National Native Title Tribunal

Annual Report 2002 – 2003

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ANNUAL REPORT
2002 – 2003

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 Tim Evans on freecall 1800 640 501 or email Tim_Evans@nntt.gov.au .

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18 September 2003

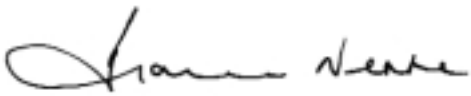
The Hon. Daryl Williams AM QC MP
Attorney-General
Parliament House
CANBERRA ACT 2600

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 2003.

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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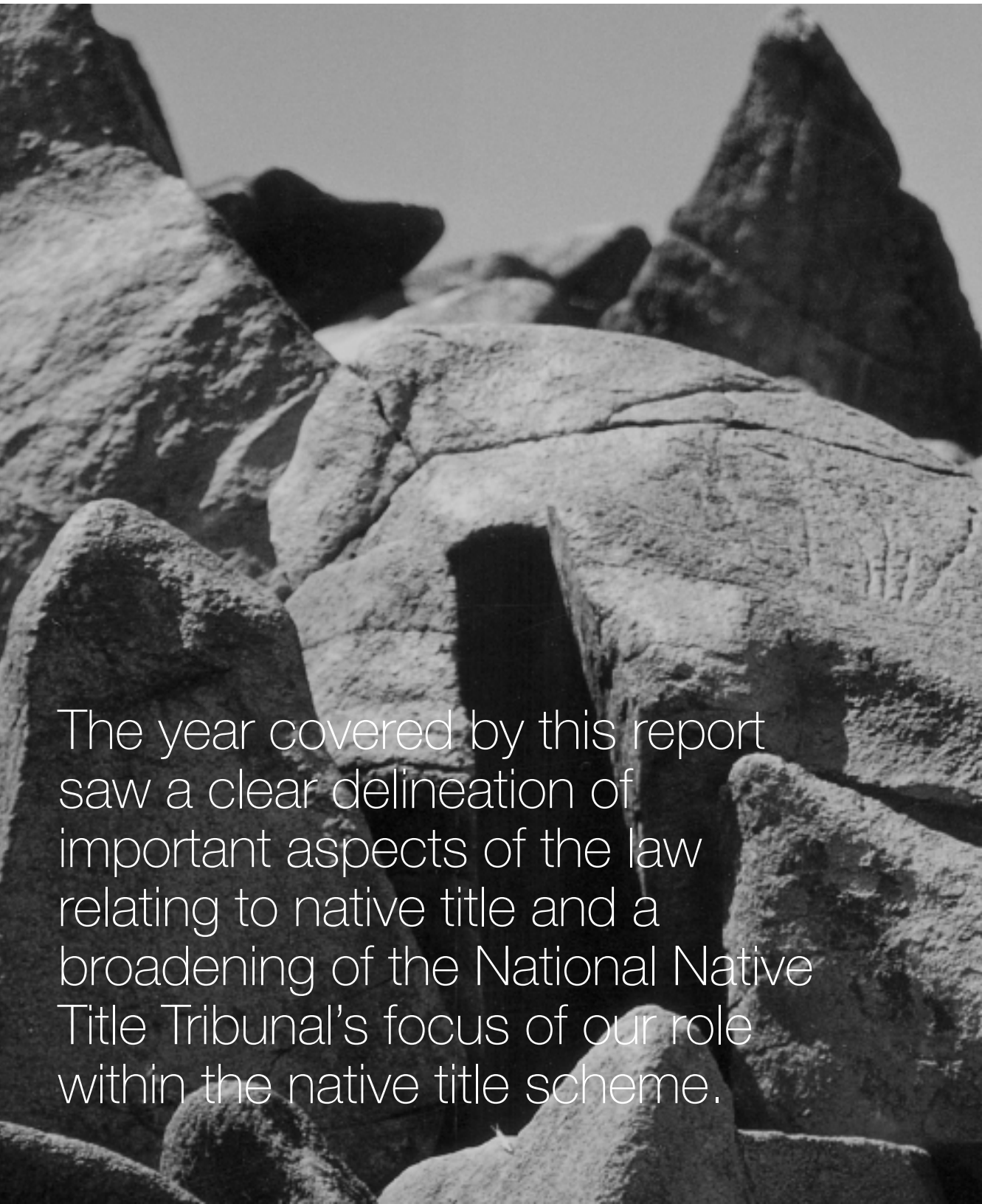


The year covered by this report saw a clear delineation of important aspects of the law relating to native title and a broadening of the National Native Title Tribunal's focus of our role within the native title scheme.

The year in review

Introduction

The year covered by this report saw a clear delineation of important aspects of the law relating to native title and a broadening of the National Native Title Tribunal's focus of its role within the native title scheme.

The landmark decisions of the High Court of Australia in *Western Australia v Ward*, *Wilson v Anderson*, and *Members of the Yorta Yorta Aboriginal Community v Victoria* (the *Yorta Yorta* case) clarified important legal principles and compelled a reassessment of aspects of native title law and practice.

The implications of those judgments are still being assessed by native title claim groups, governments at all levels, exploration and mining companies, land holders and other parties to native title proceedings—as well as institutions such as the Federal Court, native title representative bodies and the National Native Title Tribunal (the Tribunal).

The judgments had an immediate effect on such processes as the registration testing of native title determination applications, and influenced the Tribunal's thinking as we prepared our *Strategic Plan 2003–2005* (see Corporate planning, p. 108, and Appendix I, p. 127).

Some other consequences of legal developments from these and other judgments are discussed in various parts of this report.

This annual report has been prepared in accordance with the *Native Title Act 1993* (the Act), which requires the President of the Tribunal to prepare a report of the management of the administrative affairs of the Tribunal during each financial year. Although the report is primarily about the Tribunal, its focus is not confined to the management of the Tribunal's administrative affairs.

As in previous years, this 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.

Governmental reporting requirements mean that a document such as this must focus 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 land holders, government officers, company representatives, recreational land users, Tribunal members and employees, judges and many others. Each will have a range of experiences of, and responses to, the native title regime.

One object of the Act is to provide for the recognition and protection of native title. Recognition of a group's native title can bring profound social and psychological benefits to members of the group. These benefits are evident in a sense of pride and worth as a people who can 'walk tall' because they have been recognised by the broader community as the people for that area. For some people, that is the chief value of the native title process.

Although native title itself may not be an economically valuable commodity, economic benefits as well as heritage protection and other benefits are being secured as by-products of native title processes. As is evident in this report, people are using their procedural rights to negotiate a range of agreements before, after and independently of determinations that native title exists.

It is the stories of negotiations and their outcomes in human terms which provide evidence of what native title delivers to particular groups and the broader community.

The various influences of the native title scheme on 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, yet for many it is the human dimensions of native title which provide the true measure of success or effectiveness.

This overview describes:

- factors external to the Tribunal that affect how the Tribunal performs its functions;
- trends within the Tribunal and activities undertaken by the Tribunal in the reporting period; and
- trends in relation to native title that are likely to continue into the foreseeable future.

It is apparent from this report (and previous annual reports) that the nature and volume of the work undertaken by the Tribunal vary 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 (the Federal Court) 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.

External factors 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 or discontinuance of alternative legislative regimes in states;
- the policies and procedures of governments;
- the procedures and orders of the Federal Court; and
- the roles and capacity of native title representative bodies.

The Tribunal is also subject to external review, primarily by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund but also by the Aboriginal and Torres Strait Islander Social Justice Commissioner (see 'External scrutiny', p.118).

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 on native title

The only change in relation to the Act during the reporting period was the correction of a typographical error in the *Native Title Amendment Act 1998*.

More than 60 written judgments were delivered by the Federal Court on matters involving native title law during the year. They dealt with such matters as how to deal with overlapping claimant applications, who had sufficient interests to be parties to native title application proceedings,

whether a claim group was properly constituted, whether an applicant was properly authorised to make a claimant application, whether an applicant should be represented in court by someone who is not a legal practitioner, whether the Federal Court can make a determination of native title in favour of a party who has not made a claimant application, whether claimants should give evidence to the Federal Court jointly or in consultation with each other, whether a representative body (or a body exercising the powers and functions of a representative body) should be joined as a party to native title proceedings, whether a representative body could appear as *amicus curiae* in proceedings before the court, whether to issue injunctions to stop possible future acts in relation to the claim area, how to preserve evidence in advance of the substantive hearing, on what basis named applicants could be removed or replaced from claimant applications, and whether orders should be made restricting access to certain evidence.

The Federal Court reviewed decisions by Tribunal members or the Registrar about such matters as whether the parties had negotiated in good faith in relation to proposed future acts, whether an indigenous land use agreement (ILUA) should have been registered, and whether certain claimant applications should be registered.

As noted earlier, the High Court delivered judgments in three major native title cases during the reporting period. The main points of each decision are summarised in 'Appendix III Significant decisions', p. 134 to this report. From the many rulings made in those judgments, it is clear that:

- when an application for a determination of native title is made under the Act, it is to the terms of the Act that primary regard must be had—in other words, the Act has the principal and determinative role;
- native title is characterised by the general law of Australia as a bundle of rights;
- to establish that they have native title, a group of Indigenous people must be able to demonstrate that their group's observance of traditional laws and customs has continued substantially uninterrupted since the date when the Crown asserted sovereignty;
- native title claimants do not necessarily need to prove that they have recently used or been present in an area to show connection;
- native title may be extinguished partially, right by right, and with cumulative effect in the event of successive grants or appropriations;
- native title is extinguished completely by the grant of certain interests in land (including perpetual grazing leases over Western Division lands in New South Wales granted under the *Western Lands Act 1901*) and some vesting of land (e.g. the vesting of a national park or nature reserve in Western Australia under s. 33 of the *Land Act 1933*);
- some native title rights and interests are extinguished by the grant of some pastoral leases and mining leases.

The immediate and most direct effect of these judgments was to establish that native title has been extinguished over most of the land in the Western Division of New South Wales and substantial areas of Western Australia (including some national park areas). Some native title applications were significantly affected.

More broadly, if determinations of native title are to be made, these judgments have directed the attention of native title claim groups, governments and others to the need to:

- research thoroughly the history of dealings with parcels of land that are the subject of native title applications in order to ascertain whether native title has been partly or wholly extinguished by those dealings with the land; and
- assess whether there is sufficient evidence to establish as a matter of fact that native title rights and interests exist in relation to some or all of that land.

It is clear that, in some parts of Australia, groups of Aboriginal people will find it difficult, if not impossible, to demonstrate that their relationship with their traditional country meets the standard of proof required for a determination that native title exists. It is equally clear that, in some areas, few, if any, native title rights and interests will have survived the cumulative effect of various dealings in relation to the land.

Consequently, Indigenous groups and their representatives, governments, other parties and the Tribunal have been forced to take stock and assess how best to proceed in this more clearly delineated legal context.

Those deliberations have been informed by, among other things, presentations and discussions at native title conferences convened in Geraldton in September 2002 and Alice Springs in June 2003, a native title forum convened by the Tribunal in Perth in December 2002, and various information products prepared by the Tribunal.

One ongoing challenge is to work out where native title exists and who the native title holders are. Another challenge is how to deal with the aspirations of Aboriginal peoples and Torres Strait Islanders who have maintained strong connections to land and waters where, as a matter of law, native title is extinguished or survives in a limited way.

Other challenges include how to respond creatively and flexibly to other issues flowing from major court decisions, and how to find ways other than lengthy and complex litigation to resolve native title matters.

In light of recent court decisions, the willingness of parties to negotiate alternative outcomes where native title determinations are not possible has become increasingly important. It ensures that Indigenous Australians, governments and land managers or users reach solutions that meet their needs and recognise, respect and protect each other's interests.

For its part, the Tribunal took account of the legal environment when preparing its *Strategic Plan 2003–2005*. One consequence is that the Strategic Plan makes various references to 'native title and related outcomes'. So, for example, the Tribunal's purpose is to work with people to develop an understanding of native title and reach enduring native title and related outcomes. We focus our services on people with an interest in native title and related outcomes, and develop collaborative relationships with our clients and stakeholders to enhance the delivery of our services.

This expanded focus on native title and related outcomes is consistent with those sections of the Act that set out the purpose of mediation in relation to various types of native title applications and also provide that parties may make agreements involving matters other than native title, and that parties may request assistance from the Tribunal in negotiating such agreements.

Governments, particularly state and territory governments, can play a critical role in exploring the range of options that might be available to settle native title applications, including outcomes that do not involve or require a determination that native title exists. During the reporting period, there were examples of approaches which include, or may include, non-native title outcomes in various parts of the country.

In Western Australia, one consequence of the High Court's judgment in *Western Australia v Ward* was that native title had been extinguished by the vesting under which the Rudall River National Park was created. The state government announced, however, that it would negotiate with the Martu People for the joint management arrangements for the national park land. This announcement came near the end of negotiations which resulted in a consent determination of native title in relation to 136,000 square kilometres of land surrounding the national park.

In October 2002, the Victorian Government announced 'in principle' agreement with the Wotjobaluk People in relation to their native title application over land in the Woomera region. The agreement involves a proposed consent determination of non-exclusive native title rights in relation to the banks of part of the Wimmera River, a determination that native title does not exist over much of the claimed area, and the grant of freehold title to three parcels of land totalling 45 hectares which are of

historical and cultural significance to the Wotjobaluk People. It also includes arrangements for co-management of designated national parks and other culturally significant Crown reserves in part of the claimed area, the provision of non-recurrent capital funding and some ongoing administrative assistance for specific purposes, and the provision of signs indicating that the Wotjobaluk People have traditional association to the area.

In December 2002, the Terramungamine Reserve Agreement between the Tubbagah People, the New South Wales Government, the Dubbo City Council and the Dubbo Rural Lands Protection Board led to the creation of two new types of reserves—an Aboriginal burial ground and a reserve for the preservation of Aboriginal cultural heritage. This agreement was reached in the context of negotiations about a native title application, but constituted a non-native title outcome which was acceptable to the parties and resulted in the native title application being withdrawn. (See the case study at 'Output 1.2.2 — Claimant, non-claimant and compensation agreement-making', p. 62).

These outcomes illustrate some of the options which parties may consider when exploring ways of dealing with not only claimant applications but some of the underlying issues that have prompted Indigenous groups to make those applications.

The Wotjobaluk native title group meet with other rural interests to discuss their connection to country at a mediation conference in Dimboola, Victoria.

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. Rather, despite its alternative state provisions in relation to exploration and mining being confirmed by a Full Federal Court, the Queensland Government chose to revert to the right to negotiate scheme under the Act from 1 July 2003. That change in policy is likely to result in an increase in the volume and variety of native title work undertaken by the Tribunal in Queensland.

Policies and procedures of governments

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, key aspects of the Commonwealth's approach to native title claimant applications were published—one state government published new guidelines for dealing with native title applications, and two state governments took policy decisions in relation to proposed exploration and mining activity in areas where native title may exist.

Commonwealth

The Act provides that the Commonwealth Minister (currently the Attorney-General) is entitled to participate in the proceedings that are commenced when a native title application is filed in the Federal Court either:

- as a party in response to a notice of the application given to the Federal Court within the three-month notification period; or
- by intervening at any time in the proceeding, by giving written notice to the Federal Court.

The policy of the Australian Government in relation to native title was outlined in two speeches delivered by the Attorney-General at conferences in late 2002. It is apparent from those speeches that the Commonwealth may choose to become involved in a proceeding because:

- it has property and other direct interests in the area of land or waters;
- it has an interest in ensuring that the Act is interpreted in a way that is consistent with the Parliament's intention;

- it has a policy responsibility to ensure that the processes for reaching consent determinations of native title evolve in a manner consistent with the Act and native title law generally; and
- it operates on the principle that consistency delivers certainty.

The Commonwealth asserts that it has a clear and legitimate interest in the application of the following four principles to all consent determinations:

- consent determinations should create certainty about the native title rights recognised by setting out clearly (and with sufficient precision and specificity) the scope and application of native title rights and interests;
- those rights should reflect only what the common law allows, that is, only those rights capable of being recognised by the common law;
- the determination should comply with the requirements of the Act; and
- the process by which the determination is made should be transparent—so that those who want to participate in the process have an opportunity to do so, and those who are affected by a determination are satisfied that the process was fair.

According to the Attorney-General, the Commonwealth's interest arises because the credibility of the native title system depends on the consistency, effectiveness and sustainability of consent determinations.

Having offered to assist states and territories with the cost of compensation arising from the validation of pre-1997 government acts and specified government acts that the Act has permitted since 1997, the Commonwealth also wants to ensure that consent determinations of native title are limited to the rights they can recognise and protect; that is, rights that are recognisable by the common law, proved by the evidence and determined according to the Act.

The Attorney-General stated that, although consent determinations are limited in the rights they can recognise and protect, parties may negotiate on a range of matters that determine how those rights will be exercised in the future. Such negotiations may result, for example, in an ILUA which may be negotiated at the same time as a consent determination.

Western Australia

As noted in last year's annual report, the Government of Western Australia received a report commissioned in relation to a possible overhaul of mediation policy and practice in that state (the Wand Review) and a report by a Technical Task Force on Mineral Tenement and Land Title Applications.

In October 2002, in response to the Wand Review, the state government released its *Guidelines for the Provision of Evidentiary Material In Support of*

Applications for a Determination of Native Title. In summary, the guidelines are meant to assist those involved in the native title process to clearly understand the information the government requires in order to make a decision as to the possibility of settling a native title application by agreement. They were also aimed at giving all parties confidence in both the fairness and integrity of the government's approach.

The guidelines state the government's preference that, wherever possible, determinations of native title will be achieved by negotiation. For such determinations to be made, there must be sufficient evidence produced by the applicants to support their claims. The guidelines set out the basis upon which the government will decide to enter negotiations with regard to a consent determination of native title.

The government expects that the evidentiary material will consist of an expert report or reports, together with supporting material. The evidentiary basis of a 'connection report' must be credible.

The guidelines deal with such topics as the possible effect of overlapping applications on negotiations of any individual application, the importance and use of Aboriginal evidence, possible access to field notebooks and like material relied on by experts in preparing connection reports, confidentiality of information provided in connection reports and exchanged during any negotiation process, the role of other parties, and the form and content of a connection report.

While the government will not participate directly in the production of connection reports, it is anticipated that early consultation between native title applicants, their representatives and the Office of Native Title will assist to facilitate the production of connection reports by clarifying issues relating to the form and content of such reports.

The guidelines state that they will be reviewed and amended in accordance with developments in the case law.

The state government also worked towards the implementation of recommendations made by the Technical Task Force including establishing the Heritage Protection Working Group and the Mining Recommendations Working Group. The Heritage Protection Working Group is chaired by Tribunal member Bardy McFarlane. It is developing regional heritage protection agreements. The work of that group, and its potential impact on the number of objections to expedited procedure notices, is discussed later in this report (see 'Output 1.2.3 — Future act agreement-making', p. 67).

Queensland

On 27 November 2002, a Full Court of the Federal Court reversed a decision of a single judge of the Federal Court that certain of the alternative state provisions which related to mining and high impact exploration were invalid.

The day after the Full Court's decision, the Premier of Queensland announced that the Queensland Government would legislate to provide for the future act regime of the Native Title Act to operate in Queensland, probably from 1 July 2003.

Legislation giving effect to that announcement was enacted in March 2003. As a consequence, applications for exploration and mining tenements that were made before 30 March 2003 are being processed under the alternative state provisions. Other applications will be dealt with under the Act, and the Tribunal's jurisdiction in relation to those applications will take effect from 1 July 2003. The Tribunal has worked in close consultation with the Queensland Government to ensure a smooth transition from the state scheme to the Commonwealth scheme.

On 16 June 2003, the Queensland Government announced that agreement had been reached between the government, the Queensland Indigenous Working Group and the Queensland Mining Council about an arrangement involving various native title protection conditions.

States and territories generally

The Tribunal understands that state and territory governments are reviewing their guidelines in relation to the assessment of connection reports for the purpose of mediation in response to the judgments of the High Court in *Western Australia v Ward* and the *Yorta Yorta* case.

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 Tribunal 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 Chief Justice of the Federal Court convened the second National User Group meeting in Melbourne on 1 May 2003. It was well attended by representatives of states and territories, native title representative bodies, the Aboriginal and Torres Strait Islander Commission (ATSIC), industry groups and the Tribunal. It facilitated communication between the court and key stakeholders, and between those stakeholders and the court. Other user group meetings have been held in most states and the Northern Territory. These have provided useful forums for the participants to raise issues of general application in their jurisdictions.

The Federal Court has revised its indicative timeframe for dealing with native title applications. As noted in previous annual reports, the court had set a time goal for disposing of native title matters within three years from October 1999 or the date of filing (whichever was the later date). That target has been revised and the court now has as its objective that each matter will be disposed of within three years of being substantively allocated to a judge. The court recognises that, due to factors outside its control, that goal may not be achieved in every case.

It is clear from orders and directions of various judges, including provisional docket judges, that the court is taking a more active role in the case management of individual applications and is exploring a range of procedural options for progressing individual matters. The options being considered or practised by the court include:

- a regional approach to case management;
- the identification of categories of applications for different types of case management;
- the provision of early neutral evaluation of the prospects of success of some applications;
- the hearing of evidence from applicants (either for the limited purpose of preserving the evidence of applicants who are elderly or unwell or more generally in order to give some added impetus to the mediation process);
- the hearing and determination of questions of fact or law to facilitate subsequent mediation; and
- e-court as a means of managing the progress of some applications.

More intensive case management by the court affects and is affected by the way in which the Tribunal performs its functions. In his reasons for making a range of orders in respect of some claimant applications, Justice French confirmed that, when a native title application is referred to the Tribunal for mediation, the Tribunal has the responsibility to undertake mediation of all aspects of the application relevant to the purposes defined in s. 86A of the Act (see *Frazer v Western Australia*, 'Appendix III Significant decisions', p 140). This includes the development of a detailed

negotiation protocol, the exchange of information between the parties, the identification of issues to be resolved and times and venues of conferences under the Act in furtherance of the mediation process.

Timetables for discussions between the parties are an element of the mediation process undertaken by the Tribunal in the exercise of its statutory function and in respect of which it may be required to report to the court.

His Honour also noted that the court has a responsibility to ensure that the mediation processes for which the Act provides are applied and applied in a timely fashion. There are indications that other judges will approach the management of native title applications consistently with the approach outlined by Justice French.

The roles and capacity of native title representative bodies

Functions, powers and capacity

Native title representative bodies 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 (for example, 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 end of the reporting period there were 18 representative body areas with 15 recognised representative bodies for 16 of those areas.

Under s. 203FE of the Act, ATSIC may grant money to a person or body to enable that person or body to perform functions where there is no representative body. Grants can be made for the performance of all representative body functions or specified functions.

There continued to be no representative body for New South Wales. Much of the representative body work, however, was undertaken by the New South Wales Native Title Service.

On 17 April 2003, the Minister for Immigration and Multicultural and Indigenous Affairs withdrew the recognition of Mirimbiak Nations Aboriginal Corporation as the representative body in Victoria. The Minister has announced that a new body, to be known as Victorian Native Title Services, is being established. Funding is continuing from ATSIC to provide services in the meantime.

There continued to be 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).

On 8 April 2003, senior officers of the Tribunal and I met with the Chief Executive Officers of representative bodies at their national meeting in Adelaide. That meeting provided a useful opportunity for an exchange of information and views between representatives of the native title representative bodies and the Tribunal.

PJC review of the effectiveness of the Tribunal

The work of the Tribunal is scrutinised by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (the PJC).

Each year the PJC has a duty to examine the annual report of the Tribunal and reports to the Federal Parliament on any matters that appear in, or arise out of, that annual report and to which the Parliament's attention should be directed.

In addition the PJC has a duty, from time to time, to inquire into and report to the Parliament on 'the effectiveness of' the Tribunal. In September 2001, the PJC announced the commencement of a general inquiry into the effectiveness of the Tribunal and called for submissions. At the end of the reporting period the PJC had received 36 written submissions. It had taken evidence from various individuals and organisations in different parts of the country between 27 March and 20 June 2003. The Tribunal provided a detailed written submission and a supplementary written submission concerning a range of functions performed by the Tribunal. Representatives of the Tribunal were questioned at length by the PJC on two occasions. (For more information, see 'External scrutiny' p. 118).

At the end of the reporting period, the PJC had not delivered its report.

Social Justice Commissioner

Section 209 of the Act requires the Aboriginal and Torres Strait Islander Social Justice Commissioner to report annually to the Federal Attorney-General about 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. Those reports are wide-ranging documents which raise various policy issues. Sometimes they deal directly with aspects of the Tribunal's work.

The Tribunal has developed positive and constructive working relationships with the Social Justice Commissioner and his staff. Information is exchanged between the organisations. Where the Social Justice Commissioner has criticised the way the Tribunal administers parts of the Act, the Tribunal has provided detailed responses orally and in writing.

Trends within the Tribunal

Changes to membership

During the reporting period, one new full-time member (Mr Dan O'Dea) was appointed, the term of one part-time member (Dr Mary Edmunds) expired, and six members and two Deputy Presidents were reappointed. At the end of the reporting period there were 14 members.

Details of Tribunal membership are found at 'Organisational structure', p. 32 and 'Appendix II Staffing', p. 133.

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 Registrar, staff and members of 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 110 registration test decisions were made, about 13 per cent fewer than the 126 decisions made in the previous year. They included 27 registration tests made on applications for the second, third or fourth time.

The wave of notifications continued to decline in 2002–03, with 61 claimant applications being notified, compared with 135 in the previous year.

As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. At 30 June 2002, 317 currently active matters had been referred to the Tribunal for mediation. At 30 June 2003, 324 currently active claimant applications had been referred, including 23 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 2003, there were 633 claimant applications at some stage between lodgement and resolution. Although the total was only slightly greater than the 601 active claimant applications at 30 June 2002, there was a greater level of activity than the net increase might suggest. Some 39 claimant applications were discontinued, dismissed, combined with other applications or were the subject of full approved native title determinations, and 53 new claimant applications were lodged during the reporting period.

Forms of assistance offered by Tribunal

Under the Act the members, Registrar and employees of the Tribunal may provide various forms of assistance to help people prepare applications or help them at any stage in matters related to a native title proceeding, and help them to negotiate agreements such as ILUAs. The forms of assistance may include providing research services or conducting searches or records of interests in land or waters.

The Tribunal's Strategic Plan states that the Tribunal will develop, promote and deliver targeted services and products that meet identified client needs.

Much of the assistance in the past year has involved the provision of information products, maps and other geospatial services. Assistance was provided to parties on a case-by-case basis, as well as on a regional or state-wide basis (for example, by way of training sessions or forums). Some assistance was provided in cooperation with other bodies, such as the mentoring program for anthropologists conducted as a joint initiative with the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and ATSIC.

During the year, the Tribunal reviewed and revised its policy on providing assistance to parties and their representatives to attend meetings about native title matters. This was done to give greater flexibility, and a potentially broader range of forms of assistance, to them.

The Tribunal also considerably expanded its role in assisting parties to be effective participants in the native title process. Consultations undertaken in preparation of the *Strategic Plan 2003–2005* highlighted the need to address some significant capacity issues parties face, such as a lack of adequate technical resources or the need for a better understanding of the legislation and available options. The Tribunal considers that it has a leading role to play in facilitating flexible approaches to achieving native title and related outcomes. During 2002–03, members and employees collaborated with applicant groups, other parties and their representatives, developing strategies and sharing Tribunal resources, expertise and skills to assist them in building their capacity where needed. At the time of reporting, 30 initiatives had been completed or were being implemented in a diverse range of areas.

Capacity-building initiatives such as those described in this report (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83) will increasingly form an integral part of the Tribunal's assistance services in the future.

The Tribunal has developed a unique body of knowledge and experience in various fields relating to native title such as the law, anthropological research, mediation and dispute resolution, geospatial mapping and analysis, policy and procedural development and case management.

Through such capacity-building initiatives, the Tribunal is putting its collective knowledge, experience and financial resources to effective use within the overall native title system. It is developing innovative ways to

assist participants in native title processes, creating productive relationships with clients and enhancing their capacity to achieve agreements.

Assistance in negotiation of ILUAs and other agreements

The Act contains a scheme that enables the negotiation of ILUAs that can cover a range of land uses on areas where native title has been determined to exist or where it is claimed to exist. There was a substantial increase in the number of ILUAs registered in the reporting period, from 27 during 2001–02 to 35 during 2002–03. Another 25 were lodged for registration during the reporting period.

This report contains information about the level of ILUA activity around the country (see 'Output 1.2.1 — Indigenous land use agreement-making', p. 58), ILUAs lodged with the Tribunal for registration during the reporting period (see 'Output 1.1.3 — Indigenous land use agreement applications', p. 52) and Tribunal assistance in other forms of agreement-making (see 'Output group 1.2 — Agreement-making', p. 56), as well as descriptions of some ILUAs, which illustrate the variety of matters that are covered by such agreements.

Slight increase in 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 three determinations of native title. One was made by consent of the parties, one was unopposed and one was made after a lengthy trial.

The consent determination recognised that the Martu People have native title over some 136,000 square kilometres of their traditional land in the Western Desert region of Western Australia, and that the Ngurrara People also have native title rights and interests over some of that land. There was an unopposed determination that native title does not exist to an area in the Lake Macquarie region of New South Wales. After a long trial, the Federal Court ruled in *De Rose v South Australia* that native title does not exist over an area of 1,865 square kilometres of land in the north-west region of South Australia. Details of those decisions are set out later in this report (see 'Output 1.1.2 — Native title determinations' at p. 47 and 'Appendix III Significant decisions', p. 134).

The relatively low number of determinations in the reporting period reflects, among other things, the effect of significant judicial decisions on the negotiating position of parties. Major parties take time to consider

the implications of such judgments in relation to the areas where native title might exist (in part or in whole) or the nature and extent of information that is required to show that native title claim groups have the native title rights and interests they assert.

