma, Vic.	19 June 2001	Native title applicants	30
Information session Native title	Hamilton, Vic.	28 June 2001	Local government	12

Table 18 Member and employee presentations at events organised by other groups

Event	Sponsor	Place	Date	Audience	Audience numbers
Forum The different approaches by State governments to the settlement of native title issues	Mallesons Stephen Jaques Solicitors	Melbourne, Vic.	20 July 2000	Legal practitioners	150
Address The spatial characteristics of native title — a legal analysis	Mapping Sciences Institute, Australia	Perth, WA	25 July 2000	Geospatial industry representatives, legal practitioners	50
Address Mapping, recording and analysing native title — post Wik	Mapping Sciences Institute, Australia	Perth, WA	25 July 2000	Geospatial industry representatives, legal practitioners	50
Information session Native title	Kyenton Senior High School	Kyenton, Vic.	1 Aug. 2000	Students	30
Address Native title	Australian Local Government Association	Sydney, NSW	10 Oct. 2000	Local government	25
Presentation Native title	Department of Conservation and Land Management	Bunbury, WA	16 Oct. 2000	State government department	25
Information session Native title and Aboriginal cultural awareness program	Western Australian Municipal Association, Australian Local Government Association, Department of Conservation and Land Management	Perth, WA	30 Oct. 2000	State and local government	30
Seminar ATSIC Regional Council Meeting	ATSIC	Bribie Island, Qld	31 Oct. 2000	Indigenous clients	25
Information session Native title	ATSIC	Bribie Island, Qld	31 Oct. 2000	Indigenous clients	15–20

Table 18 Member and employee presentations at events organised by other groups (cont.)

Event	Sponsor	Place	Date	Audience	Audience numbers
Presentation Native title and the role of the Tribunal	Department of Family and Children's Services	Perth, WA	27, 28, 29 Nov. 2000	State government department	100
Workshop Federal Court stakeholders	Federal Court	Darwin, NT	15 Jan. 2001	Native title stakeholders	30
Workshop Federal Court stakeholders	Federal Court	Alice Springs, NT	25 Jan. 2001	Native title stakeholders	12
Address Native title and mining industries in Australia: Meeting the challenges and pursuing the possibilities	Australia House, London	London, United Kingdom	7 Feb. 2001	Mining industry representatives, developers, investment companies	No figure provided
Presentation Native title	TAFE	Perth, WA	15 Feb. 2001	Students	25
Presentation Native title	Department of Family and Children's Services	Cannington, WA	16 Feb. 2001	State government department	24
Workshop Future act	NT Minerals Council	Darwin, NT	23 Feb. 2001	NT Minerals Council members and government agencies	75
Information session Walbunja notification	Eurobodalla Shire Council	Moruya, NSW	26 Feb. 2001	General public	25
Address Native title and role of the Tribunal	SA Transport	Walkerville, SA	13 Mar. 2001	State government	60
Presentation Native title and the role of the Tribunal	Family Futures	Albany, WA	24 Mar. 2001	Indigenous clients	60
Address Future act	NT Minerals Council	Darwin, NT	5 Apr. 2001	NT Minerals Council members	40
Presentation Native title and the role of the Tribunal	Curtin University	Perth, WA	23 Apr. 2001	Students	17

Table 18 Member and employee presentations at events organised by other groups (cont.)

Event	Sponsor	Place	Date	Audience	Audience numbers
Address ILUAs and agreement-making processes	NT Extractive Industry Association	Darwin, NT	2 May 2001	NT Extractive Industry Association members	25
Presentation Native title	WA State Commission of Elders	Perth, WA	10 May 2001	Commission's members	20
Forum Native title	Pastoralists' Association of West Darling	Broken Hill, NSW	11 May 2001	Graziers	50
Presentation Native title	Centre for Aboriginal Studies	Perth, WA	23 May 2001	Students	35
Workshop Cross-cultural awareness	Department of Conservation and Land Management	Kalgoorlie, WA	30 May 2001	State government department	18
Address Native title	Flinders University	Adelaide, SA	5 June 2001	Students	60
Presentation Native title	Department of Family and Children's Services	Perth, WA	7 June 2001	State government department	25
Seminar Recent developments in native title law & practice	University of New South Wales, Faculty of Law	Sydney, NSW	8 June 2001	Legal practitioners	60
Information session Native title	Local Government Association of Queensland	Ayr, Qld	20 June 2001	Local government, cane farmers, lawyers	60
Address Native title	Queensland Beekeepers Association	Lansborough, Qld	28 June 2001	Beekeepers	50

Table 19 Information products

No. of different products	Product name	Product type	Audience	Publication date
2	<i>Native title in brief</i>	Multimedia presentation — video and CD-ROM	Pastoralists and general public	July 2000
1	<i>Strategic Plan 2000–2002</i>	Brochure — printed and online	All clients	July 2000
29	<i>Native Title Facts</i>	Series of fact sheets — printed and online	All clients, general public	Sept. 2000
1	<i>Native Title Bulletin</i>	Pamphlet — printed and online	Members of Parliament, media, all clients	Oct. 2000
1	<i>Annual Report 1999–2000</i>	Book — printed and online	Members of Parliament, media, all clients	Oct. 2000
1	<i>The design of native title corporations: A legal and anthropological analysis</i>	Book	Academic, legal practitioners	Oct. 2000
1	<i>Mining, exploration and native title: The Commonwealth scheme</i>	Flowchart poster	Miners and prospectors	Dec. 2000
1	<i>Guide to mediation and agreement-making</i>	Online only	All clients, general public	Mar. 2001
1	<i>Short guide to native title</i>	Booklet (second edition) — printed and online	All clients, general public	Mar. 2001
1	<i>Guide to future act decisions made under the Commonwealth right to negotiate scheme</i>	Book — printed and online	Legal practitioners, miners	May 2001
1	<i>Kaurareg People's native title determinations — Questions and answers</i>	Booklet — printed and online	Parties to the application	May 2001
1	<i>Prospecting, exploring and mining in Queensland: Information you need from the National Native Title Tribunal</i>	Booklet — printed and online	Queensland miners, explorers	June 2001
1	<i>Bar-Barrum People's native title determination — Questions and answers</i>	Booklet	Parties to the application	June 2001
3	<i>Occasional Paper Series</i>	Online only	Academic	July 2000–June 2001
91	Media releases	Media product	General media	July 2000–June 2001
3	Letters to the Editor	Media product	Newspapers	July 2000–June 2001

Appendix V

Papers by Tribunal members and staff

Beesley, S. 2001, 'The role of the Federal Court when parties reach agreement: s.87 of the *Native Title Act 1993*', *Native Title News*, Vol. 5, no. 1, Butterworths, Sydney, pp. 5–10.

