National Native Title Tribunal

Annual Report 2001 – 2002

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ANNUAL REPORT
2001 – 2002

National Native Title Tribunal, Perth, Western Australia

About this report

While required to report to the responsible Minister under section 133 of the *Native Title Act 1993*, the primary purpose of the annual report of the National Native Title Tribunal is to inform and be accountable to, firstly, the Parliament, and secondly, its stakeholders about the services provided.

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.

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 contain a rich text format document set in 12-point type and a PDF version for downloading.

We draw attention to the online versions for 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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NATIONAL NATIVE TITLE TRIBUNAL

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9 October 2002

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 2002.

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

Yours sincerely

Graeme Neate
President

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PRESIDENT'S OVERVIEW

The year in review

Introduction

The tenth anniversary of the judgment in *Mabo v Queensland (No 2)* occurred during the year covered by this annual report. On 3 June 1992, the High Court of Australia decided by a majority of 6:1 that 'the common law of this country recognises a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional lands'.

A direct consequence of that historic decision was the enactment of the *Native Title Act 1993* (the Act), and the establishment of the National Native Title Tribunal (the Tribunal), each of which commenced 1 January 1994.

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.

The report highlights a variety of facets of native title matters. That variety is expressed in the different activities, outputs and outcomes in relation to native title in the past year; the range of ways of doing native title business; the numerous skills which need to be brought to the resolution of native title issues; and the various forms of assistance which the Tribunal provides to parties.

A report of this type necessarily focuses on outputs and outcomes, structures and spending. But figures and graphs, output and process compliance statements only tell part of the story. People are involved at every stage — native title parties, individual landholders, government officers, company representatives, recreational land users, Tribunal members and employees and many others. Each will have a range of experiences of, and responses to, the native title regime. The ways in which that scheme influences the aspirations, expectations, and day-to-day lives of those affected by it are also important. They can only be glimpsed in an annual report of this nature.

This overview describes various:

- trends within the Tribunal and activities undertaken by the Tribunal in the reporting period;

- factors external to the Tribunal that affect how the Tribunal performs its functions;
- responses to the tenth anniversary of the decision in *Mabo (No 2)*; and
- trends in relation to native title that are likely to continue into the foreseeable future.

It is apparent from this report (and previous reports) that the nature and volume of the work undertaken by the Tribunal varies significantly over time, and between individual states and territories. Much of the work is driven by parties who request Tribunal assistance, and by the Federal Court of Australia which refers matters to the Tribunal for mediation and supervises the mediation processes. Consequently, it is difficult to predict accurately the workload trends from year to year.

As a national body, however, with members and employees located around the country, the Tribunal is able to respond by allocating appropriate resources to areas of existing and anticipated need. I gratefully acknowledge the contribution of each member, the Registrar and the employees of the Tribunal during the year covered by this report.

Trends within the Tribunal

Shifts in the volume of registration, notification and mediation of native title determination applications

The resolution of native title determination applications (or claimant applications) involves the Tribunal in three main processes — the registration testing, notification and mediation of each application.

As noted in last year's annual 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, when the bulk of relevant applications lodged before 30 September 1998 were processed together with new applications. In the period covered by this report 126 registration test decisions were made — about 18 per cent fewer than the 153 decisions made in the previous year.
- The wave of notifications continued to rise slightly in 2001–2002, with 172 applications being notified.
- As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. At 30 June 2002, 317 matters had been referred, including 90 matters that were referred to the Tribunal during the past year. The number of applications in mediation is likely to increase next year.

Details of the Tribunal's performance in delivering the services of registration testing, notification and mediation are recorded later in this report.

At 30 June 2002, there were 601 claimant applications at some stage between lodgement and resolution. Although the total was only slightly greater than the 567 active claimant applications at 30 June 2001, there was a greater level of activity than the net increase might suggest. Some 81 claimant applications were discontinued, dismissed, combined with other applications or were the subject of full approved native title determinations, and 115 new claimant applications were lodged during the reporting period.

Although they are significant for case management purposes, the numbers of applications are an imprecise guide to the level of native title claimant activity in Australia. For example, 36 native title applications to areas of sea in the Torres Strait were withdrawn during the year and one application over most of the same area was filed in place of them. A further 11 claimant applications within the Torres Strait were combined into two separate applications and areas of seas were removed from them.

Assistance in negotiation of ILUAs and other agreements

The Act contains a scheme that enables the negotiation of indigenous land use agreements (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.

This report contains information about the level of ILUA activity around the country (see 'Output 1.2.1 — Indigenous land use', p. 51), ILUAs lodged with the Tribunal for registration during the reporting period (see 'Output 1.1.3 — Indigenous land use agreement applications', p. 47) and Tribunal assistance in other forms of agreement-making (see 'Output group 1.2 — Agreement-making', p. 50), as well as descriptions of some ILUAs, which illustrate the variety of matters that are covered by such agreements.

Increased number of consent or unopposed determinations of native title

Determinations of native title take two forms — determinations that native title exists and determinations that native title does not exist in relation to specific areas of land or waters.

In the reporting period, the Tribunal registered 14 determinations of native title, 12 of which were made by consent of the parties or were unopposed and two of which were made after trials. Those determinations continue the recent growth in the number of native title determinations between 1992 and 30 June 2002. The making of agreements towards native title determinations and those determinations

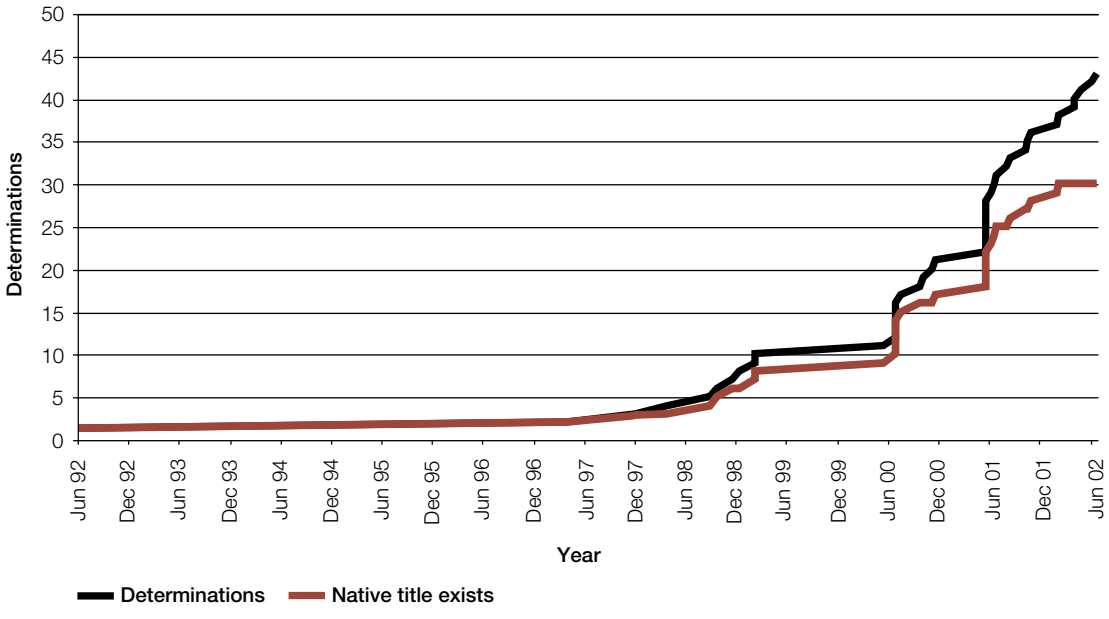
made by the Federal Court are reported elsewhere in this overview and in the body of the report (see 'Output 1.1.2 — Native title determinations', p. 40).

There is an increasing number of determinations that native title does not exist. Some are the result of litigation in which a court holds that native title has been extinguished, either as the consequence of past acts by the Crown (such as the grant of certain estates or interests in land) or because a court decides that a group of people has lost its traditional links to the area of land or waters (as in the case of *Members of the Yorta Yorta Aboriginal Community v Victoria*).

Some determinations are the result of unopposed applications for a determination. For example, in the past year there were four determinations in New South Wales where a land council established under the New South Wales *Aboriginal Land Rights Act 1983* wished to deal with land which it held under that Act but could not do so unless the land was the subject of an approved determination of native title. In June 2002 the Federal Court found, in relation to an unopposed non-claimant application, that native title did not exist on a central Queensland pastoral property (for further information, see p. 44).

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

Figure 1 Cumulative determinations of native title at 30 June 2002



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 precise 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 written reasons for the decision, setting out the background to the application and the terms of the determination. Those reasons have been published. They, and the terms of each order made by the court, are a valuable source of information for those who are negotiating agreements about native title determination applications elsewhere in Australia.

The judgments also provide an opportunity for the court to put the resolution of native title applications in a broader legal and social context. When making orders by consent of the parties to the Karajarri people's application, Justice North stated:

> The people of Australia, through laws made by our elected representatives in parliament, have recognised that indigenous people have rights and interests in land. The law sets out the circumstances in which the rights of those people are recognised and gives the Federal Court the power to determine when those circumstances exist. This law does not grant land rights to Aboriginal people. It creates nothing new with respect to the land. It recognises long standing traditional rights and interests under Aboriginal law. (Nangkiriny v Western Australia [2000] FCA 660 at paragraph 16)

Future act work

Another important aspect of the Tribunal's work is the resolution by mediation or arbitration of issues involving proposed future acts (primarily the grant of exploration and mining tenements) on land where native title exists or may exist.

Historically, a large majority of the future act notices published under the Act have been in relation to areas of Western Australia. There has, however, been a significant increase in the volume of future act (and related claimant application) work in the Northern Territory as a result of the adoption there of the future act regime under the Act.

Since February 2002, the Tribunal has made substantive decisions in relation to future act matters in the Northern Territory. Some determinations conclude what were effectively test cases on the application of particular sections of the Act in the specific circumstances of the Northern Territory.

The range of future act work undertaken by the Tribunal in the reporting period is described at 'Output 1.2.3 — Future act agreement making', p. 58 and 'Output 1.3.1 — Future act determinations', p. 63 of this report.

The volume and nature of future act work in each state and territory have been influenced by such factors as the implementation or review of government policies, the existence (and effectiveness) of alternative state legislation, and the level and nature of activity undertaken by the representatives of exploration or mining interests and Aboriginal groups.

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, Western Australian government departments and the Goldfields Land and Sea Council. It meets in Kalgoorlie under the chairmanship of full-time Tribunal member Bardy McFarlane. Members of the GNTLC have focussed on regional solutions to native title issues.

A working group established by the GNTLC, and facilitated by Mr McFarlane, developed the Goldfields Regional Heritage Protection Protocol. The protocol establishes a formula for the protection of Aboriginal heritage and will simplify the native title process, assisting explorers and prospectors who are seeking the grant of mineral tenements to resolve native title issues. In August 2001, representatives from the Goldfields Land Council, the Chamber of Minerals and Energy of Western Australia, the Association of Mining and Exploration Companies and the Amalgamated Prospectors and Leaseholders Association signed the protocol. The Deputy Premier of Western Australia endorsed the agreement on behalf of the State Government.

A subsequent pilot agreement, based on the principles of the protocol, established a coordinated program for carrying out heritage surveys, proving both time and cost efficient. As a result, the grant of 106 tenements covering approximately 40,000 hectares in the Goldfields region can proceed. Parties to the agreement included the Wongatha People and 22 companies and individuals.

The Tribunal has also taken initiatives that could provide a more productive environment in which agreement-making can take place. In the reporting period those initiatives included a range of training sessions

and the convening of a national forum in Brisbane from 1–3 August 2001. The program focussed on ILUAs and the mediation and management of native title applications.

Members and employees of the Tribunal have made presentations to various seminars, conferences and courses, including the native title conference of the Australian Anthropological Society in Adelaide, the native title conference organised by the Australian Institute of Aboriginal and Torres Strait Islander Studies in Townsville, the native title update forum which preceded the National Farmers' Federation annual conference in Carnarvon, Western Australia, a course at Melbourne University on native title law and resources development, and the Australian Property Institute's professional training course in Brisbane on the valuation of land subject to native title.

The Tribunal and the Queensland Government have contributed financially to the establishment of a Centre for Native Title Studies at the Cairns campus of James Cook University. Housed within the University's School of Law, the centre will undertake multi-disciplinary research into native title law and its impact upon northern Australia, drawing together Indigenous representative bodies and professional organisations working in native title in the area. The centre will provide practical learning and skills development opportunities to enable communities to resolve their native title issues. It is located in a part of Australia where a significant proportion of native title applications have been made and where various native title issues are addressed by numerous people and bodies.

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.

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 legislative regimes in states and territories;
- the policies and procedures of governments;
- the procedures and orders of the Federal Court; and
- the roles and capacity 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.

Developments in the law of native title

In the year covered by this report a minor amendment to the Act was made by the *Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001* which removed the age limit of 65 years for a person appointed as Registrar of the Tribunal.

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.

In October 2001 the High Court of Australia ruled, in *Commonwealth v Yarmirr*, that native title could exist over areas of sea and seabed but that the recognition of public rights of navigation and fishing, and the international right of innocent passage, were necessarily inconsistent with the native title right of exclusive possession.

The resolution of the basic legal issues by the High Court has cleared the way for the possible resolution of those claimant applications which included areas of sea and seabed. At 30 June 2002, there were 148 claimant applications which comprised or included areas of sea and seabed. About one third of those applications were to the low water mark, and the rest extended further out to sea. About two thirds of the applications were in Queensland (53) or Western Australia (49).

More than 30 written judgments were delivered by the Federal Court on matters involving native title law during the year. They dealt with such matters as who can (and cannot) be parties to native title proceedings, the authorisation or decision-making processes adopted by some native title groups in relation to claimant applications, the composition of native title claimant groups, the court's discretion and power to make consent determinations of native title, aspects of the court's management of claimant applications, the use of court-appointed experts in native title proceedings, the review of a minister's decision not to recognise a representative body, the process for dealing with objections under the future act scheme, and the validity of an alternative state regime in relation to future acts, as well as determinations that native title does or does not exist over particular areas of land or waters.

Summaries of the judgments that were most significant in terms of their impact on the operations of the Tribunal are contained in Appendix II (p. 110) of this report.

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

The applicant in *Wilson v Anderson* holds a lease, granted under the New South Wales *Western Lands Act 1901* (WLA) in 1955 in perpetuity, subject to the provisions of the WLA and the regulations. The respondent made a native title determination application on behalf of the Euahlay–I Dixon Clan in respect of land in part of the Western Division of New South Wales. There are 43 other holders of similar leases which are also subject to the native title application. The applicant contended that the existence of the lease provides a complete answer to the native title claim because the effect of the WLA, the regulations made under the WLA and the terms of the lease is to extinguish or suspend any native title rights which involve presence on the land of any native title holder.

In 1999 the Federal Court ordered, by consent of the parties, that there be no further mediation of the native title application and that certain questions be referred to the Full Federal Court. The applicant argued that the reasoning of the majority of the High Court in *Wik Peoples v Queensland* ought to be distinguished and not followed. The Full Federal Court did not accept this submission, but held that it was unnecessary to answer or could not answer the questions on the material before the court. Although the judges differed in the answers given, they all followed the majority judgments in the *Wik* case.

The High Court heard argument on the appeal in September 2001.

The case of *Members of the Yorta Yorta Aboriginal Community v Victoria* commenced as a native title determination application to areas of land and waters in the mid-Murray region of northern Victoria and southern New South Wales. After a long and complex hearing in the Federal Court, Justice Olney determined that native title did not exist. The Yorta Yorta people appealed to a Full Federal Court. Two of the judges (Justices Branson and Katz) found errors in the reasoning of the trial judge but upheld his determination and dismissed the appeal. Chief Justice Black dissented. He considered that the findings of Justice Olney that native title expired before the end of the 19th century was based upon a number of errors, particularly in his approach to the historical evidence and the concept of what is 'traditional'.

The Yorta Yorta people appealed to the High Court and the appeal was heard in May 2002.

The other significant native title case that had not been decided at 30 June 2002 was *Western Australia v Ward*. The High Court heard the appeals in March 2001. That litigation 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.

At the end of the reporting period, the High Court had not delivered judgment in any of those three cases.

The absence of decisions in these cases did not prevent the resolution of some claimant applications. Indeed, some parties negotiated determinations of native title that reflected the current state of the law and provided for variations to specified aspects of the determinations if the law were to change as a result of a High Court decision. There is, however, a sense that some parties are reluctant to negotiate agreed outcomes until the law is settled by one or more of the judgments. Consequently, there was an expectation that if the judgments contained clear guidance on the law, the resolution of numerous applications by agreement of the parties would be facilitated.

Alternative legislative regimes in states

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

During the reporting period there were no new efforts to use the alternative provisions regime. At the end of the reporting period,

however, there was uncertainty about major components of the Queensland scheme which commenced to operate on 18 September 2000.

The validity of the alternative state provisions was contested in Federal Court proceedings, *Central Queensland Land Council Aboriginal Corporation v Attorney-General (Cwlth)*. In February 2002, a single judge of the Federal Court decided that those provisions which related to mining and high impact exploration were invalid because the Federal Attorney-General had made determinations in respect of them before they had commenced to operate. At the end of the reporting period, the Commonwealth Attorney-General had not made new determinations in respect of those provisions and an appeal to the Full Federal Court against the judgment had not been heard. Consequently, key aspects of the alternative state regime were inoperative but the counterpart provisions of the Act did not operate in their place (for further information, see Output 1.2.1, p. 51). The resolution of that issue could have implications for the future role and workload of the Tribunal in Queensland.

Changes to policies and procedures of government

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

Changes of approach or policies can significantly affect the environment in which native title issues are addressed and, hence, the ways in which the Tribunal performs its functions.

During the reporting period, one state government took formal steps to revise the previous policy and procedures for dealing with native title applications and another published guidelines for the proof of native title.

Western Australia

As noted in last year's annual report, the Government of Western Australia:

- commissioned an overhaul of mediation policy and practice in Western Australia and engaged Mr Paul Wand to lead the Review of the Native Title Claim Process in Western Australia (the Wand Review);
- established a Technical Taskforce on Mineral Tenement and Land Title Applications, chaired by Tribunal member Bardy McFarlane, 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 Wand Review and the Technical Taskforce reported to the government in September and November 2001 respectively. At the end of the reporting period the government had not issued a formal response to the various recommendations.

Some of the implications of the work of the Wand Review and the Technical Taskforce are noted later in this report under 'Output 1.2.2 — Claimant, non-claimant and compensation', p. 54.

Victoria

In October 2001 the Victorian Government published *Guidelines for Native Title Proof in Victoria*. The guidelines state that:

- they were developed following the release of the government's Native Title Policy in 2000;
- the policy committed the government to resolve native title claims through mediation rather than litigation;
- the policy confirmed that the recognition of the continued existence of native title rights and interests over parts of Victoria is a potential outcome of mediation;
- claimants must provide evidence to justify recognition of their native title rights;
- such evidence is usually submitted as a 'connection report' that provides a comprehensive background to the identity of the native title claimants, their ancestry and their maintenance of law and culture based on tradition relative to the claim area;
- the government has adopted a flexible but accountable approach to proof of connection that can allow recognition of traditional Indigenous interests in land and water in Victoria, either as native title or non-native title outcomes (the level of recognition will be commensurate with the level of traditional connection demonstrated by evidence); and
- the government will commence mediation of native title applications before the claimants provide connection reports, but meaningful progress on future land management matters will be limited until issues of native title proof have been resolved.

The guidelines address the general nature of proof required for different outcomes, the assessment of proof, the form proof might take, government assistance to claimants (for example, through mapping and access to archival data held by government agencies), and the confidentiality of materials.

Commonwealth

Although the Commonwealth is not a party to all claimant applications and has to date not played an active role in the resolution of most applications, there are indications that it will seek to take a more active role in the future. The Commonwealth has indicated that it takes an active interest in consent determinations both onshore and offshore, even beyond those in which it has property or other interests. It considers that it has a policy responsibility to ensure that the processes for reaching consent determinations evolve in a manner that is consistent with the Act and native title law generally. Accordingly, the Commonwealth approaches consent determinations on the basis of four principles:

- consent determinations should provide certainty about the native title rights recognised;
- those rights should reflect what the common law allows;
- the determination should comply with the requirements of the Act;
- the process by which the determination is made should be transparent.

Federal Court procedures and orders

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 the mediation of native title determination applications and compensation applications. The court also hears appeals from, or judicially reviews, various decisions of members or the Native Title Registrar.

The case management practices of the court can profoundly influence a range of activities or potential activities. Orders of the court influence the prioritising of the Tribunal's work and the allocation of the Tribunal's resources as well as the work and resources of parties. For those reasons there is an ongoing need for communications between key institutions and stakeholders.

The court holds occasional user group meetings in a state or territory which enable the representatives of parties and others involved in native title proceedings (such as representative bodies and the Tribunal) to raise with the court significant issues arising in relation to the management and resolution of such proceedings. The Chief Justice of the Federal Court convened the first national user group meeting in Adelaide in October 2001. It was well attended. Its purpose was to facilitate communication between the users and the court, and between the court and the users. The outcome sought by the Chief Justice was a better understanding by the court of the needs of the parties and a better understanding by the parties of the challenges facing the court. The result should be a more efficient and effective process.

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 time goal for native title matters of three years from October 1999 or the date of filing (whichever is the later date) to disposition. According to the court's *Annual Report 2000–2001*, the objectives of the time goal are to:

- recognise that disposition standards are an essential component of effective case management;
- achieve the timely and efficient resolution of native title matters; and
- focus the attention of relevant people on how the resolution of native title may be achieved within a time frame that is appropriate to all participants and, at the same time, attribute responsibility to those who can contribute to, not only the resolution of the matter, but the achievement of the time goal.

The time goal has been criticised as generally unachievable and the court recognises a number of practical limits to achieving the goal in the short term, including:

- the time taken for applications to progress through the statutory requirements of the Act, such as the lengthy period in some states between notification of an application and the settling of party lists; and
- the perceived shortage of suitably qualified independent experts (historians and anthropologists) to assist the court.

The court has also recognised that the management of native title matters is likely to become increasingly complex and resource intensive for the court as more cases complete the case management and mediation stages and, if not resolved by agreement, proceed to trial.

The implications of the court's approach were considered in the Tribunal's *Annual Report 2000-2001*.

As at 30 June 2001, 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. In the year covered by this report, however, the court agreed to delay the commencement of a number of hearings in light of the particular circumstances of each case.

Not all of the cases that have been listed for trial may go ahead. Judgments of the High Court in test cases 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.

It is too early to make an accurate prediction of how long native title cases will take to resolve. 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 Federal Court by the presiding Tribunal member.

The approach taken to requesting mediation reports varies between judges and is influenced by the circumstances of each application. Although some judges rarely request reports, 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 why progress is slower than might be expected.

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. On the basis of those reports, and information provided to the court by parties at directions hearings, 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.

In some instances where matters are set down for trial, 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.

More information about mediation reports to the court can be found under 'Output 1.4.3 — Reports to the Federal Court', p. 79.

The roles and capacity of representative bodies

Functions, powers and capacity

Representative bodies continue to have important functions and powers under the Act. Those functions include:

- 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.

In performing its dispute resolution functions in a particular case, a representative body may be assisted by the Tribunal, but only if the representative body and the Tribunal have entered into an agreement under which the representative body is liable to pay the Tribunal for the assistance. 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.

Regions where representative bodies operate

At the start 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 of Western Australia.

In July 2001 North Queensland Land Council Aboriginal Corporation was recognised as the representative body for the Cairns area, and in December 2001 the South West Aboriginal Land and Sea Council Aboriginal Corporation was recognised as the representative body for the South West of Western Australia.

In December 2001 the Minister withdrew the recognition of the New South Wales Aboriginal Land Council, at the Land Council's request. Consequently, there is no representative body for New South Wales. Much of the representative body work, however, is undertaken by the New South Wales Native Title Service. Under section 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.

At the end of the reporting period there were 16 recognised representative bodies for 17 areas. The New South Wales Native Title Service performed many representative body functions in that State. 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).

Responses to the tenth anniversary of *Mabo v Queensland (No 2)*

The tenth anniversary of the High Court's decision in *Mabo v Queensland (No 2)* provided an opportunity for, among other things, various commemorative speeches, conferences and dinners, and assessments of what has happened in the past decade by people directly affected by native title.

The Tribunal participated in some of the events marking the anniversary, and provided information to media outlets interested in reporting on it (see 'Output 1.4.1 — Assistance to applicants and other persons, p. 70).

A range of views were expressed about the consequences of the High Court's decision and subsequent judicial decisions, and the operation of the Act. One mining industry leader stated that the decision in *Mabo (No 2)* forced the community to be engaged with the challenge of our past and our future.