As noted earlier, the Tribunal understand that state and territory governments are reviewing their guidelines in relation to the assessment of connection reports for the purpose of mediation in response to the judgments of the High Court in *Western Australia v Ward* and the *Yorta Yorta* case.

As a common understanding of the legal requirements is reached among key parties, the possibility of consent determinations in some cases should improve. Where it is apparent that claimant groups may not be able to establish that they have native title in accordance with the current legal requirements (or where any such native title rights have been substantially reduced or totally extinguished by dealings in relation to the land), parties will need to consider whether other outcomes might be negotiated in the context of Tribunal-convened mediation.

The Tribunal's Strategic Plan states that the Tribunal will engage with clients and stakeholders to develop, promote and facilitate comprehensive approaches to reach 'native title and related outcomes'. As major parties re-engage in the process, it may be that some claimant applications will be resolved by partial determinations of native title and other forms of settlement along the lines noted earlier in this overview.

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.

As is evident later in this report, there have been shifting trends in the future act work undertaken by the Tribunal during the reporting period. Future act consent determinations are becoming an increasingly common means of finalising negotiations.

Northern Territory

The volume of future act work undertaken by the Tribunal in the Northern Territory, particularly in relation to objections to the expedited procedure for the proposed grant of exploration tenements, peaked in the previous reporting period and then tapered off during the year. The decrease was due in part because of a change of approach to objections by the Northern Land Council and in part because the backlog of

exploration permit applications in place when the Northern Territory invoked the future act regime under the Act in September 2000 was cleared during the reporting period.

Western Australia

Historically, the majority of the future act notices published under the Act have been in relation to areas of Western Australia.

The use of the Tribunal's mediation services in that state remained relatively high, and some cases (particularly in relation to the Burrup Peninsula agreement, see case study on p. 70) required significant Tribunal resources. There was a significant increase in the number of future act consent determinations in the state. These are becoming an increasingly common means of finalising negotiations.

The Tribunal also assisted the state and other parties to implement recommendations of the Technical Task Force on Mineral Tenement and Land Title Applications to develop agreements that might eliminate the need for native title parties to lodge objections to the expedited procedure.

Queensland

There was little future act work for the Tribunal in Queensland during the reporting period, but that is likely to change significantly in the years ahead as a consequence of the future act regime of the Act operating in that state from 1 July 2003.

Details of the Tribunal's future act work in those jurisdictions and elsewhere in the country are set out later in this report (see 'Output 1.2.3 — Future act agreement-making' p. 67 and 'Output group 1.3 — Arbitration' p. 75).

Future trends

In my overview in the previous two annual reports, I made observations about future trends in native title law and practice. Events in the reporting period have confirmed many of those trends, and I will note some of them by reference to those events.

The law in relation to native title will become clearer

The landmark decisions of the High Court during the reporting period, as well as judgments of the Federal Court, have served to clarify our understanding of the law and resolve many of the outstanding issues in relation to native title. Consequently the legal environment in which negotiations occur or cases are argued is much more certain than in previous years.

Although some technical legal issues remain to be resolved, the potentially most significant outstanding issue is the basis on which compensation for native title is to be assessed and the amounts of compensation that will be payable in respect of areas where native title has been extinguished in whole or in part. At the end of the reporting period there were 22 active compensation applications. These constitute a small proportion of the overall number of native title applications and indicate the relatively low volume of work in relation to compensation issues to date. The Federal Court is scheduled to hear the first test case on compensation issues toward the end of 2003. The outcome of that litigation may well influence the volume of compensation applications to be dealt with in the years ahead.

The volume of native title work will increase

As this annual report shows, more native title applications (primarily claimant applications) were made in the reporting period, numerous future act notices were published and applications were made to the Tribunal in relation to proposed future acts, more matters were mediated or arbitrated by the Tribunal, and other agreements were reached without the direct involvement of the Tribunal.

The trend is likely to continue into the foreseeable future, although the reasons for it might not be the same nationally. For example, the use in Queensland of the future act regime under the Act from 1 July 2003 is likely to give rise to more claimant applications being made, as well as more future act activities of the types contemplated by the Act and more agreements, including ILUAs.

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

Evidence of this trend was provided in the reporting period by a significant increase in the number of ILUAs registered and other ILUAs lodged for registration.

ILUAs are only the 'tip of the iceberg' statistically speaking. Many other different types of agreements are being negotiated, whether or not the law requires them. The agreements in relation to proposed industrial development on the Burrup Peninsula provide other examples of large scale agreements (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83). Among the broad range of agreements were various agreements between local government authorities and local Indigenous groups in different parts of Australia.

On 10 June 2003, the Australian Agricultural Company announced that it is to begin agreement-making negotiations with Aboriginal groups,

many of whom have native title claims. The company has 19 properties in the Northern Territory and Queensland. As part of its commitment to sustainable management of rangelands in the Australian environment, the company is committed to working with Indigenous groups to establish access agreements and, where appropriate, ILUAs (see case study on p. 86).

As noted earlier, there is likely to be an increased emphasis on outcomes that are additional, or alternatives, to native title determinations. How extensive that trend is, and how wide the range of outcomes will be, remains to be seen.

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

Because we live in a federal system there are different laws in each state and territory on such topics as land tenure, exploration and mining. Governments have different policies on native title agreement-making. Those and other factors will influence the form and content of agreements, including those involving matters other than native title (for example, joint management of national parks, the grant of title to land, and signage in recognition of the traditional links of some groups to areas of land). Examples of the various approaches taken to particular native title applications in Western Australia, New South Wales and Victoria were given earlier in this overview.

Timeframes for negotiating agreements should, on average, be reduced

Some parties and representatives of parties are becoming more experienced in negotiations, and the scope of potential outcomes is becoming more predictable in light of increased certainty about the law and knowledge about agreements previously negotiated on similar subjects. Various agreements are now publicly available from such sources as the Agreements, Treaties and Negotiated Settlements database created by Melbourne University at www.atns.net.au .

The potential for shorter average timeframes will, however, be tempered by such factors as:

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

Both of these factors are discussed below.

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

Much remains to be done in determining where native title exists, who the native title holders are and what their native title rights are, and in negotiating associated agreements. There is, however, an increased focus on the adequacy of the structural arrangements to administer native title once it has been formally recognised and on the adequacy and durability of various types of agreements.

This concern is reflected, for example, in:

- a review of the legal regime under which prescribed bodies corporate operate (as trustees or agents) in relation to native title;
- a review of the *Aboriginal Councils and Associations Act 1976* (Cth) under which prescribed bodies corporate are incorporated;
- recognition that, although prescribed bodies corporate must be established when or after each determination of native title is made, no provision is made for resources to be provided to enable these bodies to operate;
- research projects into what makes a 'good' agreement; and
- consideration of the role (if any) which the Tribunal should be able to play after determinations of native title are made or ILUAs are registered.

The level of resources available to the parties will directly affect the pace and quality of agreement-making

As has been the case in previous years, concerns were expressed during the reporting period about the adequacy of resources available to participants in native title processes. Attention is often given to the amount of money that is, or is not, available to parties and their representatives and to the institutions which administer the native title scheme. But of equally, if not more pressing, concern is the limited availability of people with relevant qualifications and experience.

Although concerns were most commonly expressed by representative bodies, some other parties (particularly state and territory governments) or their representatives also argued that the resources available to them imposed constraints on the pace with which they could proceed to deal with the negotiation or litigation of native title issues.

The Federal Court has recognised that, in working out mediation programs, the Tribunal and the parties may have regard to the resource limitations and other practical constraints under which each of them must operate. Indeed, Justice French, in the *Frazer* case, recognised the 'harsh practical realities of resource limitations on all parties', the fact that some parties are unrepresented, and the fact that many respondents

do not have the time or resources to engage directly at all stages of the mediation process.

Resource issues will continue to influence all aspects of the native title scheme, including the prioritisation of allocations to various types of work (for example, future act negotiations, ILUA negotiations, claim mediations, court proceedings). Each of the parties and institutions involved needs to assess the nature and extent of the resources available to them and others with whom they are engaged, and work to optimise the use of those resources to achieve appropriate outcomes.

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

As noted earlier in this overview, the Federal Court is taking a more active role in the case management of individual applications and is exploring a range of procedural options for progressing those matters. In the *Frazer* case, for example, Justice French expressed the court's concern that there be a more systematic and focussed approach to the progression of native title claims. The orders he made in that case involved the applicants, any overlapping applicants, and the state, in conjunction with the Tribunal, preparing a program for the mediation of the application over a 12-month period. The program is to set out: a timetable for the exchange of information between the parties where that had not occurred, specific issues to be negotiated, a detailed timetable including proposed meeting dates and venues set in a regional context, and an outline of the negotiating protocol to be adopted by the state and the applicant. It seems likely that more orders of that type will be made by other judges in relation to applications elsewhere in the country.

Other case management options being considered or practised by the Federal Court are noted earlier in this overview.

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

An example of the ongoing discussion is the evident reluctance of some parties to have their executed agreements recorded on a public data base for access by others who are negotiating similar agreements.

There is an ongoing need for accurate and comprehensible information about native title and related matters to be made available to people involved in or affected by native title proceedings. The Tribunal has continued to prepare and provide such information in various ways, including by updating the Tribunal's web site, providing targeted seminars and forums, and producing research and other documents such as a guide

to the themes emerging from recent native title judgments by the High Court and the periodic *Native Title Hot Spots* (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83).

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

During the past year some people have criticised native title for not delivering, or being able to deliver, economic outcomes for Indigenous Australians.

As noted earlier, although native title itself may not be an economically valuable commodity, economic benefits as well as heritage protection and other benefits are being secured by groups as a by-product of native title processes. People are using their procedural rights to negotiate agreements before, after, and independently of a determination of native title.

In a broader sense Aboriginal people and Torres Strait Islanders are involved in negotiations about matters, in ways and with people that could not have been imagined a decade ago. There has been a change in the mindset of many Australians, particularly in key industries, so that it is increasingly part of day-to-day business to engage in discussions or negotiations with Indigenous people about a range of land use matters. Many of those negotiations proceed irrespective of whether the group has proved or can prove that it has native title. Indeed, many agreements are made long before native title is shown to exist and, potentially at least, with groups who could not prove that they have native title.

For those groups who have received native title recognition, the social and psychological benefits to them are profound, irrespective of any economic benefits. Indeed, for such people the benefits of native title recognition are priceless.

In my view, however, far too great a weight of expectation has been put on native title to deliver what it was not capable of delivering. Native title was never going to provide extensive outcomes for all Indigenous Australians. There are areas of Australia where native title will not be recognised. That much was reasonably clear from the High Court's judgments in *Mabo v Queensland (No 2)* and is apparent from the preamble to the Act which states, among other things:

> It is important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests …

Other programs and policies may deal with the interests of such people. The Indigenous Land Corporation, for example, was established because such people needed a 'special fund' to 'assist them to acquire land'.

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

The rights of Indigenous peoples continue to be the subject of international consideration, including in relation to the Draft Declaration on the Rights of Indigenous Peoples. Occasionally Indigenous Australians speak of invoking international law, or they address international forums in relation to native title and related matters.

The Act formally recognises the relevance of international human rights law to native title. The preamble to the Act refers to the *Racial Discrimination Act 1975* and the International Convention on the Elimination of All Forms of Racial Discrimination.

As noted earlier, the Aboriginal and Torres Strait Islander Social Justice Commissioner reports annually to the Attorney-General about 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.

The practice of overseas bodies comparable to the Tribunal can inform the Tribunal's thinking and practice. In June 2003, the Native Title Registrar and I visited the Waitangi Tribunal and other bodies in New Zealand. The discussions and observations there provide another perspective on our work in Australia.

Consequently, for various legal and other reasons, this scheme under domestic legislation will continue to be assessed in an international perspective.

Conclusion

Native title remains one of the most challenging issues for Australians. It raises questions about the rights and interests of Indigenous Australians and about understanding, respect and reconciliation between Indigenous and non-Indigenous Australians.

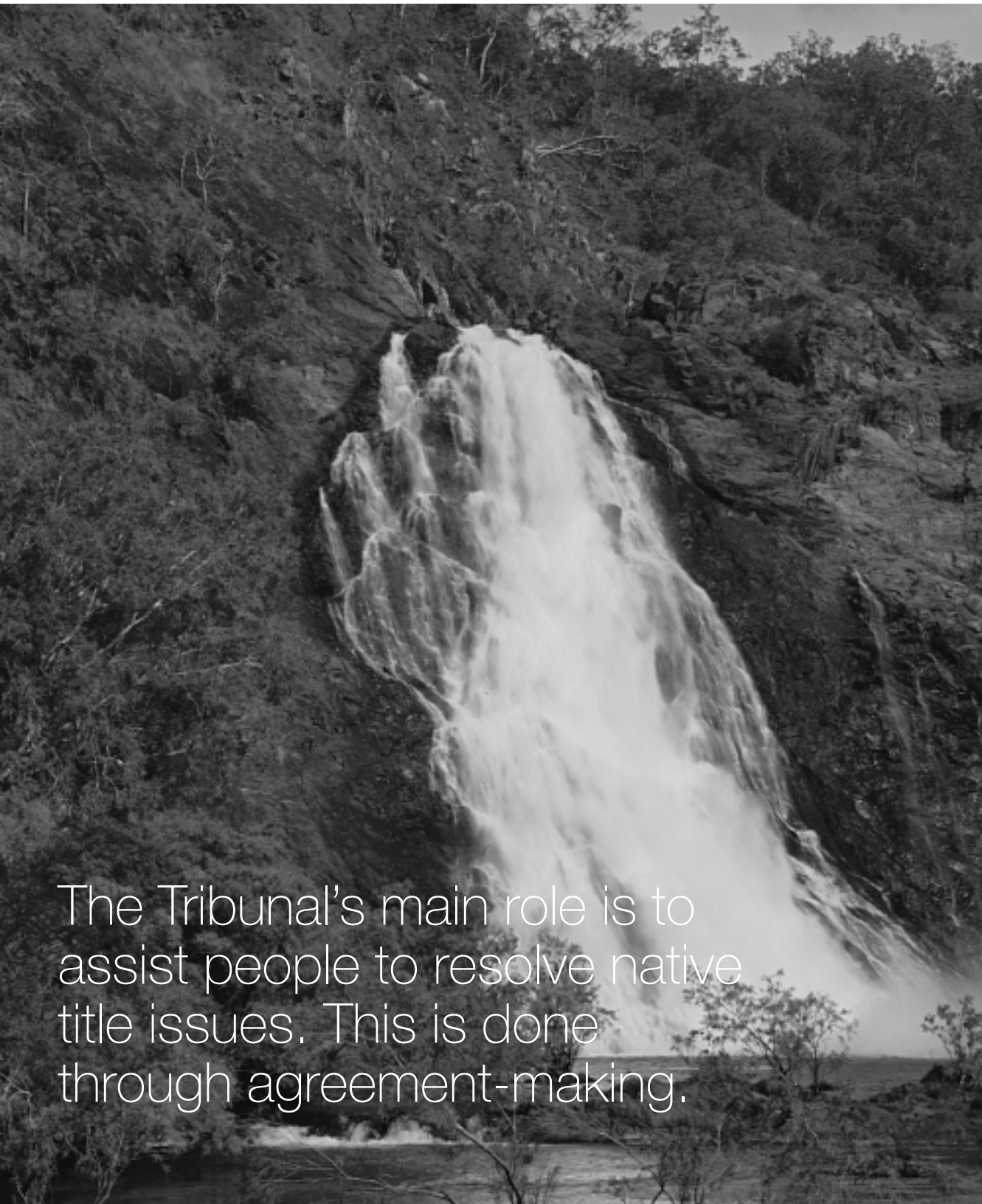
There has developed a widespread acceptance of native title and the fact that it is here to stay. There have also been many reflections on the adequacy, or otherwise, of the current native title scheme to deal with the complexity of legal, social and economic issues involved.

The Tribunal has a range of functions and powers under the Act and we see our purpose as working with people to develop an understanding of native title and reach enduring native title and related outcomes.

We are committed to excellence in the performance of our statutory functions and delivery of our services as we work with our clients and stakeholders towards an Australia where native title is recognised, respected and protected through just and agreed outcomes.

This report provides evidence of how we have worked to achieve our goals and the outcomes achieved by the parties in the past year.

Tribunal overview



The Tribunal's main role is to assist people to resolve native title issues. This is done through agreement-making.

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 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. The Native Title Registrar is Christopher Doepel.

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 agreement–making', p. 62).

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. 67 and 'Output 1.3.1 — Future act determinations', p. 75).

Tribunal members

The Governor-General appoints the members of the Tribunal for specific terms of not longer than five years. They are classified as presidential or non-presidential members. The Act sets out the qualifications for membership. Some members are full-time and others are part-time appointees.

At the end of the previous reporting period, there were 14 members, comprising four presidential members (three full-time and one part-time) and 10 other members (four full-time and six part-time). The number of members of the Tribunal was relatively stable during the reporting period, but there were some changes to the composition of the Tribunal.

During the reporting period:

- Mr Dan O'Dea was appointed as a full-time member for three years from December 2002;
- Dr Gaye Sculthorpe, Mrs Jennifer Stuckey-Clarke and Mrs Ruth Wade were reappointed as part-time members for three years from February 2003;
- Mr John Sosso was reappointed as a full-time member for four years from February 2003;
- Mr Graham Fletcher and Mr Bardy McFarlane were reappointed as full-time members for four years from March 2003;
- The Hon. Fred Chaney AO and the Hon. Chris Sumner AM were reappointed as full-time deputy presidents for four years from April 2003; and
- Dr Mary Edmunds' term as a part-time member expired in April 2003.

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

At the end of the reporting period there were 14 members—eight full-time and six part-time.

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:

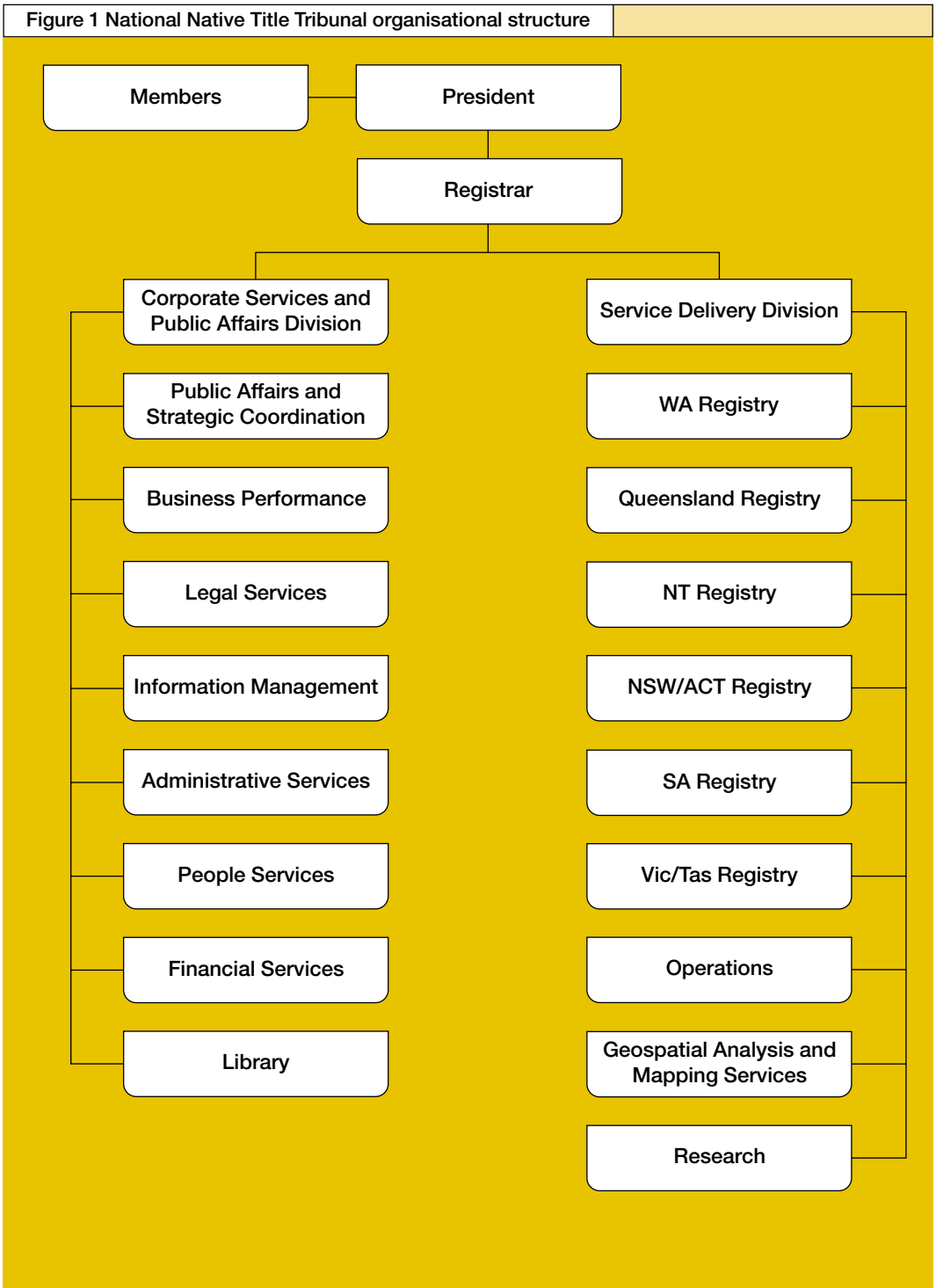
- developing the mediation strategy;
- assessing information needs and overseeing the delivery of information;
- identifying critical dates for the processing of the application;
- exchanging information affecting the claim or region with the case manager and the regional coordinator; and
- directing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

Members of the National Native Title Tribunal in Sydney, March 2003: (back row, left to right) John Sosso, Fred Chaney and Dan O'Dea (second row) Graeme Neate (President), Christopher Doepel (Registrar), Tony Lee, Graham Fletcher and Bardy McFarlane (front row) Mary Edmunds, Christopher Sumner, Gaye Sculthorpe, Doug Williamson and Ruth Wade (not present: Jennifer Stuckey-Clarke, Terry Franklyn and Geoff Clark).

Organisational structure

The organisational structure of the Tribunal remained unchanged during the reporting period. It consists of two divisions—Service Delivery, under Director Hugh Chevis and Corporate Services and Public Affairs, under Director Marian Schoen (see Figure 1).

Figure 1 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 Australian Government's accrual budgeting framework, which came into effect on 1 July 1999.

Outcomes are the results, impacts or consequences of action by the Australian Government—in this case, the Tribunal—on the Australian community. Outputs are the goods or services produced by agencies (the Tribunal) on behalf of the Australian 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. Some statements describing various 'items' and 'descriptions' have been further clarified 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. Note that the Tribunal has elected to report against an additional category of assistance under 'Output 1.4.1. — Assistance to applicants and other persons', p. 83.

The output groups are:

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

Figure 2 on page 39 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'.

Report on performance

A large number of major court decisions had a considerable impact on the Tribunal's outputs during the reporting period.

Financial performance

The Tribunal's actual expenditure for the 2002–03 financial year was $29.632m. 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 $1.977m in the Tribunal's equity.

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

Table 1 on page 36 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 2002–2003 $'000	(2) Actual 2002–2003 $'000	Variation* 2002–2003 $'000	Actual as a % of total appropriation 2002–2003 %
Departmental appropriations				
Output group 1.1 – Registrations				
Output 1.1.1 – Registration of claimant applications	3 303	3 885	582	13%
Output 1.1.2 – Native title determinations	423	98	-325	0%
Output 1.1.3 – Indigenous land use agreement applications	1 397	1 109	-288	4%
Subtotal output group 1.1	**5 123**	**5 092**	**-31**	**17%**
Output group 1.2 – Agreement-making				
Output 1.2.1 – Indigenous land use agreement-making	3 746	1 943	-1 803	7%
Output 1.2.2 – Claimant, non-claimant and compensation agreement-making	8 565	5 565	-3 000	19%
Output 1.2.3 – Future act agreement-making	1 603	1 870	267	6%
Subtotal output group 1.2	**13 914**	**9 378**	**-4 536**	**32%**
Output group 1.3 – Arbitration				
Output 1.3.1 – Future act determinations	1 684	1 003	-681	3%
Output 1.3.2 – Objections to the expedited procedure	3 391	2 672	-719	9%
Subtotal output group 1.3	**5 075**	**3 675**	**-1 400**	**12%**
Output group 1.4 – Assistance, notification and reporting				
Output 1.4.1 – Assistance to applicants and other persons	4 250	8 343	4 093	28%
Output 1.4.2 – Notification	1 604	1 783	79	6%
Output 1.4.3 – Reports to the Federal Court	1 452	1 143	-309	4%
Subtotal output group 1.4	**7 306**	**11 269**	**3 963**	**38%**
Total revenue from government (appropriations) contributing to price of departmental outputs	**31 418**	**29 414**	**-2 004**	**99%**
Revenue from other sources				
Output 1.1.1 – Registration of claimant applications	25	29	4	
Output 1.1.2 – Native title determinations	3	1	-2	
Output 1.1.3 – Indigenous land use agreement applications	10	8	-2	
Output 1.2.1 – Indigenous land use agreement-making	27	15	-12	
Output 1.2.2 – Claimant, non-claimant and compensation agreement-making	60	41	-19	
Output 1.2.3 – Future act agreement-making	12	14	2	
Output 1.3.1 – Future act determinations	12	8	-4	
Output 1.3.2 – Objections to the expedited procedure	25	19	-6	
Output 1.4.1 – Assistance to applicants and other persons	86	62	-24	
Output 1.4.2 – Notification	12	13	1	
Output 1.4.3 – Reports to the Federal Court	11	8	-3	
Total revenue from other sources	283	218	-65	1%
Total price of departmental outputs (Total revenue from government and other sources)	31 701	29 632	-2 069	
Total estimated resourcing for outcome 1 (Total price of outputs and administered expenses)	31 701	29 632	-2 069	
Average staffing level (number)	250	273		

* column 2 minus column 1

Outcome and output performance

The estimation model

The Tribunal's budget planning is consistent with the statutory requirements:

- In March/April 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.

The estimation process in 2002–2003

This year the Tribunal followed the process outlined above. However, on the basis of a conscious decision to change the strategic direction of the Tribunal in 2002-03, a third category of assistance, that of initiatives, was introduced (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83).

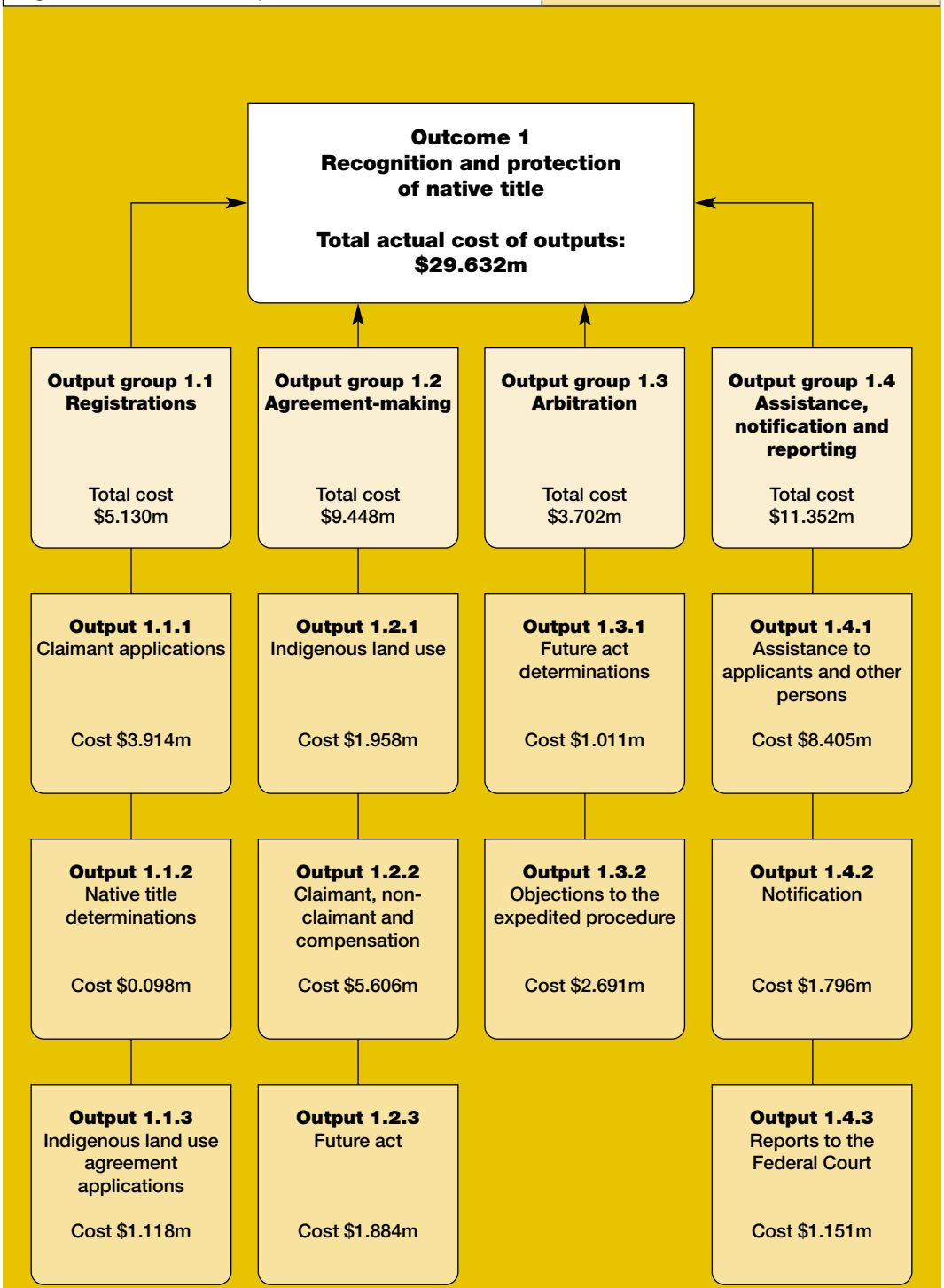
Impact of significant court decisions on the Tribunal's performance

The Tribunal is operating in a relatively new legal environment, and court decisions can affect claim mediation and other processes in ways that are unpredictable. This was the case in 2002–03, a year which saw a large number of major court decisions. The decisions in the *Yorta Yorta* case, and *Western Australia v Ward*, *De Rose v South Australia* and *Wilson v Anderson* (see 'Appendix III Significant decisions' p. 134) had a considerable impact on the Tribunal's outputs during the reporting period. In many instances, the Tribunal did not achieve estimated outputs because of delays incurred while parties and their representatives were either considering the consequences of these decisions for them or waiting for the outcome of a court case.