Chaney, F. 2000, 'The rules for engagement', paper presented to Crossing Boundaries: Anthropology, Linguistics, History and Law in Native Title Conference, 19–20 September 2000, National Native Title Tribunal, Perth.

Doepel, C. 2001, 'The challenge of resolving native title', paper presented to Federal Court Registrars' Native Title Workshop, 6–7 March 2001, National Native Title Tribunal, Perth.

Edmunds, M. 2000, '“I just want my human rights?” Native title and public discourse in Australia' in *Native title in perspective: Selected papers from the Native Title Research Unit 1998–2000*, Aboriginal Studies Press, Canberra.

Lane, P. 2000, '“Have we got a deal for you?” Mediating native title' in *Native title in perspective: Selected papers from the Native Title Research Unit 1998–2000*, Aboriginal Studies Press, Canberra.

—— 2000, 'Native title and inland waters', *Indigenous Law Bulletin*, Vol. 4, no. 29, pp. 11–14.

McFarlane, B. 2001, 'The minerals industry and native title: Future directions', presented to Minerals Council of Australia Land Access Committee Workshop, Melbourne 3 October 2000.

—— 2001, 'Making native title agreements in WA', paper presented to Pastoralists and Graziers Association 2001 Annual Convention, Perth, 21 February 2001.

—— 2001, 'Future act processes and mediated settlement: What the future holds', paper presented to Chamber of Minerals and Energy of Western Australia Centenary Conference, Perth, 19–20 April 2001.

Moloney, M. 2001, 'Native title research: “Connection to country” and other land use issues', *Australian Law Librarian*, Vol. 9, no. 1, pp. 23–31.

Neate, G. 2000, 'Meeting the challenges of native title mediation', paper presented to LEADR 2000: ADR International Conference, Sydney, 29 July 2000.

—— 2000, 'Three lessons for Australians from *Delgamuukw v British Columbia*' in *Native title in perspective: Selected papers from the Native Title Research Unit 1998–2000*, Aboriginal Studies Press, Canberra.

—— 2001, 'Native title and local government problems, procedures and prospects', paper presented to the Esperance–Eastern Goldfields Ward meeting, Kalgoorlie, 30 May 2001, National Native Title Tribunal, Perth.

—— 2001, 'Native title and mining industries in Australia: Meeting the challenges and pursuing the possibilities', paper delivered to Australian Mining Seminar, Australia House, London, 7 February 2001.

Wright, L. 2000, 'The amended Act, the registration test and judicial consideration of certain conditions' in *Native title in perspective: Selected papers from the Native Title Research Unit 1998–2000*, Aboriginal Studies Press, Canberra.

Appendix VI

Background reports

Table 20 Background and specialist reports prepared by Research Unit staff

Report	State	Audience	Number produced	Date published
Ugarapul (QC96/14)	Qld	Parties to mediation	8	July 2000
Ugarapul Supplementary (QC96/14)	Qld	Parties to mediation	8	Aug. 2000
Badimia (WC96/98)	WA	Member & case manager	6	Oct. 2000
Barada Barna Kabalbara & Yetimarla Peoples/ Southern Barada & Kabalbara People (QC97/59 & QC00/4)	Qld	Parties to mediation	8	Nov. 2000
Muthi Muthi (NC00/3)	NSW	Parties to mediation	8	Nov. 2000
Aboriginal use of the sea in south western Victoria	Vic.	Fishing conference attendees, Portland, Victoria	33	Nov. 2000
Jinibara People & Turrbal People (QC98/45 & QC98/26)	Qld	Parties to mediation	8	Dec. 2000
Birri People (QC98/12)	Qld	Parties to mediation	10	Mar. 2001
Kudjala People (QC00/1)	Qld	Parties to mediation	8	Mar. 2001
Barnarla (SC96/4)	SA	Parties to mediation	8	Mar. 2001
Aboriginal use of the sea in south western and south eastern Victoria	Vic.	Fishing conference attendees, Lakes Entrance, Victoria	33	Mar. 2001
Ngempa (NC97/10)	NSW	Member & case manager	8	Apr. 2001
Gunai/Kurnai (VC97/4)	Vic.	Parties to mediation	9	May 2001
Kalkadoon & Waanyi (QC99/32 & QC99/23)	Qld NT	Parties to mediation	10	May 2001
Kalkadoon & Yulluna (QC99/32 & QC99/9)	Qld	Parties to mediation	8	June 2001
Nukunu (SC96/5)	SA	Parties to mediation	8	June 2001
Barkandji (various 'pooncarie' & Barkandji applications including NC98/13)	NSW	Parties to mediation	8	June 2001
Joint management arrangements in Australian national parks	Qld	Parties to mediation	8	June 2001

Appendix VII Consultants

Table 21 Consultants engaged under s.131A of the Native Title Act (over \$10,000)

Consultant	Purpose	Contract price	Period	Selection process	Comments
Sean McLaughlin	Northern Rivers #4 memoranda of understanding/ ILUA between applicants and NPWS re management of national parks	\$22,000	Sept.–Dec. 2000	Direct appointment due to previous work with applicants	Two phase contract Actual expenditure: \$4,353
Kim Wilson	Facilitate the development and implementation of a framework agreement for matters referred to as Stage 2	\$15,900	May 2001–May 2002	Direct appointment due to previous work with applicants	Contract commenced at the end of the reporting period Actual expenditure: Nil
Geoff Clark	Negotiation Kerg ILUA, ILUA committee, progression of claims in north-western Queensland	\$14,000	1–30 June 2001	Direct appointment due to previous work with applicants	Interim contract (for more information see 'Membership of the Tribunal', p.8). Actual expenditure: Nil

Erratum: In last year's annual report, 'Table 11 Consultants engaged under s.131A of the Act' on page 129 (top), the entry under the name of M. McDaniel did not have an actual expenditure of \$46,600 as this contract was cancelled in February. The actual expenditure was nil. The HTML version of the *Annual Report 1999–2000* on the Tribunal's web site was updated to show the correct information as soon as the error was noted.