How well have those challenges been met?

Among the positive assessments were recognition that in those ten years there had been 30 determinations that native title exists, 24 of which were reached through negotiation with all the parties. These determinations covered land in the Torres Strait and mainland Queensland, New South Wales, the Northern Territory and Western Australia. They varied in area from a few hundred hectares to more than

50,000 square kilometres. There have also been thousands of agreements made though native title processes (including 50 registered ILUAs), ranging from agreements about mineral exploration to the establishment of a new national park.

Some people observed that without statutory reinforcement the potential of the decision in *Mabo (No 2)* could have been eroded. The Act provides a level of protection for native title that was not available under the common law. It has resolved some injustices and can be seen as an element in a development vision that recognises value to national interests in having Indigenous Australians living on and actively managing their traditional lands.

Importantly, it is increasingly the case that agreement-making has become the preferred way of resolving native title issues. For some this has come about because people who were historically on opposite sides of the fence have come together to negotiate outcomes recognising interests beyond legal rights. The Act provides processes which bring people together to address issues and try to resolve them in their mutual interests. Others suggested that an ironic benefit of a scheme that has been characterised by some as 'unworkable' is the tendency to negotiate agreements rather than work through some of the statutory processes. Industries and Indigenous communities had used strategic partnerships to work around the legislative obstacles.

Some people consider that native title rights provide potential for economic and employment opportunities for Indigenous Australians, improving their social and physical quality of life and providing economic and social benefits to industries and the broader Australian community. Goodwill and strong relationships have been built up between local communities and mining operators.

Some Indigenous leaders have noted that native title laws have enabled Indigenous people to have a say about what happens on their traditional lands and to feel a sense of pride. For them, the days of imposed outcomes riding roughshod over indigenous rights and values have passed.

There were, however, many criticisms or expressions of despondency or despair from Indigenous and industry leaders. It was argued by various people that, among other things:

- claimant applications are taking too long to process
- there is no clear definition of native title
- Aboriginal people bear the onus of proving their traditional connection to land but claimants did not have resources to take on respondent groups

- overlapping applications are a problem
- the costs of native title processes are too high and yet few results have been achieved
- the Act is unworkable, discriminatory and has not delivered outcomes to Indigenous people
- the tenure provided by native title has no economic basis
- there was no funding for the representative structures that traditional owners had been required to establish to administer native title
- the 1998 amendments to the Act diminished the protection of native title rights and had ensured that Aboriginal peoples' rights were subordinate to the rights of other title holders
- native title has divided Indigenous people and had lined the pockets of lawyers
- native title has divided Indigenous people from others in the community
- native title has a devastating effect on mineral exploration and mining
- governments were unwilling to accept that native title is an established right
- native title rules had caused uncertainty on all sides.

Various commentators offered suggestions such as fast-tracking the processing of claimant applications, enacting national land rights legislation, encouraging parties to develop agreements irrespective of the legislative scheme, enabling land to be used as collateral for business development and economic independence, a review of native title laws, and the implementation of a social justice package.

Some of the criticisms are based on the experience of those for whom native title has not delivered any benefits and possibly never will. Some other comments and suggestions are based on a lack of understanding about the processes of resolving native title applications and other issues. But there is clearly a degree of dissatisfaction with aspects of the current scheme and frustration at the limited nature and number of outcomes to date.

It is not my role as President of the Tribunal to enter the public debate about the policy of the Act or the adequacy of the judgments of our superior courts. Those are matters for the Parliament and judiciary.

I do, however, acknowledge that there remain unresolved issues and areas of dissatisfaction that are likely to provoke comment and criticism in the years ahead. Accordingly, I offer three observations to those who offer broad-based criticism of the native title system.

First, native title was never going to deliver direct benefits to all groups of Aboriginal people and Torres Strait Islanders. The seeds of that outcome were sewn in the *Mabo (No 2)* judgments. In much of Australia, the law

will not recognise native title because, for one reason or another, it has been extinguished. In other places, native title will continue over only some of the traditional country of some groups. Consequently, there will be an increased role for the Indigenous Land Corporation to address unmet needs for areas of land. Recourse may also be made to state or territory legislation to provide secure tenure which cannot be obtained under native title laws.

Second, there was always going to be a debate about how best to give effect to the principles set out in, and the challenges posed by, the High Court's decision in *Mabo (No 2)*. The law has only recognised native title for a decade. We are still working out the implications of that fundamental change to our way of thinking. The Act creates a scheme which tries to recognise and protect native title as well as ensure that the needs of the broader Australian community are met. That is clear from the main objects of the Act which, on the one hand, are:

- to provide for the recognition and protection of native title; and
- to establish a mechanism for determining claims to native title,

and on the other hand are:

- to establish ways in which future dealings affecting native title may proceed and to set standards for those dealings; and
- to provide for, or permit the validation of past acts, and intermediate period acts, invalidated because of the existence of native title.

Inevitably there will be different views about whether parts of the system are appropriate, and about how it is working.

Third, apart from independent critics who raise particular issues, the system itself ensures that it is subject to critical analysis. The Tribunal publishes annual reports on its activities. The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund reports on the implementation and operation of the Act and the effectiveness of the Tribunal. The Aboriginal and Social Justice Commissioner reports annually on the operation of the Act and the effect of the Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders. So the systems that are in place are themselves subject to periodic and public review and critique.

There is always potential for change to the substantive law and the procedures to implement it. We must not be complacent. It is important that, as new challenges arise and the law develops, those involved in the system review their practices and, where necessary, change the ways we operate.

Future prospects

In my overview in the *Annual Report 2000–2001* (pp. 22–33), I made the following observations about future trends in native title law and practice:

- The volume of native title work will increase — not only because there are hundreds of native title applications to deal with but because, as native title rights are established, more people will have procedural rights to be involved in negotiations about a wide range of proposed land uses.
- Agreement-making will become the usual method of resolving native title issues — be they claimant applications or land use proposals.
- The form and content of agreements will vary from place to place, having regard to local circumstances, including variations in laws and policies in different states and territories.
- Timeframes for negotiating agreements should, on average, be reduced as parties become more experienced in negotiations and the scope of potential outcomes becomes more predictable in light of increased certainty about the law and knowledge about agreements previously negotiated on similar subjects.
- There will be an increased focus on 'second generation' native title issues — such as what happens after a determination of native title is made or an ILUA is registered.
- The level of resources available to the parties — principally money, qualified individuals and time — will directly affect the pace and quality of agreement making.
- The Federal Court will continue to affect, if not drive, native title processes.
- There will be an increased focus on the question of who can have access to and use information generated in relation to native title matters — including connection reports and commercial agreements.
- Land planning, land access and land use laws may need to be revised or refined to fit within the overall native title regime.
- 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.

Events in the reporting period have confirmed many of those trends.

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.

Graeme Neate, President of the Tribunal, joins Dulcie Nicholls, Arakwal elder, in a handprinting ceremony to mark the declaration of the Arakwal indigenous land use agreement, Byron Bay, October 2001.

TRIBUNAL OVERVIEW

Role and function

The *Native Title Act 1993* established the Tribunal and sets out its functions and powers. The Tribunal's main role is to assist 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 pursue the objective of carrying out its functions in a fair, just, economical, informal and prompt manner.

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

- mediating 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 in relation to the doing of proposed future acts; 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.

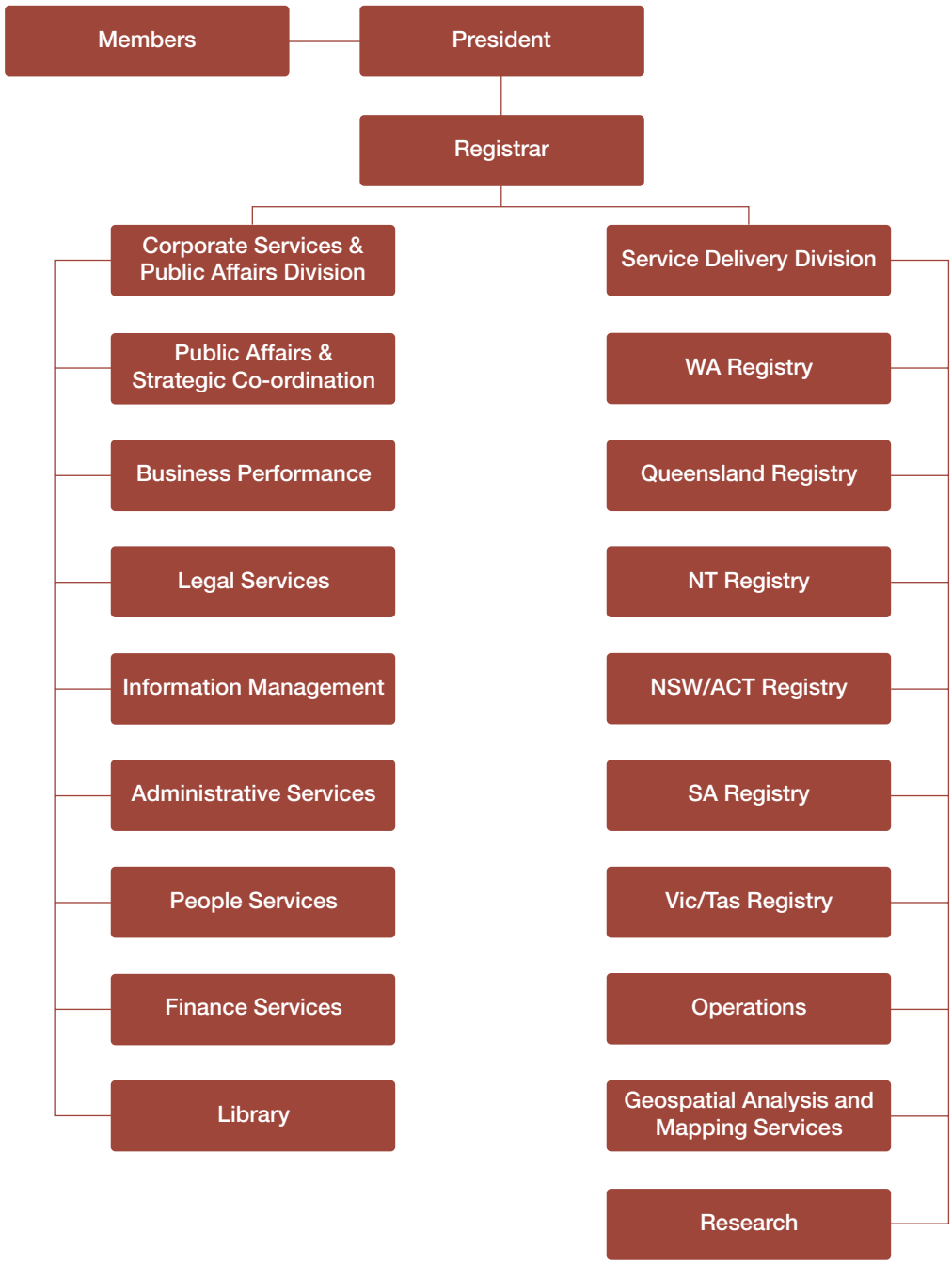
Applications for a native title determination (claimant and non-claimant applications) and compensation applications are filed in and managed by the Federal Court. Although the Court oversees the progress of these applications, the Tribunal performs various statutory functions as each application proceeds to resolution (for more information, see 'Output 1.2.2 — Claimant, non-claimant and compensation', p. 54).

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 'Output 1.2.3 — Future act agreement-making', p. 58 and 'Output 1.3.1 — Future act determinations', p. 63).

Organisational structure

In May 2002 the organisational structure of the Tribunal was changed. Former Director of the Division of Delivery Support, Ms Merranie Strauss resigned and subsequently that division was absorbed into the two other divisions of Service Delivery and Corporate Services & Public Affairs (see Figure 2, p. 27).

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 Commonwealth 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 remain unchanged from the previous reporting period. However, the description for outputs 1.1.1 and 1.2.3 have been changed to clarify the particular nature of the service being provided by the Tribunal. Similarly, statements describing various 'items' and 'descriptions' have been changed taking into account experience gained from the previous Portfolio Budget Statement and to better account for the Tribunal's broad range of services delivered under the amended Act.

The output groups are:

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

Figure 3 on page 34 illustrates the outcome and output framework. Details of the Tribunal's performance and costs in accordance with this framework are provided in the section 'Report on performance', commencing on p. 29.

REPORT ON PERFORMANCE

Financial performance

The Tribunal's actual expenditure for the 2001–2002 financial year was $28.425m. The estimated expenditure detailed in the Attorney-General's Portfolio Additional Estimates was not realised due to lower than expected activity levels. This resulted in an increase of $0.405m in the Tribunal's equity.

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

Table 1 on page 31 identifies the cost of each output group and outputs during the reporting period. The table shows the full-year budget and identifies the cost of each output group and output during the reporting period.

Table 1 Total resources for outcome

	(1) Full-year budget 2001–2002 $'000	(2) Actual 2001–2002 $'000	Variation* 2001–2002 $'000	Actual as a % of total appropriation 2001–2002 %
Departmental appropriations				
Output group 1.1 – Registrations				
Output 1.1.1 – Claimant applications	2 540	3 361	821	12%
Output 1.1.2 – Native title determinations	365	287	-78	1%
Output 1.1.3 – Indigenous land use agreement applications	866	984	118	4%
Subtotal output group 1.1	**3 771**	**4 632**	**861**	**17%**
Output group 1.2 – Agreement-making				
Output 1.2.1 – Indigenous land use	4 386	1 866	-2 520	7%
Output 1.2.2 – Claimant, non-claimant and compensation	7 550	7 963	413	28%
Output 1.2.3 – Future act	1 405	2 199	794	8%
Subtotal output group 1.2	**13 341**	**12 028**	**-1 313**	**43%**
Output group 1.3 – Arbitration				
Output 1.3.1 – Future act determinations	2 018	1 033	-985	4%
Output 1.3.2 – Objections to the expedited procedure	1 577	2 985	1 408	10%
Subtotal output group 1.3	**3 595**	**4 018**	**423**	**14%**
Output group 1.4 – Assistance, notification and reporting				
Output 1.4.1 – Assistance to applicants and other persons	4 700	4 578	-122	16%
Output 1.4.2 – Notification	1 915	1 734	-181	6%
Output 1.4.3 – Reports to the Federal Court	1 171	1 111	-60	4%
Subtotal output group 1.4	**7 786**	**7 423**	**-363**	**26%**
Total revenue from government (appropriations) contributing to price of departmental outputs	28 493	28 101 or 98.9%	-392	100%
Revenue from other sources				
Output 1.1.1 – Claimant applications	23	39	16	
Output 1.1.2 – Native title determinations	–	3	3	
Output 1.1.3 – Indigenous land use agreement applications	8	11	3	
Output 1.2.1 – Indigenous land use	39	22	-17	
Output 1.2.2 – Claimant, non-claimant and compensation	67	92	25	
Output 1.2.3 – Future act	12	25	13	
Output 1.3.1 – Future act determinations	18	12	-6	
Output 1.3.2 – Objections to the expedited procedure	14	34	20	
Output 1.4.1 – Assistance to applicants and other persons	42	53	11	
Output 1.4.2 – Notification	17	20	3	
Output 1.4.3 – Reports to the Federal Court	10	13	3	
Total revenue from other sources	250	324	74	
Total price of departmental outputs (Total revenue from government and other sources)	28 743	28 425	-318	
Total estimated resourcing for outcome 1 (Total price of outputs and administered expenses)	28 743	28 425	-318	
Average staffing level (number)	233	242	9	

* column 2 minus column 1

Outcome and output performance

The estimation model

The Tribunal is aiming to adopt an appropriate budget planning process, consistent with the statutory requirements placed upon it. The process is:

- In March of each year the Portfolio Budget Statement (PBS) is prepared for the following financial year.
- In July, the output prices are reviewed based on actual salary and administrative cost data for the just completed financial year. These figures are used in the annual report for that year.
- The revised output prices replace the prices advised in the PBS. Output data included in the PBS are also reviewed. Any changes are reported to Parliament through the additional estimates process.
- Subsequently, in March the following year, a new PBS will be prepared based on the pricing review in the previous July.

The Tribunal accepts that the price and output estimates that are generated from this model will not lead to true benchmarking, particularly as it does not rely on analysis of the underlying causes of price changes. Given the nature of the Tribunal's work, benchmarking is very difficult; however, it is expected that prices from year to year will show less variation over time.

Several aspects of the Tribunal's business contribute to fluidity, and consequent lack of certainty, in the estimation process. They are outlined below:

- Workload shifts
  The balance of work between the different outputs will change from year to year. This is illustrated, for example, in the reduced amount of registration-testing of claimant applications and changes in agreement-making practice which see more matters being resolved through mediation, including through ILUA processes.
- Stakeholder behaviour
  The behaviour of system users and other institutional participants is a major determinant of levels of demand upon, and activity within, the Tribunal. The Tribunal has no control over the number of claimant applications that are lodged, discontinued or combined, over the number of matters referred to it by the Federal Court, or the extent to which parties might call for Tribunal involvement in a particular matter. The Tribunal only exercises significant control over the processing of future act matters, once initiated, although it has no control over the number of future act applications.
- Regional variations
  It is becoming more apparent that there is no emerging uniformity in

operations across the regions served by the Tribunal that would significantly assist a process of workload estimation. There are different patterns of activity in each state and territory, and differences within particular states and territories over time.

- Complexity
  It is also emerging that there is greater complexity in the native title sphere than has been assumed to date. As parties deal with that complexity, different types of matters are jostling for priority, many of them in the same geographical area.

Benchmarking of prices is made difficult by:

- Differences in scale of activities
  Significant variation exists within the particular outputs in the scale of activity required of the Tribunal to assist stakeholders. For example, within 'Output 1.2 — Agreement making', the levels of assistance provided in the Burrup mediation and the Kalkadoon and Explorers Reference Group (KERG) ILUAs were disproportionately large compared to the levels of assistance provided to other agreement-making processes.
- Proportional variations
  The Tribunal is a relatively small agency dealing with small numbers of activities in most of its output groups, when compared with large agencies with large volumes of transactions, such as the Australian Taxation Office or Centrelink. Any variation in output level in the various output groups is likely to represent a sizeable proportional change in costs because the same basic infrastructure needs to be in place. In other words, a scale factor comes into play, given the relatively small aggregates within most of the Tribunal's output groups.

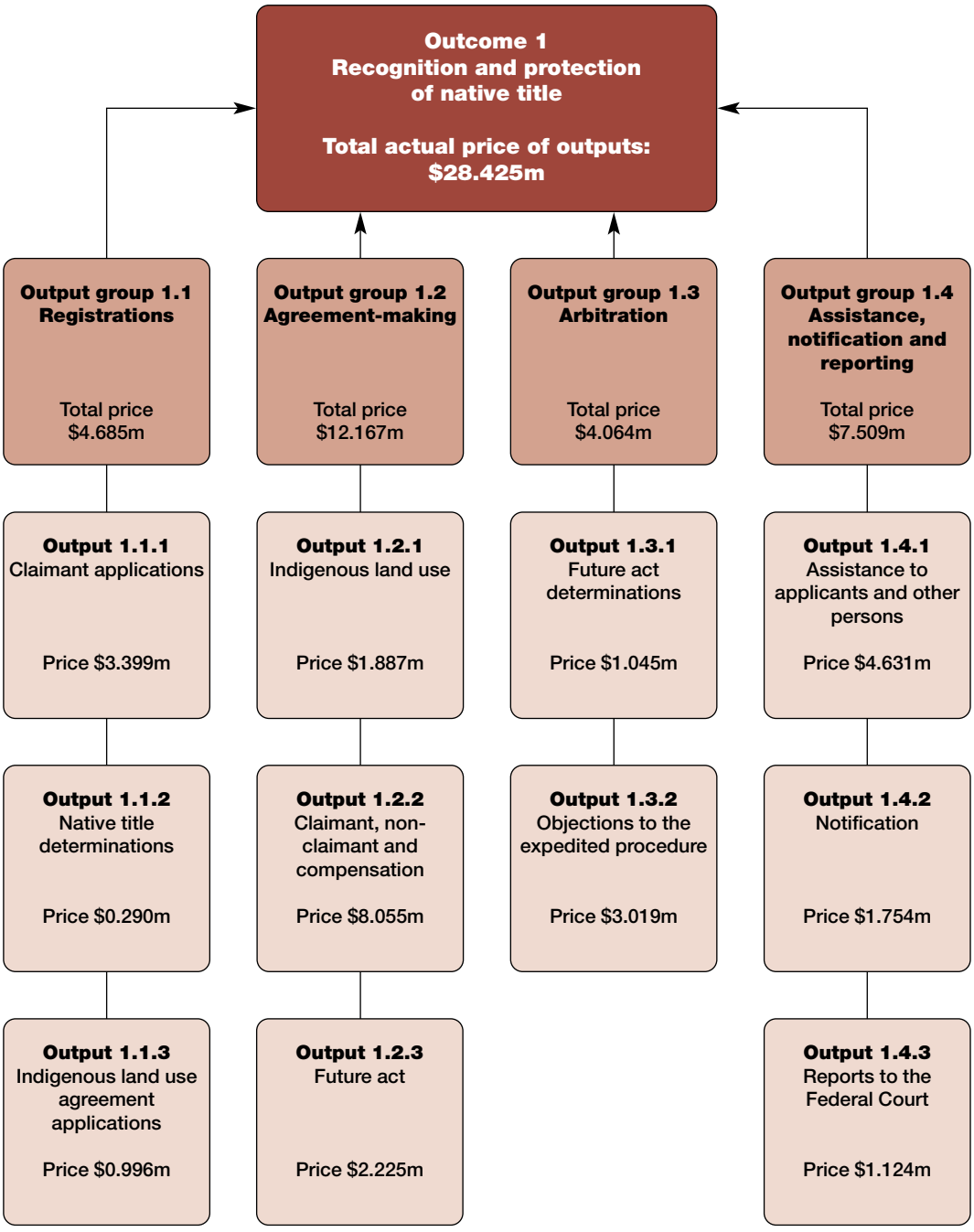
The estimation process in 2001–2002

There has been some procedural departure by the Tribunal from this model in 2001–2002, largely associated with the consolidation of a budgeting process founded on outputs and pricing.

In July 2001, the output prices were reviewed based on actual data for the 2000–2001 financial year. Those prices were used in the *Annual Report 2000–2001*. The revised prices were then adopted for the 2001–2002 financial year and output estimates were reviewed in October/November 2001. However, these changes were not reported to Parliament through the additional estimates process.

For purposes of completeness and clarity, this annual report includes output and pricing information founded on the original estimates; the revised estimates of both price and output for 2001–2002 founded on the outcomes of 2000–2001; and the achieved outputs and costings using actual data for the year.

Figure 3 Outcome and output framework for 2001–2002



Output group 1.1 — Registrations

The Tribunal's registration activities relate to:

- the application of registration procedures to claimant applications;
- compliance checking 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 Native Title Registrar is the custodian of the three registers and aims to record relevant information diligently, consistently and accurately, and facilitate public access to the information held on the registers.

Output group 1.1 consists of the registration of:

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

Output 1.1.1 — Registration of claimant applications

Description of output

Each claimant application is made to the Federal Court by Indigenous Australians (claimants) who are seeking a determination that native title exists over an area of land or waters.

The Federal Court refers the application to the Registrar who has the statutory function of applying the registration test to native title claimant applications. For a native title claimant application to become registered (placed on the Register of Native Title Claims), the application must satisfy all of the conditions set out in the Act.

Placement of an application on the Register accords to the claimant group the right to negotiate about certain future acts involving, for example, the grant of a mining lease in the area in which the claimants have an interest, or involving the compulsory acquisition of land by government for grant to a third party. Those and other procedural rights can be exercised in the period before the claimant application is determined.

The period in which registration testing takes place is affected where a state or territory government publishes a notice that a future act is to go ahead in an area that may be covered by the claimant application. Potential native

title claimants have three months from the notification date specified in the state or territory notice within which they can file a claimant application in the Federal Court. The Registrar or his delegate must endeavour to apply the registration test to the claimant application within four months from the notification date. 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.

Written reasons for each registration test decision are given to the claimants. The reasons for decision are posted to the Tribunal's web site once they have been edited to remove personal references or any matters of cultural or customary sensitivity. Summaries of registration test decisions are also posted on the Tribunal's web site.