Some examples of the impact of the legal environment on Tribunal outputs during the reporting period were:

- the Registrar imposed a temporary moratorium on registration testing of claimant applications during the second quarter of 2002 while revising the procedures in the light of the court decisions in *Western Australia v Ward*, *Wilson v Anderson*, *De Rose v South Australia* and the *Yorta Yorta* case;
- six native title determinations in the Torres Strait, expected to be finalised during the reporting period, were delayed after a major question of law, which would have an impact on all those determinations, was heard by the Federal Court. The key parties in those processes have put progress in those matters on hold until the legal question has been determined;
- as a consequence of the delayed native title determinations in the Torres Strait, the expected related ILUAs (approximately 10) were not made and therefore not lodged for registration during the reporting period;
- state and territory governments reviewed their requirements for evidence of native title claimants' connection to areas of land or waters, delaying the potential resolution of some claimant applications.

Figure 2 Outcome and output framework for 2002–2003



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;
- native title determinations; and
- ILUAs.

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 a 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**	**Result**
Quantity	120	110
Quality	70% decided within two months of receipt from Federal Court	44.5% decided within two months of receipt from Federal Court
Resource usage — unit cost per registration test	$ 27 736	$ 35 584
Resource usage — output cost	$ 3 328 000	$ 3 914 280

Comment on performance

Number of decisions made

During 2002–03, 110 registration test decisions were made, 16 (about 13 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:

- 27 registration tests were made on applications for the second, third or fourth time;
- 73 satisfied all the conditions of the registration test; and
- 37 did not satisfy one or more of the conditions and so were not registered on (or were removed from) the Register of Native Title Claims.

Of the 37 applications that did not meet the conditions of the test, eight did so after an abbreviated procedure was applied.

Registration testing continued at a steady rate during the reporting period as the Tribunal worked through the backlog of applications remaining to be tested. There was a temporary slow down in the last quarter of 2002 while the Tribunal reviewed its practice and procedures in the light of the court decisions in *Western Australia v Ward*, *Wilson v Anderson*, *De Rose v South Australia* and the *Yorta Yorta* case. The analyses of these decisions, and the added level of complexity they generated in the registration test process itself, increased the average cost of each registration test compared to the estimated cost for this output.

Following the High Court decision in *Western Australia v Ward* on 8 August 2002, the Registrar put a moratorium in place in relation to the processing of the registration test, except for decisions affected by s. 29 notice timeframes. The High Court decision impacted on the application of some key registration test criteria relating to the description of the area claimed, the rights and interests and the factual basis to support the existence of native title. The Tribunal amended the registration test procedures to address the outcomes of the decision and posted interim guidelines on its web site. It also sent copies of the interim guidelines to major stakeholders and invited submissions. Both government and indigenous interests provided submissions and comments. The guidelines were revised in the light of those submissions and incorporated in the registration test procedures which were posted on the web site on 1 October 2002, when registration testing resumed.

The analysis of the court decisions, and the added level of complexity they generated in the registration test process itself, increased the average cost of each registration test compared to the estimated cost for this output.

Table 2 shows a state and territory breakdown of the number of claimant applications processed for registration. Of the 38 decisions for the Northern Territory, seven were decisions after a second test (of which six are in relation to old Act applications) and nine were decisions in relation to old Act applications (of which six were tested for the second time).

The creation of a national registration delegates' pool in the New South Wales Registry proved to be an effective mechanism for streamlining this part of the native title process. The three officers solely working as the Registrar's delegates on claim registration made decisions regarding approximately 70 per cent of all registration tests during the reporting period.

The national delegates' pool operated with the support of the Tribunal's Legal Services section and Operations Unit, with Geospatial Analysis and Mapping Services providing compliance advice on maps and descriptions. Being able to discuss the increasing complexities face to face

also helped delegates enhance their expertise, which increased the throughput and the consistency of the test at national level.

As the number of claimant applications being filed per year across Australia is diminishing, the number of required registration test decisions will decline in the future and workloads in this area are expected to be influenced by:

- the number of applications filed in response to future act notices in the Northern Territory and Queensland; and
- the number of amended applications.

Parties may seek a review of the Registrar's registration test decisions, under the Act or under the *Administrative Decisions (Judicial Review) Act 1977*. Two registration decisions were judicially reviewed during the year—one matter was adjourned and one was awaiting judgment at the time of reporting. An additional application for a judicial review of a Registrar's decision was dismissed.

Table 2 Number of registration tests by state or territory 2002–2003

State	Accepted	Not accepted	Not accepted – abbreviated	Total
Australian Capital Territory	0	0	0	0
New South Wales	9	8	1	18
Northern Territory	22	9	7	38
Queensland	39	6	0	45
South Australia	1	0	0	1
Tasmania	0	0	0	0
Victoria	0	2	0	2
Western Australia	2	4	0	6
Total	73	29	8	110

Active claims

During 2002–03:

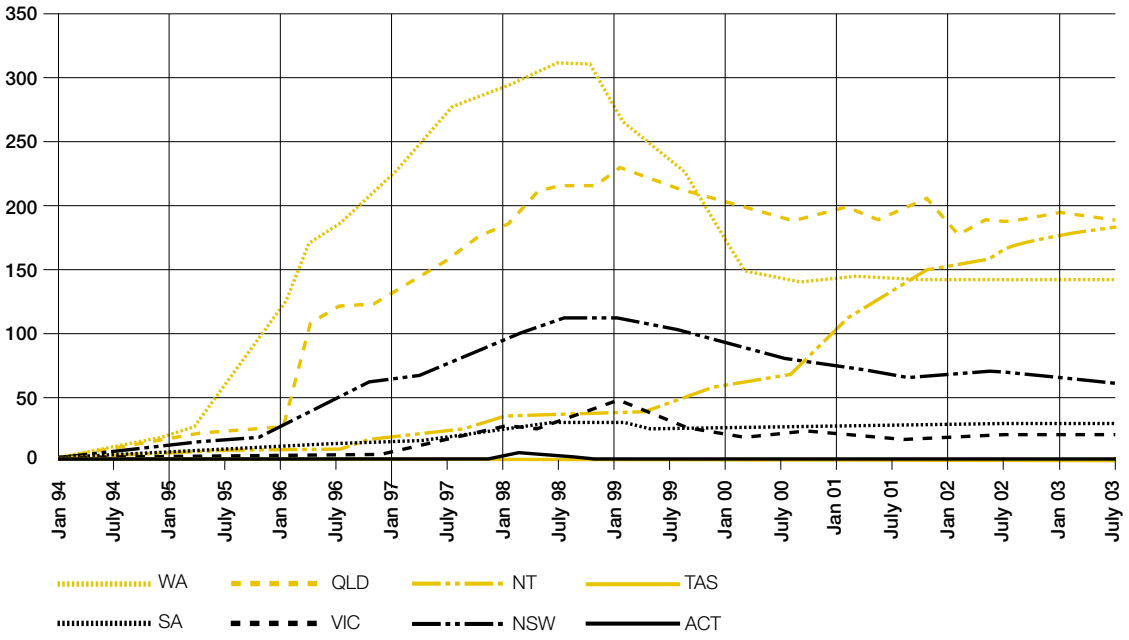
- 39 claimant applications were discontinued, dismissed, combined with other applications or were the subject of full native title determinations; and
- 53 new claimant applications were filed with the Federal Court.

As at the end of the reporting period:

- 633 claimant applications were active (at some stage between filing and resolution);
- 501 applications were on the Register of Native Title Claims;
- 105 applications had not been accepted for registration;
- 32 applications remained to be tested; and
- 33 were not identified for testing.

Information about the active claimant applications that are not on the Register of Native Title Claims is held by the Tribunal under s. 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 3 graphs the number of active claimant applications per state or territory from early 1994 to 30 June 2003.

Figure 3 Active native title claimant applications by state or territory, 1994–June 2003



Timeliness of decisions

The Tribunal aims to process 70 per cent of claimant applications through the registration test within two months of receiving the application from the Federal Court. This target was not met, with only 44.5 per cent of registration test decisions made within two months of receipt of the applications. A number of factors contributed to this result, including the moratorium instituted by the Registrar and applicants amending their applications or requesting extensions of time to provide additional information.

In the Northern Territory 24 of the 26 applications filed in 2002–03 were in response to a future act notice, providing a one-month statutory timeframe for applying the registration test. All of the decisions were made within one month. One further matter was dismissed, and one matter was subject to subsequent amendment.

In Victoria, one new claimant application was filed, tested for registration within one month and subsequently a further test was applied because the application was amended in the Federal Court.

In Queensland, 45 registration test decisions were made during the reporting period, including 16 affected by future act notices. Notable factors impacting on the number of decisions made included:

- future act-affected registration tests take priority over backlogged matters. This meant that many other Queensland registration tests did not meet the two-month time frame for registration testing; and
- the effect of the High Court's decision in *Western Australia* v *Ward* on the registration test prompted the Tribunal to offer all applicants involved in outstanding matters the opportunity to amend their applications before applying the test. Some representative bodies had a significant number of applications requiring amendment and the Tribunal allowed a reasonable timeframe for these amendments to be made.

In the six matters not affected by these factors, the registration test decisions were made within the two-month timeframe.

Resource usage

The testing of combined and further combined applications, and the outstanding old Act applications, remained complex and resource-intensive.

The time expended per registration test decision continued to vary. Reasons for these variations included:

- whether the application complied with the requirements of the Act at the time of lodgement (applicants are afforded the opportunity to amend under s. 190A(5A) of the Act);

- whether or not a decision of the High Court or Federal Court was made while an application was undergoing the registration test (in some instances applications which were thought to be compliant were subsequently deemed to be non-compliant following a court decision, so applicants were afforded the opportunity to amend following the relevant court decision);
- whether applicants were not represented by the native title representative body—unrepresented applicants tend to request high levels of assistance, for example in mapping. This also increases the time expended per decision.

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 the common law holders of the native title are (if applicable), who holds the native title (if applicable), 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 working days of receipt of notice from the Federal Court; and
- resource usage.

Performance at a glance

Measure	Estimate	Result
Quantity	20	3
Quality	80% decided within two days of receipt from Federal Court	100% decided within two days of receipt from Federal Court
Resource usage — unit cost per registration test of a determination	$ 21 283	$32 666
Resource usage — output cost	$426 000	$97 999

Comment on performance

Number of determinations registered

In the reporting period, three determinations were registered: one determination that native title exists and two determinations that native title does not exist. See Table 3 for the breakdown by state and territory of claimant and non-claimant determinations.

Table 3 Native title determinations by state or territory 2002–2003		
State	Claimant	Non-claimant
New South Wales	0	1
Northern Territory	0	0
Victoria	0	0
Queensland	0	0
South Australia	1	0
Tasmania	0	0
Western Australia	1	0
Total	2	1

Table 4 Registered determinations of native title, claimant and non-claimant applications 2002–2003					
Application name	Application type	Location	Date of court decision	Process	Number of applications affected in whole or part by the determination
Martu	Claimant	150 kms east of Marble Bar, Western Australia	27 Sep 2002	Consent	1
De Rose	Claimant	North-west South Australia	1 Nov 2002	Litigated	1
Bahtahbah Local Aboriginal Land Council	Non-claimant	Mount Hutton, Lake Macquarie, New South Wales	19 June 2003	Unopposed	1

Martu — 29 September 2002

Through a consent determination, the Martu People achieved legal recognition of their native title rights over an area covering approximately 136,000 square kilometres of land and waters in the Western Desert region of Western Australia.

This is the largest native title determination in Australia to date. Initially eight native title applications were lodged over the area. Seven were later withdrawn following mediation between the claimant groups. Late in 1998, the groups signed an agreement to work as a united group. Included in the determination is recognition of an area of shared country that will be held jointly by Martu and Ngurrara native title holders.

Martu native title holder Mack Gardiner and Tribunal President Graeme Neate, Parnngurr Rockhole in Western Australia, September 2002

De Rose — 1 November 2002

Through a litigated process, a judge of the Federal Court found that native title did not exist over the area subject to the native title determination application—an area of approximately 1,865 square kilometres of land and waters in the north-west region of South Australia. The case went to trial in June 2001 and the issues in the case included whether the applicants had maintained the necessary traditional connection to the claim area to establish that they held native title and whether pastoral leases granted under South Australian law extinguished native title.

The court held that the grant of the pastoral leases had not extinguished native title over the area. However, the determination stated that the claimant group from the Yankunytjatjara People had lost their spiritual and physical connection to the claimed area.

An appeal against the decision was heard by a Full Federal Court in May 2003.

Bahtahbah Local Aboriginal Land Council — 19 June 2003

This determination that native title does not exist was made in relation to an unopposed non-claimant application brought by the Bahtahbah Local Aboriginal Land Council in New South Wales. Under s. 40AA of the *Aboriginal Land Rights Act 1983* (NSW), in some circumstances, an Aboriginal land council must obtain a determination of native title before leasing or selling land it holds in freehold. There have been nine such procedural determinations in New South Wales since 1997.

Although developments during 2001–02 pointed to a likely increase in the number of determinations being made and registered, the rate at which determinations were being made, including consent determinations, markedly decreased during the reporting period (see Figure 4).

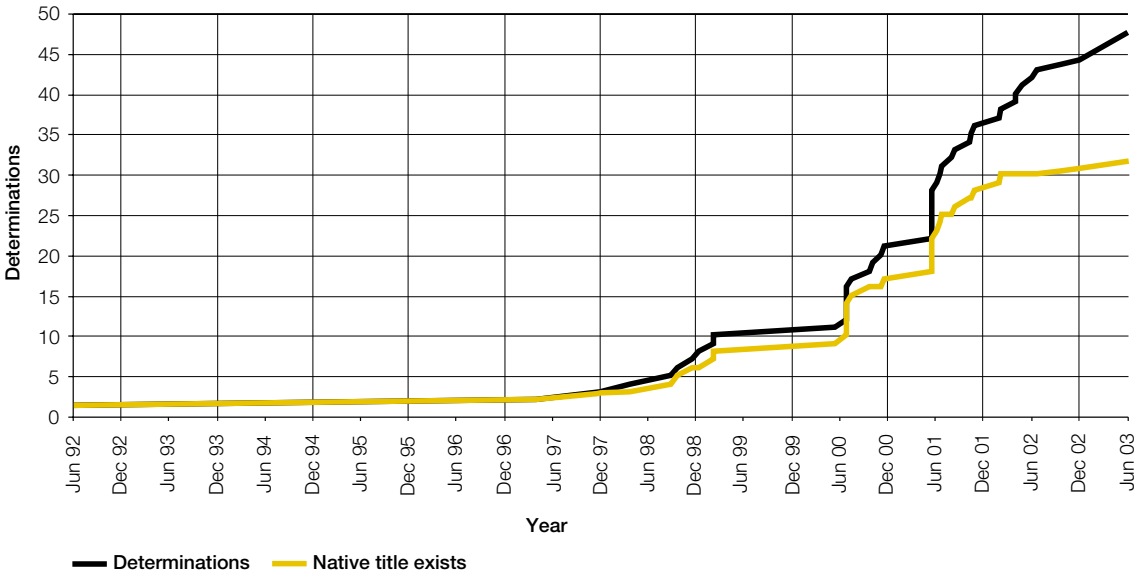
The main factors in this decrease were court decisions, including the High Court decisions in *Western Australia v Ward* and the *Yorta Yorta* case which stalled a number of proposed consent determinations while state and territory governments and other parties considered the impacts of these decisions.

In Queensland, six native title claims in the Torres Strait were expected to be determined by the end of the reporting period. However, some legal issues were referred back to the Federal Court and the determinations were not achieved.

Due to the impact of the judgment in the *Yorta Yorta* case and the absence of a clear state policy on the evidence required from Aboriginal applicants to prove that they have maintained a connection to an area, the number of consent determinations is expected to remain low during the next financial year.

The Martu consent determination was the only determination of native title in Western Australia. The lack of effective strategic planning amongst the parties was seen as a contributing factor to determinations in relation to other applications. In *Frazer v Western Australia*, the Federal Court commented upon delays in the mediation process. Following this decision, representative bodies and the Government of Western Australia started to discuss priorities and mediation programs. These discussions were expected to lead to more native title determinations during the next financial year.

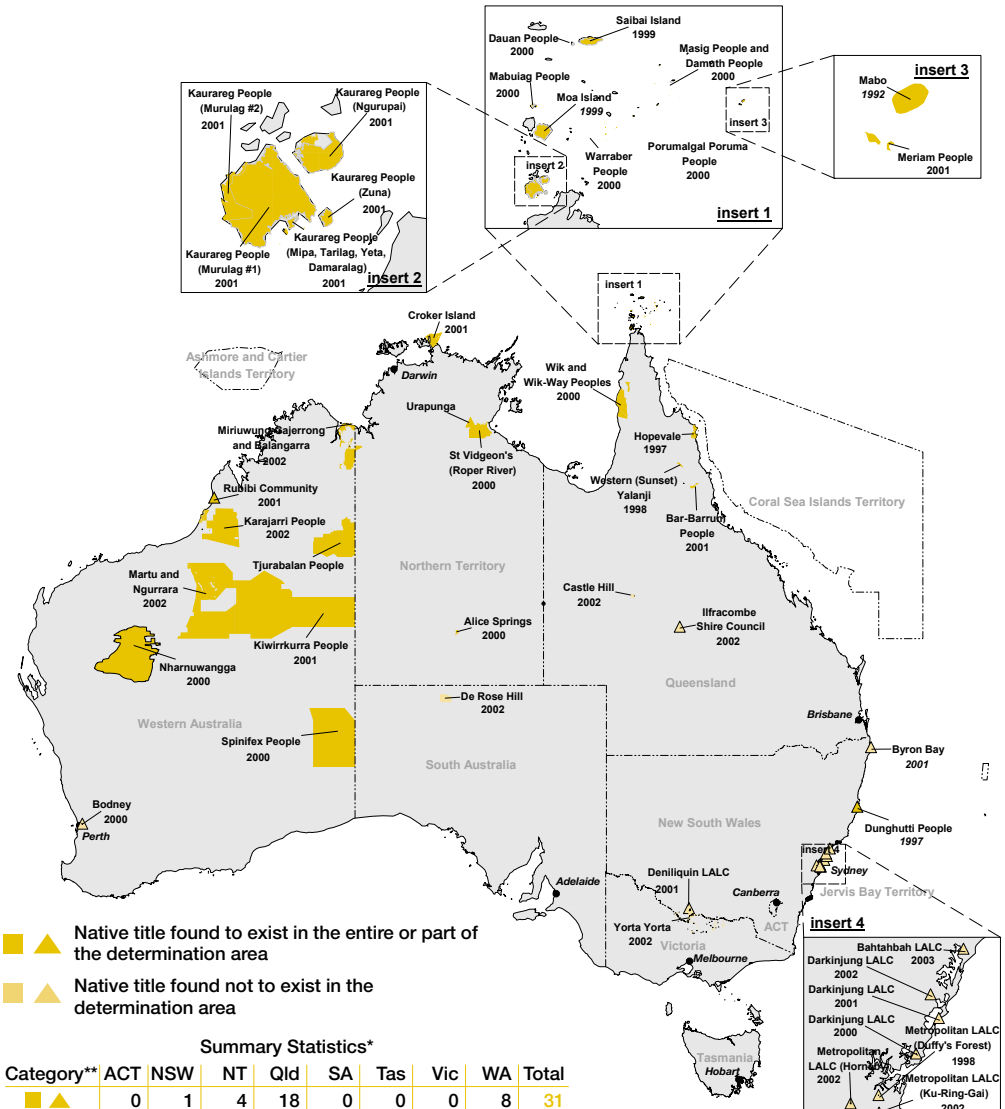
Figure 4 Cumulative determinations of native title to 30 June 2003



Timeliness of registrations

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

Figure 5 Map of native title determinations to 30 June 2003



Summary Statistics*

Category**	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
■ ▲	0	1	4	18	0	0	0	8	31
■ ▲	0	10	0	2	1	0	1	1	15
	0	11	4	20	1	0	1	9	46

Notes:

* Where determination falls within two or more jurisdictions
- allocation is assigned only to one - where the application was filed.

** As shown in legend.

Note:

1. Areas shown represent the geographic extent of the application or those parts of an application determined. They do not necessarily differentiate where native title has been determined to exist or has been extinguished. Areas excluded from determinations are not necessarily depicted.
2. Some determinations are subject to appeal.
3. Year shown is the date of latest court decision.
4. Small areas are symbolised.

Produced by National Native Title Tribunal

Data Statement

Spatial data sourced from and used with permission of:
Dept of Land Administration, WA
Dept of Infrastructure, Planning and Environment, NT
Dept of Natural Resources and Mines, Qld
Dept. of Information Technology and Management, NSW
Geoscience Australia, Commonwealth

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 registered within six months of lodgement (including the three-month notification period) where no objection is lodged; and
- resource usage per application processed for registration.

Performance at a glance

Measure	Estimate	Result
Quantity	55	36
Quality	70% registered within six months (including the three-month notification period) of lodgement	57% registered within six months (including the three-month notification period) of lodgement
Resource usage — unit cost per ILUA application processed for registration	$ 25 589	$ 31 046
Resource usage — output cost	$1 407 000	$1 117 666

Comment on performance

A total of 35 ILUAs were lodged with the Tribunal for registration in 2002–03. Table 5 on page 54 shows the state and territory distribution of ILUAs lodged.

The number of registration decisions made (36) remained below the estimated quantity. The fact that fewer ILUA applications were lodged for registration—35 in 2002–03 compared to 40 in 2001–02—contributed to this result. The High Court decisions in *Western Australia v Ward* and *Wilson v Anderson* may also have been a factor, as they caused a pause in native title business, delaying agreement-making and determinations. In the Torres Strait, for example, up to 10 ILUAs had been expected to dovetail with determinations of native title during the reporting period (see 'Impact of significant court decisions on the Tribunal's performance', p. 37).

The average cost increase compared to the estimate was primarily due to the increased level of assistance to ILUA parties before ILUA applications were lodged. The assistance was requested by the parties. Delegates, who are trained to register ILUAs on behalf of the Native Title Registrar, provided feedback and comments on draft ILUAs. This required the Tribunal to direct additional resources to increase the number of delegates. The delegates met regularly to ensure consistent practice and approach.

Of the registered ILUAs, 57 per cent were registered within six months of being lodged and none were the subject of an objection.

Queensland and the Northern Territory were the main areas of ILUA activity in the country, with 18 and 13 registered ILUAs respectively.

In Queensland, one of the ILUAs registered was an agreement between the Kalkadoon People of north-west Queensland and mining company Matrix Metals. The ILUA allowed for the grant of future mining lease applications while ensuring heritage protection, employment and training initiatives for the Kalkadoon People.

There was a slight increase in ILUA activity in the Central Land Council region of the Northern Territory. The ILUAs were mainly mineral exploration agreements and provided for land access on a company-by-company basis, outside the future act process. In addition to land access for mineral exploration, five ILUA applications were lodged and registered in relation to the granting of Community Living Areas (CLAs) under the Northern Territory Lands Acquisition Act and Pastoral Land Act. This CLA program is expected to continue in 2003–04.

Parties to area agreement ILUAs are generally the Central Land Council on behalf of the native title claimants for the area, and an exploration company holding or seeking exploration rights for the area.

The Northern Territory Government was not a party to those ILUAs lodged in the reporting period in relation to mineral exploration.

In Victoria, four ILUAs were registered in 2002–03 compared to three during the previous reporting period. All four were area agreements, three of which related to mining activities.

One ILUA was lodged for registration in Western Australia and was in notification at the time of reporting.

In South Australia, the Tribunal assisted the state government and participating parties with the development of the Statewide ILUA Strategy (see 'Output 1.2.1 — Indigenous land use agreement-making', p. 58) and no ILUAs were lodged.

Table 5 Number of ILUAs lodged for registration 2002–2003

	ACT	NSW	NT	Qld	SA	Tas.	Vic.	WA	Total
ILUAs lodged	0	0	12	20	0	0	2	1	35

The Tribunal's ILUA Strategy Group continued its work developing policy and strategic direction for a national approach to ILUAs (see 'Corporate governance', p. 103). The group identified the need to build up the capacity and skills of parties' legal representatives. A series of seminars presented by legal staff with ILUA expertise were held in most registries throughout the reporting period (see 'Capacity-building initiatives', p. 85).

Timeliness

The Tribunal seeks to reduce the time between the lodgement of an ILUA application and the decision. For this reporting period, the Tribunal adopted a performance standard of 70 percent of ILUA applications registered within six month of lodgement, including the three month notification period. The progress of each ILUA application against set internal timeframes was monitored to help meet this improved performance standard.

The Tribunal achieved the standard for applications submitted by proponents who had been through the ILUA registration process on previous occasions. For example, the majority of ILUA applications lodged in the Northern Territory were lodged by the same applicant, and for 80 per cent of these applications the Tribunal made decisions within six months of the date of lodgement. However, one-off or complex ILUAs experienced a protracted registration process, often because applicants did not meet some statutory requirements.

Where no objection was lodged, ILUAs were processed on average within 6.6 months of lodgement with the Tribunal. This included an average of just above five working days from the end of notification to registration—a marked improvement compared to last financial year's average of 12 working days between the end of notification and registration of an ILUA.

ILUA negotiations need built-in lead times to allow for authorisation, compliance testing, notification and assessing possible objections. The registration process for complex or one-off agreements will always take a significant additional amount of time.

One objection to the registration of an ILUA in Victoria was lodged and, at the time of reporting, the matter was still on foot.

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 as a major output. Agreement-making is defined as the work in achieving a native title or related 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.

Important milestones were reached during 2002–03 with the Martu consent determination and the Burrup Peninsula future act agreement in Western Australia, the Terramungamine-Wiradjuri agreement near Dubbo in New South Wales and a number of other native title, future act and indigenous land use agreements around the country. However, the reporting period saw native title parties reach fewer agreements than expected. One of the reasons was the handing-down of judicial decisions in *Western Australia v Ward*, *Wilson v Anderson*, *De Rose v South Australia* and the *Yorta Yorta* case. There were significant delays while parties across the country were waiting for the courts to make decisions or were considering the impact of those decisions. This caused the rate of agreement-making to slow down.

In contrast with the previous reporting period, the number of native title agreements achieved during the reporting period does not reflect the Tribunal's work in this area. Registries across the country continued their activities in planning and facilitating mediation and agreement-making. As part of this work, they collaborated with parties, their representatives, government agencies and the Federal Court. For example, the South Australia Registry increased its assistance to the South Australian Government in the development of a Statewide ILUA Strategy (see 'Indigenous land use agreement-making', p. 58). Some of the initiatives focused on considering native title in a broader social and economic context. This was the case in Victoria, where the Tribunal joined other Australian Government agencies to hold a series of forums about land acquisition by Indigenous people and land management in that state. The Tribunal informed communities about native title options and the agreement-making process (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83).

During the reporting period, the Tribunal played a key role in providing information about native title laws and regulations—including analysis of court decisions—to applicants and other parties.

Contributing to the knowledge and capabilities of participants in the native title process was an increasing area of Tribunal activity. Experience and relationships with stakeholders have shown that the Tribunal is particularly well-placed to assist applicants and other parties in developing their capacity to participate effectively in the native title processes.

An example where Tribunal assistance contributed to the development of proactive agreement-making policies is the national strategy being developed with the pastoral sector. As part of this strategy, staff and members of the Tribunal's Queensland Registry held a number of meetings with Australian Agricultural Company (AACo) representatives. In June 2003, AACo announced that it would begin agreement-making negotiations with Aboriginal groups, including those who have native title claims over most of the company's 19 pastoral properties.

For more examples of the Tribunal's capacity-building work, see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83.

In many cases, registries integrated a wide range of capacity-building assistance into their mediation and negotiation work. Capitalising on the experience and expertise of its members and staff, the Tribunal worked with parties to develop their understanding of native title and their prospects, to help them reach enduring agreements that suit their needs and will be workable on the ground.

In the Northern Territory, the pattern of negotiation and agreement-making of previous years continued. It was generally characterised by direct negotiations between two or more parties if an agreement was being proposed or sought, rather than the parties requesting facilitation or negotiation assistance from the Tribunal in the development of agreements.

This approach reflects the long-standing relationships between the native title representative bodies, the Northern Territory Government and its agencies, and private sector interests, primarily as a result of experience and practice under the *Aboriginal Land Rights (Northern Territory) Act 1976*.

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

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	Result
Quantity	35	17
Quality	Client satisfaction	Assessed through client surveys (see below)
Resource usage — unit cost of ILUA agreement-making	$ 107 794	$ 115 181
Resource usage — output cost	$3 773 000	$1 958 078

Comment on performance

As it is not mandatory for the Tribunal to be involved in the negotiation of an ILUA, it is difficult to assess workload trends. During the reporting period, the Tribunal was requested to assist in 45 ILUA negotiation matters—the majority in Queensland. Of these, 28 matters remained ongoing at the time of reporting and 17 had been finalised, three leading to the lodgement of an ILUA. Trends showed a slow but steady increase in requests for assistance as well as stand-alone ILUA agreements being lodged for registration.

As was the case during previous reporting periods, the level of ILUA-related activity around the nation varied. Table 6 shows the number of ILUAs per state or territory in which the Tribunal assisted.