Table 22 Consultants engaged under s.132 of the Native Title Act (over \$10,000)

Consultant	Purpose	Contract price	Period	Selection process	Comments
Manpower Services	Visual Basic programmer	\$172,930	July 2000–Dec. 2001	Select tender	
Ambit Technology	Project manager (applications development)	\$179,080	Sept. 2000–Sept. 2001	Select tender	
Deakin Consulting	Preparation of online action plan	\$32,450	July–Nov. 2000	Multiple quotes	
Manpower Services	Lotus Notes programmer	\$162,288	Aug. 2000–Dec. 2001	Select tender	
Unisys West	Regional server refresh project	\$29,924	Sept.–Nov. 2000	Direct selection	
Manpower Services	Analyst programmer (Oracle and Visual Basic)	\$58,042	Nov. 2000–July 2001	Direct engagement	
Deakin Consulting	Review of document/records management strategy	\$11,880	Nov. 2000–Apr. 2001	Multiple quotes	
Unisys West	Perth server refresh project	\$59,930	Feb.–May 2001	Direct selection	
Praxim Ltd employee assistance program	Employee assistance	\$10,000	1 Mar.–30 June 2001	Direct engagement	
Bandt Gatter & Association	Performance management design	\$31,763	28 Mar–31 Aug. 2001	Direct engagement	
David Christie & Associates	Review business processes	\$73,656	Mar.–Sept. 2001	Select tender	
Aldyth Mackay	Performance management training	\$43,335	June 2001	Expressions of interest	Staff training in performance management process

Appendix VIII

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, and 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 how members of the public can gain access to them. Inquiries regarding freedom of information may be made at the principal registry and the various regional registries or offices.

Organisation

The Tribunal's organisational structure is provided in Figure 2 on page 38 of this report. An outline of the responsibilities of its executive and senior management committees is provided on page 101.

Functions and powers

A summary of the information related to the Tribunal's functions and powers is provided below, but for more detail see 'Tribunal overview' on page 36.

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 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/her powers under the Act to Tribunal officers, and he or she may also engage consultants to perform services for the Registrar.

The Registrar has powers related to the giving of notification of native title applications and indigenous land use agreements (ILUAs) and in making decisions regarding the registration of claimant applications and ILUAs. The Registrar maintains three statutory registers and makes decisions about the waiver of fees concerning future act applications made to the Tribunal and for inspection of the registers. The Registrar may also provide non-financial assistance to persons involved in native title proceedings.

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. The Tribunal also has an arbitral role in relation to right to negotiate future act matters.

Number of formal requests for information

During the reporting period the Tribunal received two formal requests for access to documents under the Freedom of Information Act. Full access was given and both were finalised within the reporting period.

Avenues for public participation

The Tribunal actively encourages the general public and those involved in the native title process to contribute their ideas and suggestions on how the Tribunal could improve its operations.

The Tribunal holds regular meetings with clients of the Tribunal including State and Commonwealth agencies (for example, the Federal Court, and land use and mapping agencies) that deal with the Tribunal; firms of solicitors that represent claimants and other parties, law societies; and representative and peak bodies.

In addition, public meetings are held nationwide by Tribunal members and staff (for more information see Appendix IV, p.143). These meetings provide important venues for exchanging information and gauging responses to Tribunal initiatives and the way the Tribunal operates. The Tribunal's *Customer Service Charter* and customer feedback procedures are the formal mechanisms in which the public can participate (for more information see 'Customer service charter', p.118).

As part of the Tribunal-wide operational review, an external client satisfaction research project will commence shortly (for more information see 'Accountability to clients', p.118).

Categories of documents

The Tribunal has four main categories of documents or information:

- information available to the public upon payment of a statutory fee;
- documents available for purchase;
- documents customarily available free of charge (but which may be subject to a photocopy fee); and
- information and documents not available to the public.

Information available to the public upon payment of a statutory inspection fee

Information is available from the:

- Register of Native Title Claims — a register containing information about each native title determination application that has satisfied the conditions for registration in s.190A or was accepted under the old Act (s.185 of the *Native Title Act 1993*);
- National Native Title Register — a register of native title determinations (s.192 of the *Native Title Act 1993*); and
- Register of Indigenous Land Use Agreements — a register of indigenous land use agreements that have been accepted for registration under the Act (s.199A 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 applications summary database — documents relating to future act applications made to the Tribunal and all claimant applications (including those that have failed the registration test, and 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; and
- books published by the Tribunal.

Documents available 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 information;*
- *Guide to future act decisions made under the Commonwealth right to negotiate scheme*;*
- *Guide to mediation and agreement-making*;*
- *Occasional Papers Series*;*
- flyers and fact sheets;*
- regional newsletters;*
- *Yarning about native title* (audio-tapes);
- *Native title in brief* (video and CD-ROM);
- guide and application forms to instituting applications for a future act determination and objections to inclusion in an expedited procedure (under s.75 of the Act);*
- guidelines on acceptance of expedited procedure objection applications;*
- procedures of the Tribunal;*
- bibliographies;*
- Tribunal's performance information and planned level of achievement;*
- future act determinations made and published by the Tribunal;* and
- edited reasons for decisions in registration test matters.*

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 and are usually available on the Tribunal's web site (for a list of papers see p.153).

Reviews and research

The Tribunal prepares and holds background research papers, prepared at the request of staff or members, about legal, social and land use issues related to native title applications.

Databases

A number of computer databases are maintained to support the information and processing needs of the Tribunal (for more information see p.113).

Files

Paper and computer files are maintained on all Tribunal activities. A list of files created by the Tribunal relating to the policy-advising functions, development of legislation, and other matters of public administration, 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

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 information

Facilities for examining accessible documents and obtaining copies are available at Tribunal registries. Documents available free of charge upon request (other than under the *Freedom of Information Act 1982*) are also available from the Tribunal addresses on the back cover.

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.

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 IX

Use of advertising and market research

The National Native Title Tribunal did not use the services of market research organisations or polling organisations during the reporting period. The Tribunal paid \$1,848 for the services of an external distribution agency for labour costs associated with sorting, packaging, mailing and storage of information products.

The following amounts were spent on advertising (via a media advertising organisation) during the reporting period:

- notification of applications as required under the Act \$467,576
- staff recruitment \$127,321
- other advertising (for example, tenders and consultants) \$ 9,305

Appendix X

Ecologically sustainable development

The National Native Title Tribunal does not administer legislation that requires the application of the principles governing ecologically sustainable development, nor has it identified outcomes or actions specific to ecologically sustainable development.

The Tribunal continued to apply environmental best practice to its internal administrative processes as targeted in its *Certified Agreement 1998–2000*. This included recycling paper, installing more energy efficient lighting, purchasing ‘green’ products and ensuring appropriate energy ratings when purchasing office equipment.



Further to this, the new *Certified Agreement 2000–2003* extends this commitment to include better monitoring and reporting systems to capture energy consumption details. The agreement also recognises that improving the Tribunal’s energy efficiency requires:

- education on general energy-use issues, work processes and technologies;
- encouraging all employees to participate in energy-use initiatives; and
- a cooperative approach to identifying and implementing energy efficiency initiatives.

A Tribunal consultative forum on energy management was formed to provide recommendations on actions that will contribute to the application of these requirements.

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 financial year ended 30 June 2001. The financial statements comprise:

- Statement by the Chief Executive;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Commitments and Contingencies;
- Schedules of Administered Revenues and Expenses, Assets and Liabilities, Cash Flows, Commitments and 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 as to 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 entity 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.