Performance

The performance measures for the registrations of claimant applications are:

- quantity — the number of decisions made towards 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	Estimate	Revised estimate	Result
Quantity	210	137	126
Quality	70% decided within two months of receipt from Federal Court	70% decided within two months of receipt from Federal Court	59% decided within two months
Resource usage — unit cost per registration test	$12 205	$16 737	$26 980
Resource usage — output cost	$2 563 050	$2 292 930	$3 399 480

Comment on performance

Number of decisions made

During 2001–2002, 126 registration test decisions were made, about 18 per cent fewer than the number of decisions made in the previous year. It is relevant to note that of the applications tested during the year:

- 26 registration tests were made on applications for the second or third time;
- 101 satisfied all the conditions of the registration test;
- 25 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 25 applications that failed the registration test, five did so after an abbreviated procedure was applied because the applicants did not provide the Registrar with additional information. Additional material was provided for the other 20 applications but they were still unable to meet the conditions of the registration test.

With the reducing number of claimant applications being filed per year across Australia, it is expected that the number of required registration test decisions will also continue to decline. However, this will vary between states and territories.

Parties may seek a review of the Registrar's registration test decisions, under the Act or under the *Administrative Decisions (Judicial Review) Act 1977*. No registration decisions were judicially reviewed during the year.

Table 2 shows a state and territory breakdown of the number of claimant applications processed for registration, resulting in the 126 registration decisions.

Table 2 Number of registration tests by state or territory 2001–2002

State	Accepted	Not accepted	Not accepted – abbreviated	Total	Estimated
ACT	0	0	0	0	0
NSW	5	6	0	11	5
NT	44	4	0	48	80
Qld	43	4	1	48	45
SA	2	2	3	7	4
Tas.	0	0	0	0	0
Vic.	0	1	0	1	3
WA	7	3	1	11	15
Total	**101**	**20**	**5**	**126**	**152**

The most marked variation from that estimated was in the Northern Territory, where only 52 per cent of the original forecast numbers were met.

The lower-than-expected number of claimant applications lodged for registration in the Northern Territory is explained by the approach to future act matters taken by the two representative bodies: the Central Land Council (CLC) and the Northern Land Council (NLC). Thirty-seven of the 43 applications lodged in the Territory were in the area of the NLC.

Applicants within the region served by the CLC lodged just six objections to the assertion of the expedited procedure included in 121 future act notices, and filed five claimant applications necessary in order to achieve the statutory right to negotiate. On behalf of the native title

claimants, the CLC approach was to respond to future act matters by including them in ILUAs (see 'Output 1.2.1 — Indigenous land use', p. 51).

In the previous reporting period, native title claimants represented by the NLC were filing small 'polygon' native title applications over the exact area of future act notices. However, during the current reporting period, the NLC has moved to filing native title applications that cover larger areas, for example, based on pastoral property boundaries. As a consequence, fewer claimant applications for registration were filed.

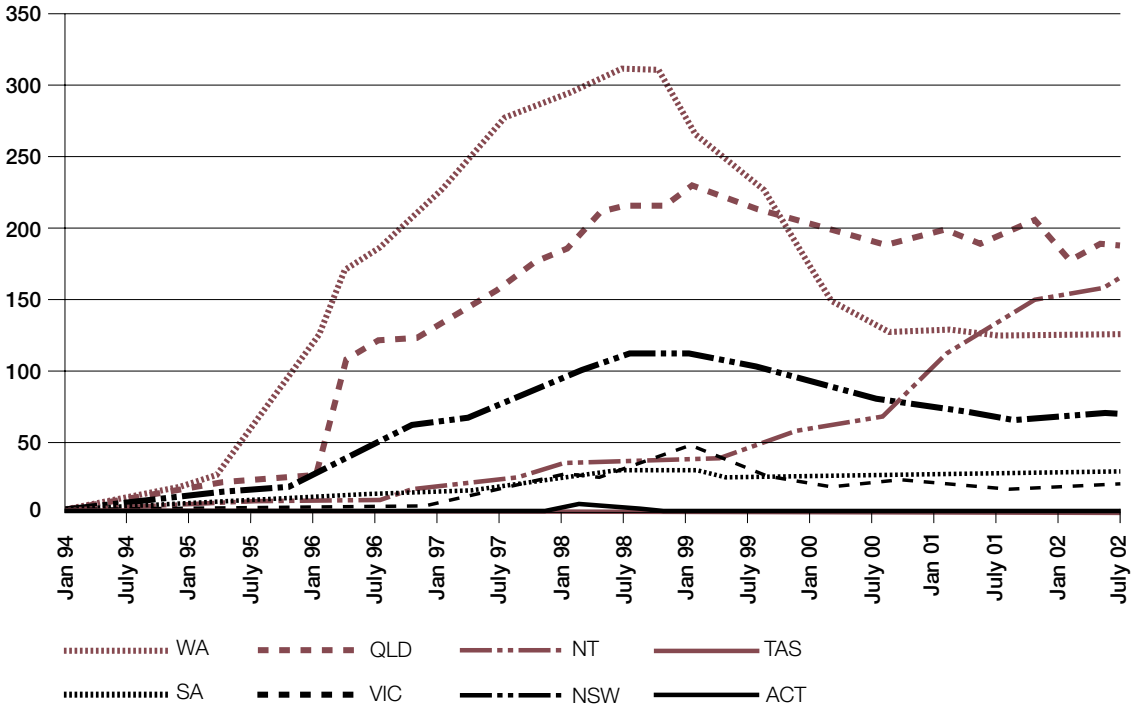
It is anticipated that, while the Northern Territory Government continues to publish future act notices, the rate of claimant applications filed in response will decrease slowly because an increasing number of the areas affected by future act notices will be covered by existing applications.

Active claims

In the reporting period, 81 claimant applications were discontinued, dismissed, combined with other applications or subject to full native title determinations, and 115 new claimant applications were filed. Consequently, at 30 June 2002, there were 601 claimant applications at some stage between filing and resolution. Of the 601 applications 455 were on the Register of Native Title Claims; 91 had not been accepted for registration; and 55 remained to be tested.

Information about the active claimant applications that are not on the Register of Native Title Claims is held by the Tribunal under section 98A of the Act, as part of a public record known as the Schedule of Applications. The schedule includes all active claimant applications which did not meet the registration test, and those new applications not yet tested. Figure 4 on page 39 graphs the number of active claimant applications per state or territory from 1994 to 30 June 2002.

Figure 4 Active native title claimant applications by state or territory, 1994–June 2002



Timeliness of decisions

The Tribunal aims to process 70 per cent of claimant applications through the registration test within two months of receipt of the applications. During the year 59 per cent were processed within the target period. While the overall performance measure was not quite achieved, it was exceeded in the case of those applications affected by a future act notice. For example, in the Northern Territory all of the decisions were made within one month. The additional resources allocated to the Darwin registry in the previous reporting period have assisted to meet the tight operational and statutory timeframes.

It was reported in the *Annual Report 2000–2001* that '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'. This has proved to be relevant to matters affected by section 29 notices. Others, such as combined and further combined applications, and the remaining old Act applications, have proved to be complex and hence their testing has required more resources.

Output 1.1.2 — Native title determinations

Description of output

A native title determination is a court decision that native title does or does not exist in relation to a particular area of land or waters.

When a determination is made, the details of the determination are sent by the court to the Tribunal to be recorded on the National Native Title Register. This process is called the registration of a native title determination.

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 or does not exist.

Performance

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

- quantity — the number of determinations registered;
- quality — 80 per cent of registrations are to be made within two days of receipt of notice from the Federal Court; and
- resource usage.

Performance at a glance

Measure	Estimate	Revised estimate	Result
Quantity	34	25	14
Quality	80% registered within two days of receipt from Federal Court	80% registered within two days of receipt from Federal Court	64%
Resource usage — unit cost per registration of a determination	$10 727	$14 207	$20 702
Resource usage — output cost	$364 720	$355 170	$289 828

Comment on performance

Number of determinations registered

In the reporting period, 14 determinations were registered, consisting of seven determinations that native title exists, one consent determination that native title does not exist, and six non-claimant determinations that native title does not exist. See Table 3 on page 42 for the breakdown by state and territory of claimant and non-claimant determinations.

Nharnuwangga Wajarri and Ngarla People – 5 July 2001

The Nharnuwangga Wajarri and Ngarla application was formed in 1999 from the combination of four applications lodged with the Tribunal in 1995. It was a particularly significant decision because of the size of the application — around 50 000 square kilometres near Meekatharra — and the range of interests, which included 24 pastoral interests, 28 mining companies, Telstra, the Shire of Meekatharra and the Western Australian Government. In addition to the mining ILUA, a comprehensive set of pastoral agreements was negotiated.

Bar-Barrum People – 28 June 2001

This was the biggest consent determination of native title reserves and unallocated state land in mainland Queensland. It recognised the Bar-Barrum People's native title to an area of approximately 357 square kilometres to the west and south-west of Herberton, far north Queensland. The determination is particularly significant as it was the first in a regional rural community in mainland Queensland with such a broad range of non-indigenous interests.

Tjurabalan People – 20 August 2001

Through a consent determination, the Tjurabalan People achieved legal recognition of their native title rights over an area covering approximately 26 000 square kilometres of land and waters in the Tanami Desert region near Halls Creek. This was the third consent determination to occur in Western Australia. The mediation process had initially been unsuccessful and litigation appeared to be the only option. However, the then recently elected State Government recommended that the parties return to the negotiating table.

Members of the Tjurabalan community portray their first meeting with Europeans through a dance incorporating the Aboriginal and Australian flags, August 2001.

Table 3 Native title determinations by state and territory 2001–2002

State	Claimant	Non-claimant
New South Wales	1	4
Northern Territory	1	0
Victoria	0	0
Queensland	1	2
South Australia	0	0
Tasmania	0	0
Western Australia	5	0
Total	**8**	**6**

Kiwirrkurra People – 19 October 2001

The Kiwirrkurra People of remote Western Australia gained legal recognition of their native title rights over approximately 42 900 square kilometres of land and waters in the Gibson Desert, west of Lake Mackay. The consent determination was handed down at Moyen on Kiwirrkurra country and was the fourth consent determination of native title for Western Australia.

Byron Bay Bundjalung People #2 (Arakwal) – 23 October 2001

This consent determination was one of the procedural steps involved in implementing the Bundjalung of Bryon Bay (Arakwal) ILUA which was registered in August 2001. Provisions of the agreement involved the Arakwal People surrendering native title to some small parcels of land in exchange for the State of New South Wales granting freehold title to the Arakwal Corporation in most of the area surrendered (the rest being gazetted as a public road). The consent determination formally acknowledged the surrender through a determination that native title no longer existed in those areas. The agreement was the first registered ILUA in New South Wales to involve the State Government, and the first in Australia to facilitate the creation of a national park (the Arakwal National Park). The Arakwal People have a significant say in the management of the national park.

Leregon/Yawuru People & Rubibi Community – 7 November 2001

The Yawuru community of Broome which, for the purpose of this application, was found to include the Djugan group, gained legal recognition of their native title rights over 'Kunin' — a 300 hectare reserve near Broome and a traditional law ground. This determination was the result of litigation and was the seventh determination of native title in Western Australia.

Ngalakan People – 7 February 2002

The Ngalakan People of the Roper River region obtained a determination of native title over Crown land in Urapunga Township, however there was a finding that native title did not include streets and certain other lots within the gazetted town plan. The town had been gazetted in March 1887 however, it was not subsequently developed. The original native

title application had been lodged in May 1995, and the determination was made in the Federal Court after hearing the matter, rather than by a consent agreement.

The decision of the Federal Court has been appealed and by the end of the reporting period the appeal had not been heard. A Prescribed Body Corporate to hold title for or on behalf of the native title holders was yet to be nominated or registered.

Karajarri People – 12 February 2002

The Karajarri People gained legal recognition of their native title rights over a 24 725-square-kilometre area in the remote Kimberley region. The consent determination covers the majority of the combined area claim (31 219 square kilometres) and includes Frazier Downs station (which is owned by the Aboriginal community), reserves for Aboriginal people's use and benefit, and portions of unallocated Crown land. Decisions on the remainder of the claimed area have been postponed until the High Court hands down its decision on the Miriuwung-Gajerrong case.

Table 4 Registered determinations of native title, claimant applications 2001–2002

Claim name	Location	Date of court decision	Process	Number of claims affected in whole or part by the determination
Nharnuwangga, Wajarri & Ngarla People	Near Meekathara, WA	5 July 2001 *	Consent	1
Bar-Barrum People	Atherton Tablelands, Qld	28 June 2001	Consent	1
Tjurabalan People	Paruku (Lake Gregory), near Halls Creek, WA	20 Aug. 2001	Consent	1
Kiwirrkurra People	Gibson Desert west of Lake Mackay, WA	19 Oct. 2001	Consent	1
Byron Bay Bunjalung People #2	Byron Bay, NSW	23 Oct. 2001	Consent	1
Leregon/Yawaru People & Rubibi Community	Near Broome, WA	7 Nov. 2001	Litigated	1
Ngalakan People	Urapunga Township, Roper River, NT	7 Feb. 2002	Litigated	1
Karajarri People	West Kimberley, WA	12 Feb. 2002	Consent	1

* This determination was conditional upon an ILUA being registered on this date.

Table 5 Registered determinations of native title, non-claimant applications 2001–2002

Claim name	Location	Date of court decision	Process	Number of claims affected in whole or part by the determination
Darkinjung Local Aboriginal Land Council	North Entrance near Wyong, central coast of NSW	10 Aug. 2001	Unopposed	1
Metropolitan Local Aboriginal Land Council	Shire of Hornsby, County of Northumberland, NSW	12 April 2002	Unopposed	1
Metropolitan Local Aboriginal Land Council	Municipality of Ku-Ring-Gai, County of Cumberland, NSW	12 April 2002	Unopposed	1
Darkinjung Local Aboriginal Land Council	Bushels Ridge, Central Coast, NSW	03 May 2002	Unopposed	1
Noel John Michael Kennedy	County of Wokingham, near Winton, Qld	13 June 2002	Unopposed	1
Ilfracombe Shire Council	Ilfracombe, Central Qld	20 June 2002	Unopposed consent	1

Determinations of non-claimant applications

Metropolitan Local Aboriginal Land Council and Darkinjung Local Aboriginal Council – 10 August 2001, 12 April 2002 (two applications), 3 May 2002

These four determinations that native title does not exist were unopposed. They are procedural determinations to facilitate New South Wales Local Aboriginal Land Councils in dealing with land they hold. Under section 40AA of the *New South Wales Aboriginal Land Rights Act 1983*, in certain situations, a land council in that state must obtain a determination of native title before leasing or selling land it holds in freehold. These determinations resulted from the lodgement and notification of non-claimant determination applications by the relevant land councils, no claimant native title applications being filed in response and subsequent determinations by the Federal Court.

Noel John Michael Kennedy – 13 June 2002

A determination that native title does not exist was made by the Federal Court in relation to an unopposed non-claimant application brought by Noel Kennedy over his own pastoral holding in the Gregory North District of Queensland. A claimant application had been brought by the Koa People after the non-claimant application, but this had been withdrawn by the time the Federal Court made the determination. Although (in light of the High Court's decision in *Wik Peoples v Queensland* and the relevant provisions of the Act) the pastoral holding was an area where native title

had not necessarily been extinguished by the lease, the Court held that the uncontested evidence provided by the pastoralist strongly suggested that there were no native title interests over the property.

Ilfracombe Shire Council – 20 June 2002

The Federal Court made a determination in respect of a consent non-claimant application which was brought by Ilfracombe Shire Council as Trustee for the area. The determination was that native title did not exist in relation to specific lots within a reserve for the purpose of pasturage at Ilfracombe in Central Queensland that were required for future public works. The non-claimant application was over a wider area than the area of the determination and was dismissed by the Federal Court except for the area of the determination.

The rate at which determinations are being made, including consent determinations, has increased in recent years (see Figure 1 on page 5).

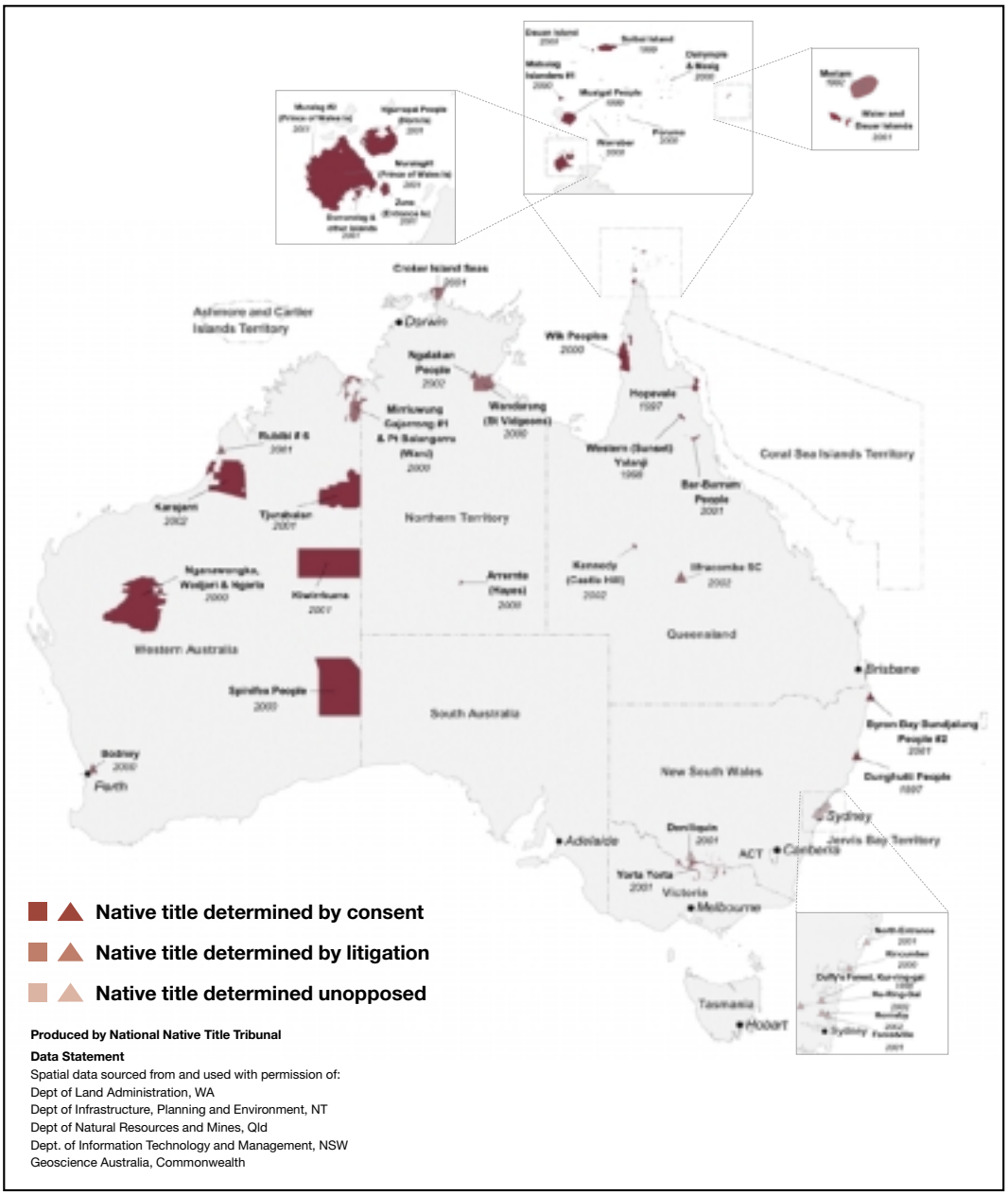
During the year there were a number of developments which may affect the registration of determinations during next reporting period, specifically:

- a number of consent determinations which were close to conclusion date at 30 June 2002;
- clarification of aspects of the law by the *High Court in Commonwealth v Yarmirr* (the Croker Island sea rights case) and argument before that Court in *Western Australia v Ward*, *Anderson v Wilson* and *Yorta Yorta v Victoria* (matters proceeding to trial may also be assisted with further clarification of the law by the High Court);
- connection policies now implemented by state governments in Queensland and Victoria, and being finalised in Western Australia, can assist in resolving native title matters by consent; and
- continuing liaison between the Tribunal and the Federal Court, and major stakeholders, with a focus on regional priorities, allow for improved scheduling of mediations and trials in managing the native title case load.

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 64 per cent of determinations received from the Federal Court were registered within this timeframe.

Figure 5 Map of native title determinations to 30 June 2002



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.
2. Some determinations are subject to appeal.
3. Year shown is the date of latest court decision.
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 and regulations;
- notify individuals and organisations with an interest in the area of the proposed ILUA;
- mediate or inquire into any objections to registration.

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	Estimate	Revised estimate	Result
Quantity	111	57	40
Quality	70% decided within eight months of lodgement	70% decided within eight months of lodgement	79% decided within eight months of lodgement
Resource usage — unit cost per ILUA application processed for registration	$7 866	$24 388	$24 891
Resource usage — output cost	$873 130	$1 390 140	$995 640

Comment on performance

While the initial estimates of registered ILUAs were not met, the current financial year saw an increase in the number of ILUAs lodged with the Tribunal compared to the previous financial year. Table 6 shows the state and territory distribution of lodged ILUAs.

Queensland continues to be the main area of ILUA activity. This activity includes:

- registration of six body corporate ILUAs (this type of ILUA is used where there is a determination of native title); and
- registration of area ILUAs between the Kalkadoon People and the Queensland Government to deal with the grant of mining exploration permits.

At the end of the previous reporting period the Tribunal was aware of about 100 ILUAs in negotiation in Queensland. However, only a small proportion of these were lodged with the Tribunal in the current reporting period. This is in part due to uncertainties around the processing of mineral tenements being experienced in Queensland.

Three of the 40 ILUAs registered during the year illustrate the variety of matters that are being covered by such agreements.

The Arakwal ILUA, registered on 28 August 2001, was the first agreement of its kind under which a new national park was created. It was the product of seven years of consultations between the Arakwal people, the New South Wales Government (through the National Parks and Wildlife Service and the Department of Land and Water Conservation), a range of community groups and the Byron Shire Council. The New South Wales Aboriginal Land Council and the Tribunal played key roles in coordinating and mediating the negotiations. The Arakwal National Park comprises 183.5 hectares of coastal land at Byron Bay and is jointly managed by the Arakwal People and the National Parks and Wildlife Service. It will provide jobs and training for Arakwal People. The ILUA also provided for some land to be transferred for Arakwal people to live on or for the construction of a cultural centre and tourist facility.

Table 6 Number of ILUAs lodged for registration 2001–2002

	ACT	NSW	NT	Qld	SA	Tas.	Vic.	WA	Total
ILUAs lodged	0	2	7	25	0	0	6	0	40

The registration in May 2002 of ILUAs between the Kalkadoon people of the Mt Isa region, the Queensland Government and a number of mineral exploration companies (the KERG ILUAs) has allowed for the grant of about 60 exploration permits. The ILUAs also give the Kalkadoon people economic security and cultural protection. For example, the Kalkadoon people have a right to provide induction training so that exploration staff have a basic understanding of Kalkadoon culture and attachment to land, a commitment that explorers will take reasonable steps to preserve and protect their cultural heritage, and access to employment opportunities and benefits from exploration.

By contrast there have been examples of ILUAs, such as the Twofold Bay defence agreements, which have been progressed very expeditiously, based upon well-prepared applications and benefiting from only a limited number of issues having to be resolved between a limited number of parties.

Additional resources were directed to implement the following:

- delegates, now numbering 18, who register ILUAs on behalf of the Native Title Registrar, meet regularly to ensure consistent practice and approach;
- the dedication of an ILUA Portfolio Officer to each registry, to ensure consistent messages to, and provide initial contact with, the public; and
- an ILUA Strategy Group was convened to develop policy and strategic direction for a national approach to ILUAs (see 'Corporate governance', p. 83).

Timeliness

Client satisfaction is affected by the timeliness of registrations of agreements, usually within a commercial environment. Lead times need to be built-in to ILUA negotiations to allow sufficient time for authorisation, compliance testing, notification and assessing possible objections. Large, complicated, or one-off agreements will always take a significant additional amount of time.

Where there is no objection lodged, ILUAs are processed by the Tribunal on average within 6.7 months of lodgement with the Tribunal, including an average of 12 working days from the end of the notification to registration. At times where this latter period has exceeded 12 working days it has been because of specific external factors. For example, this occurred with the KERG ILUA, where a new claimant application was lodged near the end of the notification period which required, amongst other matters, maps of the area covered by the ILUA to be amended and verified.

Where there have been objections to the registration of ILUAs, it has taken on average 7.5 months to process the ILUA.

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*. Agreement-making is defined as the work in achieving a result with the active participation of two or more parties, and in which the Tribunal has assisted by way of mediation or other assistance.

Output group 1.2 consists of:

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

The number of consent determinations of native title made by the Federal Court during 2001–2002 reflects the end point of some of the Tribunal's work of this output group. In Western Australia and Queensland in particular, the agreement-making work of past years came to further fruition during this reporting period. The ILUA activity in Queensland was related, in part, to determinations of native title.