In South Australia, Victoria and Western Australia, the Tribunal continued to work with state governments and other parties in the development of framework ILUAs to define policy upon which project-specific agreements could be settled.

Table 6 Tribunal assistance in ILUA negotiation

State or territory	ILUAs in progress with Tribunal assistance	Assistance matters finalised	Assistance matters finalised with ILUA lodged	Total
Australian Capital Territory	0	0	0	0
New South Wales	4	0	0	4
Northern Territory	0	0	0	0
Queensland	16	8	3	27
South Australia	3	0	0	3
Tasmania	0	0	0	0
Victoria	3	5	0	8
Western Australia	2	1	0	3
Total	28	14	3	45

Many matters for which the Tribunal provided assistance did not lead to a registered ILUA during the reporting period for a range of reasons. For example, during the negotiations, parties may conclude that an ILUA is not necessarily the appropriate solution for their particular needs. On the other hand, some of the assistance provided by the Tribunal may lead to a larger number of agreements in the next financial year.

As mentioned earlier in this report, experience showed that ILUA processes, and in particular compliance issues related to area and authorisation matters, remained challenging for parties. The Tribunal organised a series of workshops for legal representatives in an effort to help increase their knowledge and understanding of the requirements for registration (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83).

In Queensland, there was considerable ILUA activity. For example, a state-wide model ILUA was put into action. The state government and the Queensland Indigenous Working Group negotiated the model ILUA during the previous reporting period to help clear the backlog of mineral exploration permits. It provides parties with an alternative to proceeding under the state future act regime (which deals with applications made on or before 31 March 2003) or that of the Commonwealth under the Native

Title Act. At the time of reporting, the model ILUA had been used for nine ILUAs lodged for registration, two of which had been registered.

The South Burnett Local Government Association in Central Queensland held an initial meeting with representatives of the state government, the Tribunal, and Queensland South Representative Body, to obtain feedback on the feasibility of a regional ILUA. There are six native title claims incorporating parts of South Burnett, and a regional ILUA would address the interests of the native title claimants and of the local government.

In Victoria, requests for assistance in relation to complex ILUAs increased during the reporting period. Four ILUAs were registered compared to three the previous year, and the Victoria Registry was requested to provide assistance—including negotiation assistance—to the parties to five other potential ILUAs.

In Western Australia, interest in this type of agreement grew and a number of negotiations were taking place at the time of reporting, some with Tribunal assistance. For instance, at the end of the financial year the South West Aboriginal Land and Sea Council and the Western Australian Local Government Association reached a memorandum of understanding. This memorandum provided the framework for developing template ILUAs that could potentially be used in the 105 local government areas in the South West of the state.

In South Australia, the Tribunal focused on assisting with the development of the Statewide ILUA Strategy, which was established by the key native title stakeholders in 1999. The number of negotiating parties and issues covered by the process increased significantly during the reporting period, leading to a higher workload for the negotiating parties and more strain on their resources.

The Tribunal also assisted the parties to the Todmorden pastoral ILUA with negotiations and with compliance comments based on the current draft of the pilot pastoral ILUA. The state-wide ILUA negotiating parties hoped to present similar pastoral ILUAs for consideration by other parties to native title claims involving pastoral interests.

The South Australia Registry was asked to facilitate the negotiation of several other pilot ILUAs regarding future acts, local government and fishing interests, and it assisted with the facilitation of the mineral exploration pilot ILUA negotiations. At least three further ILUA pilot negotiations are expected to require Tribunal assistance during the new financial year.

In the Northern Territory, there were no formal requests from negotiating parties for Tribunal assistance during 2002–03 but parties requested technical information in relation to the ILUA registration requirements. At the time of reporting, the Territory Government and key stakeholders were expected to look towards ILUAs in 2003–04 in order to secure agreements on a range of native title and related land access issues. However, there were no indications that this would result in increased requests for mediation and other assistance from the Tribunal.

Client and stakeholder satisfaction

Overall levels of satisfaction with all output areas were measured as 65 per cent, including this output. For further details see 'Evaluation of client satisfaction', p. 120.

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

Description of output

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

These types of agreements can be negotiated in parallel with ILUAs (for more information, see 'Output 1.2.1 — Indigenous land use agreement-making', p. 58).

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	Result
Quantity	100	60
Quality	Client satisfaction	Assessed through client surveys, but numbers not settled at time of reporting
Resource usage — unit cost per claimant, non-claimant and compensation agreement-making	$ 86 249	$ 93 435
Resource usage — output cost	$8 625 000	$5 606 092

Comment on performance

Number of claimant, non-claimant and compensation agreements finalised

Only claimant agreements were made during the reporting period, and most were in Queensland, Western Australia and New South Wales. They covered a range of matters, such as establishing partnerships with

local government; amalgamating claims; recognising native title rights; protecting cultural heritage protection and involving traditional owners in local planning. No non-claimant or compensation agreements were made.

As mentioned in the introduction of this output report (p. 56), the number of agreements reached during 2002–03 was well below expectations. The main reasons for this were the major court decisions in the *Yorta Yorta* case, and *Western Australia v Ward*, *Wilson v Anderson* and *De Rose v South Australia*, which led many parties to delay the making of agreements while they were assessing the consequences of the decisions for them.

Table 7 shows the number of these agreements negotiated with the assistance of the Tribunal.

Table 7 Claimant, non-claimant and compensation agreements negotiated with Tribunal assistance

	NSW/ACT	NT	Qld	SA	Vic./Tas.	WA	Total
Number of agreements	7	0	37	1	1	14	60

In the Northern Territory, the Federal Court continued to adopt a staged approach to the referral of native title applications to the Tribunal for mediation. There were 22 matters in mediation for all or part of the reporting period, and a further 42 matters were being considered for referral. In addition, 91 active claimant applications were able to be referred, following notification and settling of party lists. These matters are likely to be considered for mediation in 2003–04. There were no Tribunal-facilitated agreements during the reporting period.

In the Central Land Council region, a negotiation strategy between the native title claimants and the Territory Government included 10 claimant applications. These negotiations may lead to one or more agreed outcomes during the next financial year. Five of these matters were in formal mediation and the Tribunal was available to provide assistance if required.

In the Northern Land Council region, the majority of claims in mediation were over pastoral leasehold land as a result of future act events. One matter (Newcastle Waters DC01/8), referred by the Federal Court for mediation from May 2002, was considered a lead matter with the aim of establishing negotiation frameworks and possibly agreed outcomes that could have wider regional applicability. At the time of reporting, the matter remained in the early stages of negotiation and within Tribunal mediation.

Fourteen agreements were achieved in Western Australia, and a number of native title applications were the subject of intensive mediation and negotiations at the time of reporting.

On 27 September 2002, the native title rights of the Martu People from the Western Desert of Western Australia were recognised in a Federal Court sitting at Parngurr Rockhole. The court determined that the Martu People held native title to 136,000 square kilometres in the Western Desert. The determination also acknowledged the native title of the Ngurrara People who share interests with the Martu over a 5,652-square-kilometre area around the Percival Lakes region (see 'Output 1.1.2 — Native title determinations', p. 47).

The Tribunal facilitated an agreement between the Kariyarra People and the Town of Port Hedland in the far north of Western Australia on 1 October 2002, which established a partnership between groups who had previously not had a formal relationship. The Kariyarra People have a native title claim that takes in the town of Port Hedland and the agreement laid a firm foundation for native title negotiations in the future. Importantly, it had a significant impact on a series of other local government memoranda of understanding in the Murchison and others being discussed in the Kimberley and the South West of the state.

In the South West of the state, the Tribunal assisted with the mediation of a memorandum of understanding between the Western Australian Local Government Association and the South West Aboriginal Land and Sea Council (SWALSC). Negotations lasted six months, with both parties consulting extensively with their stakeholders. The SWALSC represents the Noongar traditional owners in the South West region, where 105 of the state's 144 local governments, represented by the Western Australian Local Government Association, are located. The MoU sets out how the two bodies will work together to develop template agreements that will enable local governments to progress land management and land use objectives. The signing ceremony was planned for the second week of the new reporting period to coincide with National Aboriginal and Islander Day Observance Committee (NAIDOC) celebrations.

During the reporting period, the Tribunal convened regional planning meetings in all Western Australian regions. The aim of the meetings is to involve each native title representative body and the state government for each particular region in order to settle priorities for mediation, and establish and review mediation programs. Regional planning also aims to identify what can realistically be achieved with the resources of the major parties. Effective regional planning takes account of any litigation occurring, future act mediation and arbitration as well as native title claim mediation and related projects.

In New South Wales, High Court decisions and continuing improved liaison between NSW Native Title Services and the Tribunal resulted in the

resolution of some claims. This was a consolidation of activities and reflected the natural process of mediation and agreement-building in the state.

The Terramungamine–Wiradjuri agreement was mediated by the Tribunal and signed by the parties at an 'on country' ceremony on 6 December 2002 (see case study below).

CASE STUDY

Terramungamine Reserve Agreement, Dubbo New South Wales

The Tubbagah People lodged a native title claim over the 16 hectare reserve north of Dubbo in 1995. During mediation, it became clear that all participants wanted to share the land in a way that recognised everyone's rights and interests in the area. A formal agreement between them was the obvious way forward and the Tribunal started facilitating negotiations in 2000. On 6 December 2002, the Dubbo City Council, the Tubbagah People of the Wiradjuri Nation, the New South Wales Government and the Dubbo Rural Lands Protection Board signed an agreement, formalising the use and management of the historic Terramungamine Reserve.

With the agreement, the Dubbo City Council and the state government acknowledge that the Terramungamine Reserve was part of the Tubbagah People's traditional country. The agreement also creates two new types of reserves—an Aboriginal burial ground for ongoing use and a reserve for the preservation of Aboriginal cultural heritage. A 101-year old travelling stock reserve is protected and public access to the riverside reserve area continues under the management of the Dubbo City Council.

Left to right: Coral Packham and Will Burns, Tuggabah People representatives, Chris Guest, NSW Department of Land and Water Conservation, Greg Matthews, mayor Dubbo City Council and Ken Mackinnon, Dubbo Rural Lands Protection Board, at the signing ceremony in Dubbo, December 2002.

Tribunal member Mrs Ruth Wade, who mediated the agreement, described it as a good example of an outcome that brings benefits for everyone. Tubbagah People representative Will Burns said the agreement was important for his people, as it recognised Tubbagah People as the traditional owners but also formalised other parties' commitment to make the agreement work on a day-to-day basis. Mayor of Dubbo Mr Greg Matthews said he was proud that Dubbo City Council could play an important role in establishing reserve trusts for the Terramungamine Reserve and the Tubbagah Aboriginal Burial Ground.

Due to the agreement between the Tribunal and key stakeholders in South Australia not to actively mediate claims in view of the Statewide ILUA Strategy, just one native title agreement was negotiated in relation to a claim. On 30 May 2003, the Federal Court rejected an application that there be no mediation of native title claims because of the Statewide ILUA Strategy. The court indicated that all of the South Australian claims would be called on for directions in August 2003. The directions hearings will determine in each case whether the whole or part of each claim should be referred to the Tribunal for mediation.

In Victoria, agreement-making primarily involved those claimant applications in most active mediation. An in-principle agreement between the Wotjobaluk People and the State of Victoria was announced in November 2002 and could result in Victoria's first determination that native title exists. The proposed agreement incorporates both native title and related outcomes about land management, national parks, cultural heritage protection and financial support for the claimant group. (See 'President's overview', p. 6.)

Client and stakeholder satisfaction

Overall levels of satisfaction with all output areas were measured as 65 per cent, including this output. For further details see 'Evaluation of client satisfaction', p. 120.

Over the years, the Tribunal's activities in assisting the agreement-making process have been based on constructive relationships with its clients and stakeholders. During the reporting period, the registries have continued to work closely with claimants, their representatives, industry groups and state and territory agencies, providing information and assistance in many forums and meetings. The Tribunal's growing work in building capacities of participants in the native title process also contributes to enhance relationships. (Capacity-building assistance is reported on in more detail under 'Output 1.4.1 — Assistance to applicants and other persons', p. 83.)

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, or where the President has directed the holding of a conference to resolve issues in an inquiry matter.

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 (s. 31 of the Act). 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).

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 are only 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 number of agreements mediated by the Tribunal;
- quality — 70 per cent of mediations and conferences concluded within a six-month period; and
- resource usage — unit cost per future act agreement mediated with Tribunal assistance.

Performance at a glance		
Measure	**Estimate**	**Result**
Quantity	60	55
Quality	70% of mediations concluded within six months	68% of mediations concluded within six months
Resource usage — unit cost for mediation and assistance for future act agreements	$ 26 913	$ 34 252
Resource usage — output cost	$1 615 000	$1 883 866

Comment on performance

While 55 future act agreements were achieved rather than the estimated 60, the past financial year saw the signing of one of the largest native title agreements in Australia. The agreement covered parts of the Burrup Peninsula, a resource-rich area in the Pilbara region of Western Australia, which also contains the world's largest known collection of rock art.

The trigger for the agreement was the state government's intention to acquire the land and related native title interests in order to progress an industrial estate. The Tribunal started mediation between the parties in November 2001, and negotiations continued after the state lodged two applications for future act determinations in relation to the compulsory acquisition of native title. The Tribunal's arbitral team functioned separately to its mediation team, as is necessary when the processes run parallel (see case study on p. 70).

The Burrup mediation required substantial Tribunal resources, including more than 60 meetings with parties, most of which occurred during the previous financial year.

The apparent substantial increase (34 per cent) in the average cost per agreement compared to the estimated cost is due to an error in the 2002-03 Portfolio Additional Estimates Statement (PAES).

The PAES shows that the expected expenditure per unit for this output was $26, 913. However, this estimate was incorrectly based on the actual unit cost reported in the 2001–02 Annual Report ($26,175), which reflects the cost per concluded mediation rather than the cost per agreement.

To be consistent with the definition of the output, the cost estimate should have been based on last year's cost per future act agreement, which was $36,473. The actual cost per agreement in 2002–03 is consistent with the estimate as corrected above.

The Tribunal has progressively refined the definition of this output as well as the interpretation of the definition to ensure that they are conceptually sound and internally consistent.

The 55 future act agreements mediated by the Tribunal include:

- agreements arising from mediations under s. 31 given effect through state deeds (ss. 31 and 41 of the Act);
- agreements arising from mediations under s. 31 that were given effect through future act consent determinations; and
- agreements to withdraw objections to the expedited procedure (s. 150).

It is important to note that when an agreement mediated under s. 31 of the Act is given effect through a future act consent determination, this separate Tribunal process also results in a finalised future act determination. Similarly, when an agreement reached via conferences under s. 150 of the Act is given effect by the objection being withdrawn, this separate Tribunal process also results in a finalised objection.

Table 8 shows the breakdown by state and type of agreement.

The Tribunal revised the quality measure to 70 per cent of mediations concluded within six instead of eight months, and almost met this target, with 68 per cent of mediations concluded within the six-month period in 2002-03.

Table 8 Future act agreements mediated by the Tribunal by state 2002–2003

State	Agreement	Amount
NSW	Future act agreement (state/territory deed—ss. 31 and 41A (old s. 34))	1
Qld	Future act agreement (state/territory deed—ss. 31 and 41A (old s. 34))	1
Vic.	Future act agreement (s. 150)	1
WA	Future act agreement (state/territory deed—ss. 31 and 41A (old s. 34))	32
WA	Future act agreement (s. 150)	12
WA	Future act agreement (s. 31) given effect through consent determination	8
Total		55

CASE STUDY

The Burrup agreement, Pilbara region of Western Australia

The Burrup Peninsula is the world's largest area of Aboriginal rock art. In 2000, the Western Australia Government announced that it wanted to acquire the native title rights of the three native title claimant groups— the Wong-Goo-Tt-Oo People, the Ngarluma Yindjibarndi People and the Yaburara Mardudhunera People—to allow for a $6 billion industrial development in the area. When an attempt to reach a mediated agreement broke down after nine months, the state government submitted a future act determination application, asking the Tribunal to make an arbitral decision. A comprehensive arbitration process followed, involving a good faith inquiry, a call for public submissions and a visit to the site. The mediation continued to run in parallel with—but totally separately from—the arbitral inquiry. The parties reached agreement just before the Tribunal was expected to hand down the future act determination. The successful mediation helped establish constructive relationships between native title groups and the industrial companies. However, by the end of the reporting period, there was more work ahead to implement the agreement, such as setting up an authorised body corporate made up of members of the claimant group; negotiating the joint management agreement over the non-industrial land and heritage surveys over some areas of the industrial estates.

On 16 January 2003, one of Australia's most significant native title agreements was signed on the Burrup Peninsula, 1,270 km north of Perth. The agreement included three native title claimant groups, four industrial companies and the State of Western Australia. In exchange for their native title rights over the areas of proposed industrial development on the peninsula, the native title claimant groups received a $15 million heritage protection and compensation package.
The package includes protection of Aboriginal heritage on the peninsula, employment and training opportunities, a share in the housing development established to support the industrial estate and co-management of the non-industrial land on the Burrup. Tribunal member Bardy McFarlane, who conducted the long-running mediation, said the agreement was the result of persistence in the face of enormous difficulty.

Member Christopher Sumner (left) with Wilfred Hicks, spokesperson for the Wong-Goo-Tt-Oo People, on the Burrup Peninsula in Western Australia, January 2003.

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 in some states continued at a high level throughout the year. In states where a decline in the number of objection applications has occurred there is a consequent decline in the number of conferences required.

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. An increase in referral of matters to mediation by both Victoria and the Northern Territory had been anticipated, but did not eventuate in the reporting period while they remained high in Western Australia.

Sixty future act mediation requests were lodged with the Tribunal in the reporting period and 11 of these were resolved. In the same period, the Tribunal resolved another 18 mediation requests lodged before 1 July 2002. The majority of mediation requests were lodged in Western Australia.

During the reporting period there were 23 objection cases lodged in which mediation conferences under s. 150 of the Act were held, all in Western Australia. Of those 23, three matters were resolved by agreement following the conference.

There were four future act determination matters in which s. 150 mediation conferences were held, with none resulting in agreement.

In the Northern Territory, the first mediation under s. 31 of the Act took place. At the request of the grantee party, the Tribunal mediated an application involving several petroleum exploration permits. At the time of reporting, negotiations were expected to be finalised early in the new financial year.

The Northern Territory Registry also saw a decrease in objection matters due to a changed approach by the Northern Land Council, which started merit testing exploration licence applications to decide where they will be lodging objections.

In Victoria, requests for future act mediation and arbitration applications have not been as forthcoming as initially expected. However, there was an increase in the level of these activities compared with the previous

year, and two applications for future act determinations were finalised after hearings of the evidence.

Regional trends impacting on lodgement and resolution rates

As noted earlier, although it can offer mediation assistance to parties engaged in arbitral processes under s. 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 s. 31 (3) is influenced by different factors around the nation, including:

- the level of familiarity and confidence of parties in the process;
- availability of resources to participate in processes;
- whether parties favour other processes such as ILUAs;
- state or territory policies, practice and legislation; and
- industry forces affecting the priority attached to gaining access to land and resources.

At the end of 2002, the Tribunal introduced a protocol in relation to mediations under s. 31. This protocol, usually discussed at the first mediation meeting, is aimed at encouraging the parties to commit to the negotiation processes to facilitate the making of agreements.

In Western Australia, the Tribunal assisted parties and the state government in developing new approaches to resolving the current backlog of tenements in Western Australia, which have not yet entered the native title process.

It provided substantial resources to a project aimed at developing regional heritage protection agreements, conducted by the Heritage Protection Working Group. These agreements would put protections in place, eliminating the need for native title parties to lodge objections to the expedited procedure. The group worked in parallel with the Mining Recommendations Working Group to reduce the backlog of tenements in Western Australia. Both groups were established following recommendations of the Technical Taskforce on Mineral Tenement and Land Title Applications, established by the state government in 2000–01.

At the end of the reporting period, one regional agreement was finalised. The working group was aiming to develop agreements in the other regions as well a better coordination of information and management of data to avoid the need for repeated surveys. With more agreements in place, the rate of objections is expected to reduce significantly in the next financial year.

The Heritage Protection Working Group is chaired by Tribunal member Bardy McFarlane and comprises representatives of the State Office of Native Title, Department of Industry and Resources, Department of Indigenous Affairs, Chamber of Minerals and Energy, Association of Mining and Exploration Companies, Amalgamated Prospectors and Leaseholders Association, South West Aboriginal Land and Sea Council, Ngaanyatjarra Council, Yamatji Land and Sea Council, Goldfields Land and Sea Council, the Kimberley Land Council and the Western Australian Aboriginal Native Title Working Group.

In the Northern Territory, there were 81 active matters in the right to negotiate stream at the end of the reporting period. These comprise 78 matters where the expedited procedure was not asserted at notification, and three matters where the objection to the expedited procedure was upheld by Tribunal determination.

The Northern Territory Government indicated its preference for resolving these future act matters through negotiation and agreement. The Tribunal maintained regular contact with the key stakeholders in relation to a strategic approach to the right to negotiate.

In Queensland, the impending resumption of the Commonwealth future act regime was the main area of work at the end of the reporting period. In November 2002, the Full Federal Court overturned the decision made by a single judge of the Federal Court in February 2002 that some of the alternative state provisions were invalid. However, the Queensland State Government decided to go back to the Commonwealth processes as the mining industry found that the processes were working in other places.

A liaison committee including senior staff of the Tribunal and the state government was established to ensure a smooth and coordinated transition of future act work to the Tribunal.

Throughout the financial year there has been a decline in future act activity in Queensland because of the Federal Court decision in February 2002 that the alternative state provisions were invalid. High impact applications have been accumulated since February 2002, adding to the already considerable number of unprocessed mining and exploration interest applications in Queensland. The state government indicated that it intended to clear the backlog of applications with the cut-off date for lodging an application under the alternative state provisions process being 31 March 2003. The Commonwealth process commenced on 1 July 2003 and it was intended that the right to negotiate and the expedited procedure would apply.

As a result of the transition, four distinct processes to clear the backlog of applications will be run in parallel during next the financial year:

- the alternative state provisions for applications lodged within that system by 31 March 2003;
- the Commonwealth future act regime for applications lodged after 31 March 2003;
- the state-wide model ILUA; and
- other ILUAs.

Factors affecting the low level of future act activity in New South Wales included the ramifications of the High Court decision in *Wilson v Anderson*, which reduced scope for negotiations on mining in the Western Lands Division as mineral activity is largely on pastoral leases in the division. The High Court found that Western Lands perpetual grazing leases extinguish native title. This means that native title parties no longer hold the right to negotiate over about 94 per cent of the Western Division, which comprises about 42 per cent of the state.

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 s. 29 notices issued is relatively low compared with other states. The Victoria Registry received regular inquiries about assistance available in future act processes. Two hearings of requests for arbitrated decisions about whether proposed mining activity could proceed have been finalised. In both matters the decision was that the mining could proceed with conditions attached. One of these decisions was under appeal before the Federal Court at the time of reporting. The Victoria Registry was also actively engaged in several mediation matters during the reporting period.

Output group 1.3 — Arbitration

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**	**Result**
Quantity	90	56
Quality	70% determined within six months of application	100% determined within six months of application
Resource usage — unit cost of future act arbitration	$ 18 850	$ 18 051
Resource usage — output cost	$1 696 000	$1 010 830

Comment on performance

Number of future act determinations

During 2002–03, 56 applications for future act determinations were lodged, compared to last financial year's total of 23. The Tribunal made 56 future act determinations, 34 fewer than the estimated 90. Fifty four of the determinations were made in Western Australia.

The number of matters lodged depends on many factors, some of which are outlined in 'Output 1.2.3 — Future act agreement-making', p. 67. Other factors might include the intending applicant's access to resources to negotiate, 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.

As a result of promoting future act consent determinations as a means of fast-tracking agreements, future act determination activity and outputs have increased significantly in 2002–03.

The vast majority of future act determination applications were lodged in Western Australia, and most were for future act consent determinations. Future act consent determinations are a popular alternative to state deeds, thus avoiding the need to secure the signatures of all registered native title claimants. On occasion, future act consent determinations have also been used where the claimant group as a whole supports the signing of a state deed, but one registered native title claimant refuses to sign. The number of tenements cleared by future act

consent determinations has increased from 27 last financial year to 42 this financial year, all of which occurred in Western Australia.

In July 2002, the Tribunal received two determination applications from the State of Western Australia in relation to the proposed compulsory acquisition of native title on the Burrup Peninsula and Intercourse Islands in the Pilbara region of Western Australia. The inquiry involved three native title parties and one of those parties alleged that the government party had not negotiated in good faith. On 29 October 2002, the Tribunal decided that there had been good faith negotiations and that it could proceed with the inquiry.

The nine days of hearing commenced in Perth, then resumed 'on country' with the Tribunal and parties visiting the Burrup Peninsula, mainland Maitland and West Intercourse Island and taking evidence from witnesses at various locations. Following a submission by one of the native title parties, the Tribunal invited public submissions on the proposal. A total of 72 public submissions were received from local, national and international people and organisations.

The Tribunal was also involved in the mediation in relation to the Burrup (see case study in 'Output 1.2.3 — Future act agreement-making' p. 67). This mediation led to an agreement just before the determination was to be delivered in January 2003. Where an agreement is reached, the Tribunal does not make a determination.

Table 9 Number of future act determinations lodged and finalised 2002–2003

State or territory	Lodged	Finalised
Australian Capital Territory	0	0
New South Wales	0	0
Northern Territory	1	0
Queensland*	2	0
South Australia**	0	0
Tasmania	0	0
Victoria	1	2
Western Australia	52	54
Total	56	56

* Queensland operated its own alternative body from 2000 until March 2003. ** South Australia operated its own alternative body.

Timeliness

All future act determination applications were decided within six months of the Tribunal receiving the application. This means that performance has significantly exceeded targets. This was in part due to the type of applications being lodged—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

The expedited procedure is used only in Western Australia and the 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 the course of the reporting period, the Tribunal was the subject of criticism with respect to the arbitral part of its future act processes, including its:

- guidelines on accepting objections to the expedited procedure, contained in the 'The Administration of Mining Future Acts in the Reporting Period' part of the *Native Title Report* 2001 by the Aboriginal and Torres Strait Islander Social Justice Commissioner;
- expedited procedure processes, contained in papers presented at the Native Title Conference 2002, held in Geraldton, Western Australia; and
- expedited procedure processes, contained in submissions to the Inquiry into the Effectiveness of the National Native Title Tribunal by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund.

The Tribunal responded comprehensively in writing. In March 2003, Deputy President Sumner, lead future act member, met with members of the Western Australia Aboriginal Native Title Working Group and a representative of the Northern Land Council. All matters which had been the subject of criticism were canvassed and the Tribunal advised participants that it is prepared to discuss issues of practice and procedures and respond to criticism. However, it must be recognised that determinations are made on particular cases by members acting independently according to law.

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	Result
Quantity	1 000	917
Quality	80% decided within six months of application	72% decided within six months of application
Resource usage — unit cost	$ 3 416	$ 2 935
Resource usage — output cost	$3 416 000	$2 691 482

Comment on performance

The processing of objections decreased by 14 per cent during the reporting period. This gain of efficiency was mainly due to the maturing negotiating environment in which parties operate, with a significant proportion of parties reaching agreement about the objection before going through to inquiry.

Outcomes achieved from the processing of objections to the expedited procedure

The majority of objection applications were lodged in Western Australia. A continuing high rate of lodgement and resolution of objection applications in Western Australia was maintained during the reporting period, with the majority of them being submitted by the Yamatji Land and Sea Council and the Pilbara Native Title Service.

Most of the objections finalised during the reporting period were resolved by agreement (in 48 per cent of matters finalised, objections were withdrawn by agreement, and in 16 per cent of matters finalised, consent determinations were made that the expedited procedure does not apply).

The Tribunal maintained a flexible approach to the application of the expedited procedure. With the support of affected parties, it agreed to vacate directions on objections to the expedited procedure matters involving a representative body for three months, while it redirected its resources into negotiating heritage protection protocols for their two regions. In 25 matters (19 involving the Pilbara Native Title Service and six involving the Yamatji Land and Sea Council) where grantee parties indicated a contrary view, Tribunal processes continued.

Table 10 Objection outcomes by tenement finalised 2002–2003

Tenement outcome	Northern Territory	Western Australia	Total
Consent determination — expedited procedure does not apply	0	149	149
Determination — expedited procedure applies	49	12	61
Determination — expedited procedure does not apply	1	7	8
Dismissed — s. 148(a) no jurisdiction	6	5	11
Dismissed decision — s. 148(b)	47	0	47
Dismissed — s. 148(a) tenement withdrawn	3	93	96
Objection not accepted	17	64	81
Objection withdrawn — agreement	1	438	439
Objection withdrawn — no agreement	0	5	5
Objection withdrawn prior to acceptance	0	2	2
Tenement withdrawn prior to objection acceptance	0	18	18
Total	124	793	917

Table 10 shows the different outcomes of tenements finalised within the reporting period. There were various reasons for the 81 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 objection 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).

In the Northern Territory, four of the 62 objections to the expedited procedure lodged during 2002–03 remained active at the time of reporting. Of the objections lodged, 57 were within the Northern Land Council region, and five in the Central Land Council region. A total of 17 objections were not accepted under s. 77 of the Act—six because they

did not include all the prescribed information required in an application, and the remainder on grounds relating to the validity of the application, including the absence of a registered native title claimant.

The total number of objections lodged in 2002–03 represents a 57 per cent decrease on the number lodged in the previous financial year. This is primarily explained by a 50 per cent decrease in the number of notices published by the Northern Territory Government under s. 29 and asserting the expedited procedure. The backlog of Northern Territory exploration and other mining applications that existed at 1 July 2000 has effectively been cleared, and the current rate of notices is more indicative of a steady state of new licence and lease applications.

Compared with 2001–02, the rate at which native title parties objected to the expedited procedure diminished by half during the reporting period. There was an increasing number of working agreements between the Northern Land Council and mineral exploration companies in the Northern Land Concil region, and fewer objections in those cases where agreements had not been reached.