GPO Box 707 CANBERRA ACT 2601
Centenary House 19 National Circuit
BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

Audit Opinion

In my opinion,

- (i) the financial statements have been prepared in accordance with Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders;
- (ii) the financial statements give a true and fair view, in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders, of the financial position of the National Native Title Tribunal as at 30 June 2001 and the results of its operations and its cash flows for the year then ended.

Australian National Audit Office



Puspa Dash
Senior Director

Delegate of the Auditor-General

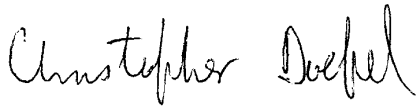
Canberra

20 September 2001

National Native Title Tribunal

Statement by the Chief Executive

In my opinion, the attached financial statements give a true and fair view of the matters required by Schedule 1 to the Financial and Management Accountability (Financial Statements 2000–2001) Orders, made under section 63 of the *Financial Management and Accountability Act 1997*.

A handwritten signature in black ink, reading "Christopher Doepele". The signature is written in a cursive, flowing style.

CHRISTOPHER DOEPEL

Chief Executive

17 September 2001

NATIONAL NATIVE TITLE TRIBUNAL STATEMENT OF FINANCIAL PERFORMANCE

for the period ended 30 June 2001

	Note	2000-01 \$'000	1999-00 \$'000
Revenues from ordinary activities			
Revenues from government	3A	25,896	22,072
Sale of goods and services	3B	103	51
Proceeds from sale of assets	3C	5	176
Interest	3D	133	143
Total revenues from ordinary activities		26,137	22,442
Expenses from ordinary activities			
Employees	4A	14,310	13,148
Suppliers	4B	10,173	8,829
Depreciation and amortisation	4C	747	1,199
Disposal of assets	6D	8	250
Write-down of assets	4D	1	1
Total expenses from ordinary activities		25,239	23,427
Net operating surplus (deficit) from ordinary activities		898	(985)
Net surplus (deficit)		898	(985)
Equity interests			
Net surplus (deficit) attributable to the Commonwealth		898	(985)
Total changes in equity other than those resulting from transactions with owners as owners		898	(985)

The above statement should be read in conjunction with the accompanying notes.

NATIONAL NATIVE TITLE TRIBUNAL STATEMENT OF FINANCIAL POSITION

as at 30 June 2001

	Note	2000–01 \$'000	1999–00 \$'000
ASSETS			
Financial assets			
Cash		2,736	2,775
Receivables	5A	233	11
Equity appropriation receivable		–	43
Capital use charge overpayment		18	–
Accrued revenues	5B	8	44
Total financial assets		2,995	2,873
Non-financial assets			
Land and buildings	6A	775	942
Infrastructure, plant and equipment	6B	481	452
Intangibles	6C	52	185
Other	6E	1,006	38
Total non-financial assets		2,314	1,617
Total assets		5,309	4,490
LIABILITIES			
Provisions			
Employees	7A	2,945	2,732
Capital use charge		–	64
Total provisions		2,945	2,796
Payables			
Suppliers	8A	422	550
Total payables		422	550
Total liabilities		3,367	3,346
EQUITY			
Capital		2,415	2,415
Accumulated surpluses (deficit)		(473)	(1,271)
Total equity	9A	1,942	1,144
Total liabilities and equity		5,309	4,490
Current Liabilities		2,004	2,242
Non-Current Liabilities		1,363	1,104
Current Assets		4,001	2,911
Non-Current Assets		1,308	1,579

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 2001

	Note	2000-01 \$'000	1999-00 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations for outputs		25,883	22,046
Sales of goods and services		100	49
GST refunds		1,008	—
Interest		169	99
Total cash received		<u>27,160</u>	<u>22,194</u>
Cash used			
Employees		14,105	13,182
Suppliers		12,472	8,424
Total cash used		<u>26,577</u>	<u>21,606</u>
Net cash from operating activities	10A	<u>583</u>	<u>588</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		—	176
Total cash received		<u>—</u>	<u>176</u>
Cash used			
Purchase of property, plant and equipment		483	89
Total cash used		<u>483</u>	<u>89</u>
Net cash from investing activities		<u>(483)</u>	<u>87</u>
FINANCING ACTIVITIES			
Cash received			
Proceeds from equity injections		43	2,372
Total cash received		<u>43</u>	<u>2,372</u>
Cash used			
Capital use paid		182	293
Total cash used		<u>182</u>	<u>293</u>
Net cash from (used by) financing activities		<u>(139)</u>	<u>2,079</u>
Net increase in cash held		(39)	2,754
Cash at the beginning of the reporting period		2,775	21
Cash at end of reporting period	10A	<u>2,736</u>	<u>2,775</u>

The above statement should be read in conjunction with the accompanying notes.

NATIONAL NATIVE TITLE TRIBUNAL SCHEDULE OF COMMITMENTS

as at 30 June 2001

	Note	2000-01 \$'000	1999-00 \$'000
BY TYPE			
CAPITAL COMMITMENTS			
Infrastructure, plant and equipment		—	—
Total capital commitments		—	—
OTHER COMMITMENTS			
Operating leases ¹		2,751	1,122
Other commitments ²		2,493	3,581
Total other commitments		5,244	4,703
COMMITMENTS RECEIVABLE		476	—
Net commitments		4,768	4,703
BY MATURITY			
All net commitments			
One year or less		2,724	2,257
From one to two years		1,506	1,558
From two to five years		538	888
Over five years		—	—
Net commitments		4,768	4,703
Operating Lease Commitments			
One year or less		1,121	711
From one to two years		844	252
From two to five years		536	159
Over five years		—	—
Net commitments		2,501	1,122

¹ Operating leases included are effectively non-cancellable and comprise leases for office accommodation. The increase is due to the Tribunal entering into 3 new leases in 2000-01.

² 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 schedule should be read in conjunction with the accompanying notes.

NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF CONTINGENCIES
as at 30 June 2001

	Note	2000-01	1999-00
CONTINGENT LOSSES		-	-
CONTINGENT GAINS		-	-
Net contingencies		-	-

The above schedule should be read in conjunction with the accompanying notes.

**NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF ADMINISTERED REVENUES AND EXPENSES**
for the year ended 30 June 2001

	Note	2000-01 \$'000	1999-00 \$'000
Revenues from ordinary activities			
Taxation			
Fees		6	64
Total taxation		6	64
Non-taxation			
Other		—	5
Total non-taxation		—	5
Total revenues from ordinary activities		6	69
Expenses from ordinary activities			
Fees — provision for doubtful debts/bad debts written off		1	2
Total expenses from ordinary activities		1	2
Cash transferred to Official Public Account		(12)	(68)
Net increase (decrease) in administered net assets		(7)	(1)

**NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF ADMINISTERED ASSETS AND LIABILITIES**
as at 30 June 2001

	Note	2000-01 \$'000	1999-00 \$'000
ASSETS			
Financial assets			
Receivables	5C	—	7
Total financial assets		—	7
Total assets		—	7
LIABILITIES			
Total liabilities		—	—
EQUITY			
Accumulated results		—	7
Total equity	9B	—	7
Current liabilities		—	—
Non-current liabilities		—	—
Current Assets		—	7
Non-current assets		—	—

The above schedule should be read in conjunction with the accompanying notes.