Queensland Premier Peter Beattie congratulates Kalkadoon elder Ethel Page at the agreement signing. They are joined by Craig Jones (Tribunal case manager), *middle*, and Tony Hespe (Western Metals Exploration), Brisbane, September 2001.

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-making by allowing a flexible and broad scope for negotiations about native title and related issues, including future acts.

ILUAs are 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 some states, ILUAs are primarily being used where other 'future act' processes are not appropriate or do not provide sufficient flexibility for complex projects, long-term relationships, or comprehensive agreements.

In Queensland, a set of determinations made by the Commonwealth Attorney-General in relation to section 43 (1) of the Act (which provides that alternative provisions can be used for processing exploration and mining tenement applications as long as there is a law of the state already established) were found by a single judge of the Federal Court to be invalid (for a description of this case, see Appendix II, p. 114). This caused an immediate hiatus in the alternative state provisions which had commenced to operate in September 2000, and some exploration and mining tenement applications were stalled. By the close of the reporting period, the decision of the Federal Court was under appeal to the Full Federal Court. It is expected that ILUA negotiations would be triggered in some cases as a result of this hold-up.

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	Estimate	Revised estimate	Result
Quantity	48	44	18
Quality	Client satisfaction	Client satisfaction	Monitored, not measured
Resource usage — unit cost of ILUA agreement-making	$91 902	$102 430	$104 848
Resource usage — output cost	$4 411 300	$4 506 920	$1 887 264

Comment on performance

The level of ILUA-related activity around the nation varied widely, mostly because of state and territory government policies. Table 7 on page 53 shows the number of ILUAs per state or territory in which the Tribunal assisted. The Tribunal is actively providing assistance in 18 matters. The first appeal against a registered ILUA is currently underway for the Blairgowie Agreement, with an application under the *Administration Decisions (Judicial Review) Act 1977* being received on 6 March 2002.

Claim-specific or project-specific ILUAs are often predicated on the successful conclusion of the framework ILUAs. This acted to limit the number of ILUAs for which the Tribunal was requested to provide assistance.

In a number of states, framework ILUAs were being developed to define policy upon which project-specific agreements could be settled. For example, in Queensland the first state-wide model ILUA was lodged for registration in June 2002. This model was developed by the State Government and the Queensland Indigenous Working Group to deal with the large number of applications for exploration permits that had been backlogged. The ILUA is between the Maiawali/Karuwali people and the State of Queensland. The terms of the ILUA will operate when the exploration proponent enters a similar ILUA.

In Victoria it is anticipated that the State of Victoria will prefer to work towards comprehensive ILUAs as the means of settling issues arising from claimant applications.

ILUA activity in Victoria is slowly increasing as matters where the Tribunal has provided assistance head into the lodgement stage. Activity is still focussed on mining, infrastructure developments and gas pipeline agreements.

Activity in both New South Wales and Western Australia remains static and low.

In New South Wales, members are providing assistance in six matters within the context of claim mediations.

In Western Australia at the end of the reporting period, members were involved in providing assistance in two ILUAs. The majority of ILUA assistance in this state was being provided within the context of future act mediations.

In South Australia, an alternative procedure agreement was being negotiated by the State Government to deliver a framework for the authorisation of mining exploration. The Tribunal commented upon

drafts of this ILUA. However, no ILUAs in relation to specific issues or projects were received before the end of the financial year. Other pilot ILUAs were being explored under South Australia's state-wide framework ILUA negotiation process.

As previously reported, 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.

Table 7 ILUAs negotiated with Tribunal assistance

State or territory	ILUAs in progress with Tribunal assistance	ILUAs lodged with Tribunal assistance	Total
Australian Capital Territory	0	0	0
New South Wales	5	1	6
Northern Territory	0	0	0
Queensland	8	0	8
South Australia	0	0	0
Tasmania	0	0	0
Victoria	2	0	2
Western Australia	2	0	2
Total	**17**	**1**	**18**

Clients seeking assistance to negotiate ILUAs included peak bodies from mining and local government; state and Commonwealth agencies; native title representative bodies; individual native title claimants; businesses engaged in mining; 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.

ILUAs are still a relatively new process and some 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.

Despite comments in the *Annual Report 2000–2001* that the process of negotiating ILUAs would become more efficient, this has not yet proven to be the case. In fact there were some very complex negotiations conducted in the reporting period. For example, in the case of negotiations about the proposed creation of an industrial estate on the Burrup Peninsula in Western Australia, the Tribunal member appointed to assist in the future act and related ILUA negotiation attended 52 meetings over an eight-month period. Similarly, the KERG ILUA in Queensland involved 33 teleconferences and 35 face-to-face meetings between May and September 2001. Between September 2001 and March 2002, there were additional monthly teleconferences in relation to the management of the notification and registration process. Not all of these were convened by the Tribunal, but the Tribunal attended all of them.

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

Description of output

Recorded under this output is 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 in parallel with ILUAs (for more information on ILUA agreement-making see Output 1.2.1, p. 51).

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	Estimate	Revised estimate	Result
Quantity	120	82	96
Quality	Client satisfaction	Client satisfaction	Monitored, not measured
Resource usage — unit cost per claimant, non-claimant and compensation agreement-making	$63 605	$85 364	$83 904
Resource usage — output cost	$7 632 600	$6 999 820	$8 054 784

Comment on performance

Number of claimant, non-claimant and compensation agreements finalised

Nearly all of the agreement-making activity 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 application boundaries and removal of overlaps, amalgamation of applications, and matters agreed to by claimants at the same time as ILUAs being negotiated between the claim groups and other parties.

Table 8 shows the number of these agreements negotiated with the assistance of the Tribunal.

In the Northern Territory there are relationships formed through the 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 often seek the assistance of the Tribunal in their negotiations over native title matters.

However, there were indications that mediation will be requested more often as other stakeholders become involved in native title negotiations. Tribunal members were involved in mediating 12 claimant applications in the Territory. There are a number of mediations nearing conclusion in the Northern Territory.

In this reporting period 47 per cent of the total agreements were made in Western Australia. This is directly linked to increased mediation activities, development of framework agreements, and increased participation by parties.

A large proportion of these are future act agreements relating to the facilitation of development projects. Those agreements relating to claimant determination applications have focussed on narrowing or resolving issues between the parties involved. In some instances, such as in the Karajarri matter, they directly contributed to the finalisation of consent determinations.

To facilitate agreement-making in these matters, the Western Australia registry has undertaken a number of capacity building exercises to equip the parties to participate effectively in this process and encourage parties to feel confident in their own ability to resolve issues and reach agreements which have a firm, ongoing basis.

Table 8 Claimant, non-claimant and compensation agreements negotiated with Tribunal assistance

State	Number of agreements
New South Wales/Australian Capital Territory	17
Northern Territory	0
Queensland	28
South Australia	4
Victoria/Tasmania	2
Western Australia	45
Total	**96**

For example:

- Assisting parties to understand the nature of their interests and roles in relation to native title proceedings. This has been particularly productive in regions where there are a large number of parties to applications, for example the Goldfields and South West regions. In the Kimberley, the Tribunal facilitated a number of meetings between some parties to the Rubibi and Leregon matters which resulted in an agreement to explore the options for reaching an ILUA.
- A cooperative approach with the Federal Court to achieve rationalisation of the number of parties to applications. For example, there has been a dramatic reduction in the number of respondents to the Wongatha, Wutha and Koara applications. This enables any mediation which may ensue to be expedited.
- Assistance to some applicant groups in the Pilbara to workshop options for the development of appropriate corporate structures such as a prescribed body corporate. The workshop was well received and the concept is now being considered for use in other regions of Western Australia.
- Developing an understanding with parties of their particular needs to maximise the effectiveness of assistance provided, resulting in initiatives such as an interagency approach to meet the information needs of local government respondents.
- In several cases the Tribunal facilitated meetings which resulted in a number of agreements to modify application boundaries to resolve overlapping claims. For example, Ngurrara/Martu applications, Innawonga Bunjima Niapaili/Jurruru applications and Martu Idja Banyjima/Eastern Gurama applications in the north and a number of south-west coast applications.

Although 29 per cent of the total agreements were recorded in Queensland, the alternative provided by ILUAs accounted for much of the Queensland registry's output in relation to agreement-making this year.

A number of matters in New South Wales were not proceeding, pending clarification of the various legal issues to be decided by the High Court and Federal Court. Some of the pending decisions are noted in the President's overview on page 10. Additionally some discontinuity arose following the withdrawal of recognition of the New South Wales Aboriginal Land Council as a native title representative body, and the commencement of the New South Wales Native Title Service which performs most of the functions of a representative body. This was a significant development leading to some loss of momentum of agreement-making, which was beginning to be addressed towards the end of the financial year with Native Title Service offices being established in Coffs Harbour, Redfern and Dubbo.

In South Australia, four agreements were finalised during the period. The Adelaide registry's agreement-making focus was on assistance to parties and the resolution of overlapping claims. The Tribunal expects to have a more active role in agreement-making in South Australia in 2002–2003.

Level of client satisfaction

A client evaluation survey was initiated in 2001 (see 'Accountability to clients', p. 100). The results will be reported in the next reporting period.

Stakeholder initiatives

Constructive working relationships between the Tribunal and clients are the hallmark of the Tribunal's activities in assisting the agreement-making process.

During 2000-2001 changes in government policy in Western Australia resulted in the establishment of two native title reviews which will directly affect the Tribunal's relationships with clients: the Technical Taskforce on Mineral Tenement and Land Title Applications chaired by Tribunal member Bardy McFarlane; and the Wand Review, which was set up to advise on an overhaul of mediation policy and practice. In August 2001 the Tribunal made detailed submissions to both these reviews. The Taskforce reported in November 2001, recommending that sweeping action be taken in a range of areas, including heritage protection, resourcing representative bodies, future acts, agreements, refunds of prepaid mining rents, and state deeds. The report on the Wand Review was made in September 2001. The State Government invited public comment on each report, prior to it deciding whether to accept the recommendations. At the end of the reporting period, the government had not yet issued its formal response to the reports. It is understood, however, that the State Government is progressing some individual recommendations contained in the reports while preparing its formal response to them.

In Queensland the continuing high number of requests for assistance indicates a high level of client satisfaction with the mediation provided by the Tribunal, although there are limitations on the resource capability of the native title representative bodies to participate in agreement-making.

Output 1.2.3 — Future act agreement-making

Description of output

This output relates to agreements that allow a future act to proceed or allow a case to move to state or territory negotiation processes, and where Tribunal members or staff have assisted by way of mediation. The Tribunal only mediates when it is requested to do so by any one of the negotiation parties. Under the Act there are two main types of future act agreements. One type of agreement relates to whether or not the proposed future act should proceed, with or without conditions. The other type of agreement relates to whether or not the proposed future act should be expedited (fast-tracked) through native title processes (s. 32 of the Act).

There are two main provisions in the Act under which the Tribunal may provide mediation assistance in future act matters. These are

- section 31, which allows parties who are negotiating in the right to negotiate stream to ask the Tribunal for mediation assistance; and
- section 150, which allows the President of the Tribunal (or his delegate) to direct that a conference be conducted to help resolve outstanding issues. Such conferences may be held for matters which are already before the Tribunal, i.e. either expedited procedure applications (s. 32) or future act determination applications (s. 35). Conferences held during inquiries are distinct from mediations (s. 31), but work on similar principles.

Performance

The performance measures for future act agreement-making are:

- quantity — the numbers of future act mediations (s. 31 of the Act) and conferences (s. 150 of the Act) concluded;
- quality — 70 per cent of mediations and conferences concluded within an eight-month period; and
- resource usage associated with each future act agreement.

Performance at a glance

Future act mediations (s. 31) and conferences (s. 150) concluded 2001–2002

Measure	Estimate	Revised estimate	Result (mediations)	Result (conferences)	Result (combined)
Quantity	117 (total)	84 (total)	25	60	85
Quality	70% of mediations concluded within eight months	70% of mediations concluded within eight months	52% (13)	96.6% (58)	83.5% (71)
Resource usage — unit cost for mediation and assistance for future act agreements	$12 122	$39 396			$26 175
Resource usage — output cost	$1 418 270	$3 309 240			$2 224 875

Comment on performance

Numbers of future act mediations and conferences conducted

The Tribunal is able to influence the number of conferences held, in that it may recommend to parties engaged in the Tribunal's arbitral processes that they should consider whether such a conference may assist in resolving issues. Although the Tribunal cannot influence the number of objection applications and future act determination applications lodged with it, lodgement rates for these matters continued at a high level throughout the year.

The Tribunal has no direct influence over the number of future act mediation requests lodged with it, although it does promote the availability of its mediation service. In some states and territories, the lodgement rates by governments fell below those anticipated.

Fifty-one future act mediation requests were lodged with the Tribunal in the reporting period. Twenty-five of these mediations were resolved.

There were 60 cases in which conferences were held, and outcomes have been significant with agreements being reached in 36 cases.

In Western Australia, as a result of conferences, there were 28 agreements by native title parties to withdraw their objection to the expedited procedure applying, and one agreement that the expedited procedure should not apply.

As a result of conferences in 12 Northern Territory cases, parties agreed that objections should be dismissed because an agreement had been reached. While native title parties could have elected to withdraw the objections in these cases, their preference was to seek a dismissal. The underlying constant is that agreement had been reached, regardless of which procedural method was used to finalise the matter.

Factors relevant to non-achievement of the quantitative performance measure are detailed below (see 'Regional trends', p. 60). In brief, these factors include:

- the fact that mediation resources are finite, so that if personnel (particularly government and representative body staff) are engaged in complex mediation, then their availability to engage in other mediations or negotiations is diminished;
- an absence of clear policy direction by state governments, which can hinder progress in active negotiations and will influence the number of mediation applications lodged;
- the complexity of some mediation cases, which means that longer timeframes are to be expected, although this is balanced by more straight forward matters being dealt with relatively quickly.

Regional trends impacting on lodgement and resolution rates

As noted above, although it can offer mediation assistance to parties engaged in arbitral processes under section 150, the Tribunal does not have much influence over the number of mediation requests lodged with it. The rate of lodgement of mediation requests under section 31 (3) is influenced by different factors around the nation.

Western Australia

The majority of mediation requests were lodged in Western Australia. The rate of lodgement and resolution of requests has, in the reporting period, been affected by:

- Technical Taskforce processes:
  - While the Taskforce was meeting, resources (e.g. State Government and representative body staff) were occupied in its intensive work. This had the effect of slowing down future act negotiations and reducing the number of mediation requests.
  - Pending the State Government identifying a clear policy position in response to the recommendations of the Taskforce, the Department of Minerals and Petroleum Resources had limited capacity to increase its future act negotiations, and this affected mediation applications.

- Regional negotiations:
  - Some mediation cases are highly resource-intensive. For example, negotiations for compulsory acquisition of land in the Burrup Peninsula for use by industry required significant involvement of two Tribunal case managers and one member, with regional mediation meetings being held on an almost fortnightly basis for eight months.
  - As regional agreements are reached, the number of applications lodged with the Tribunal can be expected to diminish. For example, the Goldfields Native Title Liaison Council has been instrumental in the negotiation of the Goldfields Regional Heritage Protection Protocol. This protocol was then used as the basis of implementing a pilot project for the joint heritage clearance of 106 tenements in the Lake Carey area, covered by the Wongatha native title claim. The existence of the protocol facilitates heritage protection processes, which means that there is less need for native title parties to lodge objections.

- Use of other processes:
  - Resources previously allocated to mediations under section 31 were shifted to explore options under ILUA processes.
  - Some mediations were terminated in order to allow a future act consent determination application (s. 35) to be made. The option of lodging a future act determination application and requesting

the Tribunal to make a consent determination has been attractive for some parties as an alternative means of formalising agreements. (For more information on consent determinations, see the section under 'Output group 1.3.1 – Future act determinations', p. 63).

Northern Territory

The Darwin registry had anticipated receiving some mediation requests during the reporting period, but none were lodged.

Factors which impacted on this include:

- The relative infancy of the use of federal processes in the Northern Territory (i.e. the right to negotiate or 'RTN' stream). At 30 June 2002, there were 48 matters in the RTN stream in the Territory, however the Tribunal has not received any requests to mediate in relation to any of these.
- The approach of land councils and grantees to regional agreements.
  - The Northern Land Council has negotiated an agreement with two large mining/exploration companies, thereby negating the need to engage in RTN processes in relation to a considerable number of matters.
  - The Central Land Council has been exploring ILUA options. Five ILUAs are now registered, and five have been lodged for compliance. So while section 29 notices are being issued, the objection rate is low. Of those objections lodged in this representative body region, all have been quickly resolved.
- The approach of government and representative bodies to agreements.

  The Northern Territory Government and Northern Territory representative bodies are generally committed to agreement-making, and may continue to explore options other than those provided by Tribunal future act RTN processes.

Queensland

Queensland predicted a small number of mediations under section 31. There was one mediation request lodged in the period. Because alternative state provisions were enacted for future act matters in Queensland, the RTN provisions of the Act did not apply to mineral exploration and mining. (For further information on the alternative state provisions in Queensland, see p. 51).

New South Wales

Factors affecting the low level of future act activity in New South Wales include:

- exemptions to the right to negotiate processes under section 26 (e.g. low impact mining, petroleum exploration, opal mining);
- less emphasis (relative to other states) on mining in the state economy; and
- mining activity is often conducted over land where native title does not exist.

Victoria/Tasmania

The Government of Tasmania does not utilise the future act provisions of the Act.

In Victoria, the State Government has been utilising the right to negotiate processes (other than the expedited procedure) for more than five years. Because a large proportion of land in Victoria is freehold, the number of section 29 notices issued is relatively low compared with other states.

This aside, regular inquiries to the Victorian registry about assistance available in future act processes had led to an assumption that the Tribunal could expect to receive a number of requests to mediate or arbitrate. While the volume of requests did not eventuate as anticipated, the Victorian registry did actively engage in several mediation matters during the reporting period.

Member John Sosso (standing at right) at a site visit for a future act determination hearing, Stockton Beach NSW, July 2001.

Output group 1.3 — Arbitration

In order to deliver its single outcome — the recognition and protection of native title — the Tribunal arbitrates certain future act matters, when requested to do so. It recognises the right of registered native title claimants to negotiate 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) (s. 38), or whether it can go ahead by being fast-tracked through the expedited procedure (s. 32(4),(5)). These rulings are referred to as future act and expedited procedure 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. Where 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. Negotiation parties will sometimes say that there has been no negotiation in good faith, and in this situation the Tribunal cannot proceed to make its determination until it is satisfied that parties have negotiated in good faith. A preliminary inquiry may be held for this purpose, before the Tribunal proceeds (if it decides it has the jurisdiction) to make its determination.

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 determined within six months of application; and
- resource usage associated with each future act determination.

Performance at a glance

Measure	Estimate	Revised estimate	Result
Quantity	22	26	19
Quality	70% determined within six months of application	70% determined within six months of application	100%
Resource usage — unit cost of future act arbitration	$92 239	$64 018	$54 996
Resource usage — output cost	$2 029 260	$1 664 460	$1 044 924

Comment on performance

Number of future act determinations

As in past years, relatively few applications for a future act determination were lodged. The national total was 19, compared to the estimate of 26. Future act matters were typically resolved by parties continuing to negotiate rather than opting to initiate arbitral processes.

The number of matters lodged depends on many factors, some of which are outlined in 'Output 1.2.3 — Future act agreement-making', p. 58. Some registries had anticipated receiving a number of applications which did not eventuate (e.g. none were lodged in the Northern Territory). Other factors might include the intending applicant's access to resources, the ability of the applicant to establish the jurisdictional precondition of negotiating in good faith, the advice provided to grantees by industry and state governments, and the parties' understanding of and preparedness to utilise alternative options.

The bulk of applications received were lodged in Western Australia, and one application lodged in the previous reporting period in New South Wales was finalised in the current period. A new application was lodged in Victoria, and an outcome is expected early in the next reporting period.

Although some applications required a full inquiry prior to a determination being made, many applications lodged in the reporting period were accompanied by requests from parties that the Tribunal make a determination by consent. The practice of requesting that a consent determination be made when the future act determination application is lodged has become more common in this reporting period, occurring in the majority of applications lodged in Western Australia. Parties may make this request when an agreement has essentially been reached, but there are technical or logistical difficulties preventing formal signing of the agreement. A consent determination application may also be made when one of the claimants refuses to sign, even though the claim group as

a whole has reached agreement. The Tribunal will normally regard it as appropriate to make a consent determination of this type where the parties (and particularly the native title party) are legally represented and have given their consent to the determination.

Table 9 Number of future act determinations lodged and finalised 2001–2002

State or territory	Lodged	Finalised
Australian Capital Territory	0	0
New South Wales	0	1
Northern Territory	0	0
Queensland*	0	1
South Australia**	0	0
Tasmania	0	0
Victoria	1	0
Western Australia	22	17
Total	**23**	**19**

* Queensland operated its own alternative body. It commenced in 2000.

** South Australia operated its own alternative body.

Timeliness

Performance has significantly exceeded measurement targets, with the high level of performance in part being facilitated by the type of applications being lodged, i.e. a large proportion of applications included requests for consent determinations which are not as resource intensive and complex as substantive future act determinations.

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; or
- 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. Although registered native title claimants can object to the fast-tracking of a tenement application, they do not have the right of veto over any proposed activity on land or waters

It should be noted that the expedited procedure is only used in Western Australia and Northern Territory. Other States either use their own alternate state provisions to process low impact tenements, or simply choose not to use the expedited procedure provisions of the Act.

In May 2001, following a number of expedited procedure determinations commenting on whether objection applications had complied with the requirements of the Act, the Tribunal issued new objection acceptance guidelines to assist parties. Although these guidelines were issued in the previous reporting period, a number of native title representative bodies expressed concern about them, resulting in them being reviewed in the current reporting period. Following consideration of oral and written submissions from all interested parties, the Tribunal issued further revised guidelines on 16 October 2001. These guidelines proved to be workable and were used to the end of the reporting period.

Performance

Performance measures for objections to the expedited procedure are:

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

Performance at a glance

Measure	Estimate	Revised estimate	Result
Quantity	1 000	850	909
Quality *	80% decided within six months of application	80% decided within six months of application	69%
Resource usage — unit cost	$1 591	$3 962	$3 322
Resource usage — output cost	$1 591 000	$3 367 970	$3 019 698

* Please note the portfolio budget statement contained an error. The quality measure is objections processed within six months from application, not two months as published.

Comment on performance

Outcomes achieved from the processing of objections to the expedited procedure

Table 10 shows the different outcomes of tenements lodged and finalised within the reporting period. There were various reasons for the 102 objections not being accepted in the reporting period. The reasons for non-acceptance included:

- no overlap between the registered native title claim and the tenement which was the subject of the objection;
- the objection being over a tenement application not advertised under expedited procedure provisions;
- the tenement application being withdrawn prior to the tenement being accepted; and
- non-compliance with the requirements of the objection form. This applied to five matters, with two of these being lodged late, and despite notice from the Tribunal, the applicants for the other three matters did not rectify the identified deficiencies.

Table 10 Objection outcomes by tenement, lodged and finalised 2001–2002

Tenement outcome	Northern Territory	Western Australia	Total
Consent determination — expedited procedure does not apply	1	102	103
Determination — expedited procedure applies	29	10	39
Determination — expedited procedure does not apply	1	10	11
Dismissed — section 148(a) no jurisdiction	12	4	16
Dismissed decision — section 148(b)	43	1	44
Dismissed — section 148(a) tenement withdrawn	34	168	202
Objection not accepted	20	82	102
Objection withdrawn — agreement	8	298	306
Objection withdrawn — no agreement	1	59	60
Objection withdrawn prior to acceptance	1	3	4
Tenement withdrawn prior to objection acceptance	9	13	22
Total	**159**	**750**	**909**

Timeliness

The Tribunal aims to process 80 per cent of expedited procedure applications within six months from date of receipt.

The overall national picture is that performance was under the expected target by approximately 11 per cent, as shown in Table 11 below.

Note that there are a smaller number of cases in Northern Territory than in Western Australia, therefore Western Australia's contribution to the national percentage is much more substantial than the Northern Territory contribution.

There are significant differences between Western Australia and the Northern Territory in terms of the expedited procedure environment and practice, and this is reflected in the performance measures achieved.

In the Northern Territory, objection outcomes and the timeliness of resolution are affected by the fact that a high percentage of accepted objections proceed to inquiry, i.e. matters are generally not being resolved through withdrawal and consent determinations. A number of cases have required complex legal issues to be determined, and other cases are sometimes put on hold pending decisions in these cases. This slows the rate of resolution of matters.