In Western Australia, levels of future act activity increased compared to the previous reporting period. Of the 2,123 expedited procedure notices published this financial year, native title parties did not object to the granting of 1,329 tenements, which were therefore cleared (a clearance rate of 62.6 per cent). This compares with 1,347 expedited notices published last financial year, of which 639 tenements were cleared as native title parties did not object (a clearance rate of 47 per cent). This increase in clearance rates may be due partly native title claimants and resource companies reaching agreement. It may also be a consequence of a lack of resources of native title parties which constrains them from exercising their procedural rights under the Act.

Of objections lodged, an increased number were finalised. A total of 619 tenements were cleared by finalising objections in the reporting period, compared to 384 last financial year. The substantial number of objections cleared by agreement this year compared to 2001–02 was mainly the result of resource companies and native title representative bodies working together to reach agreements.

For the next reporting period, the Tribunal expects a possible reduction in the number of objections in Western Australia as a result of the introduction of regional heritage protection protocols and in the Northern Territory, as a result of a changed approach by the Northern Land Council. These reductions will possibly be offset to some degree by increased activity and outputs in Queensland.

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 eight per cent, as shown in Table 11 below.

Table 11 Time taken to process objection applications

	Western Australia	Northern Territory	National
Not more than six months between s. 29 closing date and objection finalised date	74%	58%	72%

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 proceeded to inquiry—matters were generally not being resolved through withdrawal and consent determinations.

Of the 62 objections lodged in the Territory during the reporting period, 58 were finalised, with 57 finalised within six months. The objections remaining active at the end of the reporting period were lodged towards the end of the period, and it is expected they will also be finalised within the six-month timetable.

By comparison, 53 per cent of objections filed in the last reporting period were finalised within the six-month performance criterion. The significant improvement in output performance in relation to objections lodged during the financial year resulted primarily from the reduction in the number of matters which were dealt with by a substantive inquiry before a member of the Tribunal. However, because some objections lodged during the previous reporting period took longer to process, the overall percentage of objections finalised within the six-month timeframe was 58 per cent.

Most finalised objections in 2002–03 were dismissed (42) or not accepted (15).

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 taking a leadership role in 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 and other persons through activities ranging from help with the preparation of applications and information about native title to maps, research reports, workshops for parties and media information. The Tribunal also assists parties in building their capacity to be effective participants in the native title process.

Categories of assistance

In this report, assistance activities are grouped in the following three categories:

- contacts — including telephone discussions, correspondence, media statements, maps, spatial descriptions and searches of the registers;
- events — including research reports for parties in agreement-making, education programs and information materials, for example fact sheets and the Tribunal's web site; and
- initiatives — including projects and activities aimed at building the capacity of participants in the native title process.

Early in the reporting period, the Tribunal undertook an extensive planning exercise in preparation for its *Strategic Plan 2003–2005* (see 'Appendix I Strategic Plan', p. 127). Consultation with external clients and members and staff of the Tribunal highlighted the need to help build the capacity of parties to participate in the native title process and, at 30 June 2003, the Tribunal had initiated 30 significant capacity-building activities. The category 'initiatives' has been added to the two existing categories of 'events' and 'contacts' in this report and was also included in the 2003–04 Portfolio Budget Statement.

Performance

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

- quantity — number of contacts, events and initiatives;
- quality — level of client satisfaction; and
- resource usage for each activity.

Performance at a glance

Measure	Contacts	Events	Initiatives
Quantity	Estimated: 14 000 Achieved: 14 938	Estimated: 350 Achieved: 489	Estimated: n/a Achieved: 30
Quality	Client satisfaction (see below)	Client satisfaction (see below)	Client satisfaction (see below)
Resource usage — unit cost per instance of assitance	Estimated: $154 Achieved: $155	Estimated: $6 230 Achieved: $6 520	Estimated: $100 000 (PBS 2003-04) Achieved: $96 792
Resource usage — output cost	Estimated: $2 156 000 Achieved: $2 312 668	Estimated: $2 180 500 Achieved: $3 188 442	Estimated: n/a Achieved: $2 903 757

Comment on performance

Number of assistance contacts, events and capacity-building initiatives

The total number of recorded assistance contacts, not including the Tribunal's publishing and media activities, was 14,938—seven per cent higher than the estimated 14,000.

There were 489 assistance events—139 more than estimated. Assistance events included:

- published information products sent or given to clients;
- media calls logged;
- educational programs and seminars; and
- research products aimed at specific needs (for example, background connection and legal reports).

In addition, there were 30 capacity-building initiatives during 2002–03.

Client satisfaction

Overall levels of satisfaction with all output areas were measured as 65 per cent, including this output. For further details see 'Evaluation of client satisfaction', p. 120.

Assistance contacts

Figure 6 shows that the most common type of assistance requested was application and register information, including register searches. Figure 7 shows that assistance provided in Queensland was the greatest of any state, followed by New South Wales.

The high level of assistance activities in Queensland reflects the stakeholders' need for authoritative information and help at a time of significant legal and political changes, in particular in the future act area. The level of demand for assistance and information is expected to remain steady well within the new financial year with the move from alternative state provisions to the Commonwealth future act regime from 1 July 2003 (see 'Output 1.2.3 — Future act agreement-making' p. 67).

Capacity-building initiatives

Native title outcomes are more likely when all parties have a good knowledge of native title processes and are able to participate effectively in the proceedings. Some claimant groups and other parties grapple with key capacity issues. These often relate to, among other things, access to adequate financial and technical resources and the understanding of the legislation, the process of agreement-making, the available options and possible outcomes. When parties lack capacity it can slow down the agreement-making process. The Tribunal considers it has an important role in identifying whether native title parties are able to be effective participants and in developing strategies to build capacity where needed.

Capacity-building assistance took many different forms during the reporting period. It was mostly an integral part of registries' work and closely linked to agreement-making activities, as illustrated by the examples mentioned earlier in this report. A common feature of these initiatives was the sharing of Tribunal resources, expertise and skills with clients to build relationships and create environments that would allow people to make effective agreements.

CASE STUDY

Assisting in building parties' capacity to make agreements in Queensland

The national pastoral project illustrates the Tribunal's effort to address issues and information needs within an industry at a structural level rather than on a claim-by-claim basis.
Around 75 per cent of Australia can be termed 'rangelands'. The pastoral industry operates over a significant proportion of this rangeland and thus native title is an important issue. During the previous reporting period, a project which initiated meetings with representatives from larger pastoral companies and family holdings, with a view to increasing the likelihood of agreements between pastoral interests and Aboriginal peoples, was piloted by the Queensland Registry. In June 2003, the Australian Agricultural Company announced that it would engage directly with Aboriginal groups, including native title applicants with a view to developing land use and access agreements over its holdings. At the time of reporting, the Tribunal planned to extend its strategy to address native title issues on pastoral lands across Australia by focusing specifically on large pastoral corporations and large pastoral family holdings.

Peter Wallace, Kuku Yalanji People, and Jane Holden from the Tribunal's Queensland registry, June 2003.

Other capacity-building assistance events and initiatives included:

- In Victoria, the Tribunal held bi-monthly forums on various topics and provided ongoing information and assistance to the Chamber of Mines, Mirimbiak Nations Aboriginal Corporation and the State of Victoria towards development of a series of template mining related agreements and ILUAs. The registry also participated in Land Justice Information Forums to convey information on available options and processes. This was a cooperative initiative by Australian Government agencies with a role in dealing with indigenous land aspirations.
- In New South Wales, the registry focused on the increasingly complex registration test process and Tribunal staff conducted a seminar for legal representatives of claimant groups aimed at enhancing their skills in meeting the conditions.

- In South Australia, after a series of planning meetings with the South Australian Government and the representative body for the state at the beginning of the reporting period, the Tribunal increased its involvement in the Statewide ILUA Strategy and expanded its assistance to parties. The Tribunal provided research material to the representative body regarding connection and the preservation of evidence of elderly or infirm witnesses, and provided regular native title updates to the fishing industry (see 'Output 1.2.1 — Indigenous land use agreement-making', p. 58).
- In the Northern Territory, the registry entered into active discussions with key Northern Territory stakeholders to help foster dialogue about strategic approaches to agreement making in relation to the claimant applications.
- In Western Australia, the Tribunal initiated the Goldfields Native Title Liaison Council pastoral project to assist in developing pastoral access agreements. It also assisted the South West Aboriginal Land and Sea Council in conducting community meetings in the South West (leading towards the Noongar People amalgamating six applications into one single claim), Heritage Protection Working Group meetings (see 'Output 1.2.3 — Future act agreement-making', p. 67) and a native title workshop at the Pastoralists and Graziers' Association 2003 Conference.
- The Native Title Forum, organised in December 2002 with the State Government's Office of Native Title and the Western Australian Aboriginal Native Title Working Group, brought together a broad group of interested parties. Looking at innovative options for the way forward in the post-*Western Australia v Ward* environment, the forum led to the creation of the Native Title Strategy Group and the Fishing Interest Group. Both groups are ongoing forums for parties and government representatives to build relationships and develop strategic, workable solutions to native title issues.
- In Queensland, the Tribunal has assisted parties to the Torres Strait regional sea claim by developing a structured approach. The area under claim is the subject of an international treaty arrangement with Papua New Guinea and the mediation will require cross-border issues to be addressed. At the end of the reporting period, the Tribunal had met with the board members of the Torres Strait Regional Authority, representatives of prescribed bodies corporate from individual communities, and legal and anthropological staff to outline its approach. In the new financial year, this project will deliver a statement of relevant interests and issues, which will form the basis of terms of reference for the parties to the sea claim.
- The Tribunal also recognised opportunities to take a strategic approach to providing practical and specialised assistance. When the Yamatji Land and Sea Council asked for geospatial assistance, the

Tribunal developed a map production tool. This assistance led to a review of the representative bodies' geospatial capabilities. An inaugural meeting between four of the five Western Australian representative bodies, the state government Land Claims Mapping Unit and the Tribunal in June was a further step in exploring ways to share geospatial resources, expertise and strategies. The Tribunal's geospatial staff also joined forces with the legal staff and Western Australia Registry staff to prepare the education forum conducted in Paraburdoo in the Pilbara at the end of April 2003. Around 90 claimants involved in seven different claims in the region came together to talk about how issues flowing from the *Western Australia v Ward* and *Yorta Yorta* decisions impacted on their claims. With the help of maps, Tribunal staff explained the effect of the decisions and clarified how to progress the resolution of overlapping claims.

- At the national level, the Tribunal participated in a project with ATSIC to mentor anthropologists working with representative bodies. It was also part of a joint initiative with the AIATSIS and ATSIC, looking at developing models for managing native title issues within Indigenous communities.

Some of the Tribunal's initiatives in this output are mentioned earlier in this report as they were integrated as part of agreement-making work. For example, information on the Tribunal's ILUA seminars can be found under 'Output 1.2.1 — Indigenous land use agreement-making', p. 58.

Alice Springs native title conference

The Tribunal played a part in the native title conference organised by AIATSIS in Alice Springs in June 2003. President Graeme Neate was invited to summarise the conference outcomes and options during the final plenary session. Other Tribunal members and staff also presented papers, chaired sessions and convened workshops.

Talking Native Title

Since its launch in the last reporting period, the distribution of the Tribunal's national newsletter, *Talking Native Title*, has grown to more than 4,000—an increase of around 1,000 over the year. Articles have focused on native title-related High Court and Federal Court decisions, the signing of new agreements and celebrations of determinations of native title. *Talking Native Title* is augmented by individual state-based news briefs which are produced intermittently and distributed with the newsletter.

Information products

A range of information products was produced and distributed during the reporting period to meet specific stakeholder group needs. The Tribunal's

information materials are continually updated and evaluated to take into account the changing native title environment.

- A new edition of a *Short guide to native title* was produced, incorporating developments in native title law and new information on agreement-making.
- The Tribunal's Legal Services section developed a newsletter which has become a key source of updated information for native title practitioners. *Native Title Hot Spots* provides summaries of the latest developments in native title case law, regulations and determinations, recent research projects and changes to administrative procedures. *'Hot Spots'* is produced every two months. It has a subscription of 380 people and has been available on the Tribunal's web site since August 2002.
- A case study project was initiated to promote a range of native title outcomes to the Tribunal's diverse stakeholder groups. Filming of various case studies took place around Australia during the reporting period, and will be used for a new video in the next reporting period. The idea of the case study project is to use real stories to explain how different communities have worked with the native title process. Posters that give short 'snapshots' of different types of native title agreements were also developed.

Web site

The Tribunal launched its new web site in December 2002. The site was developed after an introductory phase that included research with stakeholders to determine the style, type and amount of information they required.

The new site has a substantial increase in accessible native title information and a number of new features including:

- an electronic subscription service for newsletters, hearings lists, media releases and publications;
- a Media Centre with the latest news and background information on agreements, key developments, determinations and events;
- maps of applications, determinations and ILUAs that can be downloaded easily;
- downloadable information sheets;
- online access to an extensive library catalogue of native title information; and
- information on employment opportunities at the Tribunal.

The web site is the central information point for many people involved with native title, receiving more than 10,000 visitor sessions each month and having more than 2,000 subscribers.

Media

Media interest in native title remained high during the year, especially following the announcement of a number of key High Court decisions and the signing of significant agreements. The media remain a key information source for many people interested in native title and the Tribunal's media unit consistently responds to requests from journalists around the country.

Research

The Tribunal's Research Unit has completed a total of 28 research reports relating to native title applicant group identity and areas claimed—two more than the last reporting period. These reports were supplied to mediation teams across most states and territories to assist with proceedings.

The coverage of the research can be gauged in the bibliographies from these reports published on the Tribunal's web site. The Research Unit undertakes other research projects to meet the needs of the Tribunal for specialist research materials (under s. 108). During the reporting period seven reports were delivered to members and staff. The unit published three papers written by staff members of the Tribunal's Legal Services in its 'Occasional Papers Series'—*The perpetuation of oral evidence in native title claims, Indigenous Witnesses and the* Native Title Act 1993 *(Cth)* and *Themes emerging from the High Court's recent native title decisions*. These papers are available on the Tribunal's web site.

As part of its research consultancy with the Tribunal, James Cook University was engaged to do two research projects during the reporting period. One was on legal issues of the Torres Strait sea claim and the second was the development of a workshop on the Commonwealth right to negotiate for representative bodies.

Geospatial assistance

The Tribunal maintains spatial records and associated spatial reference data on native title matters it administers, and the Geospatial Analysis and Mapping Unit provides a substantial amount of this information. The Tribunal remains the custodian of native title datasets and put substantial resources in improving the integration of those datasets with other data held by the organisation. As part of its work towards improving data sharing across the spatial sciences industry, the unit liaised with governments at state, territory and federal level and with the private sector.

Geospatial staff worked in close collaboration with registries, legal and operational staff and with clients, assisting with register searches, preparation of maps and written descriptions, preliminary assessment before registration testing. The unit provided general mapping, statistical

information and spatial analysis or advice but also developed specific maps for educational forums such as the Paraburdoo education forum (see 'Capacity-building initiatives', pp. 87–88).

As part of its assessment of the impact of the decision in *Western Australia v Ward*, the Tribunal developed a map showing the state-based categorisation of land tenure. Copies were provided to stakeholders including Western Australian Aboriginal Native Title Working Group, the Human Rights and Equal Opportunity Commission (HREOC), ATSIC and the representative bodies. Following the new protocols with HREOC for spatial analysis, the Tribunal provided an overlap activity map and statistics which depicted the Australian landmass subject to the geographic extent of native title applications.

Piloted in Queensland, a new mediation tool using Geographic Information System (GIS) integrated aerial photography, tenures (including historical tenure), site data and administrative boundaries and enabled the Tribunal and parties to enquire, visualise and link all documentation for the required area whilst in the field. Two pilots of the GIS mediation tool, with the Ngadjon Jii and Girramay native title applications, were successfully completed with a third proposed for the Torres Strait in the new financial year.

From November 2002, the Tribunal's new intranet system enabled staff to visualise and analyse information and maps via the self service product, GIRO II (Geospatial information — regional and organisational). This significantly increased the amount and quality of information available to staff. The Tribunal plans to make GIRO II available to clients and stakeholders.

The provision of training sessions and workshops for employees enables the unit to continue improving products and services provided, which in turn enables greater understanding of spatial issues in respect of native title applications or agreements within the Tribunal which assists in generating native title outcomes.

Level of client satisfaction

Overall levels of satisfaction with all output areas were measured as 65 per cent, including this output. For further details, see 'Evaluation of client satisfaction' p. 120.

Figure 6 Assistance to applicants and other persons by type 2002–2003

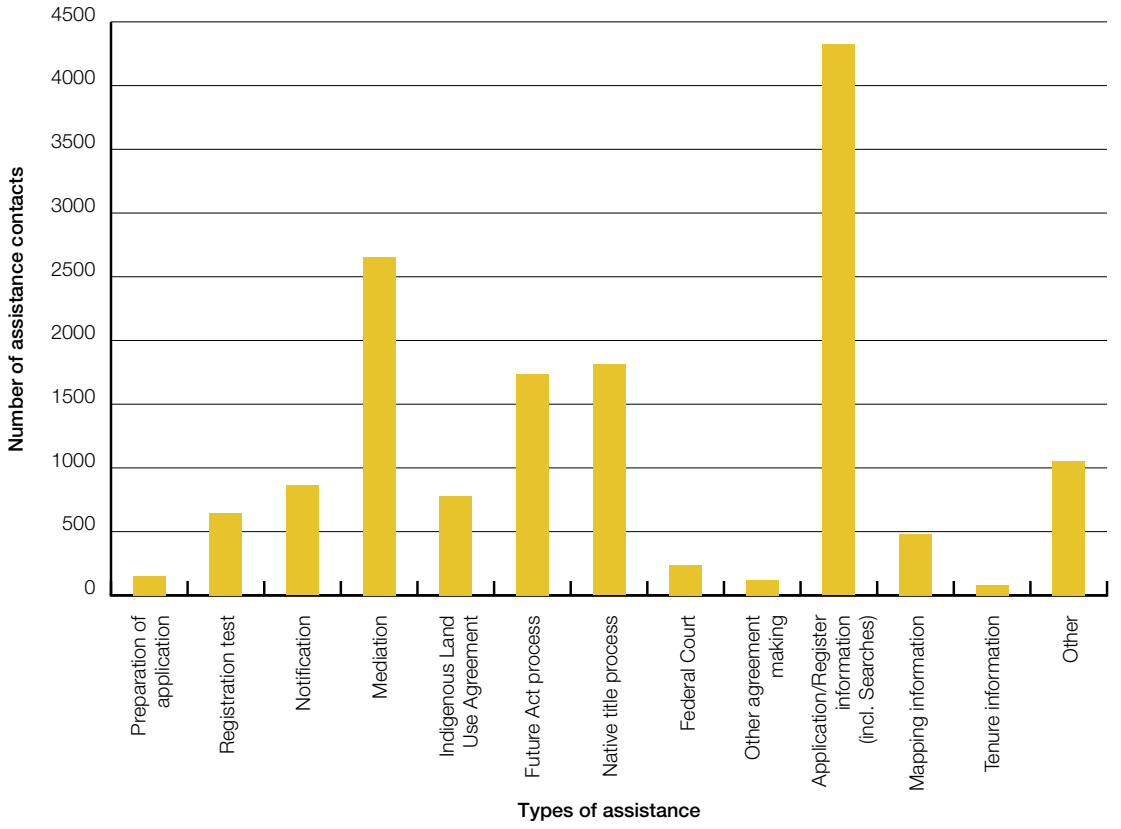
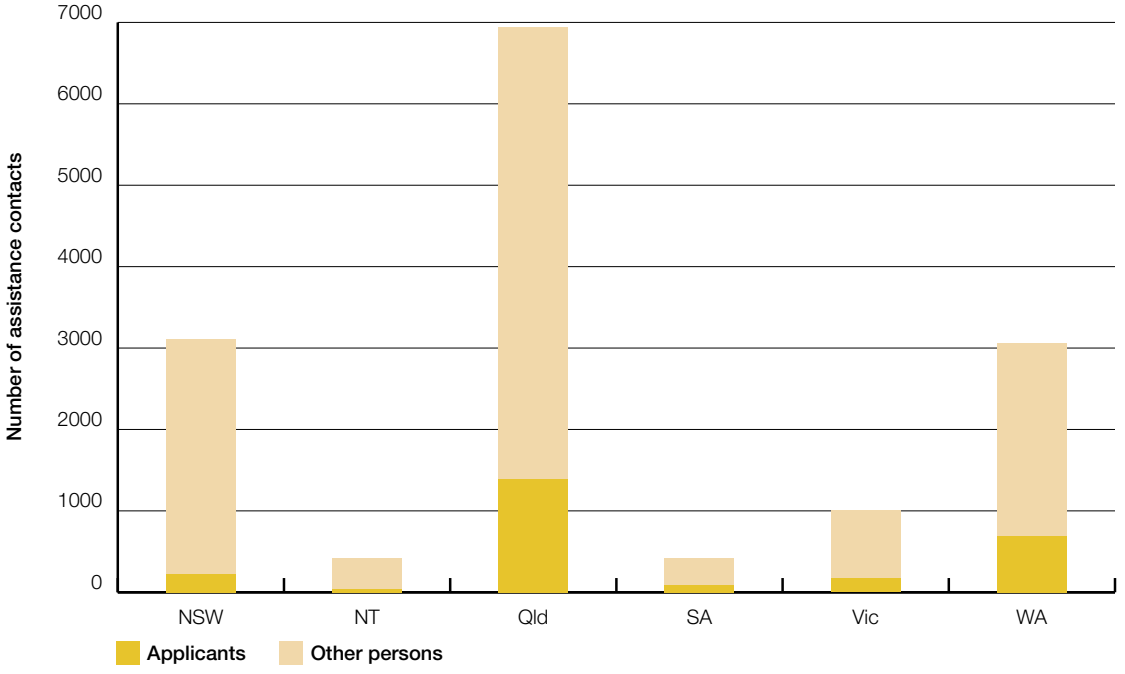


Figure 7 Assistance to applicants and other persons by state and territory 2002–2003



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 delegate) 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 ('broad' notifications). The Tribunal also uses other means of disseminating information about the notification in addition to newspaper advertisements; for example, in press releases and by providing maps to local government offices for display and conducting radio interviews.

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	Result
Quantity	100 applications advertised	103
Quantity	18 800 letters	8 531
Quality	Less than 5% to be renotified	No applications had to be renotified
Resource usage — unit cost	$6 011 per application advertised $54 per notification or renotification letter	$9 999 $90
Resource usage — output cost	applications advertised: $601 000 notification or renotification letters: $1 015 200	$1 029 853 $ 766 418

Comment on performance

The Registrar initiated the notification of 103 applications in this reporting period—61 claimant, 6 non-claimant and 36 applications to register ILUAs. The Tribunal has now notified a total of 84 per cent of all active native title claimant applications.

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

Table 12 Applications notified 2002–2003

State or territory	Claimant	Compensation	ILUA	Non-claimant	Total
Australian Capital Territory	0	0	0	0	0
New South Wales	6	0	0	5	11
Northern Territory	21	0	11	0	32
Queensland	28	0	21	1	50
South Australia	0	0	0	0	0
Tasmania	1	0	0	0	1
Victoria	2	0	3	0	5
Western Australia	3	0	1	0	4
Total	61	0	36	6	103

With the number of new claimant applications diminishing, the workload in notification gradually decreased during the reporting period. ILUA notifications contributed to sustaining the workload. However the fall in activity was sharper than anticipated with a total of 8,531 notification letters sent out—less than half the estimated 18,800. This was mainly due to the following circumstances:

- notification of claimant applications stalled in the last quarter of 2002 as the Tribunal established a moratorium on registration testing while it reviewed its procedures in the light of the recent court decisions in *Western Australia v Ward*, *Wilson v Anderson*, *De Rose v South Australia* and the *Yorta Yorta* case;
- less than half the estimated number of letters were sent to notify the large Gunai-Kurnai application in Victoria, due to the number of multiple interest holders in the area;
- from October 2002 to February 2003, there were no notifications of claimant applications in Queensland while the registry was investigated ways of obtaining interest holder information to allow for personal notice.

The significant increase in cost for this output is due to resource-intensive preparation work related to:

- the large Gunai-Kurnai application in Victoria; and
- the solution to the problem of broad notifications in Queensland.

The Gunai-Kurnai People's application, which covers nine local government areas in Gippsland, was notified in September 2002. The Victorian State Government had given early indications that the notification was likely to involve up to 12,000 interest holders, and this number affected the Tribunal's output estimate. However, the Victoria Registry sent a total of 4,217 notification letters. As many of the 11,500 interest holders had multiple interests in the area, the Tribunal ensured that interest holders received no more than one letter indicating that a native title application had been lodged over areas where they had interests. This required analysing the interest holder information provided by the state, capturing all interests and preparing 4,217 letters. This significant amount of administrative work increased the cost per letter.

The cost of this output was further increased by the lead-up work to a new process set up by the Queensland Registry to obtain interest holder information. The process has virtually eliminated the need for so-called 'broad' notifications, but required cross-checking and data input of information provided by the state. During the previous reporting period, the Tribunal had been constrained to conduct broad notifications in some instances where costs and timeframes for individual notification were an issue, prompting criticism by local government and other stakeholders.

At the time of reporting, many of the matters which still required notification were subject to activity before the Federal Court in relation to amendment, withdrawal and combination. The Queensland Registry initiated action to help resolve the status of these applications.

In January 2003, the first Tasmanian native title application reached the notification stage, as people with an interest in land covered by a native title application over a 1.3-square-kilometre area on Tasmania's north-west coast were invited to register to become parties to the claim.

In Western Australia, the Federal Court ordered special notices in relation to the trial proceedings for the Wongatha claimant applications in the Goldfields:

- Following the filing of two new applications, the Federal Court ordered the Native Title Registrar to give special notice of the filing of the applications. In particular, the Registrar was ordered to include in the advertisement that fact that, to the extent of the overlap with the Wongatha application, the new applications would be determined concurrently.
- In October 2002 the Wongatha application was amended, reducing the area of the application and removing some overlaps. The court subsequently made orders that the Registrar give special notice of the filing of the further amended application.

During the reporting period, the high cost of notifying ILUAs further increased the total cost of this output. On average, the cost of placing a newspaper advertisement for an ILUA was double the cost of a claimant application advertisement. ILUA notification advertisements contain extensive information, requiring more adminstrative resources to compile and check as it is not possible to use templates. In an effort to contain costs, the Tribunal was able to adopt the 'bulk' advertising approach, used in claimant notifications, for some ILUA notifications. This was the case when five ILUAs had the same proponent, dealt with the same subject matter, and therefore had common statements to be set out in the notice.

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 registrar to maintain mutually convenient and efficient reporting processes. The Tribunal also commenced a review of the national mediation report template with a view to increasing its effectiveness and readability.

The Tribunal also worked closely with the Federal Court to develop a protocol concerning the distribution of mediation reports in the north-west Queensland cluster of claimant applications. This protocol is consistent with the practice in some other regions.

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	Result
Quantity	820	567
Quality	95% within the timeframe set by the court	97% within the timeframe set by the court
Resource usage — unit cost per mediation report	$ 1 784	$ 2 029
Resource usage — output cost	$1 463 000	$1 150 557

Comment on performance

Where the Federal Court requests a mediation progress report, the Tribunal aims to make the reports to the court within the timeframe established by the court. Generally, the reporting process and the format of the reports are now well established. However at the end of the reporting period, the Tribunal was reviewing the mediation report template to increase its effectiveness.

While almost all reports were delivered to the court within the time period set by it, various factors 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 that did not allow a suitable 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.

In South Australia, the focus during the reporting period was on the state-wide ILUA negotiations. The court was in the process of settling the parties in up to 17 applications. These applications are expected to be referred to the Tribunal for mediation once the party lists are settled and this will result in more reports being provided to the court.

Similarly in the Northern Territory, a likely increase in the number of matters in mediation will result in an increase in reports to the court.

In Victoria, mediation activity was focused on the Wotjobaluk matter. An in principle agreement was struck in October 2002 in that matter and the court is now likely to refer another seven matters to the Tribunal for mediation. This may result in an increase in mediation reports to the court during the next reporting period.

In Western Australia, the court did not request as many mediation reports as expected, but the Tribunal did provide a number of reports voluntarily under s. 136G(3) of the Act.

The behaviour of other institutional participants in Western Australia has determined levels of demand upon, and mediation activity within, the Tribunal. For instance, for much of the reporting period, the state's involvement in Tribunal-led mediations was minimal. Despite this, the Tribunal was active in mediating with other respondent parties and in providing assistance to representative bodies.

In the Western Australian matter of *Frazer v Western Australia* the Federal Court gave a clear indication of the Tribunal's role in mediation. The court ordered that the Tribunal provide the court with detailed mediation programs in relation to matters in the Central Desert. In an earlier call over for matters in the Geraldton and Pilbara regions, the court made similar directions.

Whilst not technically a 'mediation report', mediation programs provide the court with extensive information about the mediation of a claim. The programs cover topics such as the issues to be negotiated in each matter, a negotiation protocol to be adopted by the parties, as well as the times, dates and venues of meetings. The Tribunal has taken a leading role in the development, circulation and lodging of these programs.

In response to comments made by Justice French, the Western Australia Registry also filed regular regional mediation reports with the court. These reports include information regarding any regional priorities as agreed between the state and representative body, the extent of any future act or ILUA activity, and any ongoing litigation affecting parties' capacity to engage in mediation.

The Native Title Forum, organised in December 2002 (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 83) led to the creation of the Native Title Strategy Group and the Fishing Interest Group. The work of these groups is likely to result in greater mediation activity in the next reporting period.

In some regions, the 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 s. 86B of the Act.