NATIONAL NATIVE TITLE TRIBUNAL ADMINISTERED CASH FLOWS

for the year ended 30 June 2001

	Note	2000-01 \$'000	1999-00 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees		12	63
Other	—	5	
Total cash received		12	68
Cash used			
Cash to Official CPA		12	68
Total cash used		12	68
Net increase in cash held		—	—
add cash at beginning of reporting period		—	—
Cash at end of reporting period	10B	—	—

NATIONAL NATIVE TITLE TRIBUNAL SCHEDULE OF ADMINISTERED COMMITMENTS

as at 30 June 2001

	Note	2000-01 \$'000	1999-00 \$'000
BY TYPE			
CAPITAL COMMITMENTS			
Infrastructure, plant and equipment		—	—
Total capital commitments		—	—
OTHER COMMITMENTS			
Operating leases ¹		—	—
Other commitments ²		—	—
Total other commitments		—	—
COMMITMENTS RECEIVABLE		—	—
Net commitments		—	—
BY MATURITY			
All net commitments			
One year or less		—	—
From one to two years		—	—
From two to five years		—	—
Over five years		—	—
Net commitments		—	—
Operating Lease Commitments			
One year or less		—	—
From one to two years		—	—
From two to five years		—	—
Over five years		—	—
Net Commitments		—	—

The above schedule should be read in conjunction with the accompanying notes.

NATIONAL NATIVE TITLE TRIBUNAL SCHEDULE OF ADMINISTERED CONTINGENCIES <i>as at 30 June 2001</i>			
	Note	2000–01	1999–00
CONTINGENT LOSSES		–	–
CONTINGENT GAINS		–	–
Net contingencies		–	–

The above schedule 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 2001

Note	Description
1	Summary of Significant Accounting Policies
2	Events Occurring after Balance Date
3	Operating Revenues
4	Operating Expenses
5	Financial Assets
6	Non-Financial Assets
7	Provisions
8	Payables
9	Equity
10	Cash Flow Reconciliation
11	Executive Remuneration
12	Remuneration of Auditors
13	Average Staffing Levels
14	Act of Grace Payments and Waivers
15	Financial Instruments
16	Administered Financial Instruments
17	Appropriations
18	Trust Moneys
19	Reporting of Outcomes

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the National Native Title Tribunal

The objectives of the National Native Title Tribunal are:

- 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.
- To have a highly skilled, flexible, diverse and valued workforce.

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 performance report section of the annual report).

1.2 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:

- Schedule 1 to Financial Management and Accountability (Financial Statements 2000–2001) Orders made by the Finance Minister for the preparation of Financial Statements in relation to financial years ending on or after 30 June 2001;
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Boards;
- other authoritative pronouncements of the Boards; and
- 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 1 issued by the Department of Finance and Administration.

The Agency Statements of Financial Performance and Financial Position 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.

Assets and liabilities are recognised in the Agency Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. Assets and liabilities arising under agreements

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2001

equally proportionately unperformed are however not recognised unless required by an Accounting Standard. Liabilities and assets which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Revenues and expenses are recognised in the Agency Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

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.

The Schedules of Administered Revenues and Expenses, Assets and Liabilities, and Cash Flows are prepared on the same basis and using the same policies as for Agency items, except where otherwise stated at Note 1.17.

Administered items are distinguished from agency items in the financial statements by shading.

1.3 Changes in Accounting Policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 1999–2000.

1.4 Revenue

The revenues described in this Note are revenues relating to the core operating activities of the Tribunal.

(a) Revenues from Government — Agency Appropriations

Appropriations for departmental outputs are recognised as revenue to the extent that the Finance Minister is prepared to release appropriations for use (that is, the full amount of the appropriation passed by Parliament less any savings offered up at Additional Estimates and not subsequently released).

(b) Resources Received Free of Charge

Services received free of charge are recognised 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.

(c) Other Revenue

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.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2001

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.

1.5 Transactions by the Government as Owner

Appropriations designated as 'Capital — equity injections' are recognised directly in equity to the extent drawn down as at the reporting date.

1.6 Employee Entitlements

(a) 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 2001 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 2001. In determining the present value of the liability, the Tribunal has taken into account attrition rates and pay increases through promotion and inflation.

(b) Separation and redundancy

Provision is 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.

(c) 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 \$1,464,475 (1999–00: \$1,296,989) in relation to these schemes have been expensed in these financial statements.

No liability for superannuation is recognised as at 30 June 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.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
*for the year ended 30 June 2001***1.7 Leases**

Operating lease payments are expensed on a basis which is representative of the pattern of benefits derived from the leased assets. The net present value of future net outlays in respect of surplus space under non-cancellable lease agreements is expensed in the period in which the space becomes surplus.

The Tribunal had no finance leases in existence at 30 June 2001.

1.8 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution.

1.9 Financial Instruments

Accounting policies for financial instruments are stated at Notes 15 and 16.

1.10 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.

1.11 Property (Land, Buildings and Infrastructure), Plant and Equipment*Asset recognition threshold*

Purchases of property, plant and equipment are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Revaluations

Land, buildings, infrastructure, plant and equipment are revalued progressively in accordance with the 'deprival' method of valuation in successive 3-year cycles, so that no asset has a value greater than three years old.

Leasehold improvements are revalued progressively on a geographical basis. The current cycle commenced in 1999–2000 however, as at 30 June 2001, no revaluations have been obtained.

Plant and equipment (P&E) assets are initially being revalued over the financial years 1998–99 to 2001–02 by type of asset. In 1998–99 all information technology assets were revalued. All other P&E assets on hand at the commencement of the cycle will be revalued in 2001–02.

Assets in each class acquired after the commencement of the progressive revaluation cycle are not captured by the progressive revaluation then in progress.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

In accordance with the deprival methodology property, plant and equipment are measured at their depreciated replacement cost. Where assets are held which would not be replaced or are surplus to requirements, measurement is at net realisable value. At 30 June 2001 the Tribunal had no assets in this situation.

All valuations are independent.

Recoverable amount test

Schedule 1 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.

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:

	2000–01	1999–00
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 10 years	3 to 10 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4C.

1.12 Taxation

The Tribunal is exempt from all forms of taxation except fringe benefits tax and the goods and services tax.

1.13 Capital Use 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.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2001

1.14 Insurance

The Tribunal has insured for risks through the Government's insurable risk managed fund, called 'Comcover'. Workers compensation is insured through Comcare Australia.