Following consultation with all relevant stakeholders, the Tribunal substantially revised the expedited procedure-related parts of its Right to Negotiate Procedures in February 2002. These changes, which were made to encourage agreement-making and streamline Tribunal processes for dealing with objections, resulted in:

- an extension of the negotiation period from 14 weeks to 16 weeks;
- acceptance and processing of objection applications from receipt, rather than from the closing date (thus giving a longer time to negotiate);
- giving parties the option to vacate the preliminary conference if their intention is to negotiate an agreement;
- introduction of a status conference to check agreement-making progress before commencing the inquiry;
- should agreement not be possible, increased expectation of timely compliance with directions for the conduct of the inquiry.

Table 11 Time taken to process objection applications

	Western Australia	Northern Territory	National
Not more than six months between section 29 closing date and objection finalised date	73%	55%	69%

The new procedures gave parties the option to lodge their applications prior to the closing date so that longer periods were available in which negotiated outcomes could be achieved. In Western Australia, parties often lodge their applications ahead of the closing date thereby taking advantage of extra time for resolution of objections. Resolution may be by way of withdrawal of objection (e.g. after agreement has been reached), or by consent determination (i.e. that the expedited procedure is not attracted). In the Northern Territory, the lodgement and acceptance of objection applications has generally required the filing and registering of native title determination applications, and as a result, objections are rarely lodged prior to the section 29 notice closing date.

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, communities and the Federal Court.

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 with the preparation of applications, which includes providing maps, register information and research reports. The Tribunal also assists other persons with information about native title and agreement-making processes, as well as conducting seminars and workshops. Information is provided to media outlets throughout Australia about the progress of native title claims, notifications and determinations.

Performance

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

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

Performance at a glance

Measure	Estimate	Revised estimate	Result
Quantity	13 423	14 704	Exceeded — 15 654
Quality	Client satisfaction	Client satisfaction	Achieved where measured
Resource usage — unit cost per instance of assistance	$353	$230	$289
Resource usage — output cost	$4 738 320	$3 381 270	$4 630 908

Comment on performance

Number of assistance contacts and events

The number of contacts and events is identified through databases in which individual contacts made with clients or groups may be recorded. Figures 6 and 7 (pp. 74–5) show the distribution of Tribunal assistance according to types of assistance and region.

Although not accounted for in the 15 654 contacts, the following other forms of assistance are commented upon in this report:

- the number of published information products sent or given to clients;
- the number of media calls logged;
- number of workshops and seminars; and
- research products aimed at specific needs (e.g. background connection and legal reports).

The Tribunal was active throughout the year with new strategies aimed at increasing awareness and understanding of native title amongst the Tribunal's many stakeholders.

National forum

One of the year's first public events was a forum, *Negotiating Country*, held in Brisbane from 1 to 3 August 2001. This important national conference, attended by more than 200 people from around Australia, provided an opportunity for native title practitioners to discuss and share experiences about agreement-making and mediation. Attorney-General the Hon. Daryl Williams MP opened the forum and ATSIC chairman Geoff Clark addressed the conference dinner. Forum participants ranged from representatives of all levels of government, land councils, Indigenous corporations, mining companies, rural organisations and the legal profession. After analysing the feedback from forum participants, the Tribunal began to develop seminars tailored to specific practitioner needs.

Kado Muir (Research Fellow, Centre for the Management of Arid Environments, Curtin University) speaks at the Tribunal's Negotiating Country forum held in Brisbane, August 2001.

Information products

Throughout the year the Tribunal produced and distributed a range of information products to stakeholders and the wider public. Some of these were produced in response to specific events — for example, a new fact sheet about native title and fishing was developed to take account of the High Court's sea rights decision in *Commonwealth v Yarmirr*. Brochures, booklets, information kits and videos were also produced.

New national newsletter

Towards the end of 2001, the Tribunal began production of a new quarterly national newsletter, called *Talking Native Title*. The first issue was tested on a circulation list of 244 stakeholders and their responses were recorded in a

comprehensive survey. With strong positive feedback on the content, format and design, the newsletter went into regular production from March 2002.

Printed versions of the newsletter are now distributed to a stakeholder contact list of around 3 000, with a further 300 electronic subscribers. *Talking Native Title* is also available from the Tribunal's web site.

Ten years of native title

In June, the tenth anniversary of the High Court's *Mabo (No 2)* decision provided a unique opportunity to participate in national discussions about the progress of the native title system. The Tribunal developed a comprehensive media and communications strategy in anticipation of increased interest from media organisations around the country.

Elements of the strategy included the production of a tenth anniversary information kit and a special issue of *Talking Native Title* which focused on key case studies and interviews with stakeholders. Both products proved extremely popular with media, stakeholders and the wider public — the information kit was initially sent out to 88 key media outlets, with a total of 750 sent out in hard copy. The kit was also downloaded from the web site more than 1 800 times in the run-up to the June 3 anniversary, proving to be one of our most popular online documents.

Tribunal representatives also participated in conferences and events to mark the tenth anniversary, including the Unfinished Business conference in Melbourne and a special anniversary seminar of the Brisbane Institute. The Queensland State Manager Kevin Smith was invited to the island of Mer in the Torres Strait for special anniversary celebrations. Each of these events provided useful opportunities to disseminate information and increase contact with stakeholder groups.

Media coverage of the anniversary was extensive with around 40 per cent of news items featuring a Tribunal spokesperson or statement.

Pictured at a native title function held by the Tribunal in Adelaide, are: (left to right) Jenny Hart (Crown Solicitor's Office, SA), Peter Hutchison (Tribunal State Manager, SA), Frank Badman (South Australian Farmers Federation), and Ruth Wade (Tribunal member), March 2002.

The media

The Tribunal's contact with a range of media organisations was further developed through key events during the year — in particular the High Court's sea rights decision on 11 October 2001, three consent determination events in Western Australia and the tenth anniversary of native title in June 2002. Other developments, such as the signing of major ILUAs between the Queensland Government, Mt Isa mineral exploration companies and the Kalkadoon People and the finalisation of the Goldfields Regional Heritage Protection Protocol in Western Australia, provided good opportunities for Tribunal messages to be communicated via local, regional and national media.

Also in October, the creation of the new Arakwal National Park at Byron Bay in New South Wales as a result of an ILUA negotiated by the Tribunal, generated strong media interest. Tribunal President Graeme Neate attended the celebration event at which New South Wales Premier Mr Bob Carr congratulated the Arakwal People and other parties to the agreement for their commitment to the process.

Web site

The Tribunal's web site continued to receive over 9 000 visitor sessions per month during the financial year.

The most downloaded pages included:

- What is native title?
- 10-year anniversary information kit;
- What happens when there is a native title application?
- What areas can be claimed?
- What is the difference between native title and land rights?

Research products

A total of 26 background research reports and 10 special projects were produced during the period.

Geospatial assistance

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, including the keeping of the registers, the Tribunal's geospatial unit provides a substantial amount 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 services. For example, the Western Australian Government, through the Land Claims Mapping Unit, provides detailed assistance in mapping and application descriptions. However, the Northern Territory Government refers applicants to the private sector.

As an outcome of the implementation of the Commonwealth Government's Action Agenda on the Spatial Information Industry, it is expected that resultant changes in state and territory spatial data access and pricing policies may create the environment to allow greater engagement of the private sector spatial information industry in this arena. It is intended that the Tribunal include geospatial services in its market testing policy in the next reporting period or the one thereafter.

Recognition by states and territories of their need to hold information about native title matters within their own land registers has seen the creation of a national working group on native title under the auspices of the Intergovernmental Committee on Surveying and Mapping (ICSM). The Tribunal is represented on the group together with representation from Geoscience Australia, representing the Commonwealth Surveyor-General.

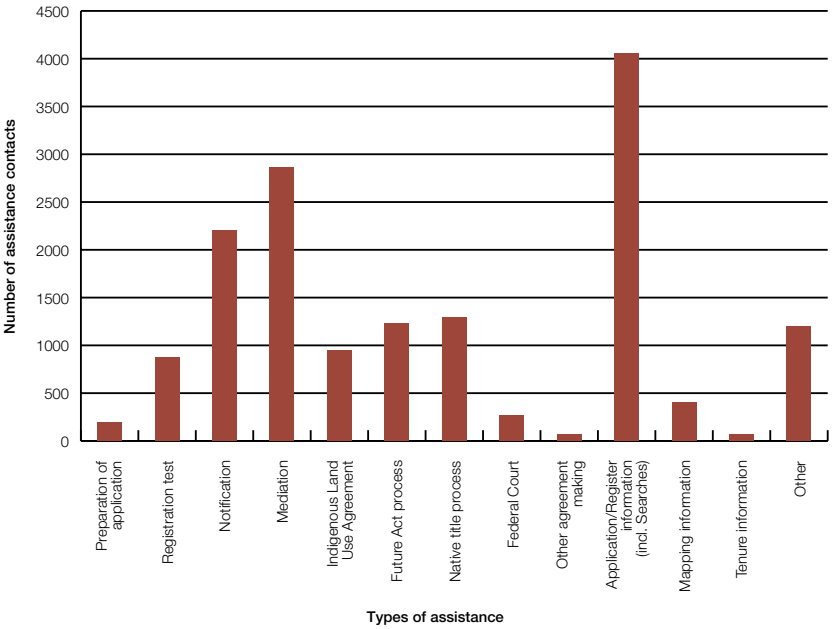
Level of client satisfaction

While not directly measured during the reporting period there are indicators of client satisfaction with the assistance provided by the Tribunal:

- evaluations from workshops and seminars; and
- invitations for the Tribunal to be represented on government committees. The Tribunal received invitations to be on several national working groups established by Geoscience Australia, to deal with mapping and register issues.

For further information on the client satisfaction survey commenced during the reporting period, see 'Accountability to clients', p. 100.

Figure 6 Assistance to applicants and other persons by type 2001–2002



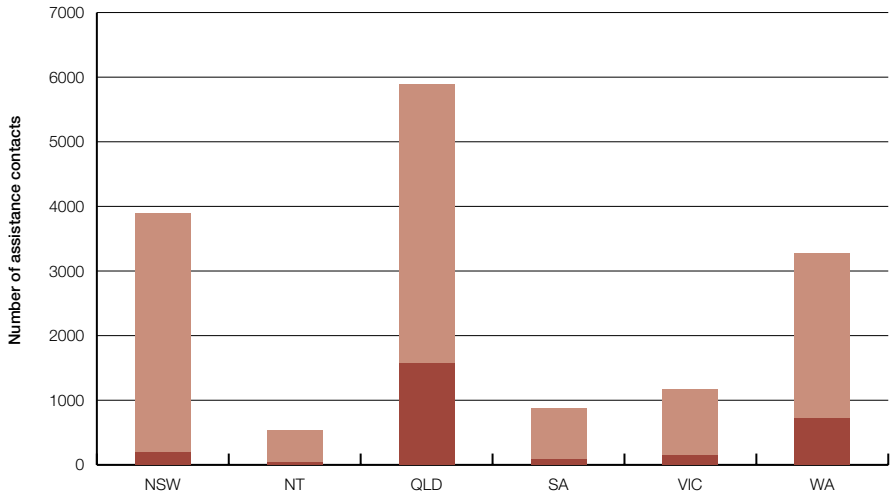
Assistance contacts

The total number of recorded assistance contacts, not including the Tribunal's publishing and media activities, was 15 654 — 9 per cent higher than the estimated 14 204. It is also greater than the level of assistance provided in the previous financial year. This number reflects the movement of Tribunal activity into agreement-making and away from the heavy registration test workload of the previous three years.

Figure 6 shows that the most common type of assistance requested was register information, which usually includes a geospatial component. Information about notification was also in heavy demand, reflecting the significant focus upon notification of claimant applications and ILUAs during the year.

Figure 7 shows that assistance provided in Queensland was the greatest of any state, followed by New South Wales.

Figure 7 Assistance to applicants and other persons by state and territory 2001–2002



Output 1.4.2 — Notification

Description of output

Notification is defined here as 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 area of land and/or water covered by a claimant application, the types of tenures involved, and the number of registers that need to be searched.

The Registrar (or his delegates), has negotiated with governments to develop procedures for the timely and cost-effective provision of 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. Cost, timeliness and availability of data are relevant criteria.

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	Estimate	Revised estimate	Result
Quantity	175 applications advertised	198 applications advertised	172
Quantity	12 290 letters	19 300 letters	14 209
Quality	Less than 5% to be renotified	Less than 5% to be renotified	None were renotified
Resource usage — unit cost	per application advertised	$2 600	$5 852
	per notification or renotification letter	$41	$53
Resource usage — output cost	applications advertised notification or renotification letters	$514 750 $799 840	$1 006 544 $747 393

Comment on performance

The Registrar initiated the notification of 172 applications in 2001–2002 being 135 claimant, nine non-claimant and three compensation applications, and 25 applications to register ILUAs. A total of 81 per cent of all active native title claimant applications have now been notified by the Tribunal.

Table 12 Applications notified 2001–2002

State or territory	Claimant	Compensation	ILUA	Non-claimant	Total
Australian Capital Territory	0	0	0	0	0
New South Wales	3	1	2	9	15
Northern Territory	76	2	5	0	83
Queensland	37	0	15	0	52
South Australia	2	0	0	0	2
Tasmania	0	0	0	0	0
Victoria	11	0	3	0	14
Western Australia	6	0	0	0	6
Total	**135**	**3**	**25**	**9**	**172**

Table 12 gives the distribution of different applications notified during the period.

As reported in the previous period, the Registrar exercised discretion to undertake broad notifications in Queensland, but this was supplemented with other mechanisms such as information sessions, and press releases to inform potential parties and stakeholders.

There was some criticism of this process by local government, but the Tribunal must balance the need to advise individuals against the need to progress matters in a timely way. The Tribunal considers it inappropriate to delay notification, possibly for years, while waiting for individual interest holder details from government custodians of the data.

The Federal Court has ordered mediation to occur in relation to some overlapping claims in New South Wales and, in those cases, notification was deferred pending potential combination of applications.

Some ILUA notifications are very expensive, with between $5 000 and $20 000 being spent per application on newspaper advertisements. The Tribunal has exercised some discretion in the form of the advertisements in some instances to contain the costs. This is the subject of further discussion with the Commonwealth Government.

In the current reporting period no applications were renotified. However, four notices were issued to correct minor deficiencies.

Output 1.4.3 — Reports to the Federal Court

Description of output

This output concerns the provision of reports to the Federal Court of Australia about the progress of applications. Native title applications are made to the court which subsequently refers them to the Tribunal for registration testing 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 member considers that a report would assist the Federal Court in progressing the proceedings.

Mediation reports to the court have the potential to assist:

- parties to reach agreement or clarify the matters in dispute between them;
- the Tribunal to advance the mediation process;
- the court to ascertain whether mediation should cease or continue, including whether the continuation should be based on new orders or directions; and
- the court to strategically list native title matters and to identify and progress test cases.

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	Estimate	Revised estimate	Result
Quantity	1 073	853	658
Quality	95% within the timeframe set by the court	95% within the timeframe set by the court	97%
Resource usage — unit cost per mediation report	$1 102	$1 263	$1 735
Resource usage — output cost	$1 182 450	$1 077 760	$1 124 280

Comment on performance

Number of reports

There were 658 mediation and status reports provided to the court. The target of 927 was not achieved because the court did not request the number of reports anticipated. Table 13 gives the breakdown of reports by state and territory registries.

In South Australia, up to 17 applications are expected to be referred to the Tribunal for mediation once the court has settled the parties in each matter and this will result in more reports being provided to the court. Similarly in Victoria and the Northern Territory, an increase in the number of matters in mediation will result in an increase in reports to the court.

In Western Australia, the Government's yet-to-be-announced response to the Review of the Native Title Claim Process in WA (the Wand Review) is expected to affect the numbers of matters in mediation. In particular, the Government's response to recommendations about the blanket referral of all registered claims to mediation will influence whether there will be an increase in the number of reports to the court during the next reporting period.

Policies regarding the provision of connection reports implemented in Queensland, Victoria and Western Australia, which are aimed at resolving native title matters by consent, are likely to result in more matters in mediation with the Tribunal and therefore more reports to the court.

The High Court's judgment in *Commonwealth v Yarmirr* and the pending decisions of the High Court in *Western Australia v Ward*, *Members of the Yorta Yorta Aboriginal Community v Victoria* and *Anderson v Wilson* should resolve many of the issues relating to the extinguishment and content of native title and this will result in greater certainty for parties engaging in mediation. For further information, see 'President's overview', p. 10–11.

In some regions, the Federal Court continues to undertake a limited range of mediation in an effort to resolve particular issues. The matters are generally then referred back to the Tribunal for mediation under section 86B of the Act.

Timeliness of the reports

Where the court requests a mediation progress report, the Tribunal aims to make the 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. While almost all reports were delivered to the court within the time period set by it, there were a range of factors that affected performance in carrying out mediation and therefore providing reports to the court this year, including:

- the influence of climatic conditions on the abilities of parties to attend meetings within the court-ordered timeframe;
- short timeframes from the court in some cases which did not allow a proper set of meetings to be held, given such factors as the limited resources of some parties; and
- the need for further research to provide connection material and the length of time it takes for such research to be carried out.

Reports are generally timely and well received, with the court regularly allowing mediation to continue.

Table 13 Mediation and status reports by state and territory

State or territory	Total
Australian Capital Territory	0
New South Wales	71
Northern Territory	10
Queensland	149
South Australia	8
Tasmania	0
Victoria	5
Western Australia	415
Total	**658**

MANAGEMENT

Corporate governance

Tribunal members

Members of the Tribunal are appointed by the Governor-General for specified terms of not longer than five years. Member classifications include presidential and non-presidential, full-time and part-time. The Act sets out the qualifications for membership.

During the year, Deputy President the Hon. E. M. (Terry) Franklyn QC and member Professor Douglas Williamson QC were appointed for a further term of three years each, commencing on 17 December 2001.

The members are geographically widely dispersed, living in places as far apart as Cairns, Melbourne, Sydney and Perth.

Members of the National Native Title Tribunal in Adelaide, March 2002: (back row, left to right) Tony Lee, Graham Fletcher, Bardy McFarlane, Ruth Wade, Geoff Clark, John Sosso, Jennifer Stuckey-Clarke, Doug Williamson, Christopher Doepel (Registrar), (front row, left to right) Gaye Sculthorpe, Christopher Sumner, Graeme Neate (President), Terry Franklyn, Mary Edmunds (not present: Fred Chaney).

Roles and responsibilities

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

Members are involved in claim mediation, ILUA negotiations and future act hearings and processes, as well as providing assistance and information to parties involved in the native title process.

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 having conduct of a matter being mediated determines how it will proceed, and his or her 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.

Members' meetings

The President and members held two members' meetings in the reporting period: one in Perth in October 2001 and the other in Adelaide in March 2002. 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 developed and adopted a voluntary members' code of conduct, procedures for dealing with alleged breaches of the code of conduct, and a conflict of interest policy (see Code of conduct, p. 97).

Strategic planning advisory group

The strategic planning advisory group is a key forum for corporate governance of the Tribunal under the authority of the President and Registrar. It was established on 31 May 2001 and comprises the President, Deputy President Chris Sumner, ILUA Member Coordinator Ruth Wade, member Tony Lee, the Registrar and the Directors of Service Delivery, and Corporate Services and Public Affairs.

The group integrates the management and administration with the organisational strategic direction. It met six times during the reporting period to advise on high-level budget priorities for 2001–2002, monitor the Tribunal's performance and make recommendations to facilitate strategic Tribunal projects.

ILUA strategy group

The indigenous land use agreement (ILUA) strategy group was established in November 2000 to facilitate the integration and management of ILUA activity across the Tribunal. The strategy group's membership includes the Registrar, the ILUA Member Coordinator Ruth Wade, Director Service Delivery, Director Corporate Services and Public Affairs, and other senior managers of the Tribunal.

Its major activities are to:

- monitor and coordinate ILUAs with a national and strategic approach;
- develop best practice ILUA processes and practices; and
- oversee workload assessment and management of ILUA activity.

The group met on seven occasions during the reporting period.

Future act liaison group

The National Future Act Liaison Group was established in November 2000 to identify and address strategic future act issues. It is chaired by Deputy President Sumner, with membership comprising an officer from the national Operations Unit, the Director of Service Delivery, the Registrar, 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. Meetings were held monthly by telephone link-up during the reporting period.

The key objectives were to:

- monitor and address national future act issues (some may have arisen locally but had national implications);
- drive various national future act initiatives, such as case manager training in supporting members performing the arbitral function;
- ensure consistent practice when appropriate; and
- monitor national trends to assist in strategic planning.

The major activities were:

- a review of the implementation of the new Objection Acceptance Guidelines;
- monitoring the impact of the Western Australia Government Technical Taskforce Report;
- working towards the Tribunal publishing future act decisions on Austlii;
- managing the implementation of recommendations from the internal Review of Future Act Management; and
- overseeing the development of future act-specific information sheets and products.

Agreement-making strategy group

The agreement-making strategy group was established in April 2002 to promote the implementation of key recommendations of the working group on workloads, specialisation and training, and in particular to advance agreement-making processes within the native title sphere. It is chaired by the President, with membership including three other members (Geoff Clark, Mary Edmunds and Gaye Sculthorpe), and two senior managers (Hugh Chevis and Andrew Jaggers).

Its major activities are to:

- develop a best practice agreement-making model to be used by the Tribunal in carrying out its agreement-making functions;
- develop the curriculum content of training in agreement-making for members and relevant staff and proposals for delivery of training programs; and
- monitor and evaluate the delivery of training.

The group has established two project teams, each chaired by a member. The course provider project team, convened by member Geoff Clark was established to research potential agreement-making training providers. The agreement-making model project team, convened by member Mary Edmunds, was established to commence research into developing a best practice agreement-making model to be adopted by the Tribunal.

Tribunal Executive

Role and responsibilities

The executive of the Tribunal's administration comprises the President, Registrar and directors who head the Tribunal's divisions of Service Delivery and Corporate Services and Public Affairs. A description of the qualifications and background of the Tribunal executive is available on the Tribunal's web site at www.nntt.gov.au .

During the year, the Tribunal was restructured to provide for two divisions; Service Delivery and Corporate Services and Public Affairs (see Figure 2, p. 27).

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.

Mr Christopher Doepel was appointed for a further term of four years as Native Title Registrar from January 2002.

Senior management committees

The Registrar and directors comprise 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.

The Registrar's group: (left to right) Christopher Doepel (Registrar), Marian Schoen (Director, Corporate Services and Public Affairs) and Hugh Chevis (Director, Service Delivery), Perth, 2002.

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.

An audit committee of the Registrar and divisional heads reviews the assessment of internal audit control measures. The committee has the authority to request information from employees of the Tribunal, the internal auditors and to discuss matters with the internal auditors.

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 of Service Delivery and other senior staff according to the issues at the time.

Meetings of corporate services and public affairs managers are held fortnightly with the Director, Corporate Services and Public Affairs in order to co-ordinate the implementation of cross-organisational projects or services and communication strategies.

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.

Research reference group

The research reference group comprises the directors, six members, state registry managers and the unit managers of the Research Unit and Legal Services, and the Tribunal's senior librarian. It met on four occasions to advise on research strategies and directions.

SES remuneration

Senior executive service (SES) employees are employed under Australian Workplace Agreements (AWAs). During the reporting period a restructure of the Tribunal resulted in the removal of one SES position. As a consequence, renegotiations of existing AWAs have commenced with two SES employees to take into account new responsibilities. The SES Band 1 salaries are set by the Registrar.

Corporate planning

In response to the budget cycle and organisational directions developed by the strategic planning advisory group (see p. 85) a corporate planning cycle was implemented during the reporting period which aimed to align divisional, registry and section business plans to that cycle.

Reflecting elements of the *Strategic Plan 2000-2002*, objectives of the corporate planning cycle were to:

- increase stakeholder and community understanding of what the Tribunal does;
- develop practical and innovative approaches to native title issues;
- develop targeted services for identified client needs;
- develop a highly skilled, flexible, diverse and valued workforce;
- streamline business processes; and
- ensure a corporate approach to organisational communication.

After the restructure of the organisation from three into two divisions in May 2002, the divisional, registry and section business plans were adjusted to reflect these objectives and deliver outputs under the new two-division structure.

Management of human resources

During the reporting period a number of core people-management processes continued to be developed, improved and implemented to assist in the management, leadership and development of Tribunal employees. The processes established during the reporting period included the Tribunal Capability Framework, learning and development, and workforce planning. The national occupational health and safety policy, reported against in the previous annual report, was enhanced.

Tribunal Capability Framework

The Tribunal Capability Framework steering committee met eight times during the year and completed a working model of individual performance standards, indicators and examples. By the end of the reporting period, the framework had been completed for the benchmarking of skills required by employees to meet the needs of the Tribunal's business outcomes. The framework was based on five key principles: simplification, consistency, integration, transparency and accountability.