Number of reports

There were 567 mediation and status reports provided to the court. The expected level of reporting was not achieved because the court did not request the number of reports anticipated. Further, the High Court's judgments in *Commonwealth v Yarmirr*, *Western Australia v Ward*, *Wilson v Anderson* and the *Yorta Yorta* case resulted in a greater need for assistance as parties endeavoured to understand the implications of these decisions. Mediation activity in some regions was therefore reduced in line with this need for assistance.

Table 13 gives the breakdown of reports by state and territory.

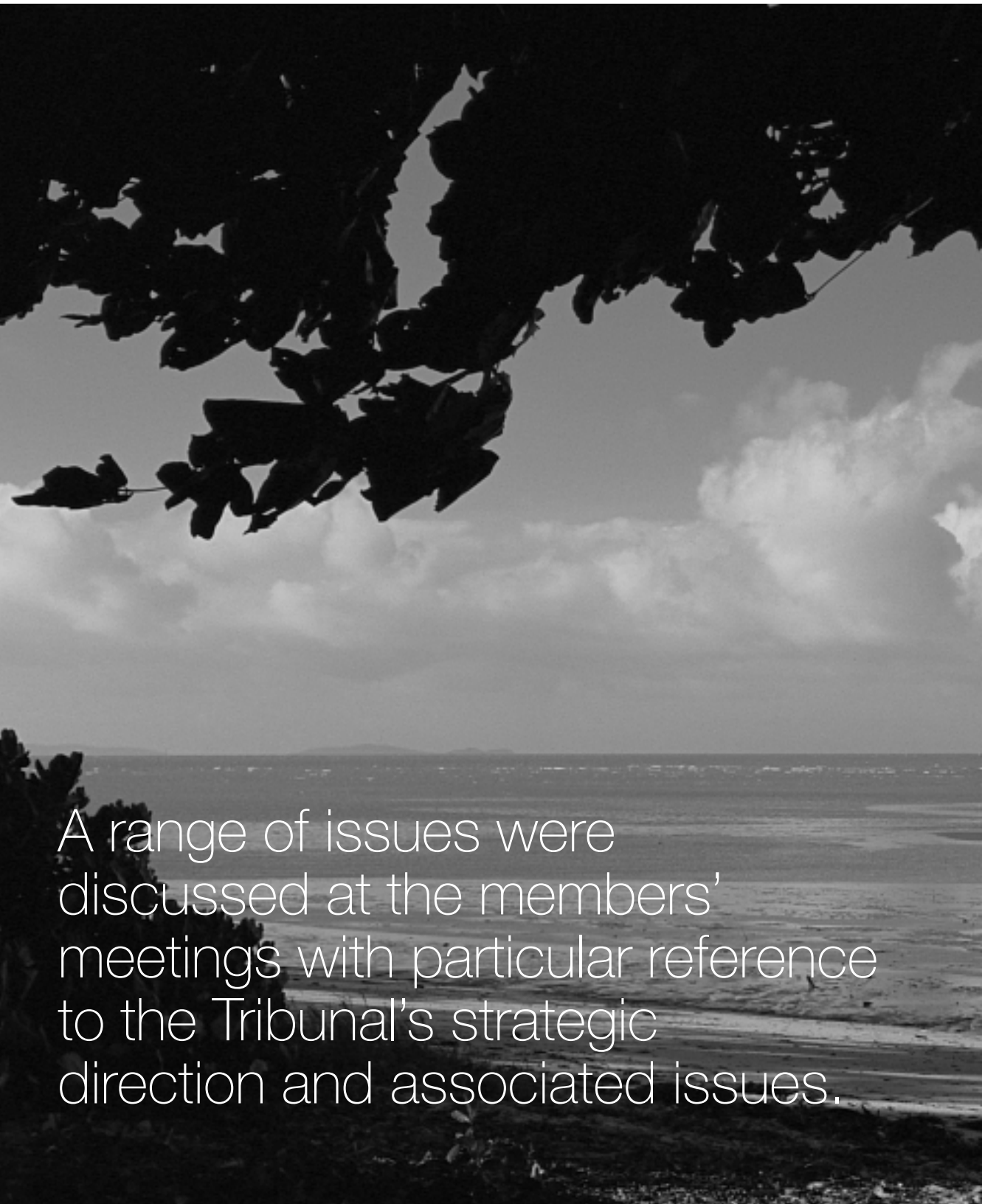
Table 13 Mediation and status reports by state and territory

	ACT	NSW	NT	Qld	SA	Tas.	Vic.	WA	Total
Reports	0	54	25	142	12	0	10	324	567

Timeliness of the reports

Reports are generally timely and well received, with the court regularly adopting the Tribunal's recommendations.

Management



A range of issues were discussed at the members' meetings with particular reference to the Tribunal's strategic direction and associated issues.

Corporate governance

Members' meetings

The President and members held two members' meetings in the reporting period, in Melbourne during October 2002 and in Sydney during March 2003. One extraordinary meeting was also held in Adelaide during January 2003.

A range of issues were discussed at the meetings with particular reference to the Tribunal's strategic direction and associated issues. Other items included the Tribunal's mediation and assistance practices and procedures, developments in agreement making and the development of responses to inquiries, including the inquiry into the effectiveness of the Tribunal conducted by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund.

Matters arising from Federal Court and associated practices, were discussed by members which helped to guide the Tribunal's Federal Court liaison team.

The extraordinary meeting was held to develop the Tribunal's *Strategic Plan 2003–2005*. This incorporated the finalisation of the Tribunal's four key success areas, organisational adjustments required to implement the plan and its communication to the Tribunal's broad stakeholder groups.

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 comprises the President, Deputy President Chris Sumner, ILUA Member Coordinator Ruth Wade, member Tony Lee, the Registrar, the Director of Service Delivery, and the Director of Corporate Services and Public Affairs. Other members are involved from time to time.

The group integrates the management and administration with the organisational strategic direction. It met seven times during the reporting period to advise on high-level budget priorities for 2002–03, monitor the Tribunal's performance, assist in the development of the Tribunal's *Strategic Plan 2003–2005*, and make recommendations to facilitate strategic Tribunal projects.

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 Tribunal agreement-making processes. It is chaired by the President and includes three members, the Director of Service Delivery, the Western Australia State Manager and an executive officer.

The group worked on developing and documenting a best practice agreement-making model to be used by the Tribunal in carrying out its mediation functions. It established a curricula development project team, convened by Member Gaye Sculthorpe, to develop a program to train members and staff in the agreement-making model.

In the next financial year, the group plans to focus its work on: training; implementing and refining the agreement-making model; monitoring agreement-making trends; and responding to new issues in native title agreement-making.

National 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 Chris Sumner and its members include the Director of Service Delivery, the Registrar, member Bardy McFarlane and senior staff involved in future act work at national and state levels. Other members and staff may also attend the meetings to address or inform on various agenda items. During the reporting period, the group met monthly and played a key role as the executive forum dealing with strategic future act matters. It was responsible for:

- maintaining an overview of the national future act picture on a region-by-region basis through statistical and state reports;
- identifying and addressing strategic and policy related issues;
- covering matters relevant to the coordination of national future act practice, for example matters arising from members' meetings, officer training or information products;
- considering matters referred to it from future act working groups, or referring matters back to those working groups;
- liaising with other Tribunal strategy groups as required; and
- referring appropriate issues to the Strategic Planning Advisory Group.

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 group's members are the Registrar, the ILUA Member Coordinator Ruth Wade, the Director of Service Delivery, the Director of Corporate Services and Public Affairs and other senior managers, including a Registrar's delegate and representatives from Geospatial and Mapping Services and Legal Services.

The group meets every six weeks and 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.

During the reporting period, the group approved and organised a national seminar series aimed specifically at legal practitioners. Seminars were held in the Northern Territory and all states except Western Australia. General information sessions were also held in the Northern Territory and Queensland. Other activities included a full audit of the ILUA assistance database, a review of the portfolio budget statement reporting criteria, refinement of business rules and the development of a protocol between the Registrar and members, covering negotiations to withdraw objections to the registration of an ILUA.

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 .

The Tribunal has two divisions: Service Delivery and Corporate Services and Public Affairs (see Figure 1, p. 32).

Under the Act, the President is responsible for managing the administrative affairs of the Tribunal, assisted by the Registrar. The Registrar has responsibility for the day-to-day operations of the Tribunal, in close consultation with the President. The Registrar may delegate all or any of his or her powers under the Act to Tribunal employees. During the reporting period delegates of the Registrar assessed claimant applications and ILUAs for registration, notified interested persons in the various types of applications and managed the three statutory registers.

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

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 on a range of issues concerning the Tribunal.

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 of Corporate Services and Public Affairs in order to coordinate the implementation of cross-organisational projects or services and communication strategies.

State and territory managers meet in the Principal Registry in Perth three times a year. 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 two 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 three occasions to advise on research strategies and directions.

SES remuneration

Senior executive service (SES) employees are employed under Australian Workplace Agreements (AWAs). The SES Band 1 salaries are set by the Registrar.

Corporate planning

During the year, a new strategic plan was developed for the period 2003–05, to come into effect from 1 July 2003 (see 'Appendix I Strategic Plan', p. 127). As part of the consultation process, members and staff considered the issues in the external and internal operating environment, external client and stakeholder feedback and the future directions for the Tribunal.

Key priorities for the Tribunal were developed by the members of the Tribunal, including: stakeholder relations, agreement-making, the post-agreement environment and capacity-building of parties involved in the native title process.

The *Strategic Plan 2003–2005* sets out four key success areas:

1. Taking a leadership on native title issues
2. Providing excellence in native title services
3. Enhancing our organisational capability to anticipate and respond to change
4. Ongoing improvement in our performance.

A range of organisation-wide strategies were developed to achieve these objectives. Operational plans within the Tribunal were developed to implement those strategies at the section and registry level. A framework for individual performance plans was developed to ensure there was a link with the operational and strategic plans.

Outcomes for each of the key success areas were developed, which include indicators such as client satisfaction, client and stakeholder perception, organisational culture and employee engagement, improved efficiencies and output targets.

A performance information framework was developed to provide regular reporting to the Strategic Planning Advisory Group of progress in relation to financial performance, key priorities, and progress with operational plans and the Strategic Plan.

Management of human resources

Strategic direction and achievement in key success areas were a major theme during the reporting period, with people-management activities including:

- process mapping of key business activities within the People Services section;
- provision of online access to employee conditions of service and related information through the implementation of the Tribunal's new intranet (see p. 122); and
- continuous improvement and aligning of core people-management practice and procedures.

Market testing of people management functions also took place (see 'Performance against purchasing policies', pp. 123–4).

Tribunal Capability Framework

The Tribunal Capability Framework (TCF) is a major tool used to support, link and measure individual employee performance management with the Tribunal's strategic and operational planning, and organisational performance. It was introduced in the previous reporting period to underpin core people-management practice and processes such as recruitment and selection activities, learning and development initiatives, and performance management.

The TCF is a set of five common capabilities that are used as the primary selection criteria for all vacancies within the Tribunal. Each capability is supported by examples of performance indicators that describe the types of activities that should be demonstrated consistently for each classification level within the Tribunal.

The Tribunal Capability Framework was reviewed in the reporting period and major changes were made to simplify its application.

Learning and development

In the reporting period, learning and development activities focussed on three key areas.

Corporate compliance, including:
- occupational health and safety training for those travelling in the field, especially in remote locations;
- dealing with diversity issues in the workplace, including in the field (for example, Indigenous cultural awareness);
- a comprehensive induction strategy, including flexible training materials, comprehensive checklists, and a 'buddy' system for new starters;
- selection and recruitment practices for both selection panels and internal applicants;
- performance management;
- contract management; and
- records and document management.

Skills development, including:
- case management training (for example, mediation, registration testing and ILUAs); and
- media skills for senior and regional managers.

Professional and career development including:
- a national workshop for Indigenous employees;
- a new mentoring program trialled with Indigenous employees;
- provision of job application skills; and
- participation in seminars and conferences relating to native title issues (as participants or presenters).

Workforce planning

A major component of workforce planning is to link of expenditure on employees to business outcomes. Total expenditure on the salaries of the members, Registrar and employees for 2002–03 was $17,770,189 compared with $16,054,961 for the previous reporting period—an increase of 10.68 per cent.

At 30 June 2003, the Tribunal had 15 Holders of Public Office (President, Registrar and members) and 281 people employed under the *Public Service Act 1999* (Cwlth) (PSA), an overall increase of seven from the end of the previous reporting period. Of the 281 PSA employees, 275 were covered by the Tribunal's Certified Agreement 2000–03 and six were on AWAs (two SES and four non-SES).

During the reporting period 27 PSA employees resigned. This represented 9.85 per cent of the workforce (calculated on staff numbers at 30 June 2002). In the previous reporting period 17 PSA employees had resigned, which represented 7.02 per cent of the workforce (calculated on staff numbers at 30 June 2001).

Of the 281 people employed under the PSA, 191 were female and 90 were male, 250 were full-time and 31 part-time, 237 were ongoing staff and 44 non-ongoing (for more information, see 'Appendix II Staffing', p. 132). Thirty nine people identified themselves as being either Aboriginal or Torres Strait Islander, six people identified themselves as having a disability, and 10 people as coming from a linguistically diverse background.

Indigenous employees

In the State of Service report issued in November 2002, the Public Service Commissioner advised that, at 30 June 2002, the average number of Indigenous employees in Australian Public Service agencies was 2.4 per cent. In the same reporting period, Indigenous employees made up 14 per cent of the Tribunal's national workforce. Of the 73 agencies providing statistical information, the Tribunal ranked fifth behind ATSIC, AIATSIS, Aboriginal Hostels and the TSRA in number of Indigenous employees. At 30 June 2003, the Tribunal's percentage of Indigenous employees remained constant at 14 per cent.

Indigenous Advisory Group

As part of the Tribunal's Certified Agreement 2000–2003, the Indigenous Advisory Group (IAG) was established to give Indigenous employees the opportunity to meet with the Registrar every two months. The group discusses issues of concern to Indigenous employees, proposes strategies to address those issues, and monitors the implementation of the Aboriginal and Islander Employment and Career Development Strategy (AIECDS).

The steering committee elected to represent the Tribunal's Indigenous employees are (left to right) Ed Brown, Natalie Heir, Beverly Councillor, Margaret Saunders (Chairperson) and Gary Lui, Perth, February 2003.

A national workshop for Indigenous employees was held in Perth from 4 to 6 February 2003. It included information sessions and discussion on recruitment, diversity, cross-cultural training, and the role and structure of the IAG.

Thirty-seven Indigenous staff from nearly all registries attended the workshop, which was facilitated by an Indigenous consultant based in Perth. The outcomes of the workshop included:

- a review of the role and structure of the Indigenous Advisory Group;
- the election of a steering committee to represent Indigenous staff in a range of forums across the Tribunal; and
- the development of a project to identify an expanded role for Indigenous staff in the agreement-making work of the Tribunal.

The workshop report was endorsed by the Registrar and supported by senior management.

Occupational health and safety performance

The 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 are part of a national committee which meets regularly with the Tribunal's nominated occupational health and safety officer.

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 was one accident that was notifiable under s. 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 completed guidelines and information for employees who travel to remote areas. These guidelines focus on safety while working in remote areas and have an emphasis on training. In the reporting period, training in four-wheel driving, bush survival skills and remote first aid was provided to employees and some members who undertake field travel for the Tribunal.

A number of online training modules relating specifically to managing health in relation to remote area travel, including conditions associated with deep vein thrombosis, fatigue, and safe driving, and occupational health and safety for managers and supervisors, were developed and training was provided to relevant employees in most regional registries. The 'introduction to occupational health and safety in the Tribunal' package was delivered to new employees as part of their induction training and as refresher training in a number of regional registries. The package has also been developed as an online self-paced training module.

In the reporting period work commenced on development of a program of pre-employment medical examinations for all employees who are engaged in the Tribunal for a period of longer than one month, as well as pre-travel medical examinations for employees who travel on Tribunal business outside of city areas. 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

A new diversity program for the Tribunal continued to be developed during the reporting period and includes proposals to update existing disability strategies.

The Tribunal ensures that all employment policies and procedures comply with the *Disability Discrimination Act 1992* (Cwlth) and has conducted a national training program on diversity for all employees and managers of employees.

The Tribunal has grievance procedures in place, 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.

Risk management

The Tribunal has continued to progress the implementation of a risk management regime within its practices and procedures. A formal policy has been developed based on the Australian Government's recommended standards, and this has been endorsed by the Tribunal's Audit Committee.

To ensure an integrated approach to risk management, a risk management implementation project plan has been developed. The focus of this plan is to develop a risk management culture within the Tribunal that supports its planning and decision-making functions.

With the development of the Tribunal's new *Strategic Plan 2003–2005*, the Tribunal will be commencing a risk process to ensure performance objectives at the strategic, operational and process levels are reviewed, and effective risk treatments are applied. Training for senior managers in risk management has commenced to ensure risk management occurs consistently throughout the Tribunal.

A major protective security risk review was carried out of all Tribunal offices during the reporting period. The process of risk review was in accordance with the guidelines provided by the Protective Security Coordination Centre, and the recommendations of the Protective Security Manual 2000. This has resulted in the development of a Protective Security Treatment Plan 2003-2004 for the Tribunal.

The Tribunal has also commenced a fraud management risk review, and aims to have a fraud treatment plan in place for the next reporting period.

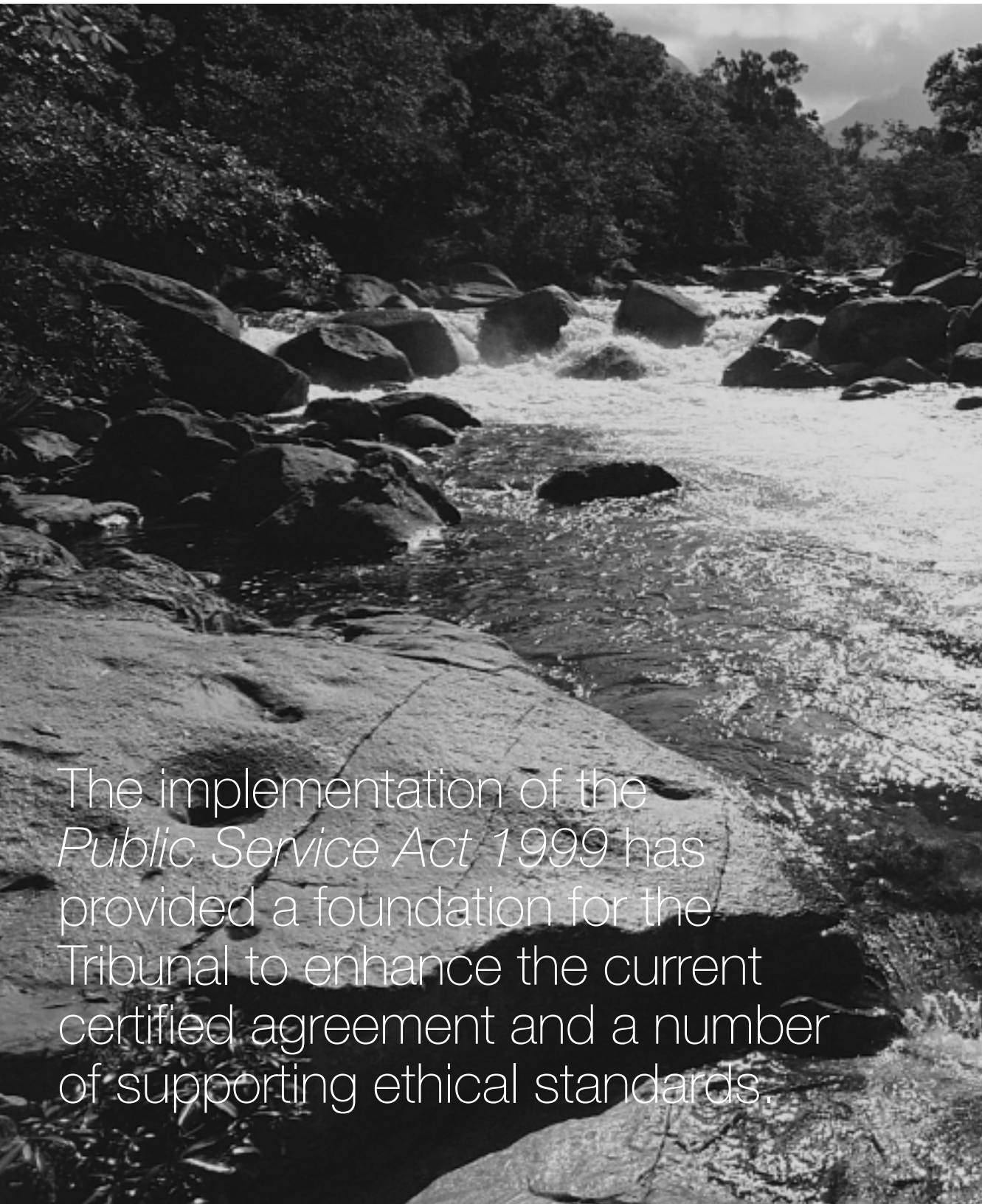
Information management

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 s. 190A of the Act or were registered prior to the 1998 amendments to the Act;
- the National Native Title Register, which contains information about determinations of native title; 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



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.

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 are supplied with a bookmark that outlines the APS values and Code of Conduct in an induction package.

During the reporting period, two complaints of alleged breaches of the APS Code of Conduct against the same employee for the same incident were received. Investigation into the alleged breaches had commenced but not been finalised during the reporting period.

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 s. 122 of the Act which deal with conflict of interest in relation to certain aspects of a member's work. As Tribunal members are not members of the 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.

Tribunal members have voluntarily adopted a code of conduct, the procedures for dealing with alleged breaches of the members' voluntary Code of Conduct, and an extended conflict of interest policy. There have been no complaints made, and hence no action taken, under any of these documents.

External scrutiny

Judicial decisions

This reporting period saw a number of High Court decisions that had a significant impact on the operations of the Tribunal as well as the law of native title in general.

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

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 s. 206 of the Act.

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

The PJC has received a number of submissions and they can be viewed online at www.aph.gov.au/senate/committee/ntlf_ctte/nat_nattitle_trib/submissions/sublist.htm .

The Tribunal prepared two formal submissions on 11 November 2002 and then supplementary submissions on 10 April 2003. The President and Registrar, together with other members and staff of the Tribunal, appeared to give evidence at the public hearings in Canberra on 27 March and 20 June 2003.

The PJC continues to accept submissions and, at the time of writing, has not published its final report.

The PJC's nineteenth report 'The Report on the examination of Annual Reports 2000–2001 in fulfilment of the Committees' duties pursuant to s. 206(c) of the Native Title Act 1993' was tabled in Parliament on 12 December 2002, and is available online at www.aph.gov.au/senate/committee/ntlf_ctte/reports/index.htm .

The PJC's report 'Examination of Annual Reports for 2001–2002' was tabled in Parliament on 25 June 2003, and is available online at www.aph.gov.au/Senate/committee/ntlf_ctte/reports/index.htm .

Freedom of information

During the reporting period, four formal requests were made under the *Freedom of Information Act 1982* (Cwlth) for access to documents associated with the administration of the registration tests and concerning the register of agreements and prescribed bodies corporate (for more information, see 'Appendix V Freedom of information', p. 148).

Other scrutiny

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

Accountability to clients

Evaluation of client satisfaction

A survey of Tribunal clients was undertaken to seek their levels of satisfaction with services provided during 2002 in the areas of registration, notification, mediation, future act processes, indigenous land use agreements and assistance with research, maps or information on the native title process.

The categories of clients interviewed included: native title representative bodies; unrepresented claimants; state, local and federal governments, peak bodies, legal practitioners and individual parties. They were invited to respond to specific service attributes such as timeliness of service delivery, whether the services provided met their needs and were provided at the right time, the level of assistance provided, the expertise and skill of Tribunal members and staff, the quality and accuracy of information and whether an understanding of cultural differences was demonstrated.

Overall, almost two thirds, or 65 per cent, of the 139 clients interviewed are satisfied with the services of the Tribunal. Of these, 48 per cent are satisfied and 17 per cent are extremely satisfied. Sixteen percent are dissatisfied, with 19 per cent of clients being neither satisfied nor dissatisfied.

As this is the Tribunal's first survey of client satisfaction, the outcomes provide a benchmark for developing and evaluating service improvement initiatives. The survey provides a measure against which to compare client satisfaction over time and to assess the effectiveness of changes in practice or processes.

The feedback on client needs and suggestions for service improvement from the survey will be considered to determine areas where further feedback would be useful to understand the issues affecting satisfaction. Regular feedback will also be sought from clients as part of the Tribunal's quarterly performance reporting. This information will assist in determining whether any changes to practice or business processes or communication strategies may be required.

Customer Service Charter

A review of the Tribunal's Customer Service Charter was undertaken during the reporting period as part of a continuous improvement approach, and to ensure service standards meet client needs. Client and stakeholder input into the service standards was sought, and a comprehensive process for handling complaints developed. The charter has been redrafted in response to this feedback, and wide distribution is proposed for the next reporting period.

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 'Output 1.4.2 — Notification', pp. 93–94);
- the fair and transparent operation of the statutory functions it 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 launched. 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 Australian 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 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. Australian Government metadata standards have been used extensively to allow ease of searching by external search engines.

A review of the functionality and usability of the site will be conducted in the next reporting period with the aim of including secure access to geospatial and other information by external clients and stakeholders.

A Tribunal-wide intranet was also launched during the reporting period giving employees and members online access to a wide range of information and facilities. A project team was established to survey users' needs, manage the implementation, promote usage, receive feedback and undertake a review four months after implementation. All sections and registries of the Tribunal help to continually develop and update the content of the site through an intranet editors' group.

To meet the Australian Government's record keeping requirements the Tribunal has commenced the implementation of an electronic document management system. It is anticipated that the system will be implemented across all registries during the next reporting period.

Performance against purchasing policies

Procurement

The audit recommendations and changes reported in the previous period were endorsed by the Tribunal's Audit Committee. Training in the new consultancy procedures, as well as contract management, took place in the Principal and Western Australia registries during 2002–03, and will extend to regional registries in the next reporting period.

The consultancy guidelines have also been expanded to include the new confidentiality provisions as outlined in the Department of Finance and Administration publication 'Guidelines on Confidentiality of Contractors' Commercial Information'. The guidelines will be amended to include the reporting of all guarantees, warranties, indemnities and letters of comfort details where they are included in contracts in the next reporting period.

A procurement guidebook is currently under development for the use of all senior managers and staff. It will include an outline of all procurement methods, as well as an outline of how to approach the procurement of specific office machines, vehicle hire and the use of the endorsed supplier arrangements.

Information technology outsourcing

During the reporting period, the three-year information technology outsourcing contract with Unisys West expired. An external review of the service delivery model recommended that the Tribunal move from an end-to-end outsourcing model to a more flexible and selective outsourcing model.

The selective model has been implemented with a number of services continuing to be outsourced while others are now conducted in-house. Service level agreements are a key part of best practice service delivery in a selective outsourcing model, and these are being implemented under the Information Technology Infrastructure Library framework. Development and auditing of these service level agreements has been outsourced to ensure full accountability. Performance and customer satisfaction of information technology service delivery will be reported on during the next period.

Human resource and finance information systems

The Tribunal's human resource and finance information systems are being phased out by the current external providers. The Tribunal has

called for and evaluated expressions of interest for replacement systems. It is anticipated that these systems will be implemented in the next reporting period.

Market testing of Financial Services, People Services and Administrative Services was undertaken during the reporting period. A consultant was engaged to review the services and determine an ideal business model and whether the services were appropriate to be outsourced. The review concluded that an in-house service delivery model would be maintained on the basis that the size of the Tribunal did not make it cost effective to contract out these corporate functions. The review did identify opportunities to improve the productivity and the quality of services. The measures to achieve these improvements will be implemented during the next reporting period.

In accordance with the Australian Government's policy, consideration is being given to market testing other activities in 2003–04.

Consultancies

Consultancies and competitive tendering and contracting

The Tribunal did not contract out any other government activities during the reporting period. The outsourced information technology function was discontinued during the reporting period (see 'Information technology outsourcing', p. 123).

Consultancies

The Act provides for consultancies in two circumstances. Section 131A specifies that the President may engage consultants for any assistance or mediation activity specified in the Act. Section 132 provides that the Registrar may engage consultants with suitable qualifications to undertake administrative and research activities. The full list of consultancies is supplied in 'Appendix IV Consultants', p. 146.

Actual expenditure on consultancies for the reporting period was $1,808,355 which was made up of the following:

Information technology	$1,591,277
Mediation (s. 131A of the Act)	$54,496
Corporate Services and Public Affairs	$117,554
Service Delivery	$45,028

There was a 34 per cent increase in overall expenditure associated with the engagement of consultants when compared with the previous reporting period. Expenditure on consultants for s. 131A mediation work decreased by comparison to last year, while expenditure for information technology increased.

Contracts

In accordance with the Senate Order dated 21 June 2001, the Tribunal has continued to list 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.

Asset management

The Tribunal carried out an annual stocktake of its assets in all offices in April 2003. Some items were identified as not being recorded on the Tribunal's financial system, FINEST, and these were subsequently bar-coded and included. Regional staff were advised of the correct asset procedures to ensure a correct record of the Tribunal's resources could be maintained. In addition to the stocktake, the Tribunal also made a commitment to begin an internal audit of its asset management practices in accordance with ANAO recommendations.