1.15 Comparative Figures

Comparative figures have been adjusted to conform with changes in presentation in these financial statements where required.

1.16 Rounding

Amounts shown in the financial statements and notes have been rounded to the nearest \$1,000 except in relation to the following:

- remuneration of executives;
- remuneration of auditors; and
- appropriations.

1.17 Administered Revenue

All revenues described in this note are revenues relating to the core operating activities performed by the Tribunal on behalf of the Commonwealth.

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.

Note 2: Events Occurring after Balance Date

No events have occurred after the balance date which have any effect on the Tribunal's financial position.

Note 3: Operating Revenues

	2000-01 \$'000	1999-00 \$'000
Note 3A — Revenues from Government		
Appropriations for outputs	25,883	22,046
Resources received free of charge	13	26
Total	<u>25,896</u>	<u>22,072</u>
Note 3B — Sales of Goods and Services		
Services	<u>103</u>	<u>51</u>

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

	2000-01 \$'000	1999-00 \$'000
<u>Note 3C — Proceeds from disposal of assets</u>		
Trade-ins received	5	—
Sale of assets	—	176
	<u>5</u>	<u>176</u>
<u>Note 3D — Interest Revenue</u>		
Bank interest	133	143
	<u>133</u>	<u>143</u>

Note 4: Operating Expenses

<u>Note 4A — Employee Expenses</u>		
Remuneration (for services provided)	13,907	12,597
Separation and redundancy	13	239
Total remuneration	<u>13,920</u>	<u>12,836</u>
Other employee expenses	390	312
Total	<u>14,310</u>	<u>13,148</u>
<u>Note 4B — Suppliers Expenses</u>		
Supply of goods and services	7,669	6,990
Operating lease rentals ¹	2,504	1,839
Total	<u>10,173</u>	<u>8,829</u>

¹These comprise minimum lease payments only.

<u>Note 4C — Depreciation and Amortisation</u>		
Depreciation of property, plant and equipment	<u>747</u>	<u>1,199</u>

The aggregate amount of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:

Leasehold improvements	483	537
Plant and equipment	131	491
Intangibles	133	171
Total	<u>747</u>	<u>1,199</u>

Note 4D — Write down of assets

Financial assets		
Receivables	1	1
Non-financial assets	—	—
Total	<u>1</u>	<u>1</u>

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 5: Financial Assets

	2000-01 \$'000	1999-00 \$'000
Note 5A — Receivables		
Goods and services	30	8
GST receivable	208	3
	<u>238</u>	<u>11</u>
Less: provision for doubtful debts	(5)	—
	<u>233</u>	<u>11</u>
Receivables (gross) are aged as follows:		
Not overdue	223	8
Overdue by:		
less than 30 days	3	2
30 to 60 days	6	—
60 to 90 days	1	1
More than 90 days	5	—
	<u>238</u>	<u>11</u>
Note 5B — Accrued revenues		
Interest	8	44

Note 5C — Administered receivables

Fees	—	7
Less provision for doubtful debts	—	—
	<u>—</u>	<u>7</u>
Fee receivables which are overdue are aged as follows:		
Not Overdue	—	1
Overdue by:		
less than 30 days	—	5
30 to 60 days	—	1
60 to 90 days	—	—
more than 90 days	—	—
	<u>—</u>	<u>7</u>

Note 6: Non-financial assets

Note 6A — Land and buildings

Leasehold Improvements — at cost	2,986	2,670
Accumulated amortisation	2,211	1,728
Total land and buildings	<u>775</u>	<u>942</u>

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

	2000–01 \$'000	1999–00 \$'000
Note 6B — Plant and equipment		
Plant and equipment — at cost	1,034	916
Accumulated depreciation	573	491
Total plant and equipment	461	425
Plant and equipment — at 1998–99 valuation	101	101
Accumulated depreciation	81	74
Total plant and equipment	20	27

Note 6C — Intangibles		
Computer software — at cost	890	890
Accumulated amortisation	838	705
Total Intangibles	52	185

Note 6D — Analysis of Property, Plant, Equipment and Intangibles

Movement summary 2000–01 for all assets.

Item	Buildings \$'000	Plant & equipment \$'000	Intangibles \$'000	Total \$'000
Gross value at 1 July 2000	2,671	1,017	890	4,578
Additions — Asset purchases	315	168	–	483
Disposals	–	(50)	–	(50)
Gross value at 30 June 2001	2,986	1,135	890	5,011
Accumulated depreciation at 1 July 2000	1,728	565	705	2,998
Depreciation charges for the year	483	131	133	747
Adjustments for disposals	–	(42)	–	(42)
Accumulated depreciation/ amortisation at 30 June 2001	2,211	654	838	3,703
Net book value at 30 June 01	775	481	52	1,308
Net book value at 1 July 00	942	452	185	1,579

Note 6E — Other

Prepaid expenses	1,006	38
	1,006	38

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 7: Provisions

	2000-01 \$'000	1999-00 \$'000
Note 7A — Employee Provisions		
Salaries and wages	407	445
Leave	2,538	2,287
Total employee entitlement liability	2,945	2,732
Current	1,582	1,628
Non-current	1,363	1,104

Note 8: Payables

Note 8A — Suppliers

Trade creditors	404	312
Operating lease rentals	18	238
	422	550

Note 9: Equity

Note 9A Equity — Agency

Item	Capital		Accumulated Results		TOTAL EQUITY	
	2000-01 \$'000	1999-00 \$'000	2000-01 \$'000	1999-00 \$'000	2000-01 \$'000	1999-00 \$'000
Balance 1 July 2000	2,415	2,372	(1,271)	71	1,144	2,433
Operating result	—	—	898	(985)	898	(985)
Equity appropriation	—	43	—	—	—	43
Capital Use Charge	—	—	(100)	(357)	(100)	(357)
Balance at 30 June 2001	2,415	2,415	(473)	(1,271)	1,942	1,144

Note 9B Equity — Administered

Item	Capital		Accumulated Results		TOTAL EQUITY	
	2000-01 \$'000	1999-00 \$'000	2000-01 \$'000	1999-00 \$'000	2000-01 \$'000	1999-00 \$'000
Balance at July 2000	—	—	7	7	7	7
Contributions to Budget Outcome	—	—	5	67	5	67
Amount to Official Public Account	—	—	(12)	(67)	(12)	(67)
Balance at 30 June 2000	—	—	—	7	—	7

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 10: Cash Flow Reconciliation