Learning and development

Learning and development refers to processes associated with the identification of Tribunal and individual training requirements in relation to employee development, and the supply of opportunities to bridge gaps in skills or behaviour of employees and members. Work conducted during the reporting period included:

- ongoing development and implementation of a national learning and development strategy for members and staff that includes management and leadership, foundation training and induction, as well as other identified corporate training (cross-cultural awareness, contract management, plain English writing);
- the provision of specialised training in the areas of native title law and alternative dispute resolution for members of the Tribunal;
- preliminary work on a project plan for the learning and development strategy — the first stage of the foundation training program (technical knowledge) for the Service Delivery Division was successfully implemented;
- coordination of the training reference group which was established during the previous reporting period.

Chris Doepel meets with cadets Monica Collard, left, and Lauren Heinritz during a three-day induction session, Perth, February 2002.

Workforce planning

Workforce planning provides the information, tools and resources to ensure the Tribunal has adequate numbers of suitably skilled staff to meet its objectives.

Workforce planning supports the Tribunal's strategic planning processes. It includes the capability, learning and development, and recruitment and selection/diversity programs to ensure effective people-management strategies to achieve successful business outcomes.

Development of the workforce plan commenced at the beginning of 2002.

Workforce planning also provides a mechanism for linking expenditure on employees to business outcomes. Total expenditure on the salaries of the members, Registrar and employees for 2001–2002 was $16 054 961 compared with $13 715 295 for the previous reporting period, an increase of 17.06 per cent.

At 30 June 2002, the Tribunal had 15 Holders of Public Office (President, Registrar and members) and 274 people employed under the *Public Service Act 1999* (PSA), an overall increase of 32 from the end of the previous reporting period.

During the reporting period 17 PSA employees resigned. This represented 7.02 per cent of the workforce (calculated on staff numbers at 30 June 2001). In the previous reporting period 31 PSA employees had resigned, which represented 14.4 per cent of the workforce (calculated on staff numbers at 30 June 2000).

Of the 274 people employed under the PSA, 182 were female and 92 were male, 246 were full-time and 28 part-time, 228 were ongoing staff and 46 non-ongoing (for more information, see Table 14, p. 108). Thirty three 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.

Occupational health and safety performance

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 their committee is very active nationally, with representatives and the Tribunal's nominated officer meeting on a regular basis. Representatives

were elected for the new premises of the Western Australian registry, which was separated from the principal registry during the reporting period.

Occupational health and safety remained a standing agenda item for the Tribunal's consultative forum during the period and reports were provided every six weeks.

During the reporting period there were no accidents that were notifiable under section 68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. There were no specially commissioned tests in any of the Tribunal offices and no notices were provided to the Tribunal in the reporting period.

The Tribunal's certified agreement reinforces the commitment that all reasonable steps are to be taken to provide a healthy and safe workplace. During the reporting period, a remote area travel working party continued to refine specific guidelines and information for employees who travel to remote areas. These guidelines focus on safety whilst working in remote areas and have an emphasis on training. In the reporting period, training in four-wheel driving and remote first aid was provided to those employees and some members who are required to undertake field travel.

A major initiative during the reporting period was the development and implementation of a national induction strategy. This strategy included an 'introduction to occupational health and safety in the Tribunal' module that is delivered through traditional training means and an on-line self-paced training module.

Work also continued on the development of on-line training modules relating specifically to managing health in relation to remote area travel, including conditions associated with deep vein thrombosis, fatigue, and safe driving.

The Tribunal recently purchased on-line power-point presentation material relating to office bullying and workplace harassment. This material is expected to be presented as part of diversity training early in the next reporting period.

Work commenced on developing a program of pre-employment medical examinations for all employees who are engaged in the Tribunal for a period of longer than one month. The aim is to ensure that all prospective employees are actually fit to carry out the tasks that they are being engaged to undertake. The program will include the provision of pre-employment medical examinations, eyesight testing for employees who use screen-based equipment, carriage of the Tribunal's vaccination program (which includes influenza, tetanus, hepatitis and Japanese encephalitis), and fitness for continued duty examinations as required (for example, return to work of ill or injured employees).

Performance against disability strategy

During the reporting period preliminary research was commenced for the development of a revised diversity program for the Tribunal which will include updated disability strategies.

The Tribunal continues to ensure that:

- All employment policies and procedures comply with the *Disability Discrimination Act 1992* and refer to this Act as a source document.
- Changes to any of the Tribunal's policies, practices and procedures are made through the Consultative Forum. If there are any changes, they must be endorsed by the Consultative Forum.
- 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 principle of 'reasonable adjustment' to the workplace is applied, 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.
- Ongoing education and awareness of managers is practised. To this extent, a proposed suite of diversity training modules has been developed and training for managers with supervisory responsibilities is expected to be presented early 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.

Risk management

The Tribunal continued its program of training in risk management procedures and processes introduced during the previous reporting period. All executive and senior managers were provided with training in the objectives, corporate governance requirements, and risk management processes according to the Australian standards in risk management.

During the reporting period, the Tribunal introduced the Risk Management Plan (RMP), as outlined in the previous report. The focus of the plan was to address six priority areas, including the achievement of organisational outputs and outcomes, the Tribunal's registers, occupational health and safety (remote travel and fatigue), conflict of interest, information management, and recruitment and selection. An additional priority target was included that looked at security and fraud.

Working groups for each risk area met to identify risks, and develop recommendations to address those risks assessed as extreme and high. Progress reports from two of the priority areas were submitted by the end of the reporting period to ensure early attention to any recommendations.

The Tribunal has also revised its contracting and consultancy guidelines, its project management procedures, and has developed guidelines for cross divisional project development that all include risk management as a requirement of the planning process. All resource or financial requests now require an accompanying assessment of any risks, and recommendations for dealing with those risks.

Information management

The Registrar has a statutory requirement to maintain a number of registers that hold records of native title claimant and non-claimant applications, determinations, and agreements made under the Act. These are:

- the Register of Native Title Claims, which contains information about all claimant applications that have been registered under section 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; and
- the Register of Indigenous Land Use Agreements, which contains information about all ILUAs that have been accepted for registration.

The security, integrity and accessibility of these registers and associated databases and systems were enhanced during the reporting period.

ACCOUNTABILITY

Ethical standards and accountability

Code of conduct

The implementation of the *Public Service Act 1999* has provided a foundation for the Tribunal to enhance the current certified agreement and a number of supporting ethical standards. Information on these standards is provided to employees through a comprehensive induction program and the provision of ongoing information sessions.

The Tribunal's induction program summarises employees' responsibilities as public servants and includes references to ethical guidelines such as whistle-blowing procedures and procedures for determining alleged breaches of the Australian Public Service (APS) Code of Conduct. All employees have been supplied with a bookmark that outlines the APS values and Code of Conduct.

On request, small group training sessions were held throughout the regional registries of the Tribunal during 2001–2002. These sessions outlined the APS Code of Conduct, APS values and procedures for dealing with suspected breaches. During the reporting period three complaints of alleged breaches of the APS Code of Conduct were investigated. One of the complaints was substantiated and two were not substantiated. In the case where the complaint was substantiated, sanctions, counselling and specified training activities were applied.

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. Appointment must be terminated over 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 section 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 Australian Public Service, they are not directly governed by the APS Code of Conduct, although they may be subject to it if they are involved in the supervision of staff.

During the previous reporting period, Tribunal members had voluntarily adopted a code of conduct and commenced the development of a set of procedures to be followed when dealing with any alleged breaches of that code. They also considered the application of conflict of interest rules beyond the areas which are specifically governed by section 122. During this reporting period, both the procedures for dealing with alleged breaches of the members voluntary Code of Conduct and an extended conflict of interest policy were finalised.

External scrutiny

Judicial decisions

Although there has been continuing judicial scrutiny of the Tribunal's decisions and other decisions made regarding native title matters, 14 decisions have had a significant impact on the operations of the Tribunal during this reporting period. Details of these decisions are provided in Appendix II, p. 110.

Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund

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 section 206 of the Act.

The PJC tabled in Parliament its *Nineteenth Report: Second Interim Report for the section 206(d) Inquiry – Indigenous Land Use Agreements* on 26 September 2001. The scope of this inquiry, and the full report is available online at http://www.aph.gov.au/senate/committee/ntlf_ctte/report_19/contents.htm

In that report the committee made a number of recommendations specifically concerning the powers and functions of the Tribunal and the Registrar. Those recommendations were:

- that the Native Title (Notices) Determination 1998 be amended to require the Tribunal, where possible, to notify the indigenous community about the proposed registration of an ILUA by way of advertisement on local indigenous radio or television programs. This would be in addition to the current requirement that the Tribunal advertise in relevant newspapers (para 7.24).
- that the Act be amended to grant to the Tribunal powers to assist with dispute resolution (following registration of an ILUA) in circumstances where relevant parties to the ILUA request it (para 7.33).
- that the Act be amended to include a provision that shows how an amendment can be made to a registered ILUA (para 7.42).

The Attorney-General is responsible for making determinations under, and recommending amendments to, the Act. At the end of the reporting period, the Attorney-General had not responded, on behalf of the government, to the committee's Nineteenth Report.

On 7 September 2001, the PJC advertised its intention to inquire into the effectiveness of the Tribunal in accordance with its duty under section 206(d)(i) of the Act.

To date, the PJC has received a number of submissions in relation to this current inquiry. These submissions are available online at http://www.aph.gov.au/senate/committee/ntlf_ctte/nat_nattitle_trib/sublist.htm. The Tribunal, and any other interested persons, have yet to appear before the PJC in relation to this inquiry.

The PJC's eighteenth report, *Examination of 1999–2000 Annual Reports* in fulfilment of the committee's duties pursuant to section 206(c) of the *Native Title Act 1993* was tabled in Parliament on 30 August 2001, and is available online at http://www.aph.gov.au/senate/committee/ntlf_ctte/report_18/contents.htm

The President and the two directors appeared before the PJC on 24 June 2002 in accordance with the PJC's obligation to examine the Tribunal's *Annual Report 2000–2001*.

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 IV, p. 123).

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.

Dan MacKinnon, left, and John Clapin, right, from the Pastoralists and Graziers Association of WA are pictured with Lillian Maher (Regional Manager, WA registry) at the opening of the Western Australia registry, Perth, December 2001.

Accountability to clients

Evaluation of client and stakeholder needs and satisfaction

The Tribunal is required to research and provide quantitative and qualitative information on client satisfaction as part of its budget and performance reporting system. During the year, the Tribunal conducted an initial survey of key stakeholders to seek their views on the proposed research method and service areas to be included in the evaluation.

The research methodology for the evaluation was developed taking into account the service areas and attributes suggested by key stakeholders. A questionnaire was developed for interviews with clients, seeking their responses to specific attributes and their levels of satisfaction with Tribunal services in the areas of registration, notification, mediation, future act, indigenous land use agreements and assistance.

A range of client categories were settled, and those clients with active involvement with the Tribunal during 2001 are to be invited to take part in the evaluation. The survey will be undertaken in the next reporting period. The outcomes will identify specific client needs and areas for service improvement through external communication strategies, targeted information materials, learning and development strategies, and the performance management program.

Customer service charter

The outcomes of the client satisfaction survey will contribute extensively to the development of improved performance standards outlined in the *Customer Service Charter* that will better reflect the needs of the Tribunal's clients. As an interim measure, the *Customer Service Charter* was revised in March 2002 and published on the web site.

In addition, an internal review was undertaken in regard to the service standards that were identified in the previous charter. These changes were required as the focus of the Tribunal's activities has changed since the original charter was developed. The new standards will form the basis of a new charter form for the collection and evaluation of client statistics.

There was limited use of the charter process during the reporting period, with two incidents reported for action. Further promotion of the charter to clients supported by staff training and development of complaints reporting procedures is proposed for next year.

Social justice and equity in service delivery

The work of the Tribunal impacts significantly on matters of social justice, because the outcome delivered by the organisation is the recognition and protection of rights of a significant section of the Australian community. The Tribunal must do this without impairing the rights of others.

As outlined fully in the previous annual report:

- the Tribunal has fair and efficient processes for making arbitral and registration decisions;
- the Tribunal provides accurate and comprehensive information about native title matters to clients, governments and communities;

and, importantly for mediation

- the Tribunal provides 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;
  - meet the needs of the parties involved and assist them to resolve native title issues.

During this reporting period those strategies were carried out in all the day-to-day business of the organisation, particularly by way of:

- mediation practice, in which the Tribunal conducted most of its mediations in the field;
- the delivery of information to clients and stakeholders in a variety of accessible media and formats, including via radio (for further information, see p. 77);
- the fair and transparent operation of the statutory functions the Tribunal is required to perform under the Act; and
- the allocation of almost a quarter of the Tribunal's budget to the assistance of parties involved in native title processes.

Online services

During the reporting period, the Tribunal's new web site was constructed and tested for launch in the next reporting period. Development was based on the Tribunal's Online Action Plan after consultation with a wide range of stakeholders and Tribunal employees. It incorporates the useability and accessibility standards required for Commonwealth Government web sites.

The content was completely reviewed and new techniques were developed for browsing and searching for information. New features for the user include:

- a new navigation structure;
- a text only function, for users with low bandwidth access;
- a 'print-ready' function to enable quick and professional printing;
- feedback functions for speedy and transparent communications with Tribunal employees; and
- a subscription function for Tribunal newsletters, updates on determinations, and current events.

The test site was developed using international standards, ensuring ease of upgrade in later phases of development. Use of templates and a content management system will ensure Tribunal employees can quickly and easily update information on the site in a consistent and controlled manner. Commonwealth Government metadata standards have been used extensively to allow ease of searching by external search engines.

Pictured at NAIDOC celebrations are staff from the principal and WA registries: (left to right) Jose Narvaez, Sharon Roach, Edward Brown, Fran Thomas (front), Debra Thompson, Bill Unmeopa, Paul Willaway, Nuccia Merlo and Natalie Heir, Perth, July 2001.

Performance against purchasing policies

Procurement

During the reporting period, the Tribunal carried out an internal audit on a number of financial and procurement activities, including the engagement of consultants. This audit recognised that the procedures and guidelines in place were in accordance with best practice, but could be further developed to ensure more effective management of consultancies, and better accountability in decision making.

The audit identified areas that could be improved, and in response to those recommendations, the Tribunal's 'Engagement of Consultants' policy, guidelines and forms were amended. In addition to the audit recommendations, the policy and guidelines were also updated to reflect the changes to the new Commonwealth Procurement Guidelines issued in February 2002, and the findings of the Australian National Audit Office audit report No.54 2000–2001, 'Engagement of Consultants'.

Staff and managers involved in procurement expenditure were advised of the changes to the procurement principles, particularly in regard to the emphasis on value for money, and the need to justify decisions in writing. The need to include risk statements when submitting large procurement proposals was also emphasised in accordance with the Tribunal's risk management policy.

A recent review of the Tribunal's outsourced IT functions looked at the issue of purchasing or leasing the IT equipment required by the Tribunal. The review examined and analysed the current costs of the leasing arrangement, and carried out simulations to compare the options of leasing and purchasing. In response to the findings of the review the Tribunal will continue the leasing option.

During the reporting period the Tribunal developed a collections register for its indigenous artworks held in the state and national offices to effectively manage what is an appreciating asset. The register identifies the value and provenance for each work, and includes an image for reference purposes.

The Tribunal carried out an annual stock take in June 2002, and all listed items were accounted for.

Information technology outsourcing

During the reporting period UnisysWest managed the Tribunal's IT infrastructure and provided help desk support services under a three-year contract awarded in December 1999. All services were provided in accordance with the contract and the availability of the Tribunal's applications averaged 99.90 per cent. No service credits were payable by UnisysWest and the overall expenditure was within budget. There were no variations other than those associated with the leasing of additional equipment and approved project work.

Customer satisfaction with the IT services was measured by both the Tribunal and by external consultants. It was determined that 95 per cent of clients were satisfied or very satisfied with the services.

A consultant was engaged to assess future IT requirements and advise on the appropriate service delivery model to meet Tribunal business on the expiration of the contract in early 2003. The implementation of a revised model for IT services commenced at the close of the year under review.

Consultancies

Consultancies and competitive tendering and contracting

During the reporting period, the Tribunal contracted out its public affairs mailing requirements, including storage and distribution of media and promotional material. This is aimed at improving efficiencies in regard to response times, and allowing staff to focus on more strategic issues.

The Tribunal did not contract out any other government activities during the reporting period. The outsourced IT function continued throughout the reporting period (see 'Information technology outsourcing' above).

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 full list of consultancies is supplied in Appendix III, p. 121.

Actual expenditure on consultancies for the reporting period was $1 342 302 which was made up of the following:

Information technology	$1 176 477
Mediation (s. 131A of the Act)	$65 900
Other	$68 765
Training	$31 160

There was a 15 per cent increase in overall expenditure associated with the engagement of consultants when compared with that reported in the previous year.

Expenditure on consultants for section 131A mediation work decreased by comparison to last year, while expenditure for information technology and training increased. The information technology-related work increased by approximately 20 per cent.

Contracts

During the previous reporting period, the Tribunal had contracted with Ansett Australia for the provision of airline services. Following Ansett Airlines going into administration, the Tribunal was able to access the services of Qantas Australia through the Attorney-General's Department airline agreement. This agreement is for a period of approximately two years with a contract value of $2 000 000.

In accordance with the Senate Order dated 21 June 2001, the Tribunal has listed all contracts in excess of $100 000 on its web site. This list identifies whether these contracts contain confidentiality clauses in line with the Senate Order directions.

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.

The Tribunal continued to apply environmental best practice to its internal administrative processes as targeted in its *Certified Agreement 2000–2003* which extends its commitment to apply environmental best practice to its internal administrative processes. This included recycling paper, purchasing paper stock with a recycled component, purchasing other 'green' products and establishing 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 efficient processes.

Energy management

Since the previous reporting period, the Tribunal has developed an Energy Management Plan (EMP) in accordance with the requirements of its certified agreement. The EMP was developed in consultation with all staff, and endorsed by the Tribunal's Consultative Forum.

The plan incorporates energy usage figures for the past three years as reported in the 'Energy Use in Commonwealth Operations' publication compiled by the Department of Industry, Tourism and Resources.

The plan identifies a range of options that can be applied in each of the Tribunal's offices with the aim of reducing energy and resource usage. There are measures associated with the usage of power and paper that will allow for accurate reporting of any changes, and allow the Tribunal to accurately report on those changes.

APPENDICES

Appendix I Staffing

Employees

Table 14 Employees by classification, location and gender at 30 June 2002

Classification	Location													
	Male							Female						
	WA	NSW	Qld	Vic.	SA	NT	Total	WA	NSW	Qld	Vic.	SA	NT	Total
Cadet	-	-	-	-	-	-	-	2	-	-	-	-	-	2
APS level 1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
APS level 2	7	2	2	-	-	-	11	17	1	11	2	1	4	36
APS level 3	5	-	1	-	-	-	6	16	1	2	-	-	-	19
APS level 4	8	1	2	-	-	1	12	14	4	10	3	4	1	36
APS level 5	2	-	-	-	-	-	2	4	-	1	-	-	-	5
APS level 6	22	3	4	1	1	-	31	24	5	11	2	1	4	47
Legal 1	-	-	1	-	-	-	1	5	-	1	-	-	-	6
Legal 2	1	-	-	-	-	-	1	-	-	-	-	-	-	-
Media 1	-	-	-	-	-	-	-	1	-	-	-	-	-	1
Media 2	-	-	-	-	-	-	-	-	1	-	-	-	-	1
Library 1	-	-	-	-	-	-	-	1	-	-	-	-	-	1
Library 2	-	-	-	-	-	-	-	1	1	1	-	-	-	3
Executive level 1	10	2	3	1	-	-	16	16	1	3	1	1	-	22
Executive level 2	6	1	1	1	1	1	11	2	-	-	1	-	-	2
Senior executive	1	-	-	-	-	-	1	1	-	-	-	-	-	1
Total employees	**62**	**9**	**14**	**3**	**2**	**2**	**92**	**104**	**14**	**40**	**8**	**7**	**9**	**182**

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 Members of the Tribunal at 30 June 2002

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	Dec. 1998, Dec. 2001	Three years, reappointed for a further three years	Perth
Mr Anthony (Tony) Lee	Full-time member	30 June 1995 5 July 2000	Five years, reappointed for three years	Perth
Mr Graham Fletcher	Full-time member	20 Mar. 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 12 Apr. 2000	Five years, reappointed for three years	Canberra
Prof. Douglas Williamson QC	Part-time member	4 Dec. 1996 17 Dec. 2001	Five years, reappointed for three years	Melbourne
Mr Geoffrey Robert Clark	Part-time member	1 June 1998 28 June 2001	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

Appendix II Significant decisions

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

General developments in native title law

High Court decisions

Commonwealth v Yarmirr and Yarmirr v Northern Territory (2001) 184 ALR 113

Summary

This case concerned an appeal to the High Court from the findings of the trial judge and the majority of the Full Court. The main issues 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.

The majority judges of the court (Gleeson CJ, Gaudron, Gummow, and Hayne JJ) dismissed both appeals. The minority was split. Kirby J would have dismissed the Commonwealth's appeal and allowed the applicant's appeal. McHugh and Callinan JJ, in separate judgements, would have allowed the Commonwealth's appeal. As a result of the majority's decision, the findings of Olney J at first instance were not disturbed. This means that non-exclusive native title is capable of being recognised off-shore.

The Commonwealth

The majority held that in order for native title rights and interests to be recognised, the common law and the relevant native title rights and interests must be able to co-exist. If they are fundamentally inconsistent, then the common law will prevail.

The majority rejected the argument put forward by the Commonwealth that the common law of Australia does not apply below low water unless it has been extended there by statute. The existence of radical title is not a necessary pre-requisite to the recognition of native title. An analysis of sovereign rights indicates that there is no necessary inconsistency between the acquisition of sovereignty offshore and the continued existence of native title offshore with one important qualification: the interests asserted at sovereignty carried with them the recognition of the

public rights to fish and navigate and, perhaps, a concession of a right of innocent passage under international law.

In relation to the legislation granting title to the seabed and the space above it (out to three nautical miles) to the Northern Territory, the majority held that full beneficial ownership was not granted, and that the legislation had preserved pre-existing rights, including native title rights and interests.

The claimants

The majority rejected the applicant's argument that the trial judge and the Full Federal Court wrongly decided that the native title rights and interests could not be exclusive of the interests of others. The applicants amended their argument to allow for those exclusive rights to be subject to the rights such as the right of innocent passage under international law, the public right of navigation through the area and the rights of commercial fishers under valid licences.

However, the majority found that there was a fundamental inconsistency between a native title claim to exclusive possession of the area, on the one hand, and other rights such as the common law rights to fish and navigate through the area and the international law right of innocent passage, on the other. The majority said that:

> [T]he two sets of rights cannot stand together and it is not sufficient to attempt to reconcile them by providing that exercise of the native title rights and interests is to be subject to the other public and international rights [at par 98].

To put it into context, the majority said that:

> Although the inconsistency does not arise as a result of the exercise of sovereign power (as is the case where a grant of fee simple extinguishes native title) the inconsistency which exists in this case between the asserted native title rights and the assertion of sovereignty is of no different quality. At its root, the inconsistency lies not just in competing claims to control who may enter the area but in the expression of that control by the sovereign authority in a way that is antithetical to the continued existence of the asserted exclusive rights [at par 100].

This case clarifies the interpretation and recognition of native title rights and interests offshore. The decision is most relevant to the registration test and mediation.

Federal Court decisions

Ridgeway on behalf of the Worimi People, in the matter of Russell v Bissett-Ridgeway [2001] FCA 848 per Tamberlin J, 19 July 2001 This was an application brought under section 66B of the Act to replace one of the current applicants in a claimant application on the basis that she was no longer authorised by the native title claim group. The determination of the application depended upon whether the removal and substitution sought were authorised at a meeting held in February 2001 which had been publicly notified. No minutes of the meeting were put into evidence and there were no written records made at the time of meeting that recorded any resolutions passed.

His Honour was not satisfied that the members of the claim group had been sufficiently identified to determine whether there had been a proper decision taken to authorise the removal and substitution of an applicant, that adequate notice was given of the specific of the meeting relied upon, that the relevant people affiliated with the land in question were notified of the meeting, or that the decision-making process followed at the meeting was in accordance with either an accepted or a traditional decision making process.

This case is most relevant the registration test and mediation.

Colbung v Western Australia [2001] FCA 1342 per Finn J, 19 September 2001. This case concerned an application by the State of Western Australia seeking a nine-month adjournment of a consolidated proceeding involving four overlapping claimant applications in the south-west of Western Australia to allow for further mediation. The four claimant groups, the State and the Commonwealth supported the adjournment. No other party opposed it. A mediation report provided by the Tribunal under section 136G recommended that 'reasonable time be given to the parties to constructively and adequately enter into mediation, with the support of the Court'.