Environmental performance

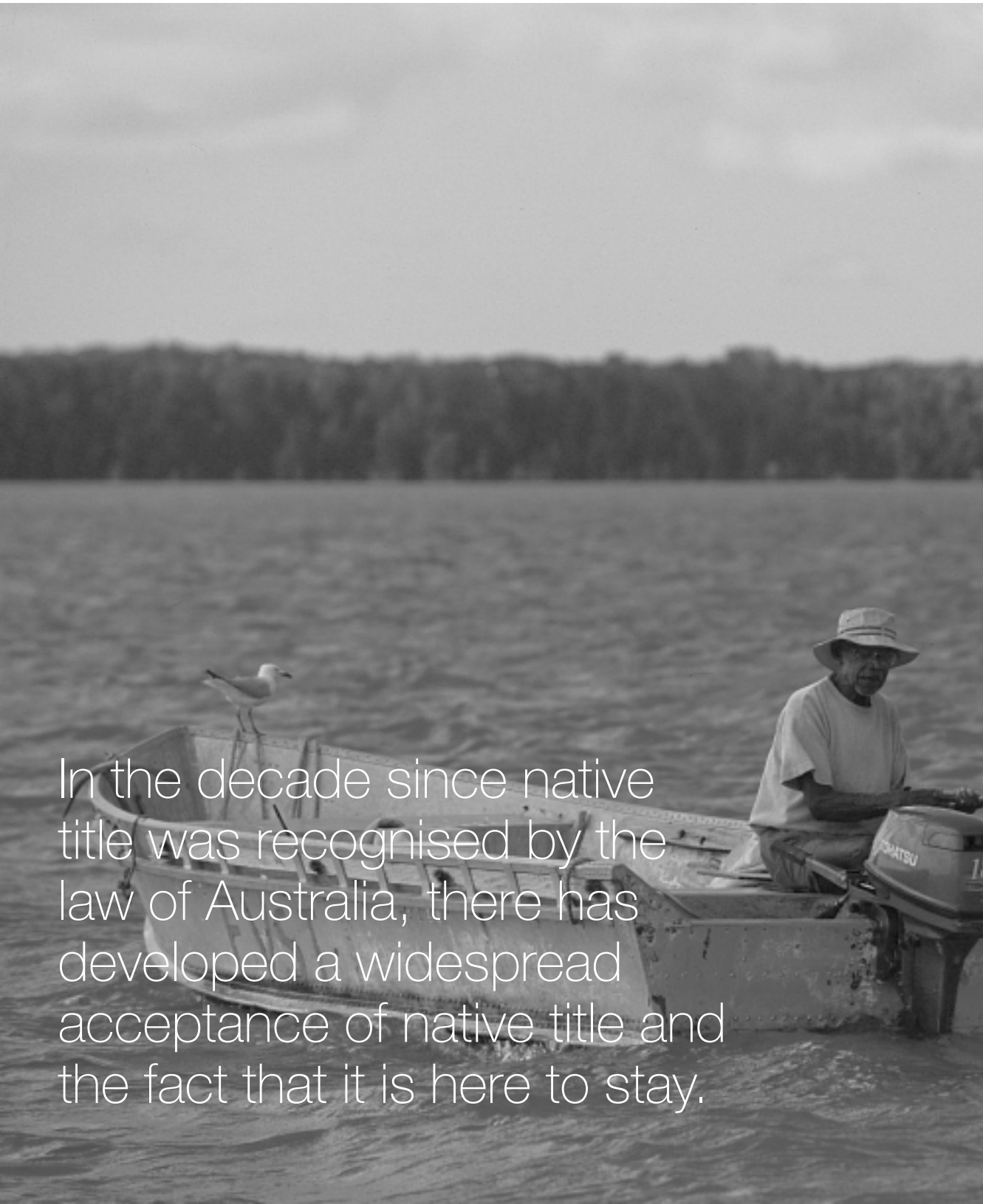
- The Tribunal has set up an environmental management system in accordance with the requirements of Environment Australia. This includes the development of a draft policy for planning, implementation and review of methodologies necessary to effectively review its performance against environmental goals.
- A review of all offices was carried out using an Environment Australia checklist, and administrative staff were advised of ways that they could be proactive in regard to environmental issues. A database was also set up to collect appropriate environmental information and standardise the data for reporting purposes.
- The policy and its supporting goals have been developed to assist in promoting environmentally sound decision-making within the Tribunal.

Energy Management

The Tribunal's energy committee continues to meet regularly and develop ideas for the conservation of energy within the Tribunal. All Tribunal offices now have representation on the committee, and a number of sub-committees have been formed within this group to research particular issues.

An expansion of the Tribunal's accommodation space in 2001–02 meant that there was a slight increase in energy usage for 2002–03. However, with the implementation of more proactive energy saving initiatives throughout the year, energy usage had started to level, and in some cases decrease, by the end of the reporting period.

Appendices



In the decade since native title was recognised by the law of Australia, there has developed a widespread acceptance of native title and the fact that it is here to stay.

Appendix I Strategic Plan 2003–2005

President's Introduction

Native title is one of the most challenging issues for Australians. It raises questions about the rights and interests of Indigenous Australians and about understanding, respect and reconciliation between Indigenous and non-Indigenous Australians.

In the decade since native title was recognised by the law of Australia, there has developed a widespread acceptance of native title and the fact that it is here to stay. There have also been many reflections on the adequacy of the current native title scheme to deal with the complexity of legal, social and economic issues involved.

One ongoing challenge is to work out where native title exists and who the native title holders are. Another challenge is how to deal with the aspirations of Aboriginal peoples and Torres Strait Islanders who have maintained strong connections to land and waters where, as a matter of law, native title is extinguished or survives in a limited way.

Other challenges include how to respond creatively and flexibly to the issues flowing from major court decisions, and how to find ways other than lengthy and complex litigation to resolve native title matters.

In recent years, there has been a trend to deal with those matters by agreement rather than have a court decide them. The willingness of parties to negotiate alternative outcomes where native title determinations are not possible has become increasingly important. It ensures that Indigenous Australians, governments and land managers or users reach solutions to meet their needs and to recognise, respect and protect each other's interests.

The National Native Title Tribunal has a leading role in assisting people to explore the options available to them to meet these challenges and to negotiate fair, practical and enduring outcomes.

Future directions

This Strategic Plan provides a clear direction about where we consider the Tribunal needs to go over the next three years in taking a leading role in native title issues, and what we need to do to work towards achieving our objectives. In taking that role, we will work with our clients and stakeholders to develop broader and more comprehensive approaches to ensure that native title and related outcomes acknowledge the rights and interests of all those involved, and lead to lasting relationships.

We will, as appropriate, develop the capacity of parties involved in native title matters to engage in the process through the provision of information and assistance that meets their needs.

What we do

The *Native Title Act 1993* provides the foundation of the work of the National Native Title Tribunal. The objectives of the Act include:

- providing for the recognition and protection of native title
- establishing ways in which future dealings affecting native title may proceed and setting standards for those dealings
- establishing a mechanism for determining claims to native title.

The Tribunal's main functions are:

- providing information about native title processes
- mediating between parties to native title applications and assisting parties to reach agreement about relevant matters
- mediating between parties to assist them in reaching agreement about certain future acts that might take place on areas where native title exists
- arbitrating in relation to certain future acts where parties are unable to reach agreement
- assisting parties to negotiate legally binding agreements (such as indigenous land use agreements) that resolve a variety of native title issues
- maintaining registers of native title applications, determinations and agreements.

In carrying out its functions, the Tribunal seeks to:

- be fair, just, economical, informal and prompt
- take into account the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

Our clients and stakeholders

The Tribunal's stakeholders are diverse and range from those people who are parties to native title proceedings to the broader Australian community. Each has specific interests and information needs.

Our clients are those who are parties to native title proceedings. They include: Indigenous claimants; native title representative bodies; federal, state and local governments; and individuals and organisations with an interest in land or waters.

Stakeholders with a broader interest in native title and related outcomes include the Federal Government, the Federal Parliament and its committees, federal government agencies, peak industry and business associations, state, territory and local governments, the Federal Court, media and the wider community.

The Tribunal's people

While operating within a legislative and policy framework, the Tribunal's ability to fulfil its purpose depends on its people. The Tribunal's people and their commitment, professionalism and motivation are highly valued. In particular, we recognise that our Indigenous employees play an important part in enhancing the services we provide.

The Strategic Plan

This Strategic Plan has been developed by members and employees of the Tribunal. It builds on our achievements and outlines what we must do to improve our services and capabilities. It provides the framework for the continuing strategic management of the Tribunal and allows us to shape our organisational future and respond to the continually changing environment.

It is a statement of our shared organisational purpose and direction, and will provide the basis of our planning and activities. The Strategic Plan also sets out the values and behaviours we will demonstrate in the approach to our work and people.

We are committed to excellence in the performance of our statutory functions and delivery of our services as we work with our clients and stakeholders towards an Australia where native title is recognised, respected, and protected through just and agreed outcomes.

Graeme Neate
President
June 2003

Our Vision
An Australia where native title is recognised, respected and protected through just and agreed outcomes.

Our Purpose
We work with people to develop an understanding of native title and reach enduring native title and related outcomes.

We want to be known for:
Displaying leadership by:
- providing accurate and authoritative information about native title
- assisting parties to reach enduring outcomes and lasting relationships
- mediating in an effective, innovative and creative way
- decision-making that is efficient, fair and timely.

Our Values
We value:
- Excellence
- Fairness
- Impartiality
- Practicality
- Innovation
- Collaboration, and
- Acting in culturally appropriate ways

Our organisational approach

How we deliver our services:
We focus our services on people with an interest in native title and related outcomes, and develop collaborative relationships with our clients and stakeholders to enhance the delivery of our services.

How we create value:
We display leadership in ways that engender confidence in the Tribunal and co-operation with clients and stakeholders.

How we develop:
We are flexible, creative, strategic and practical in enhancing the value and range of our services.

How we operate:
We are committed to excellence in performing our statutory functions and delivering our services in a timely, responsive and culturally appropriate manner.

Key Success Areas

1. Taking a leadership role on native title issues

1.1 Engage with clients and stakeholders to develop, promote and facilitate comprehensive approaches to reach native title and related outcomes.

1.2 Ensure that our strategic vision and common purpose are cultivated across the Tribunal and reflected in our work.

Outcomes

Client satisfaction • Client/stakeholder perception • Organisational culture and employee engagement

2. Providing excellence in native title services

2.1 Develop and implement systems and processes to assist parties to reach native title and related outcomes.

2.2 Develop, promote and deliver targeted services and products that meet identified client needs.

Outcomes

Client satisfaction • Output targets • Improved efficiencies

3. Enhancing our organisational capability to anticipate and respond to change

3.1 Develop and implement an organisational framework (structure, systems and processes) to ensure that, consistent with statutory requirements, our service delivery meets client needs.

3.2 Ensure that the Tribunal's people have the skills, knowledge and motivation to meet current and future challenges.

3.3 Improve the effectiveness of communication internally and externally.

Outcomes

Client satisfaction • Organisational culture and employee engagement • Communication effectiveness

4. Ongoing improvement in our performance

4.1 Develop and implement a framework that integrates the management of our internal and external performance.

4.2 Review and improve our organisational processes and service delivery in response to information about our performance.

Outcomes

Output targets • Client/stakeholder perception • Improved efficiencies

Appendix II Staffing

Employees

Table 14 Employees by classification, location and gender at 30 June 2003

Classification	Location															
	Male								Female							
	Principal	WA	NSW	Qld	Vic.	SA	NT	Total	Principal	WA	NSW	Qld	Vic.	SA	NT	Total
Cadet	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	2
APS level 1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
APS level 2	-	3	2	2	-	-	-	7	8	13	2	15	1	-	-	39
APS level 3	3	-	-	-	-	-	-	3	7	7	1	2	-	-	1	18
APS level 4	7	3	1	4	-	-	1	16	7	8	5	12	2	3	2	39
APS level 5	5	-	-	-	-	-	-	5	5	-	-	1	-	1	-	7
APS level 6	11	6	4	5	1	1	-	28	16	11	7	10	1	1	3	49
Legal 1	1	-	-	1	-	-	-	2	5	-	-	1	-	-	-	6
Legal 2	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Media 1	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Media 2	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	2
Library 1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Library 2	-	-	-	-	-	-	-	-	2	-	2	1	-	-	-	5
Executive level 1	10	1	1	3	1	-	-	16	9	6	-	3	1	-	-	19
Executive level 2	5	2	1	1	1	-	1	11	1	1	-	-	-	1	-	3
Senior executive	1	-	-	-	-	-	-	1	1	-	-	-	-	-	-	1
Total employees	44	15	9	16	3	1	2	90	64	47	18	45	5	6	6	191

Performance pay

The Tribunal does not have a performance based pay program in place under the current Certified Agreement 2000–2003. No performance based pay was approved during the reporting period.

Members

Table 15 Tribunal members at 30 June 2003

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* 18 Apr 2003	Three years, reappointed for a further four years	Perth
The Hon. Christopher Sumner AM	Full-time Deputy President	18 Apr. 2000* 18 Apr 2003	Three years reappointed for a further four years	Adelaide
The Hon. Edward M (Terry) Franklyn QC	Part-time Deputy President	17 Dec. 1998, 17 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 a further three years	Perth
Mr John Sosso	Full-time member	28 Feb. 2000 28 Feb. 2003	Three years reappointed for a further four years	Brisbane
Mr Graham Fletcher	Full-time member	20 Mar. 2000 20 Mar. 2003	Three years reappointed for a further four years	Cairns
Mr Alistair (Bardy) McFarlane	Full-time member	20 Mar. 2000 20 Mar. 2003	Three years reappointed for a further four years	Adelaide
Mr Daniel (Dan) O'Dea	Full-time member	9 Dec. 2002	Three years	Perth
Prof. Douglas Williamson QC	Part-time member	4 Dec. 1996 17 Dec. 2001	Five years, reappointed for a further three years	Melbourne
Prof. Geoffrey Robert Clark	Part-time member	1 June 1998 28 June 2001	Three years, reappointed for a further three years	Cairns
Dr Gaye Sculthorpe	Part-time member	2 Feb. 2000 2 Feb. 2003	Three years, reappointed for a further three years	Melbourne
Mrs Jennifer Stuckey-Clarke	Part-time member	2 Feb. 2000 2 Feb. 2003	Three years, reappointed for a further three years	Sydney
Mrs Ruth Wade	Part-time member	2 Feb. 2000 2 Feb. 2003	Three years, reappointed for a further three years	Perth

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

Appendix III 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

Western Australia v Ward (2002) 191 ALR 1

This and the *Yorta Yorta* case are the most significant cases to clarify the nature of native title in the reporting period.

As a result of the decision in *Western Australia v Ward*, the Registrar reviewed the procedures and guidelines for registration testing and issued revised guidelines for applying the registration test. The revised interim guidelines were issued in mid-December 2002 and were consolidated as the registration test procedures in March 2003.

Summary

This case concerned a claim by the Miriuwung Gajerrong People seeking recognition of their native title rights over an area of approximately 8,000 square kilometres situated partly in the East Kimberley region of Western Australia and partly in the Northern Territory. The area claimed included the Ord River irrigation area, Lake Argyle and Lake Kununurra, the Glen Hill pastoral lease, land subject to mining tenements, part of the Argyle diamond mine, Keep River and the Mirima national parks, some Aboriginal-owned freehold in the Northern Territory, some grazing leases, areas of vacant Crown land that had formerly been pastoral lease land, various reserves, three islands in the Cambridge Gulf and part of the intertidal zones of the Gulf.

The claim was lodged in April 1994. Mediation proved unsuccessful and, in November 1998, the Federal Court determined that native title existed. In March 2000 the Full Court of the Federal Court partially overturned the decision. Leave to appeal to the High Court was granted on 4 August 2000 with the hearing of the appeals commencing on 5 March 2001. Judgment was delivered on 8 August 2002.

Important findings

Among the many important findings, the High Court, by a majority of 5:2, upheld the following propositions of law:

- native title is a bundle of rights;

- such rights can be partially extinguished or extinguished if they are inconsistent with non-native title rights and interests unless the Native Title Act otherwise provides;
- satisfying the definition of native title in s. 223(1) involves two inquiries — one into the rights and interests possessed under traditional laws and customs under s. 223 (1)(a), and the other, for connection with land and/or waters by those laws and customs under s. 223(1)(b);
- the grant of a pastoral lease is not necessarily inconsistent with the continued existence of native title rights and interests;
- the right to protect cultural knowledge is not a right or interest that has the requisite connection to the land that is required under s. 223 of the Native Title Act and therefore cannot be claimed as a native title right or interest.

The court also examined the effect on native title of the previous exclusive possession act and previous non-exclusive possession act provisions of the Native Title Act and their Western Australian and Northern Territory analogues in relation to the various grants made over the area covered by the determination. Common law extinguishment was also discussed.

Effect on the registration test

The majority decision in *Western Australia v Ward* saw a number of changes to the approach taken in applying the registration test to native title applications. Generally the changes concerned the nature of rights and interests that could be registered and also where native title had been partially or fully extinguished.

In summary, the areas of change centre on the following:

- The non-exclusive right to possession, occupation, use and enjoyment of native title rights and interests may not be registered as a readily identifiable native title right and interest. Whilst rights framed in this manner can still be claimed in the application they will not be accepted for registration.
- A clarification of the position in relation to extinguishment to the extent that there are now certain categories of land tenure where native title is extinguished and the guidelines reflect these categories.
- As the judges decided that the grant of a pastoral lease was inconsistent with the native title right to control access to land and to control the use made of the land, then any claims for these rights over pastoral lease land would not be acceptable for registration testing purposes. Further, it was possible that the right to burn country may also be inconsistent with the pastoralist's right. The court was of the view that the right to hunt or gather traditional food on the land

subject to a pastoral lease would not be inconsistent with the rights of the leaseholder although the rights of the pastoral lease would prevail over them. These comments impacted on the rights being accepted for registration;

- The right to control the use of cultural knowledge is not a readily identifiable right and therefore cannot be registered under the Native Title Act.

Wilson v Anderson (2002) 190 ALR 313

The central issue for resolution by the High Court was, assuming that native title rights and interests existed, whether they had been extinguished by the grant in 1955 of a lease in perpetuity pursuant to s. 23 of the *Western Lands Act 1901* (NSW).

It was held by a majority of 6:1 that the lease conferred a right of exclusive possession and therefore the lease was a previous exclusive possession act within the meaning of s. 23B of the Native Title Act, which extinguished native title.

Their Honours concluded that the conditions and restrictions upon a perpetual lease did not detract from the conclusion that the grant was, in substance, of a freehold interest.

The case clarified to a significant extent the meaning of an exclusive pastoral lease and its subsequent effect on the definition of extinguishment.

Ramifications of decision

Consequently native title was found to be wholly extinguished over much of the Western Land Division in NSW. The area subject to a claim in NSW was substantially reduced as a result of this decision. The effect may flow onto other parts of Australia subject to perpetual pastoral leases having the same characteristics.

Members of the Yorta Yorta Aboriginal Community v Victoria (2002) 194 ALR 538

This decision deals primarily with the meaning of 'native title' and 'native title rights and interests' as defined under s. 223 of the Native Title Act. The area of land and waters subject to the claim was situated along the banks of the Murray River in Victoria and the case concerned an appeal by the Yorta Yorta People against a finding that they did not have native title to their traditional lands.

Finding that relevant laws and systems pre-date sovereignty

In order to obtain a positive determination that native title exists, the claimants must prove that traditional laws and customs deriving from a

body of norms or a normative system, survived the assertion of sovereignty and are practised today, and continued in substantially the same manner as pre-sovereignty. Whilst the court recognised that some change to traditional law and custom following the assertion of sovereignty would not necessarily be fatal to a claim, the key question remained as to whether the law and custom can be seen to be 'traditional' and rooted in pre-sovereignty times.

The judges also emphasised that the normative system must have continued to function uninterrupted and must show a system that has had a continuous existence and vitality since sovereignty. The transmission of customs by word of mouth through generations was not enough to satisfy this test.

The appeal by the Yorta Yorta People failed. The court found that the society that had once observed traditional laws and customs had ceased to do so and no longer constituted the society out of which the traditional laws and customs sprang.

Effect on the operations of the Tribunal

This case exemplified the forward movement and the settling of the meaning of traditional laws and customs that had started in *Yanner v Eaton* (1999) 201 CLR 351 and *Western Australia v Ward* set out above. For the delegates making decisions on the registration test, this case clarified the interpretation of the phrase 'traditional laws and customs' which is also used in s. 190B of the Native Title Act.

The Yorta Yorta People have advised that they will be taking the case to the United Nations.

Federal Court decisions

De Rose v South Australia [2002] FCA 1342

This case concerned an application for a determination of native title over three pastoral leases in the far north-west of South Australia that are collectively known as De Rose Station. This was the first contested determination of native title by the Federal Court after the High Court's decision in *Western Australia v Ward*.

The case detailed what the court found to be effectively a break in connection. The members of the claim group gave evidence that they had not visited the sacred and important sites on the station because they were not able to return to the station for fear of reprisals from the pastoralists. In addition there was evidence to suggest that gates had been locked impeding applicants access to country.

Justice O'Loughlin was critical of the lack of continuing presence on the land. In addition it was found that none of the persons who had identified as *Nguraritja* for the claim area had lived together or joined together as a cohesive community or group. This was further supported by the fact that there was no evidence given by the younger generation, which showed the lack of continuity of culture and tradition.

In these circumstances it was found that the claimants had failed to prove that they had retained a connection to the claim area by traditional laws and customs acknowledged and observed by them sufficient to satisfy s. 223 of the Native Title Act. Without this connection it was found that native title had therefore ceased to exist. The case illustrates that even short breaks in the observance of traditional laws and customs may seriously impede a determination that native title exists.

The claimants filed a notice of appeal on 20 November 2002 and that appeal was heard by a Full Court of the Federal Court in May 2003.

Daniel v The State of Western Australia (2003) 194 ALR 278

This case concerned the replacement of an applicant pursuant to s. 66B of the Native Title Act. It is relevant to the workings of the Tribunal especially in registration testing as it comments on the question of authorisation for making native title applications as defined in s. 251B of the Act.

In this case, Justice French emphasised the central importance to the conduct of native title determination applications and the exercise of the rights that flow from their registration, that those bringing such applications and exercising such rights on behalf of a group of asserted native title holders have the authority of that group to do so.

It is inherent in s. 66B that the power to authorise an applicant also includes a power to withdraw authorisation. In each case there needs to be shown a traditional form of decision-making had been followed in appointing the applicant to make the application and deal with matters arising from it. The implication for the registration test is to ensure that there is adequate evidence of authorisation for the named applicant to make the application.

Queensland v Central Queensland Land Council Aboriginal Corporation (2002) 195 ALR106

This was an appeal by the State of Queensland which concerned, amongst other things, determinations under s. 43(1) of the Native Title Act. The land council claimed that the Commonwealth Attorney-General had no jurisdiction to make the determinations because there was not, at the time of making them, a law of a state or territory that provided for

alternative provisions required by that subsection (the Queensland law although enacted was not in force at the time of making the determinations) and that therefore each of the determinations were invalid and without legal effect.

The court found that the determinations were valid, finding that in the interpretation of s. 43 of the Act it was open to the relevant Minister to make a determination where the relevant Queensland legislation, although enacted, was not in force.

The Central Queensland Land Aboriginal Corporation had cross-appealed arguing that amendments to the *Mineral Resources Act 1989* (Qld) were invalid as they failed to satisfy s. 24MA of the Native Title Act—that is, the effect of the act would be to place native title holders in a more disadvantageous position at law than if they held ordinary title to the land—and that the amendments were otherwise inconsistent with the provisions of the *Racial Discrimination Act 1975* (Cth).

The cross-appeals failed primarily on the basis that the amendments could not be classified as 'future acts' according to the definition in the Native Title Act and do not affect native title rights and interests. The right to negotiate (which was a right claimed to be affected by the amendments) is not part of the bundle of rights defined to be native title rights and interests. Rather, it is a procedural right granted by the provisions of the Act. It was open for the Minister to be satisfied that certain procedural rights would operate under the Queensland alternative provisions embodied in the amendments to the mining legislation.

On 28 November 2002, the day after this decision was handed down, Queensland Premier Peter Beattie announced that, notwithstanding the success of the state's appeal, the Queensland alternative state provisions would be discontinued and the future act regime of the Native Title Act would operate in Queensland.

From 1 July 2003, the Tribunal will have a role in future act decisions concerning mining and exploration acts that had been previously progressed through the Queensland alternative state provisions. It is anticipated that there will be an increase in future act determinations and objection applications to be decided in the next financial year.

Frazer v Western Australia (2003) 198 ALR 303

This case is important for the comments made by Justice French concerning the role of the Tribunal in the mediation of claimant applications.
The comments arose from His Honour's concern that over the past three, years negotiations between the state and the applicants had taken place without any active involvement of the Tribunal.

The subsequent comments can be summarised as follows:

- any suggestion that the provision of connection evidence is outside of or antecedent to the mediation process should be rejected;
- a referral under s. 86B of the Native Title Act is a referral to the Tribunal and it has a central role in mediation;
- the provisions of division 4A of the Native Title Act relating to mediation conferences are ancillary to the referral of applications to the Tribunal and do not define the limits of the Tribunal's role;
- the Tribunal has the responsibility for undertaking mediation of all aspects of the application that are relevant to the purposes set out in s. 86A, including: the development of a detailed negotiation protocol, the exchange of information between the parties, the identification of issues to be resolved, and the times and venues for holding mediation conferences;
- the court needed to be satisfied that any mediation proposal put to it demonstrated that there was a likelihood that the parties would reach agreement on facts relevant to some or all of the matters set out in s. 86A(1);
- mediation should take place in a timely fashion, and the court wanted to see a more systematic and focused approach to the progression of native title claims;
- it is not open to any party to unilaterally announce priorities for mediation. Any such action may suggest a breakdown of the mediation process. It is legitimate for the parties with the Tribunal to develop protocols and timetables, including regional timetables that stagger mediation to reflect agreed priorities.

The court also dealt with the issue of connection evidence. The court suggested two avenues for the resolution of this issue namely, referral by the Tribunal to the court of a 'question of fact' or court intervention on a particular issue. A third option was canvassed—early neutral evaluation (ENE).

It was envisaged that ENE could be conducted by the court or by the Tribunal as an aid to mediation. The purpose of ENE would be for a suitably qualified person to provide a confidential, non-binding assessment of the strengths and weaknesses of the respective cases of the parties to assist when they re-enter the mediation process.

Registration test

Federal Court decisions on applications for review of registration test

Quall v The Native Title Registrar [2003] FCA 145

Issues

This case concerns a review of a decision by the Native Title Registrar's delegate that the claimant application concerned should not be accepted for registration. The grounds upon which review was sought were:

- since the majority of the requirements of the registration test were met, the delegate erred in refusing to accept the application;
- the delegate took irrelevant information into account;
- the delegate erred in finding that the claim group was not a properly constituted native title claim group and in finding that the claim overlapped another registered claim and that there were members common to each claim group for those applications; and
- the delegate was biased or acted in bad faith by considering the application with a closed mind, based on the delegate having had reference to evidence and findings in the 'Report and Recommendations of the Aboriginal Land Commissioner' under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) called the Kenbi (Cox Peninsula) Land Claim No. 37 (the land claim report).

Findings

The most pertinent findings in this case that are important to the operation of the Tribunal are as follows:

- All conditions of the registration test must be met before accepting a claim for registration. It is not sufficient that a majority of factors are met.
- The delegate did not err in having regard to information contained in a land claim report. Pursuant to s. 190A(3), the Registrar may have regard to such other information as he or she considers appropriate.
- The identification of the native title claim group 'goes to the heart' of a native title claim and the delegate must examine and decide who in accordance with traditional law and custom, comprises the native title claim group. The delegate found that the claim group was not properly constituted because some of the offspring of the apical ancestors had not been included and reference to the land claim reports raised some doubts. It followed from this that the application did not comply with s. 61(4), which requires all persons in the native title claim group to be named or otherwise described sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.
- If a claim group is not properly constituted it follows that the application should fail the provision of s. 190C(4)(b) which requires the applicant be properly authorised pursuant to the terms of s. 251B.

- The claim group not being properly constituted then it follows that the conditions of s. 190B(5), (6) and (7) can therefore not be met.
- A claim of bias or lack of good faith is a serious allegation—it should not be made without proper foundation. The applicant must show they hold a reasonable suspicion or the minds of the public hold a reasonable suspicion that the delegate did not bring a fair and unprejudiced mind to the inquiry.

The application was dismissed.

Future acts

Decisions of Tribunal members

There were a number of decisions made by members of the Tribunal concerning future act matters. Set out below is a selection setting out significant aspects for the workings of the Tribunal.

Paddy Huddlestone and Ors on behalf of the Wagiman, Warai and Jawoyn peoples/Northern Territory/NT Gold Pty Ltd and Ors, NNTT DO01/137, Mr J. Sosso, 27 September 2002.

The government party challenged the usefulness of a male deponent identifying a women's site, while expressly acknowledging that men cannot speak for the site. The Tribunal referred to *Little v Western Australia* [2001] FCA 1706 and held it is a condition precedent to a finding that an area or site is of particular significance that the Tribunal have before it evidence of the importance of a given area or site, in accordance with the traditions of the native title holders. The best evidence of such traditions is from a person or persons who have the traditional knowledge and have the traditional authority to speak for the relevant area or site. No evidence was submitted by a properly authorised female native title holder. The Tribunal held mere identification of a site without the presentation of any additional evidence is not sufficient for the Tribunal to make a finding that it is of particular significance for the purpose of s. 237(b).

Western Australia v Daniel (2002) 172 FLR 168, Hon. C. J. Sumner, 12 November 2002.

The Wong-goo-tt-oo People, one of the three native title parties in these proceedings, contended that the government party had not complied with s. 31(1)(b), that is the requirement for the parties to negotiate in good faith prior to making an application to the Tribunal under s. 35 of the Act.

The Tribunal rejected the contention that it could not refer to confidential and without prejudice documents in making its decision. The Tribunal referred to paragraphs 4.6.1 and 4.6.2 of the *Procedures*

Under the Right to Negotiate Scheme (issued 10 September 2002), which provide that the without prejudice nature of negotiations is subject to the requirements of a s. 35 determination inquiry to decide if a government or grantee party has negotiated in good faith.

The Tribunal was of the view that the government party was entitled to assess the strength of the different native title claims, including considering whether or not native title has been extinguished and that its views on these issues can legitimately influence offers made.