	2000-01 \$'000	1999-00 \$'000
Note 10A — Agency Reconciliation		
Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows:		
• Cash at year end per Statement of Cash Flows	2,736	2,775
• Statement of Financial Position items comprising above cash: 'Financial Assets – Cash'	2,736	2,775
Reconciliation of operating surplus (deficit) to net cash provided by operating activities:		
Net surplus (deficit)	898	(985)
Depreciation/Amortisation	747	1,199
Loss on sale of non-current assets	8	75
Provision for doubtful debts	4	–
Decrease (increase) in receivables	(227)	(1)
Decrease (increase) in accrued revenues	36	(45)
Decrease (increase) in prepayments	(968)	37
Increase (decrease) in employee liabilities	213	(34)
Increase (decrease) in suppliers liabilities	(128)	342
Net cash provided by operating activities	583	588

Note 10B — Administered Reconciliation

Reconciliation of Cash per Schedule of Administered Assets and Liabilities to Statement of Cash Flows

• Cash at year end per Statement of Cash Flows	–	–
• Schedule of Administered Assets and Liabilities items comprising above cash: 'Financial assets — Cash'	–	–

Reconciliation of 'Net change in administered net assets' from Schedule of Administered Revenues and Expenses to net cash provided by operating activities:

Net increase (decrease) in administered net assets	(7)	(1)
Decrease (increase) in receivables - fees	7	1
Net Cash from Operating Activities	–	–

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 11: Executive Remuneration

	2000–01	1999–00
The number of Executives who received or were due to receive total remuneration of \$100,000 or more:		
\$100,000 to \$110,000	–	1
\$110,001 to \$120,000	2	2
\$130,001 to \$140,000	1	1
The aggregate amount of total remuneration of Executives shown above.	\$359,586	\$484,516
The aggregate amount of separation and redundancy payments during the year to Executives shown above.	Nil	Nil

Note 12: Remuneration of Auditors

Financial statement audit services are provided free of charge to the Tribunal. The fair value of audit services provided was \$13,000 (1999–00: \$12,000).

No other services were provided by the Auditor-General.

Note 13: Average Staffing Levels

Average staffing level for the Tribunal in 2000–01 was 213 (1999–00: 209).

Note 14: Act of Grace Payments and Waivers

No Act of Grace payments were made during the reporting period (1999–00: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management and Accountability Act 1997* (1999–00: nil).

No payments were made under the Defective Administration Scheme during the reporting period (1999–00: nil).

Note 15: 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)
Financial Assets		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 5.45% for the year (1999-00: 7%). Interest is paid quarterly.
Receivables for goods and services	5A	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.	All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (1999-00: 30 Days)
Financial Liabilities		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	8	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).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

Note 15: 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		1 to 2 years		2 to 5 years		> 5 years												
				00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	
Financial Assets																						
Cash at Bank		2,728	2,768	-	-	-	-	-	-	-	-	-	-	8	7	2,736	2,775	5.45	7.0			
Receivables for goods and services	5A	-	-	-	-	-	-	-	-	-	-	-	-	233	11	233	11	n/a	n/a			
Total Financial Assets (Recognised)		2,728	2,768	-	-	-	-	-	-	-	-	-	-	241	18	2,969	2,786					
Total Assets																5,309	4,490					
Financial Liabilities																						
Trade creditors	8	-	-	-	-	-	-	-	-	-	-	-	-	423	550	423	550	n/a	n/a			
Total Financial Liabilities (Recognised)		-	-	-	-	-	-	-	-	-	-	-	-	423	550	423	550					
Total Liabilities																3,367	3,346					

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 15: Financial Instruments (cont.)

(c) Net Fair Values of Financial Assets and Liabilities

		2000–01		1999–00	
	Note	Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
Departmental					
Financial Assets					
Cash at Bank		2,736	2,736	2,775	2,775
Receivables for Goods and Services	5A	233	233	11	11
Total Financial Assets		2,969	2,969	2,786	2,786
Financial Liabilities					
(Recognised)					
Trade creditors	8	423	423	550	550
Total Financial Liabilities					
(Recognised)		423	423	550	550

Financial assets

The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

Financial liabilities

The net fair value for trade creditors are approximated by their carrying amounts.

(d) Credit Risk Exposures

The Tribunal's maximum exposures 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 Statement of Financial Position.

The Tribunal has no significant exposures 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.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 16: Administered 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)
Financial Assets		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.	The balance of the administered cash account is non interest bearing.
Fees receivable	5C	Fees accrue and are recognised at the time services are performed.	All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (1999-00: 30 days).

(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	1 to 2 years	2 to 5 years	> 5 years							
		00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000	00-01 \$'000	99-00 \$'000
Financial Assets													
Fees Receivable	5C	-	-	-	-	-	-	-	7	-	7	n/a	n/a
Total Financial Assets (Recognised)		-	-	-	-	-	-	-	-	-	-	n/a	n/a
Total Assets										-	7		

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 17: Appropriations

	2000–01	1999–00
	\$	\$
<u>Note 17A — Agency appropriations</u>		
Annual appropriations for Departmental items (outputs)		
Appropriation Acts No 1 & 3 credits:		
Section 7: Act 1 — basic appropriations (budget)	22,183,000	22,046,000
Section 7: Act 3 — basic appropriations	3,700,000	—
Section 10: adjustments	—	—
Section 11: Advance to the Finance Minister	—	—
Section 12: Comcover receipts	—	—
Total Current Appropriation Acts	25,883,000	22,046,000
Add: FMA Act		
s30 appropriations	—	—
s30A appropriations (GST Recoverables)	1,007,244	n/a
s31 appropriations	268,858	324,036
Total appropriations available for the year	27,159,102	22,370,036
Balance brought forward from previous period	403,371	—
Total appropriations available for payments	27,562,473	22,370,036
Expenditure during the year	27,241,576	21,966,665
Balance of appropriations for outputs at 30 June	320,897	403,371

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 17B — Annual Appropriations for Departmental Capital items

(a) Terms, conditions and accounting policies

	Equity Injections		Loans		Carryovers		Total	
	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00	2000-01	1999-00
	\$	\$	\$	\$	\$	\$	\$	\$
Appropriation Act No 2 & 4								
Section 10 — Act No 2 (Budget)	—	—	—	—	43,000	2,372,000	43,000	2,372,000
Section 10 — Act No 4	—	—	—	—	—	—	—	—
Advance to the Finance Minister	—	—	—	—	—	—	—	—
Total Current Appropriation Acts	—	—	—	—	43,000	2,372,000	43,000	2,372,000
Add: FMA Act appropriations								
s30 appropriations	—	—	—	—	—	—	—	—
s30A appropriations (GST recoverable)	—	—	—	—	—	—	—	—
Total appropriated in the year	—	—	—	—	43,000	2,372,000	43,000	2,372,000
Balance available at 1 July brought forward from previous period	—	—	—	—	2,372,000	—	2,372,000	—
Total appropriations available for payments	—	—	—	—	2,415,000	2,372,000	2,415,000	2,372,000
Payments during the year	—	—	—	—	—	—	—	—
Balance of appropriations at 30 June carried to next period	—	—	—	—	2,415,000	2,372,000	2,415,000	2,372,000

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2001

Note 18: Trust Moneys

Comcare Trust Account

Purpose — moneys held in trust and advanced to the Tribunal by COMCARE for the purpose of distributing compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1998*.