The Judge said that:

> …In…native title applications, account must be taken of additional considerations which bear on the attainment of justice...The structure created by the Act for the resolution of native title applications gives mediation a central place… Mediation, unlike litigation, will not necessarily result in the formal resolution of a dispute…and for that reason the adversarial process retains its place [in the Act] as the ultimate instrument for resolving applications. But the balance struck between mediation and litigation can itself be an important consideration influencing the exercise of a judicial discretion where…an adjournment is sought further to prosecute a mediation which is underway, from which no party wishes to resile and for which there are prospects entertained of a significant partial, if not total, resolution of the proceedings.

His Honour's reasons for granting the adjournment included the progress made in mediation and the commitment of the parties to a mediated solution, the expectation that the mediation would produce both significant agreement between the parties and a contraction of the matters in issue, that further mediation was not sought to the detriment of any party, the logistical and resourcing difficulties that the parties would face if they had to conduct mediation and pre-trial preparation in tandem, and that, given that the were willing to co-operate, the risk should be avoided of the chance of a mediated outcome being imperilled by the need to adopt adversarial postures for litigation related purposes.

This case is relevant as it emphasises the importance the Act places on agreed outcomes, and the mediation work of the Tribunal.

Chapman v Luminis Pty Ltd (No 5) [2001] FCA 1106 per von Doussa J, 21 August 2001. This case concerned an application by the Chapmans and Binalong Pty Ltd for damages for loss incurred as a consequence of a declaration made under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth) on 9 July 1994 which banned the building of a bridge from Goolwa to Hindmarsh Island for 25 years. Although this case does not strictly concern the Native Title Act, it is relevant to the interpretation of Aboriginal tradition and proof of spiritual belief under the Act and, therefore, may have application in relation to the registration test and in mediation.

In relation to Aboriginal tradition, his Honour Justice von Doussa said that:

> [K]nowledge of the significance in accordance with Aboriginal tradition about an area or an object once honoured and respected by a community or group of Aboriginal people might with the passage of time and the dispersal of its members from their traditional lands come to be held by only one person. I do not think that means that the area is no longer a significant Aboriginal area [at par 275].

In relation to 'proof' of spiritual beliefs, His Honour said that:

> Spiritual beliefs do not lend themselves to proof in strictly formal terms. Their acceptance by true believers necessarily involves a leap of faith. To use lack of logic as a test to discredit those asserting a particular spiritual belief is to pose a test that is both unhelpful and inappropriate [at par 390].
>
> The reason why the construction of the [Hindmarsh Island] bridge would constitute a use or treatment of the area in a manner inconsistent with Aboriginal tradition is stated: the permanent link is an affront to that tradition [at par 392].

> Acceptance of the alleged Aboriginal tradition, the beliefs involved and their content, will depend on the veracity of the informants. A proper assessment of their veracity is not aided by an attack based on an assertion that the alleged beliefs and their content are irrational. Such an attack would not only be unhelpful, it would also be contrary to the purpose of the [Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwlth)] which is to recognise, respect and protect Aboriginal beliefs which constitute part of Aboriginal tradition. It would also be contrary to the multicultural aims of our community, and would involve a discriminatory assertion that the religious or spiritual beliefs of one culture are superior to those of another [at par 395].

Central Queensland Land Council v A-G of the Commonwealth of Australia & State of Queensland (2002) 188 ALR 200. This case concerned, amongst other things, a set of determinations made by the Commonwealth Attorney-General under s. 26A(1) and s. 43(1) of the Act, in relation to establishing alternative future act processes under Queensland legislation for granting certain mining permits and tenements in Queensland.

Wilcox J found that each of the determinations under s. 26A(1) were valid and effective in law.

However, his Honour found that the Minister has no jurisdiction in relation to the s. 43(1) determinations because there was not, at the time of making them, a law of a state or territory that provided for alternative provisions as required under that subsection. (Unlike s. 26A(1), this is a pre-requisite for determinations made under s. 43(1) of the Act.) Therefore, each of the determinations made pursuant to s. 43(1)(b) of the Act were invalid and without legal effect. This case is relevant for future act workload implications, as well as future ILUA negotiations and registration of claimant applications in Queensland. This decision is subject to appeal to a Full Federal Court.

Ward v Northern Territory [2002] FCA 171 per O'Loughlin J, 8 February 2002. The case concerned an attempt to replace some of the people named as the applicant for the group with other people, pursuant to s. 66B of the Act. When the application was filed under the old Act, there were 22 named applicants. The application was amended in 1999 and currently lists 17 of those 22 people as the applicant.

Up until May 2001, it appeared that the representative for the claimants was 'Paul Kennard for David Imlah, Principal Legal Officer' (PLO) of the Aboriginal Legal Service of Western Australia Inc (the ALS). On 1 May 2001, the Northern Land Council (NLC) filed a Notice of Change of Solicitor stating that it now represented the applicants formerly

represented by the ALS. On 10 May 2001, an objection to the Notice of Change of Solicitor was filed. The objectors to the Notice of Change of Solicitor included 11 of the 17 people named in the current application.

When the matter came before the court, the NLC filed a s. 66B application seeking to replace some of those people named currently as the applicant with a group of 14 people (the replacement application), four of whom were amongst the 17 named in the current claim. The replacement application was supported by affidavits from nine of the 14 proposed as the replacement applicant.

Justice O'Loughlin noted that s. 66B gives the court a discretion to make orders for the replacement of the current applicants on the grounds that those currently named as the applicant are no longer authorised to make the application, or deal with the matters arising under the Act in relation to it, or that they have exceeded their authority. The claim group members applying under s. 66B must satisfy the court that they are now authorised by the claim group to make the application and deal with matters arising in relation to it. His Honour declined to exercise that discretion, noting that it would be inappropriate to make the orders sought because there was no indication that the s. 66B application and supporting affidavits had been served on any of the 17 people named as applicants, their agents or the respondents, and there was no formal statement that the 14 people who had provided affidavits in favour of the replacement were authorised to speak for the group, or who makes up the native title claim group.

The application under s. 66B was dismissed, and his Honour ordered that aspect of the proceedings be referred to the Tribunal for mediation. This case highlights the importance of proper authorisation under the Act and is relevant to the registration test, right to negotiate proceedings and in mediation.

Registration test

Federal Court decisions on applications for review of registration test

During the reporting period there were no cases heard which had a significant impact on the operations of the Tribunal.

Future acts

Federal Court decisions on appeal from Tribunal

Little v State of Western Australia & Anor [2001] FCA 1706 per RD Nicholson J, 6 December 2001. This was an appeal pursuant to s. 169 of the Act from determinations by Deputy President Franklyn dismissing expedited procedure objection applications (WO 00/167 and WO 00/351) brought by the registered native title claimants for the Badimia native title claim. The appeal arose out of the refusal of the Tribunal to change a listings date, and later to receive further contentions and affidavit evidence. Deputy President Franklyn relied upon the Tribunal's obligation to take all reasonable steps to make a determination as soon as practicable under s. 36(1) and s. 36(3) of the Act and noted that the applicants had had ample opportunity to earlier seek leave to lodge further contentions and evidence, and that the applicants had been given a reasonable opportunity to present their case as required under s. 142.

His Honour held that the Tribunal had not failed to provide the registered native title claimants with procedural fairness. Nicholson J construed the statutory provision of reasonable opportunity provided for in s. 142 of the Act as expressly subject to the power of the Tribunal to determine the objection on the papers provided in s. 151(2). The reasonable opportunity in s. 142 is excluded when it is decided, under s. 151(2), to make the determination on the papers. The intention of the power to determine under s. 151(2) is that the Tribunal can make a determination without holding a hearing if it is satisfied that the issues for determination can be adequately determined in the absence of the parties. The power is not expressly qualified by a need for consent of the parties.

His Honour found that the Tribunal erred in placing reliance upon ss. 36(1) and (3) to find that it was obliged to determine the objections as soon as was practicable, but that this error was not sufficient, of itself, to justify remitting the matter because expedition was appropriate in the circumstances, particularly in the light of the provisions of s. 109 of the Act.

The native title party submitted that the objections should not have been dismissed on the papers without deciding whether the *Aboriginal Heritage Act 1972* (WA) protected an area situated within the tenement.

Nicholson J found that there was no evidence that the gazetted boundaries of the Lake Moore site were incorrect compared to the actual location of the site. The site in question would have been protected under the Aboriginal Heritage Act wherever it was located.

The appeal was dismissed. This case is relevant to the interpretation of the law in right to negotiate proceedings.

Decisions of Tribunal members

Michael Teelow/Michael Page/Northern Territory, NNTT DO01/22 Mr J. Sosso, 10 October 2001. In this case, the grantee party applied for a dismissal of an objection application to the expedited procedure pursuant to s. 148(b) of the Act for failure to comply with Tribunal directions. The Tribunal found that a decision as to whether to exercise the discretion available under s. 148(b) should be guided by the object of the expedited procedure provisions of the Act, namely that the parties and the Tribunal are required to proceed expeditiously with a view to avoiding delays, expense and legal technicalities. Directions are made to achieve these objectives and, accordingly, non-compliance enlivens the power vested in the Tribunal pursuant to s. 148.

Determining whether the discretion should be exercised or not is dependent on a range of factors and circumstances that cannot be comprehensively outlined. Two important factors are that that the right to negotiate is a valuable right that should not be lightly dispensed with, and that the Act should be interpreted in a beneficial manner. That aside, the discretion in s. 148 is unfettered. The appropriateness of exercising it in a particular case depends on all the circumstances, including whether the failure to comply was as a result of the actions of the objectors or their representative, whether there has been some reasonable explanation proffered for non-compliance, whether the failure of the applicant to comply with Tribunal directions has resulted in prejudice to other parties, the history of the proceedings, and the consequences of dismissal.

The Tribunal found that the power in s. 148(b) should be used sparingly and only in cases where it is manifestly clear that it is appropriate to do so. In this instance, the failure to comply was explained and the grantee party not significantly prejudiced. This case is relevant to the interpretation of s. 148 of the Act, and future act processes.

Northern Territory/Ward and Ors/Ashton Exploration Australia Pty Ltd, NNTT DO01/3, DO01/13, DO01/19-23 Mr J. Sosso, 21 December 2001. In this matter, the government party challenged the Tribunal's jurisdiction on the basis the objectors had failed to comply with the

requirements of paragraphs 7 and 8 of the prescribed Form 4. These forms had been accepted by way of the exercise of a discretion to accept the objections, although apparently non-compliant. The objections in question were made before both the determination of *Dixon/Ashton Mining Limited/Northern Territory* (2001) 166 FLR 29, Hon. E. M. Franklyn QC, 23 April 2001 and before the issue of the Tribunal's Guidelines on Acceptance of Expedited Procedure Objection Applications on 8 May 2001.

The Tribunal considered the case law on compliance with forms in the context of the Act, noting that an objection application must be in the prescribed form i.e. Form 4. However, it was found that the type of information required by paragraphs 1 to 6 of the form, whilst important, is neither so vital nor of such unique significance that any sort of failure to comply would render the application invalid unless another party could show that a material injustice was caused by the non-compliance [at 69]. The Tribunal found that, as highlighted in *Dixon*, a failure to state why an objection is lodged at the very outset puts the other parties at a disadvantage, and runs counter to the requirement found in s. 109(1) of the Act that the Tribunal carry out its functions in a fair, just, economical and prompt way under s. 109(1). To determine whether an objector has complied with paragraph 7 of the form requires an evaluation of the actual response in the circumstances surrounding that response, and the consequences of finding either compliance or non-compliance.

However, the Tribunal may also consider the law at the time the objectors lodged their objection applications, any guidance given on the Tribunal's web site and the Tribunal's past conduct in not rejecting objections made in that form.

The Tribunal found that, having regard to the law as commonly understood at the time and the official information provided by the Tribunal, there was sufficient compliance with paragraphs 7 and 8 of Form 4. Therefore, the Tribunal had jurisdiction to conduct the inquiry.

The Tribunal also noted that under s. 77 of the Act, the Tribunal, and not the Registrar, is specifically empowered to accept s. 75 applications made under the Act. Under s. 77, if an expedited procedure objection application complies with s. 76, the Tribunal must accept it. The member interpreted the Tribunal to mean a member of the Tribunal and, accordingly, accepted the objection applications. The member commented that in the event that his analysis was incorrect, then another authorized person, as an authorised decision-maker within s. 77, had properly accepted the objection.

Moses Silver and Ors/Ashton Exploration Australia Pty Ltd/Northern Territory, NNTT DO01/13, Mr J. Sosso, 1 February 2002. In this matter, the Tribunal determined that the expedited procedure was not attracted to the future act in question. In doing so, a new approach in the interpretation of s. 237(a) of the Act was taken. The Tribunal determined that spiritual activities fall within the scope of s. 237(a) of the Act, provided they are rooted in physical activities. The earlier approach of the Tribunal in *Western Australia v Smith* (2000) 163 FLR 32 (i.e. that s. 237(a) requires a likelihood of direct interference with physical aspects of community activities) was distinguished.

In interpreting the legislative history and intent of s. 237(a), the Tribunal observed that s. 237(a) is focused on an examination of the external manifestation of community life in the form of activities. When addressing s. 237(a), native title parties are required to put before the Tribunal material showing that the future act is likely to directly physically interfere with activities which, in turn, will impact on the spiritual dimension of those activities, and provide any relevant evidence. Each case must be examined in context, and there must be evidence that the doing of the act would substantially interfere with the community or social activities of the native title holders. The phrase 'social activities', as used in s. 237(a), comprehends social manifestations of traditional laws and customs, which are nevertheless grounded in the communal concept of native title.

Kevin Walley and Ors/Western Australia/Giralia Resources, NNTT WO01/179 and WO01/180, Hon. C. J. Sumner, 8 March 2002. This matter is of particular interest because it concerns the interpretation of s. 237(a) of the Act. The objectors in these two matters did not live on the area of the proposed tenement but produced evidence as to the nature and frequency of the community activities in the area. Evidence of the carrying on of community activities in the area, which included Wilgie Mia, the Weld Ranges and areas of importance to the Wajarri and other Aboriginal people, was not challenged.

The Tribunal determined the expedited procedure did not to apply to the tenement application because the grant of the proposed tenement area was likely to directly interfere with the community and social activities in the proposed tenement area. Community or social activities which arise out of a community's spiritual beliefs such as the conduct of ceremonies, initiations, teaching children about spiritual aspects of Aboriginal law, traditions, customs or beliefs which are part of or related to a claimant's native title and connection to land are covered by s. 237(a).

Emotional distress of some members of a claim group, caused by the proposed future act, is not covered by s. 237(a) if it does not reflect on the manner in which community or social activities are carried out. Spiritual beliefs which give rise to obligations to look after country may have consequences for traditional custodians under Aboriginal customary law if those obligations are not fulfilled. There may be dispute and dissension amongst a claimant group because of it. But to satisfy s. 237(a), there must be evidence of the consequences of this concern or dispute or dissension for the community or social activities of members of the native title holders.

Roy Dixon on behalf of the Gurdanji Karranjini People and Others/Northern Territory/Ashton Mining Ltd and Others, NNTT DO01/140, DO02/16, DO02/17, DO02/20 and DO02/27, Mr J. Sosso, 15 April 2002. All of the grantee parties in this matter were members of the multi-national group of companies. A Memorandum of Understanding between the group and the representative body provided, amongst other things, a comprehensive mechanism for dealing with future act applications. The representative body wrote to the Tribunal advising that, as financial support for the objection prosecutions was not available, they would not be further prosecuting them. The difficulty for the Tribunal was that this meant that there was no prospect that the native title party would comply with any future directions. The Tribunal had to decide what approach to take in circumstances where the native title party in an objection to the application of the expedited procedure is not funded to progress the objection. The Tribunal noted the preferable course in these circumstances was the withdrawal of the objections. However, the objectors had not instructed the representative body to withdraw their objections. Two options for dismissal were available to the Tribunal, under either s. 147 or s. 148(b) of the Act.

The parties agreed that the appropriate course was for the Tribunal to direct that the native title party supply contentions in support of the objections. If there was no compliance with those directions within the specified time, then a self-executing direction would provide that the objections were to stand dismissed. As the contentions were not lodged, the objections stand dismissed. This case is relevant to the processes and timeframes for future act matters.

Appendix III Consultants

Table 16 Consultants engaged under section 131A of the Native Title Act (over $10 000)

Consultant	Purpose	Contract price	Period	Selection process	Comments
Kim Wilson	Facilitate the development and implementation of a framework agreement for matters referred to as Stage 2 negotiations between parties.	$15 900	May 2001–May 2002	Direct appointment due to previous work with applicants	Approved in previous reporting period. Actual expenditure 2001–2002: $7 150

Table 17 Consultants engaged under section 132 of the Native Title Act (over $10 000)

Consultant	Purpose	Contract price	Period	Selection process	Comments
Deakin Consulting	Implementation of records management system	$20 790	Nov. 01–June 02	Direct engagement	Limited market. Contractor undertook records management review following public tender.
Deakin Consulting	IT Services contract review	$28 734	Feb 2002–June 2002	Public tender	
AlphaWest 6	Implementation of records management system in WA registry	$26 400	Nov. 2001–Dec 2001	Direct engagement	Sole supplier
AlphaWest 6	Implementation of records management system in principal registry	$47 520	Dec. 2001–Apr. 2002	Direct engagement	Sole supplier
AlphaWest 6	Post-implementation support of records management system	$15 840	Apr. 2001–July 2002	Direct engagement	Sole supplier
AlphaWest 6	Training in records management systems	$10 475	Apr. 2001	Direct engagement	Sole supplier
Manpower Services	Analyst programmer (Oracle and Visual Basic)	$76 905	July 2001–June 2002	Direct engagement	Contractor had unique knowledge of the Tribunal's IT environment.
Manpower Services	Visual Basic programmer	$142 427	July 2001–June 2002	Extension	Original selection by select tender
Manpower Services	Lotus Notes programmer	$115 221	July 2001–June 2002	Extension	Original selection by select tender

Table 17 Consultants engaged under section 132 of the Native Title Act (over $10 000) cont.

Consultant	Purpose	Contract price	Period	Selection process	Comments
Ambit Technology	Project manager (applications development)	$45 584	July 2001–Sept. 2001	Extension	Original selection by select tender
David Christie & Associates	Review business processes	$38 192	July 2001–Sept. 2001	Extension	Original selection by select tender
Strategic Computer Solutions	Windows 2000 migration (training and materials)	$87 930	Nov. 2001–May 2002	Public tender	
Strategic Computer Solutions	Windows 2000 migration (technical support)	$25 300	Nov. 2001–June 2002	Public tender	
Unisys West	Windows 2000 migration project	$230 000	July 2001–May 2002	Public tender	
Unisys West	Provision of IT services	$1 475 000	July 2001–June 2002	Public tender	Includes $580,000 equipment lease costs
Social Change Online	Online Services Project Phase 1 — user needs analysis	$36 740	Sept. 2001–Oct. 2001	Public tender	
Social Change Online	Online Services Project Phase 2 — web site redevelopment	$220 880	Dec. 2001–June 2002	Public tender	
Apex	Web publisher	$62 696	Sept 2001–July 2002	Select tender	
Gryphon	Web developer	$67 760	Jan. 2002–Aug. 2002	Select tender	
Gel Group	Web developer	$25 168	July 2001–Sept. 2001	Select tender	
Colmar Brunton	Client satisfaction research	$99 990	July 2001–Dec. 2001	Selective tender	Client satisfaction survey and recommendations
Marie Louise Hunt	Media services	$15 000	July 2001–Aug. 2001	Direct engagement	Assist with the provision of media services
CIT Solutions	Training and development	$43 335	July 2001–Sept. 2001	Select tender	Training in feedback skills
Cape York Land Council	Undertake work for the Cape York Peninsula PBC project NPP 074	$67 500	May 2001–July 2002	Select tender	
James Cook University	Research	$250 000	June 2001–June 2006	Direct engagement	

Appendix IV 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, p. 27. An outline of the responsibilities of its executive and senior management committees is provided in the section on 'Management', p. 82.

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', p. 24.

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* (as amended) under which the Tribunal was established.

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 four formal requests for access to documents under the Freedom of Information Act. Full access was given to two requests, one request was withdrawn, and one request remained unfinalised at the end of 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. 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. 100).

As part of the Tribunal-wide operational review, an external client satisfaction research project was undertaken during the reporting period (for more information see 'Accountability to clients', p. 100). The results of the project were outstanding by the end of the financial year.

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 section 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;*
- *Talking Native Title* quarterly newsletter;*
- *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 section 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.

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 'Information management', p. 95).

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.

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 V Use of advertising and market research

The National Native Title Tribunal used the services of a market research organisation during the reporting period. The Tribunal paid $29 997 for the conduct of an evaluation of client satisfaction.

The costs for the services of an external distribution agency for labour costs associated with sorting, packaging, mailing and storage of information products amounted to $7 093 (Sundream Pty Ltd operating as Northside Distributors) for the reporting period.

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

Notification of applications as required under the Act	$430 983.01
Staff recruitment	$154 791.29
Other advertising (for example, tenders and consultants)	$2 114.19

Appendix VI Audit report and notes to the financial statements

INDEPENDENT AUDIT REPORT

To the Minister for Immigration and Multicultural and Indigenous Affairs

Scope

I have audited the financial statements of the National Native Title Tribunal for the year ended 30 June 2002. The financial statements comprise:

- Statement by the Chief Executive;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Contingencies and Commitments; and
- Notes to and forming part of the Financial Statements.

The National Native Title 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 the 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 Accounting Standards and other mandatory professional reporting requirements in Australia and statutory requirements so as to present a view which is consistent with my understanding of the National Native Title Tribunal's financial position, its financial performance and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In my opinion the financial statements:

(i) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and

(ii) give a true and fair view, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia and the Finance Minister's Orders, of the financial position of the National Native Title Tribunal as at 30 June 2002, and its financial performance and cash flows for the year then ended.

Australian National Audit Office

Mark Moloney
Senior Director

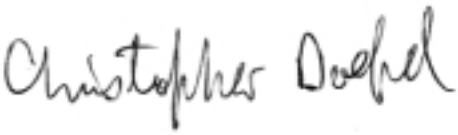
Delegate of the Auditor-General

Canberra
11 October 2002

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 2 to the Finance Minister's Orders, made under section 63 of the *Financial Management and Accountability Act 1997*



CHRISTOPHER DOEPEL
Chief Executive

9 October 2002

NATIONAL NATIVE TITLE TRIBUNAL
STATEMENT OF FINANCIAL PERFORMANCE *for the period ended 30 June 2002*

	Note	2001-02 $'000	2000-01 $'000
Revenues from ordinary activities			
Revenues from government	3A	**28,506**	25,896
Sale of goods and services	3B	**172**	103
Interest	3C	**152**	133
Net gains from sale of assets	3D	**–**	5
Total revenues from ordinary activities		**28,830**	26,137
Expenses from ordinary activities			
Employees	4A	**16,607**	14,310
Suppliers	4B	**11,053**	10,173
Depreciation and amortisation	4C	**764**	747
Write-down of assets	4D	**1**	9
Total expenses from ordinary activities		**28,425**	25,239
Net operating surplus from ordinary activities		**405**	898
Net surplus		**405**	898
Equity interests			
Net surplus attributable to the Commonwealth		**405**	898
Total changes in equity other than those resulting from transactions with owners as owners		**405**	898

NATIONAL NATIVE TITLE TRIBUNAL
STATEMENT OF FINANCIAL POSITION *as at 30 June 2002*

	Note	2001-02 $'000	2000-01 $'000
ASSETS			
Financial assets			
Cash	5A	**3,280**	2,736
Receivables	5B	**153**	233
Capital use charge overpayment		**182**	18
Accrued revenues	5C	**5**	8
Total financial assets		**3,620**	2,995
Non-financial assets			
Land and buildings	6A	**968**	775
Infrastructure, plant and equipment	6B	**456**	481
Intangibles	6C	**12**	52
Other	6E	**801**	1,006
Total non-financial assets		**2,237**	2,314
Total assets		**5,857**	5,309
LIABILITIES			
Provisions			
Employees	7A	**3,153**	2,945
Total provisions		**3,153**	2,945
Payables			
Suppliers	8	**413**	422
Total payables		**413**	422
Total liabilities		**3,566**	3,367
NET ASSETS		**2,291**	1,942
EQUITY			
Parent entity interest			
Contributed equity		**2,415**	2,415
Accumulated deficits		**(124)**	(473)
Total parent entity interest	9	**2,291**	1,942
Total equity		**2,291**	1,942
Current Liabilities		**2,153**	2,004
Non-Current Liabilities		**1,413**	1,363
Current Assets		**4,421**	4,001
Non-Current Assets		**1,436**	1,308

NATIONAL NATIVE TITLE TRIBUNAL

STATEMENT OF CASH FLOWS *for the year ended 30 June 2002*

	Note	2001-02 $'000	2000-01 $'000
OPERATING ACTIVITIES			
Cash received			
Appropriations for outputs		**28,493**	25,883
Sales of goods and services		**183**	100
GST refunds		**1,205**	1,008
Interest		**155**	169
Total cash received		**30,036**	27,160
Cash used			
Employees		**16,391**	14,105
Suppliers		**11,989**	12,472
Total cash used		**28,380**	26,577
Net cash from operating activities	10	**1,656**	583
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		**–**	–
Total cash received		**–**	–
Cash used			
Purchase of property, plant and equipment		**892**	483
Total cash used		**892**	483
Net cash used in investing activities		**(892)**	(483)
FINANCING ACTIVITIES			
Cash received			
Proceeds from equity injections		**–**	43
Total cash received		**–**	43
Cash used			
Capital use paid		**220**	182
Total cash used		**220**	182
Net cash used in financing activities		**(220)**	(139)
Net increase in cash held		**544**	(39)
Cash at the beginning of the reporting period		**2,736**	2,775
Cash at end of reporting period		**3,280**	2,736

NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF COMMITMENTS *as at 30 June 2002*

	Note	2001-02 $'000	2000-01 $'000
BY TYPE			
CAPITAL COMMITMENTS			
Infrastructure, plant and equipment		–	–
Total capital commitments		–	–
OTHER COMMITMENTS			
Operating leases[1]		2,047	2,751
Other commitments[2]		1,155	2,493
Total other commitments		3,202	5,244
COMMITMENTS RECEIVABLE		291	476
Net commitments		2,911	4,768
BY MATURITY			
All net commitments			
One year or less		2,200	2,724
From one to two years		687	1,506
From two to five years		24	538
Over five years		–	–
Net commitments		2,911	4,768
Operating Lease Commitments			
One year or less		1,150	1,121
From one to two years		687	844
From two to five years		24	536
Over five years		–	–
Net commitments		1,861	2,501

1 Operating leases included are effectively non-cancellable and comprise leases for office accommodation.

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.

NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF CONTINGENCIES *as at 30 June 2002*

	Note	2001-02	2000-01
CONTINGENT LOSSES		–	–
CONTINGENT GAINS		–	–
Net contingencies		–	–

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

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 an 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:

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

- Finance Minister's Orders (being the Financial Management and Accountability (Financial Statements 2001-2002) Orders);
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Board;
- other authoritative pronouncements of the Board; and
- Consensus Views of the Urgent Issues Group.

The statements have also been prepared having regard to the Explanatory Notes to Schedule 1, and Finance Briefs issued by the Department of Finance and Administration.

The 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. No allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the 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 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 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.

Administered revenues, expenses, assets and liabilities and cash flows reported in Note 16 are accounted for on the same basis and using the same policies as for Agency items, except where otherwise stated at Note 1.17.

1.3 Changes in Accounting Policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2000-01, except in respect of:

- Output appropriations (refer to Note 1.4); and
- Presentation and disclosure of administered items (refer to Note 1.17).

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

1.4 Revenue

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

(a) Revenues from Government

The full amount of the appropriation for departmental outputs for the year is recognised as revenue. This is a change in accounting policy caused by the introduction of a new requirement to this effect in the Finance Minister's Orders. (In 2000-01, output appropriations were recognised as revenue to the extent the appropriations had been drawn down from the Official Public Account).

The change in policy had no financial effect in 2001-02 as the full amount of the output appropriation for 2000-01 had been drawn down in that year.

(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.

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

From 1 July 2001, appropriations designated as 'Capital – equity injections' are recognised directly in Contributed equity according to the following rules determined by the Finance Minister:

- to the extent that the appropriation is not dependent on future events, as at 1 July; and
- to the extent that it is dependent on specified future events requiring future performance, on drawdown.

The change in policy has no financial effect in 2001-02 as no equity injections were received by the Tribunal in either 2000-01 or 2001-02.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

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 2002 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 2002. 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 amounting to $1,739,682 (2000-01: $1,464,475) 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.

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 2002.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

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 Note 15.

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 the Tribunal's leases are generally for no more than 3 years, so no revaluations have been required.

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 remain at historical cost as this represents the most appropriate value.

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.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

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:

	2001-02	2000-01
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 11% (2001: 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.

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.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

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 have been rounded to the nearest $1,000 except in relation to the following:

- remuneration of executives;
- remuneration of auditors; and
- appropriation note disclosures.

1.17 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are presented in the Notes to these financial statements. In 2000-01, summary information was presented in Schedules following the primary Agency statements. Either presentation is permitted by AAS 29 Financial Reporting by Government Departments.

Accounting policies for administered items are as stated in note 1.2 above.

These financial statements do not report the receipt of administered appropriations from the Official Public Account (OPA) as administered revenues, nor are transfers of administered receipts to the OPA reported as administered expenses. This change in 2001-02 acknowledges that the administered activities of agencies are performed on behalf of the Commonwealth Government and it is not appropriate to identify resources transferred between administered activities of different agencies as revenues and expenses of the Administered entity. Generally, therefore, the notes to these financial statements do not report any transactions or balances that are internal to the Administered entity. One exception is the disclosure of administered cash flows, since cash transferred between the OPA and the Tribunal's administered bank account is necessary for the completeness of the cash flow disclosures.

All administered revenues 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 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.

NATIONAL NATIVE TITLE TRIBUNAL

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 3: Operating Revenues		
Note 3A – Revenues from Government		
Appropriations for outputs	**28,493**	25,883
Resources received free of charge	**13**	13
Total	**28,506**	25,896
Note 3B – Sales of Goods and Services		
Services	**172**	103
Note 3C – Interest Revenue		
Interest on deposits	**152**	133
Note 3D – Net Gains from Sales of Assets		
Infrastructure, plant and equipment		
Trade-ins received	**–**	5
Net book value at trade in	**–**	–
Net gain	**–**	5
Note 4: Operating Expenses		
Note 4A - Employee Expenses		
Remuneration (for services provided)	**16,094**	13,907
Separation and redundancy	**145**	13
Total remuneration	**16,239**	13,920
Other employee expenses	**368**	390
Total	**16,607**	14,310
Note 4B - Suppliers Expenses		
Supply of goods and services	**8,335**	7,669
Operating lease rentals[1]	**2,718**	2,504
Total	**11,053**	10,173

[1] These comprise minimum lease payments only.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 4C - Depreciation and Amortisation		
Depreciation of property, plant and equipment	**764**	747
The aggregate amount of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	**599**	483
Plant and equipment	**125**	131
Intangibles	**40**	133
Total	**764**	747
Note 4D – Write down of assets		
Bad and doubtful debts expense	**1**	1
Plant and equipment – write-off on disposal	**–**	8
Total	**1**	9

Note 5: Financial Assets

Note 5A – Cash		
Cash at bank and on hand	**3,280**	2,736
All cash recognised is a current asset.		
Note 5B – Receivables		
Goods and services	**31**	30
Less: provision for doubtful debts	**(3)**	(5)
	28	25
GST receivable	**125**	208
	153	233
All receivables are current assets.		
Receivables (gross) are aged as follows:		
Not overdue	**143**	223
Overdue by:		
less than 30 days	**5**	3
30 to 60 days	**4**	6
60 to 90 days	**1**	1
More than 90 days	**3**	5
	13	15
Total receivables (gross)	**156**	238

NATIONAL NATIVE TITLE TRIBUNAL

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 5: Financial Assets (continued)		
Note 5C – Accrued revenues		
Interest	**5**	8
Note 6: Non-financial assets		
Note 6A – Land and buildings		
Leasehold Improvements – at cost	**3,778**	2,986
Accumulated amortisation	**(2,810)**	(2,211)
Total land and buildings	**968**	775
Note 6B – Plant and equipment		
Plant and equipment – at cost	**1,155**	1,034
Accumulated depreciation	**(710)**	(573)
	445	461
Plant and equipment – at 1998-99 valuation	**80**	101
Accumulated depreciation	**(69)**	(81)
	11	20
Total plant and equipment	**456**	481
Note 6C- Intangibles		
Computer software – at cost	**890**	890
Accumulated amortisation	**(878)**	(838)
Total Intangibles	**12**	52

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

Note 6D - Analysis of Property, Plant, Equipment and Intangibles

TABLE A - Reconciliation of the opening and closing balances of property, plant and equipment and intangibles.

Item	Buildings - Leasehold Improvements	Plant & equipment	Intangibles	Total
	$'000	$'000	$'000	$'000
Gross value at 1 July 2001	2,986	1,135	890	5,011
Additions – Asset purchases	792	100	–	892
Disposals	–	–	–	–
Gross value at 30 June 2002	3,778	1,235	890	5,903
Accumulated depreciation at 1 July 2001	(2,211)	(654)	(838)	(3,703)
Depreciation charges for the year	(599)	(125)	(40)	(764)
Adjustments for disposals	–	–	–	–
Accumulated depreciation/ amortisation at 30 June 2002	(2,810)	(779)	(878)	(4,467)
Net book value at 30 June 2002	968	456	12	1,436
Net book value at 1 July 2001	775	481	52	1,308

TABLE B – Assets at valuation

Item	Buildings - Leasehold Improvements	Plant & equipment	Intangibles	Total
	$'000	$'000	$'000	$'000
As at 30 June 2002				
Gross value	–	80	–	80
Accumulated depreciation	–	(69)	–	(69)
Net book value	–	11	–	11
As at 30 June 2001				
Gross value	–	80	–	80
Accumulated depreciation	–	(67)	–	(67)
Net book value	–	13	–	13

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 6: Non-financial assets (continued)		
Note 6E – Other Non-Financial Assets		
Prepaid expenses	**801**	1,006
	801	1,006

All other non-financial assets are current assets.

Note 7: Provisions

Note 7A – Employee Provisions		
Salaries and wages	**428**	407
Leave	**2,693**	2,538
Aggregate employee entitlement liability	**3,121**	2,945
Other	**32**	–
Total	**3,153**	2,945
Current	**1,740**	1,582
Non-current	**1,413**	1,363

Note 8: Payables

Supplier Payables		
Trade creditors	**413**	404
Operating lease rentals	**–**	18
	413	422

All payables are current liabilities.

Note 9: Equity

Analysis of Equity

Item	Accumulated Results		Contributed Equity		TOTAL EQUITY	
	2001-02 $'000	2000-01 $'000	2001-02 $'000	2000-01 $'000	2001-02 $'000	2000-01 $'000
Balance 1 July 2001	**(473)**	(1,271)	**2,415**	2,415	**1,942**	1,144
Operating result	**405**	898	**–**	–	**405**	898
Capital Use Charge	**(56)**	(100)	**–**	–	**(56)**	(100)
Balance at 30 June 2002	**(124)**	(473)	**2,415**	2,415	**2,291**	1,942
Less: outside equity interest	**–**	–	**–**	–	**–**	–
Total equity attributable to the Commonwealth	**(124)**	(473)	**2,415**	2,415	**2,291**	1,942

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

Note 10: Cash Flow Reconciliation

	2001-02 $'000	2000-01 $'000
Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows:		
• Cash at year end per Statement of Cash Flows	**3,280**	2,736
• Statement of Financial Position items comprising above cash: 'Financial Assets – Cash'	**3,280**	2,736
Reconciliation of operating surplus to net cash provided by operating activities:		
Net surplus	**405**	898
Depreciation/Amortisation	**764**	747
Write down of non-current assets	**–**	8
Decrease (increase) in net receivables	**80**	(223)
Decrease (increase) in accrued revenues	**3**	36
Decrease (increase) in prepayments	**205**	(968)
Increase (decrease) in employee liabilities	**208**	213
Increase (decrease) in suppliers liabilities	**(9)**	(128)
Net cash provided by operating activities	**1,656**	583

Note 11: Executive Remuneration

The number of Executives who received or were due to receive total remuneration of $100,000 or more:		
$110,001 to $120,000	**–**	**2**
$120,001 to $130,000	**1**	–
$130,001 to $140,000	**1**	1
$180,001 to $190,000	**1**	–
The aggregate amount of total remuneration of Executives shown above.	**$451,952**	$359,586
The aggregate amount of separation and redundancy payments during the year to Executives shown above.	**Nil**	Nil

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 12: Remuneration of Auditors		
Financial statement audit services are provided free of charge to the Tribunal The fair value of the services provided was:	**13,000**	13,000

No other services were provided by the Auditor-General.

Note 13: Average Staffing Levels		
The average staffing levels for the business operation of the Tribunal during the year were:	**242**	213

Note 14: Act of Grace Payments and Waivers

No Act of Grace payments were made during the reporting period (2000-01: nil).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management and Accountability Act 1997* (2000-01: nil).

No payments were made under the Defective Administration Scheme during the reporting period (2000-01: nil).

Note 15: Financial Instruments

Note 15A – 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	5A	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 4.48% for the year (2000-01: 5.45%). Interest is paid quarterly.
Receivables for goods and services	5B	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 (200-01: 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 a 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 nott part of the Commonwealth legal entity. Settlement is usually made net 30 days.

Note 15: Financial Instruments (continued)

Note 15B – 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							
		01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000	01-02 $'000	00-01 $'000
Financial Assets																	
Cash at Bank	5A	**3,273**	2,728	**–**	–	**–**	–	**–**	–	**–**	–	**7**	8	**3,280**	2,736	**4.48**	5.45
Receivables for goods and services	5B	**–**	–	**–**	–	**–**	–	**–**	–	**–**	–	**156**	238	**156**	238	**n/a**	n/a
Less: provision for doubtful debts	5B	**–**	–	**–**	–	**–**	–	**–**	–	**–**	–	**(3)**	(5)	**(3)**	(5)		
Total Financial Assets (Recognised)		**3,273**	2,728	**–**	–	**–**	–	**–**	–	**–**	–	**160**	241	**3,433**	2,969		
Total Assets														**5,858**	5,309		
Financial Liabilities																	
Trade Creditors	8	**–**	–	**–**	–	**–**	–	**–**	–	**–**	–	**413**	422	**413**	422	**n/a**	n/a
Total Finacial Liabilities(Recognised)		**–**	–	**–**	–	**–**	–	**–**	–	**–**	–	**413**	422	**413**	422		
Total Liabilities														**3,566**	3,367		

Note 15: Financial Instruments (continued)

Note 15C – Net Fair Values of Financial Assets and Liabilities

	Note	2001-02 Total carrying amount $'000	2001-02 Aggregate net fair value $'000	2000-01 Total carrying amount $'000	2000-01 Aggregate net fair value $'000
Departmental Financial Assets					
Cash at Bank	5A	**3,280**	**3,280**	2,736	2,736
Receivables for Goods and Services (net)	5B	**153**	**153**	233	233
Total Financial Assets		**3,433**	**3,433**	2,969	2,969
Financial Liabilities (Recognised)					
Trade creditors	8	**413**	**413**	422	422
Total Financial Liabilities (Recognised)		**413**	**413**	422	422

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.

Note 15D – Credit Risk Exposure

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.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 16: Administered Items		
Note 16A – Revenues Administered on Behalf of Government *for the year ended 30 June 2002*		
Other taxes, fees and fines		
Non-taxation – fees	6	6
Total Revenues Administered on Behalf of Government	6	6
Note 16B – Expenses Administered on Behalf of Government *for the year ended 30 June 2002*		
Write-down of assets		
Financial assets - receivables	–	1
Total Expenses Administered on Behalf of Government	–	1

Note 16C – Assets Administered on Behalf of Government *as at 30 June 2002*

There were no Administered assets at 30 June 2002
(30 June 2001: Nil)

Note 16D – Liabilities Administered on Behalf of Government *as at 30 June 2002*

There were no Administered liabilities at 30 June 2002
(30 June 2001: Nil)

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

	2001-02 $'000	2000-01 $'000
Note 16E –Administered Cash Flows *for the year ended 30 June 2002*		
OPERATING ACTIVITIES		
Cash received		
Other taxes, fees and fines	**6**	12
Total cash received	**6**	12
Cash used		
Cash to Official Public Account	**6**	12
Total cash used	**6**	12
Net increase in cash held	**–**	–
Cash at the beginning of the reporting period	**–**	–
Cash at the end of the reporting period	**–**	–

Note 16F –Administered Commitments
as at 30 June 2002

There were no Administered commitments at 30 June 2002 (30 June 2001: nil).

Note 16G –Administered Contingencies
as at 30 June 2002

There were no Administered contingencies at 30 June 2002 (30 June 2001: nil).

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

Note 17: Appropriations

Note 17A – Appropriation Acts (No. 1/3) 2001-2002

Particulars	Administered Expenses $	Departmental Outputs $
Year ended 30 June 2002		
Balance carried forward from previous year	–	320,897
Appropriation for reporting period (Act 1)	–	28,493,000
Appropriation for reporting period (Act 3)	–	–
Adjustments determined by the Finance Minister	–	–
Amounts from Advance to the Finance Minister	–	–
Amounts from Comcover receipts	–	–
Refunds credited (FMA s 30)	–	–
GST credits (FMA s 30A)	–	1,205,431
Annotations to 'net appropriations' (FMA s 31)	–	337,868
Other annotations	–	–
Transfer to/from other agencies (FMA s32)	–	–
Administered expenses lapsed (expended)	–	–
Available for payments	**–**	**30,357,196**
Payments made	**–**	**29,492,565**
Balance carried forward to next year	**–**	**864,631**
Year ended 30 June 2001		
Available for payments 2001	–	27,562,473
Payments made 2001	–	27,241,576
Balance carried forward to 1 July 2001	–	320,897

FMA = Financial Management and Accountability Act 1997
Act 1 = Appropriations Act (No.1) 2001-2002
Act 3 = Appropriations Act (No.3) 2001-2002

There were no savings offered up during the year and there have been no savings offered up in previous years which are still ongoing.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

Note 17B – Appropriation Acts (No. 2/4) 2001-2002

Particulars	Administered	Capital				Total
		Departmental			Admin	
		Equity	Loans	Carry-overs	Capital	
	$	$	$	$	$	$
Year ended 30 June 2002						
Balance carried forward from previous year	–	–	–	2,415,000	–	2,415,000
Current appropriation (Act 2)	–	–	–	–	–	–
Current appropriation (Act 4)	–	–	–	–	–	–
Adjustments determined by the Finance Minister	–	–	–	–	–	–
Amounts from Advances to the Finance Minister	–	–	–	–	–	–
Amounts from Comcover receipts	–	–	–	–	–	–
Refunds credited (FMA S30)	–	–	–	–	–	–
GST credits (FMA s 30A)	–	–	–	–	–	–
Annotations to 'net appropriations' (FMA s 31)	–	–	–	–	–	–
Other annotations	–	–	–	–	–	–
Transfers to/from other agencies (FMA s 32)	–	–	–	–	–	–
Administered expenses lapsed under determination	–	–	–	–	–	–
Available for payments	**–**	**–**	**–**	**2,415,000**	**–**	**2,415,000**
Payments made	**–**	**–**	**–**	**–**	**–**	**–**
Balance carried forward to next year	**–**	**–**	**–**	**2,415,000**	**–**	**2,415,000**
Year ended 30 June 2001						
Available for payments 2001	–	–	–	2,415,000	–	2,415,000
Payments made 2001	–	–	–	–	–	–
Balance carried forward to 1 July 2001	–	–	–	2,415,000	–	2,415,000

Act 2 = Appropriations Act (No.2) 2001-2002
Act 4 = Appropriations Act (No.4) 2001-2002

There were no savings offered up during the year and there have been no savings offered up in previous years that are still ongoing

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

Note 18: Assets Held in Trust

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	
	2001-02 $'000	2000-01 $'000
Balance carried forward from previous year	–	–
Receipts during the year	26	1
Available for payments	26	1
Payments made	26	1
Balance carried forward to next year	–	–

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 – Total Cost/Contribution of Outcome (Whole of Government)

	Outcome	
	Actual $	Budget $
Net taxation, fees and fines revenues	–	–
Other administered revenues	–	–
Net Subsidies, benefits and grants expenses	–	–
Other administered expenses	–	–
Net cost of departmental outputs	28,101	28,454
Cost of outcome before extraordinary items	28,101	28,454
Extraordinary items	–	–
Net Cost to Budget Outcome	28,101	28,454

Note 19B - Major Departmental Revenues & Expenses by Output Group

	Output Group 1		Output Group 2		Output Group 3		Output Group 4		Total	
	2002 $'000	2001 $'000	2002 $'000	2001 $'000	2002 $'000	2001 $'000	2002 $'000	2001 $'000	2002 $'000	2001 $'000
Operating revenues										
Revenues from government	**4,846**	3,884	**12,258**	11,135	**3,991**	2,849	**7,411**	8,028	**28,506**	25,896
Sale of goods and services	**30**	16	**77**	47	**25**	12	**46**	33	**178**	108
Other non-taxation revenues	**25**	20	**63**	57	**20**	14	**38**	42	**146**	133
Total operating revenues	**4,901**	3,920	**12,398**	11,239	**4,036**	2,875	**7,495**	8,103	**28,830**	26,137
Operating expenses										
Employees	**2,823**	2,147	**7,141**	6,153	**2,325**	1,574	**4,318**	4,436	**16,607**	14,310
Suppliers	**1,879**	1,526	**4,753**	4,374	**1,547**	1,119	**2,874**	3,154	**11,053**	10,173
Depreciation and amortisation	**130**	113	**328**	321	**107**	82	**199**	231	**764**	747
Other	**–**	1	**1**	4	**–**	1	**–**	3	**1**	9
Total operating expenses	**4,832**	3,787	**12,223**	10,852	**3,979**	2,776	**7,391**	7,824	**28,425**	25,239

Note 19C - Major Classes of Departmental Assets and Liabilities by Output Group

Output specific departmental assets										
Goods and services receivable	**5**	5	**14**	13	**4**	3	**8**	9	**31**	30
Net GST receivable	**21**	31	**54**	90	**17**	23	**33**	64	**125**	208
Less: provision for doubtful debts	**(1)**	(1)	**(1)**	(2)	**–**	-	**(1)**	(2)	**(3)**	(5)
Buildings	**165**	116	**416**	333	**135**	86	**252**	240	**968**	775
Plant and equipment	**77**	72	**196**	207	**64**	53	**119**	149	**456**	481
Intangibles	**2**	8	**6**	22	**2**	6	**3**	16	**13**	52
Total output specific departmental assets	**269**	231	**685**	663	**222**	171	**414**	476	**1,590**	1,541
Other departmental assets										
Cash at bank and on hand	**558**	411	**1,410**	1,176	**459**	301	**853**	848	**3,280**	2,736
Other	**168**	155	**425**	444	**138**	113	**257**	320	**988**	1,032
Total other departmental assets	**726**	566	**1,835**	1,620	**597**	414	**1,110**	1,168	**4,268**	3,768
Output specific departmental liabilities										
Employees	**536**	442	**1,356**	1,266	**441**	324	**820**	913	**3,153**	2,945
Suppliers	**70**	63	**178**	181	**58**	47	**108**	131	**414**	422
Total output specific departmental liabilities	**606**	505	**1,534**	1,447	**499**	371	**928**	1,044	**3,567**	3,367
Total other departmental liabilities	**–**	–	**–**	–	**–**	–	**–**	–	**–**	–

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2002*

Note 19D – Major Classes of Administered Revenues and Expenses by Outcome

	Outcome	
	2001-02 $'000	2000-01 $'000
Operating revenues		
Fees	6	12
Total operating revenues	6	12
Total operating expenses	–	1

Note 19E – Major Classes of Administered Assets and Liabilities by Outcome

Total outcome specific administered assets	–	–
Total other administered assets	–	–
Total outcome specific administered liabilities	–	–
Total other administered liabilities	–	–

Appendix VII Glossary

For ease of reading the use of abbreviations and acronyms has been kept to a minimum in the report. For ease of reading, the use of abbreviations and acronyms has been kept to a minimum in the report.

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.
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: 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 Funds, 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.

Non-claimant application: an application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.

Non-current assets: assets other than current assets.

Non-current liabilities: liabilities other than current liabilities.

Notification: the act of formally making known or giving notices.

Party: an individual, group or organisation that has an interest in an area covered by a native title application, and (in most cases) has been accepted by the Federal Court of Australia to take part in the proceedings.

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.

Sections of the Native Title Act: included in this report are described at SCALEplus, the legal information retrieval system owned by the Attorney-General's Department at http://scaletext.law.gov.au/html/pasteact/2/1142/top.htm .

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).

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.

INDEX

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