	Trust Money Comcare Trust Account	
	2000–01	1999–00
	\$'000	\$'000
Balance carried forward from previous period	–	2
Receipts during the period	1	4
Available for payments	1	6
Payments made	1	6
Balance carried forward to next period	–	–

Note 19: Reporting of Outcomes

The Tribunal has one outcome, the Recognition and Protection of Native Title. The level of achievement against this outcome is constituted by activities that are grouped into the four output categories of registration (Group 1), agreements (Group 2), arbitration (Group 3) and assistance and information (Group 4).

Note 19A — Reporting by outcomes

	Outcome	
	Budget	Actual
	\$'000	\$'000
Net Subsidies, benefits and grants expenses	–	–
Other administered expenses	–	1
Total net administered expenses	–	1
Add net cost of entity outputs	27,001	24,998
Outcome before extraordinary items	27,001	24,999
Extraordinary items	–	–
Net Cost to Budget Outcome	26,776	24,999
Outcome-specific assets deployed as at 30/6/01	3,397	5,309
Assets that are not outcome specific deployed as at 30/6/01	–	–

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2001

Note 19B — Major Agency Revenues & Expenses by outcome

	Output Group 1	Output Group 2	Output Group 3	Output Group 4	Total
	Actual \$'000	Actual \$'000	Actual \$'000	Actual \$'000	Budget \$'000
Operating revenues					
Revenues from government	3,884	11,135	2,849	8,028	25,883
Sale of goods and services	15	45	11	32	60
Other non-taxation revenues	21	59	15	43	165
Total operating revenues	3,920	11,239	2,875	8,103	26,108
Operating expenses					
Employees	2,147	6,153	1,574	4,436	15,450
Suppliers	1,526	4,374	1,119	3,154	10,652
Other	114	325	83	234	899
Total operating expenses	3,787	10,852	2,776	7,824	27,001
					25,239

Resource allocation is aligned with quantity achieved multiplied by output cost. However, in some instances the Tribunal has incurred varying degrees of set-up costs and benefited from incurring marginal rather than full costs. These variances are detailed in the body of the annual report for each output group.

Note 19C — Major Administered Revenues & Expenses by outcome

	Outcome
	Actual \$'000
Operating revenues	
Fees	6
Operating expenses	
Write down of assets	1

Appendix XII

Compliance against requirements

The requirements for departmental annual reports, updated in June 2001, can be summarised as:

- Review by departmental Secretary (President’s overview)
- Departmental (Tribunal) overview
- Report on performance
- Management and accountability
- Financial statements
- Other mandatory information

The Tribunal annual report comprises:

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	Contact officer(s)	ii, iv
	Internet home page address and internet address for report	ii
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	President’s overview	2
	Trend information	2
	Summary of significant issues and developments	10
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Appendix XIII

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.

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 s.22 or a person who is engaged as an APS employee under s.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.

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 service: 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.

CPA (Commonwealth Public Account): the Commonwealth's official bank account kept at the Reserve Bank. It reflects the operations of the Consolidated Revenue Fund, the Loan Fund, the Reserved Money Fund and the Commercial Activities Fund.

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 that 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 FMA 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).

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 Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

National Native Title Register: a record of native title determinations.

Native title application/claim: see native title claimant application/claim, compensation application or 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 Reconciliation and Aboriginal and Torres Strait Islander Affairs, and funded by the Aboriginal and Torres Strait Islander Commission, to represent Indigenous Australians in native title issues in a particular region.

New Act: the Native Title Act after the 30 September 1998 amendments.

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.

Old Act: the Native Title Act before the 30 September 1998 amendments.

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.

PAEs: portfolio additional estimates.

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 nationwide.

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 that 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 that have been filed with the Federal Court, referred to the Native Title Registrar and 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, who 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.

Running costs: include salaries and administrative expenses (including legal services and property operating expenses). For the purposes of this document the term '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 funded by Appropriation Act No. 1 but also Special Appropriations and receipts raised through the sale of assets or interdepartmental charging and permitted to be deemed to be appropriated, known as 'section 31 receipts' and received via annotated running costs appropriations.

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.

Sections of the Native Title Act

Included in this glossary is a brief description of the sections of the Act mentioned throughout the report. For a full description of each section please consult the official written form or visit the SCALEplus, the legal information retrieval system of the Australian Attorney-General's Department at <http://scaletext.law.gov.au/html/pasteact/2/1142/top.htm>

s.24HA: deals with future acts relating to the management or regulation of water and airspace.

s.24NA: deals with future acts affecting offshore places.

s.29: deals with the government giving notice of a proposal to do a future act (usually the grant of a mining tenement or a compulsory acquisition).

s.29(3): deals with notifying the public of the proposed act.

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.

s.35: deals with applications for an arbitral body determination as to whether or not the proposed act may be done or not.

s.62: deals with the information to be included in claimant and compensation applications.

s.75: deals with right to negotiate applications.

s.84(3)(b): deals with applying to become a party to a native title or compensation application.

s.86B(1): deals with the referral of matters by the Federal Court to the Tribunal for mediation.

s.122: deals with the disclosure of any conflict of interest a Tribunal member may have.

s.123: deals with the President's powers to direct the way in which the Tribunal's business is arranged.

s.131A: deals with the President engaging consultants in relation to any assistance or mediation that the Tribunal provides.

s.132: deals with the Registrar engaging consultants.

s.133: deals with the preparation and presentation of the Tribunal's annual report.

s.169: deals with appealing to the Federal Court against certain decisions and determinations of the Tribunal.

s.190A: deals with applying the registration test to claimant applications by the Registrar.

s.190B(5): is the part of the registration test that requires that the Registrar be satisfied that there is a sufficient factual basis provided to support the claim that native title exists.

s.190C(2): is the part of the registration test that requires the Registrar to ensure that the application is complete and accompanied by any required documents.

s.190C(3): is the part of the registration test that requires the Registrar to check that a later overlapping claim does not have members in common with an earlier registered claim.

s.190C(4): is the part of the registration test that requires the Registrar to ensure that the people making the application have the authority of the claimant group.

s.190D: deals with what happens if the claim cannot be registered.

s.206: deals with the duties of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund.

s.229(4): deals with how to determine whether or not a public work is a category A past act.

s.233: defines the term 'future act'.

s.237: sets out the circumstances in which an expedited procedure will apply to the doing of a future act.

s.251B: deals with how a native title claim group authorises members of the group to make an application for a native title determination or a compensation application on their behalf.

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