The Tribunal held that it is contrary to the intention of the Act to hold up future act negotiations and arbitrations pending a final determination of native title. Right to negotiate procedures should be conducted as far as possible in a timely manner. Unless there are exceptional circumstances, the Tribunal should fulfil its statutory responsibilities to make a determination within the times set by Parliament without awaiting the conclusion of Federal Court proceedings.

The Wong-goo-tt-oo contended that the government party failed to ensure that the native title party was adequately resourced and that this resulted in a fundamental inequality of bargaining position. The Tribunal found that the wording of s. 31(1) did not suggest that one party is obliged to fund another and that s. 31(2) did not extend negotiation beyond the effect of the future act on registered native title rights and interests. The Tribunal found that the government party had contributed funding to the native title parties' legal costs and regarded this as an indication of good faith.

Kathleen Parry and Ors on behalf of the Wagiman, Ngangiwumeri, Malak Malak, and Kamu peoples and April Bright and Ors on behalf of the Mak Mak Maranunggu and Werat Groups/Falconbridge (Australia) Pty Ltd/Northern Territory, NNTT DO02/48 and DO02/49, Mr J. Sosso, 22 November 2002.
In this case the native title party submitted that the expedited procedure should be interpreted as an exception to the right to negotiate and read down in the context of the legislative scheme of the Act.

The Tribunal concurred with the decision of Carr J in *Ward v WA* (1996) 69 FCR 208 that it is not correct to view the expedited procedure as a limited exception or as somehow extraordinary. The Tribunal found that Parliament had provided for two sets of circumstances with two different procedures that are to apply, depending upon the factual circumstances. In undertaking a predictive risk assessment, the Tribunal does, in appropriate circumstances, give the objectors the benefit of the doubt. However, there is no basis for assuming that the expedited procedure is exceptional and assessing the s. 237 criteria in such a manner.

Kathleen Parry and Ors on behalf of the Wagiman, Ngangiwumeri, Malak Malak, and Kamu peoples/ Buchanan Exploration Pty Ltd/Northern Territory, NNTT DO01/139, Mr J. Sosso, 21 October 2002.

The *Upper Daly River Land Claim Report*, submitted by the native title party in this matter, reported on a site called Kalay that is situated 200 metres from the southern boundary of the proposed tenement and which was acknowledged in the report to be a very important site. There was no direct evidence about the site before the Tribunal. The Tribunal determined that the importance of this site 'is so manifest and so clear that it is appropriate in the circumstances to accept that Kalay is a site of particular significance' (without the need for any direct evidence from a native title holder) by drawing this inference from the land claim report

The Tribunal held that there was a real chance or risk that the grant of a mining tenement would result in direct interference with community and social activities, therefore finding that the expedited procedure did not apply to the grant of the lease. In arriving at the decision the Tribunal made reference to:

- the native title holders detailed evidence of current social and community activities, which was unchallenged at the hearing;
- some of the Tribunal's earlier decisions in Western Australia where there was evidence of regular camping, travelling and hunting on the relevant land and waters and it was held that the future act proposed would directly interfere with these;
- the evidence that demonstrated that the activities 'were not isolated, were conducted on a frequent basis and played an important part in the life of the claim group in question';
- the regulatory regime governing the grant of an exploration licence in the Northern Territory that is quite different from that which applies in Western Australia, in that the regulatory regime in the Northern Territory has been specifically drafted with native title considerations in mind.
- *Smith v Western Australia* (2001) 108 FCR 442, where French J held that, when assessing the risk of direct interference, the Tribunal is entitled to have regard to constraints already imposed on community or social activities by third parties. In this case there did not appear to be such restraints on the activities.

Robert Patrick Markham and Ors on behalf of the Wagiman, Dagoman and Jaywon peoples, NNTT DO02/51 and DO02/52, Hon. C.J. Sumner, 29 November 2002.

The Tribunal held a land claim report can be received into evidence but the use to which it may be put will vary with the circumstances. Reasonably current findings of activities carried out by traditional owners who are also registered native title claimants over the specific area of the proposed grant may be able to be formally adopted under s. 146(b) of the Act or be given weight as evidence. In other cases, land claim reports may be of less weight or completely irrelevant.

Indigenous land use agreements

Murray v The Registrar [2002] FCA 1598

This is the first case involving an appeal from the decision of a Registrar's delegate to register an indigenous land use agreement (ILUA) pursuant to s. 24CL of the Act. The application was pursuant to s. 5 of the *Administrative Decisions Judicial Review Act 1977* (Cth).

Although there were many parts to the application the important findings are as follows:

The definition of 'all persons' in s. 24CD(1) of the Act should not be read strictly. Justice Marshall referred to the terms of the explanatory memorandum (for the Native Title Act) in agreeing that the correct approach would be to read the term as describing the process of identifying all persons who may hold native title in the area, but does not extend to the requirement that all possible native title holders need be parties to the ILUA.

Making reasonable efforts to ascertain the parties that may hold native title does not impose an obligation to accept others on a mere assertion. A prima facie case needs to be made out.

The Tribunal exercises administrative power and not judicial power, therefore the decision to register an ILUA does not, and would not, exclude any other native title claimant from making a native title determination application over that same area.

A review of a delegate's decision to register an ILUA comprises a review on any errors of law—it is not a review on the merits.

The application was dismissed. The decision is on appeal to the Full Court in respect of the interpretation of aspects of s. 24CD.

Appendix IV Consultants

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

Consultant	Purpose	Contract price	Period	Selection process	Comments
Planning Integration Consultants	Facilitation of Rubibi ILUA	$27,000	July 2002–Oct 2003	Direct engagement	
Mary Edmunds	Wik native title mediation	$14,850	Apr 2003–June 2003	Direct engagement	Completion of work

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

Consultant	Purpose	Contract price	Period	Selection process	Comments
Deakin Management Consulting	Market testing of corporate activities	$54,294	Oct 2002–Jan 2003	Public Tender	
Colmar Brunton	Client satisfaction research	$99 990	July 2001–June 2003	Selective tender	Client satisfaction survey and recommendations
Elan IT Recruitment	Visual Basic Programmer	$113,816	July 2002 – March 2003	Extension of select tender process	Contractor formerly known as Manpower Services.
Unisys West	Provision of IT support services	$1,475,000	Feb 2000–Jan 2003	Public Tender	Includes $580,000 for equipment lease costs.
Gryphon	Web developer	$130,416	July 2002–June 2003	Extension of select tender process	
Social Change Online	Online Services Project Phase 2—web site redevelopment	$240,350	Dec 2001–June 2003	Public tender	Includes $19,470 for variations
Kinetic IT	Provision of IT support services	$77,000	Feb 2003–April 2003	Public tender	Interim contract
Kinetic IT	Provision of IT support services	$55,000	May 2003–July 2003	Public tender	Interim contract
Kinetic IT	Help desk software and support	$125,000	Mar 2003–Feb 2006	Public tender	
Spherion Technology Solutions	IT service level auditing	$20,000	Jan 2003–Feb 2004	Public tender	
Ambit IT&T Recruitment	Web publisher	$24,235	May 2002–July 2002	Extension of select tender process	Contractor formerly known as Apex.

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

Consultant	Purpose	Contract price	Period	Selection process	Comments
Simon White	Indigenous economic development phase 1	$30,000	June 2003–Aug 2003	Select tender	
Bearcage Productions	Promotional video production	$66,754	Jan 2003–Aug 2003	Select tender	
Junipers	Document management	$28,000	May 2003–June 2004	Direct engagement	Assist with DMS project
Centre for Anthropological Research, University of Western Australia	Diversity 2 — development and delivery	$33,000	May 2003–June 2003	Select tender	
Anthropos Consulting	Provide mentor services to representative bodies	$25,825	June 2003–June 2004	Direct engagement	Capacity-building
James Cook University	Research	$275,000	June 2001–June 2006	Direct engagement	Engagement of Native Title Centre staff for research consultancies
AlphaWest 6	Post implementation support of records management system	$15,840	Apr 2001–July 2002	Direct engagement	Sole supplier
Deakin Consulting	Implementation of management planning process	$20,790	Nov 2001–June 2002	Direct engagement	Limited market. Contractor undertook records management review following public tender.
Ryder Self Group	Internal communication project	$26,250	Nov 2002–Jan 2003	Select tender	
Colmar Brunton	External communication research	$88,418	June 2003–Oct 2003	Extension of select tender	

Appendix V Freedom of information

Section 8 of the *Freedom of Information Act 1982* requires each Australian Government 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 1, p. 32. An outline of the responsibilities of its executive and senior management committees is provided under 'Tribunal executive', pp. 106–7.

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. 29.

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.

Date received	Nature of request	Conclusion
July 2002	Documents related to the future act working group	Withdrawn
November 2002	Documents relating to Aboriginal and Torres Strait Islander Social Justice Commissioner Report	Withdrawn
November 2002	Documents relating to future acts	Withdrawn
March 2003	Documents relating to certification of an ILUA application	Part complied with and part answered outside FOI Act

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 Australian Government 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 feedback procedures are the formal mechanisms in which the public can participate (for more information see 'Customer Service Charter', p. 121).

As part of the Tribunal-wide operational review, external client satisfaction research was undertaken during the reporting period (for more information see 'Accountability to clients', p. 120).

Categories of documents

The Tribunal has four main categories of documents or information:

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

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

Information is available from the:

- Register of Native Title Claims — a register containing information about each native title determination application that has satisfied the conditions for registration in s. 190A or was accepted under the old Act but not yet determined (s. 185 of the *Native Title Act 1993*);
- National Native Title Register — a register containing information about each native title determination that has been determined by the Federal Court, High Court or other recognised body (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:

- application summaries—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 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 Paper Series
- flyers and fact sheets
- *Talking Native Title* quarterly newsletter
- *Native Title Hot Spots* regular electronic publication detailing latest cases and movement in the law
- guide and application forms to instituting applications for a future act determination and objections to inclusion in an expedited procedure (under s. 75 of the Act)
- guidelines on acceptance of expedited procedure objection applications
- certain 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.

The Operations Unit also issues regular reports on activities and outputs and statistics.

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 databases are maintained to support the information and processing needs of the Tribunal (for more information see 'Information management', p. 115).

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 or 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, Principal Registry.

An application for access pursuant to the Freedom of Information Act must be in writing and should contain sufficient information to identify the relevant documents, together with the prescribed fee ($30) to commence the process. Additional charges are payable (usually set as an hourly rate) for time spent in locating the documents requested and granting access. Charges and fees may be waived in particular circumstances.

A decision on the request for access to information should be made in 30 days, however, where the agency is required to consult with third parties this period may be extended.

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 VI
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 $48,228 for the conduct of an evaluation of communication with stakeholders.

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 $4,964 (Sundream Pty Ltd operating as Northside Distributors) plus $10,942 (Lasermail Pty Ltd), a total of $15,906 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	$343,891
staff recruitment	$94,964
other advertising (for example, tenders and consultants)	$13,123

Appendix VII
Audit report and notes to the financial statements

INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope

I have audited the financial statements of the National Native Title Tribunal for the year ended 30 June 2003. The financial statements comprise:

- Statement by the Chief Executive and Chief Finance Officer;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Commitments
- Schedule of Administered Items; 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 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 2003, and its financial performance and cash flows for the year then ended.

Australian National Audit Office

Mark A Moloney
Senior Director

Delegate of the Auditor-General

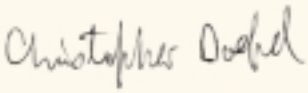
Canberra

15 September 2003

National Native Title Tribunal

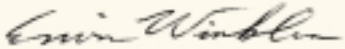
Statement by the Chief Executive and Chief Finance Officer

In our opinion, the attached financial statements for the year ended 30 June 2003 give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*.



Christopher Doepel
Chief Executive

4 September 2003



Erwin Winkler
Chief Finance Officer

4 September 2003

NATIONAL NATIVE TITLE TRIBUNAL
STATEMENT OF FINANCIAL PERFORMANCE *for the year ended 30 June 2003*

	Note	2003 $'000	2002 $'000
Revenues from ordinary activities			
Revenues from Government	2A	**31,598**	28,506
Sale of goods and services	2B	**103**	172
Interest	2C	**115**	152
Revenues from ordinary activities		**31,816**	28,830
Expenses from ordinary activities			
Employees	3A	**18,646**	16,607
Suppliers expense			
Operating lease rentals		**2,955**	2,718
Other suppliers expenses from external entities		**7,263**	8,335
Depreciation and amortisation	3B	**768**	764
Write-down of assets	3C	**1**	1
Expenses from ordinary activities		**29,633**	28,425
Net operating surplus from ordinary activities		**2,183**	405
Net surplus		**2,183**	405
Total changes in equity other than those resulting from transactions with owners as owners	8	**2,183**	405

NATIONAL NATIVE TITLE TRIBUNAL
STATEMENT OF FINANCIAL POSITION *as at 30 June 2003*

	Note	2003 $'000	2002 $'000
ASSETS			
Financial assets			
Cash	4A	**5,895**	3,280
Receivables	4B	**165**	335
Accrued revenues	4C	**–**	5
Total financial assets		**6,060**	3,620
Non-financial assets			
Land and buildings	5A,D	**541**	968
Infrastructure, plant and equipment	5B,D	**734**	456
Intangibles	5C,D	**65**	12
Other	5E	**988**	801
Total non-financial assets		**2,328**	2,237
TOTAL ASSETS		**8,388**	5,857
LIABILITIES			
Provisions			
Employees	6	**3,653**	3,153
Total provisions		**3,653**	3,153
Payables			
Suppliers	7	**467**	413
Total payables		**467**	413
TOTAL LIABILITIES		**4,120**	3,566
NET ASSETS		**4,268**	2,291
EQUITY			
Contributed equity	8	**2,415**	2,415
Retained surplus	8	**1,853**	(124)
Total equity		**4,268**	2,291
Current liabilities		**2,515**	2,153
Non-current liabilities		**1,605**	1,413
Current assets		**7,048**	4,421
Non-current assets		**1,340**	1,436

NATIONAL NATIVE TITLE TRIBUNAL

STATEMENT OF CASH FLOWS *for the year ended 30 June 2003*

	Note	2003 $'000	2002 $'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		**133**	183
Appropriations		**31,584**	28,493
Interest		**120**	155
GST received from ATO		**1,016**	1,205
Total cash received		**32,853**	30,036
Cash used			
Employees		**18,116**	16,391
Suppliers		**11,427**	11,989
Total cash used		**29,543**	28,380
Net cash from operating activities	9	**3,310**	1,656
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		**593**	892
Purchase of intangibles		**78**	–
Total cash used		**671**	892
Net cash (used by) investing activities		**(671)**	(892)
FINANCING ACTIVITIES			
Cash received			
Proceeds from equity injections		**–**	43
Total cash received		**–**	43
Cash used			
Capital use charge paid		**24**	220
Total cash used		**24**	220
Net cash from (used by) financing activities		**(24)**	(220)
Net increase in cash held		**2,615**	544
Cash at the beginning of the reporting period		**3,280**	2,736
Cash at end of reporting period	4A	**5,895**	3,280

NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF COMMITMENTS *as at 30 June 2003*

	Note	2003 $'000	2002 $'000
BY TYPE			
Capital commitments			
Infrastructure, plant and equipment		–	–
Total capital commitments		–	–
Other commitments			
Operating leases[1]		**1,309**	2,047
Other[2]		**230**	1,155
Total other commitments		**1,539**	3,202
Commitments receivable		**(140)**	(291)
Net commitments		**1,399**	2,911
BY MATURITY			
Operating lease commitments			
One year or less		**1,161**	1,150
From one to five years		**29**	711
Other commitments			
One year or less		**209**	1,050
Net commitments by maturity		**1,399**	2,911

NB: Commitments are GST inclusive where relevant.

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

[2] Other comprises orders placed for consumable goods and services.

NATIONAL NATIVE TITLE TRIBUNAL
SCHEDULE OF ADMINISTERED ITEMS

	Note	2003 $'000	2002 $'000
Revenues administered on behalf of Government *for the year ended 30 June 2003*			
Non-taxation revenue			
Fees		**5**	6
Total revenues administered on behalf of Government		**5**	6
Expenses administered on behalf of Government *for the year ended 30 June 2003*			
Write-down of assets		**–**	1
Total expenses administered on behalf of Government		**–**	1
Assets administered on behalf of Government *for the year ended 30 June 2003*		**Nil**	Nil
Liabilities administered on behalf of Government *for the year ended 30 June 2003*		**Nil**	Nil
Administered cash flows *for the year ended 30 June 2003*			
Operating activities			
Cash received			
Fees		**5**	6
Cash Used			
Cash to Official Public Account		**5**	6
Net cash from operating activities		**–**	–
Administered commitments *as at 30 June 2003*		**Nil**	Nil
Administered contingencies *as at 30 June 2003*		**Nil**	Nil

Statement of Activities Administered on Behalf of Government
The administered activities of the National Native Title Tribunal are directed towards achieving the outcome described in Note 1 to the Financial Statements. The activities are the collection of fees for lodgement of applications and for inspection of the Native Title Register.

NATIONAL NATIVE TITLE TRIBUNAL

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

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.

Tribunal activities contributing to this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Tribunal in its own right. Administered activities involve the management or oversight by the Tribunal on behalf of the Government of items controlled or incurred by the Government.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

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:

- Finance Minister's Orders (or FMOs, being the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 30 June 2003) Orders)*;
- Australian Accounting Standards and Accounting Interpretations issued by the Australian Accounting Standards Board; and
- Consensus Views of the Urgent Issues Group.

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. However assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets which are unrecognised are reported in the Schedule of Commitments. The Tribunal had no Contingencies other than unquantifiable or remote contingencies, which are reported at Note 10.

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 the Schedule of Administered Items are accounted for on the same basis and using the same policies as for Agency items, except where otherwise stated at Note 1.12.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

1.3 Changes in accounting policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2001–02, except in respect of:

- the accounting for output appropriations (refer to Note 1.4);
- recognition of equity injections (refer to Note 1.5);
- measurement of certain employee benefits at nominal amounts (refer to Note 1.6); and
- the initial revaluation of property, plant and equipment on a fair value basis (refer to Note 1.11).

1.4 Revenue

Revenues from Government

Departmental outputs appropriations for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue.

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.

Other revenue

Revenue from the sale of goods is recognised upon the delivery of goods to customers.

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. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

1.5 Transactions with the Government as Owner

Capital Use Charge

A Capital Use Charge of 11 per cent (2002: 11 per cent) is imposed by the Government on the departmental net assets of the agency at year end. The net assets figure is adjusted to take account of asset gifts and revaluation increments during the financial year. The charge is accounted for as a dividend to Government.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

In accordance with the recommendations of a review of Budget Estimates and Framework, the Government has decided that the charge will not operate after 30 June 2003.

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2002–03, by agreement with the Department of Finance and Administration, the Tribunal returned surplus output appropriation funding of $1,900,000 to the Official Public Account.

1.6 Employee benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for salaries (including non-monetary benefits) and annual leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability. This is a change in accounting policy from last year required by an initial application of a new Accounting Standard AASB 1028 from 1 July 2002.

Leave

The liability for employee benefits 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 leave liabilities are calculated on the basis of employees' remuneration, including the Tribunal's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary as at 30 June 2003. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and redundancy

No provision has been made for separation and redundancy payments as the Tribunal has not identified any positions as excess to requirements within the next 12 months.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

Superannuation

Staff of the National Native Title Tribunal are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability for their superannuation benefits is recognised in the financial statements of the Commonwealth and is settled by the Commonwealth in due course.

The Tribunal makes employer contributions to the Commonwealth at rates determined by an actuary to be sufficient to meet the cost to the Commonwealth of the superannuation entitlements of the Tribunal's employees.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

1.7 Leases

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets and operating leases under which the lessor effectively retains substantially all such risks and benefits.

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 2003.

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.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

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

Basis

Land, buildings, plant and equipment are carried at valuation. Revaluations undertaken to 30 June 2002 were done on a deprival basis; revaluations since that date are at fair value. This change in accounting policy is required by Australian Accounting Standard AASB 1041 *Revaluation of Non-current Assets*.

Fair and deprival values for each class of assets are determined as shown below.

Asset class	Fair value measured at:	Deprival value measured at:
Leasehold improvements	Depreciated replacement cost	Depreciated replacement cost
Plant and equipment	Market selling price	Depreciated replacement cost

Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value. The Tribunal held no such assets at 30 June 2003.

No assets revalued at 30 June 2002 under the deprival method have subsequently been revalued using the fair value method. Accordingly, this change in policy has had no financial effect.

Frequency

Plant and equipment is revalued progressively in successive three-year cycles. All current cycles commenced on 1 July 2000 and finished on 30 June 2003.

Conduct

All valuations are conducted by an independent qualified valuer.

Depreciation

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 depreciated on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives) and methods are reviewed at each reporting 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 rates applying to each class of depreciable asset are based on the following useful lives:

	2003	2002
Leasehold improvements	**5 years**	5 years
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 3B.

Recoverable amount test

From 1 July 2002, Schedule 1 no longer requires the application of the recoverable amount test in Australian Accounting Standard AAS 10 *Recoverable Amount of Non-current Assets* to the assets of agencies when the primary purpose of the asset is not the generation of net cash inflows.

No plant and equipment assets have been written down to recoverable amounts per AAS 10. Accordingly, the change in policy has had no financial effect.

1.12 Reporting of administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Agency items, including the application to the greatest extent possible of Accounting Standards, Accounting Interpretations and UIG Consensus Views.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

Administered receipts transferred or transferable to the OPA are not reported as administered expenses or payables. These transactions or balances are internal to the administered entity.

These transfers of cash are reported as administered (operating) cash flows.

1.13 Rounding

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

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

	2003 $'000	2002 $'000
Note 2: Operating Revenues		
Note 2A – Revenues from Government		
Appropriations for outputs	**31,584**	28,493
Resources received free of charge	**14**	13
Total	**31,598**	28,506
Note 2B – Sales of Goods and Services		
Services	**103**	172

All services were rendered to external entities.

Note 2C – Interest Revenue		
Interest on deposits	**115**	152
Note 3: Operating Expenses		
Note 3A – Employee expenses		
Salary	**15,757**	14,198
Superannuation	**2,046**	1,740
Leave and other entitlements	**415**	156
Separation and redundancy	**80**	145
Other employee expenses	**278**	304
Total employee benefits expense	**18,576**	16,543
Worker compensation premiums	**70**	64
Total employee expenses	**18,646**	16,607

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

	2003 $'000	2002 $'000
Note 3B – Depreciation and amortisation		
Depreciation of property, plant and equipment	**768**	764
The aggregate amount of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	**499**	599
Plant and equipment	**243**	125
Intangibles	**26**	40
Total	**768**	764
Note 3C – Write down of assets		
Bad and doubtful debts expense	**1**	1
Total	**1**	1

Note 4: Financial Assets

Note 4A – Cash		
Cash at bank and on hand	**5,895**	3,280
Note 4B – Receivables		
Goods and services	**20**	31
Less: provision for doubtful debts	**(3)**	(3)
	17	28
GST receivable	**148**	307
Total receivables (net)	**165**	335
All receivables are current assets.		
Receivables (gross) are aged as follows:		
Not overdue	**161**	143
Overdue by:		
less than 30 days	**3**	5
30 to 60 days	**1**	4
60 to 90 days	**1**	1
More than 90 days	**2**	3
	7	13
Total receivables (gross)	**168**	156
Note 4C – Accrued revenues		
Interest	**–**	5

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

	2003 $'000	2002 $'000
Note 5: Non-financial Assets		
Note 5A – Land and buildings		
Leasehold Improvements — at cost	**3,850**	3,778
Accumulated amortisation	**(3,309)**	(2,810)
Total land and buildings	**541**	968
Note 5B – Plant and equipment		
Plant and equipment — at cost	**1,605**	1,155
Accumulated depreciation	**(880)**	(710)
Total plant and equipment at cost	**725**	445
Plant and equipment — at 1998–99 valuation	**75**	80
Accumulated depreciation	**(66)**	(69)
Total plant and equipment at valuation	**9**	11
Total plant and equipment	**734**	456
Note 5C – Intangibles		
Computer software — at cost	**968**	890
Accumulated amortisation	**(903)**	(878)
Total intangibles	**65**	12

Note 5D – 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 $'000	Plant and equipment $'000	Intangibles $'000	Total $'000
As at 1 July 2002				
Gross book value	3,778	1,235	890	5,903
Accumulated depreciation/amortisation	(2,810)	(779)	(877)	(4,466)
Net book value	968	456	13	1,437
Additions by purchase	72	521	78	671
Depreciation/amortisation expense	(499)	(167)	(26)	(692)
Disposals	–	(76)	–	(76)
As at 30 June 2003				
Gross book value	3,850	1,680	968	6,498
Accumulated depreciation/amortisation	(3,309)	(946)	(903)	(5,158)
Net book value	**541**	**734**	**65**	**1,340**

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

TABLE B – Assets at valuation

Item	Buildings – Leasehold Improvements $'000	Plant and equipment $'000	Intangibles $'000	Total $'000
As at 30 June 2003				
Gross value	–	75	–	75
Accumulated depreciation	–	(66)	–	(66)
Net book value	–	**9**	–	**9**
As at 30 June 2002				
Gross value	–	80	–	80
Accumulated depreciation	–	(69)	–	(69)
Net book value	–	11	–	11

	2003 $'000	2002 $'000
Note 5E – Other non-financial assets		
Prepaid expenses	**988**	801
	988	801

All other non-financial assets are current assets.

Note 6: Provisions

	2003 $'000	2002 $'000
Employee provisions		
Salaries and wages	**398**	370
Leave	**3,108**	2,529
Superannuation	**147**	222
Aggregate employee entitlement liability	**3,653**	3,121
Other	**–**	32
Total	**3,653**	3,153
Current	**2,048**	1,740
Non-current	**1,605**	1,413

Note 7: Payables

	2003 $'000	2002 $'000
Supplier payables		
Trade creditors	**467**	413
	467	413

All payables are current liabilities.

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

Note 8: Equity

Analysis of Equity

Item	Accumulated Results		Contributed Equity		TOTAL EQUITY	
	2003	2002	**2003**	2002	**2003**	2002
	$'000	$'000	**$'000**	$'000	**$'000**	$'000
Opening balance at 1 July	**(124)**	(473)	**2,415**	2,415	**2,291**	1,942
Net surplus	**2,183**	405	**–**	–	**2,183**	405
Transactions with owner:						
Capital Use Charge	**(206)**	(56)	**–**	–	**(206)**	(56)
Closing balance at 30 June	**1,853**	(124)	**2,415**	2,415	**4,268**	2,291
Less: outside equity interest	**–**	–	**–**	–	**–**	–
Total equity attributable to the Commonwealth	**1,853**	(124)	**2,415**	2,415	**4,268**	2,291

Note 9: Cash Flow Reconciliation

	2003 $'000	2002 $'000
Reconciliation of net surplus to net cash from Operating activities:		
Net surplus	**2,183**	405
Depreciation/amortisation	**768**	764
Write down of non-current assets	**1**	–
(Increase)/decrease in receivables	**(12)**	80
Decrease in accrued revenues	**5**	3
(Increase)/decrease in prepayments	**(187)**	205
Increase in employee liabilities	**500**	208
Increase/(decrease) in supplier liabilities	**52**	(9)
Net cash from operating activities	**3,310**	1,656

Note 10: Contingent Liabilities and Assets

Quantifiable and unquantifiable contingencies

The Tribunal had no quantifiable or unquantifiable contingencies at 30 June 2003.

Remote contingencies

The Tribunal has indemnified the state governments of Western Australia and Queensland, the Northern Territory Government, the Great Barrier Reef Marine Park and Geoscience Australia against any action brought against it which results from spatial data provided to it by the governments and authorities. These indemnities are unlimited.

NATIONAL NATIVE TITLE TRIBUNAL

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

	2003	2002
Note 11: Executive Remuneration		
The number of Executives who received or were due to receive total remuneration of $100,000 or more:		
$120,001 to $130,000	**–**	1
$130,001 to $140,000	**–**	1
$150,001 to $160,000	**1**	–
$160,001 to $170,000	**1**	–
$180,001 to $190,000	**–**	1
$190,001 to $200,000	**1**	–
The aggregate amount of total remuneration of Executives shown above.	**$508,186**	$451,952
The aggregate amount of separation and redundancy payments during the year to Executives shown above.	**Nil**	Nil

	2003 $'000	2002 $'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:	**14,000**	13,000

Audit remuneration in Note 12 of the NNTT's 2001–2002 Annual Financial Statements was incorrectly reported as $13,000,000—the correct figure should have been $13,000.

No other services were provided by the Auditor-General.

	2003	2002
Note 13: Average Staffing Levels		
The average staffing levels for the business operation of the Tribunal during the year were:	**273**	242

Note 14: Act of Grace Payments and Waivers

No Act of Grace payments were made during the reporting period and there are no amounts owing as at year end.

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

No payments were made under the Defective Administration Scheme during the reporting period.

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 and 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	4A	Cash is recognised at its nominal amount. Interest is credited to revenue as it accrues.	Moneys in the Tribunal's bank accounts 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 3.50% for the year (2002: 4.48%). Interest is paid quarterly.
Receivables for goods and services	4B	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 (2002: 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	7	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.
Unrecognised financial liabilities			
Indemnities		Indemnities have been given to state and territory governments and two Commonwealth agencies in regard to the provision of spatial data. These are reported as remote contingency liabilities in Note 9.	Refer to Note 9.

Note 15: Financial Instruments (continued)

Note 15B – Interest rate risk

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate Maturing in						Non-interest Bearing		Total		Weighted Average Effective Interest Rate	
				1 year or less		1 to 5 years		> 5 years							
		2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000
Financial Assets															
Cash at Bank	4A	**5,891**	3,273	**–**	–	**–**	–	**–**	–	**4**	7	**5,895**	3,280	**3.50**	4.48
Receivables for goods and services	4B	**–**	–	**–**	–	**–**	–	**–**	–	**168**	156	**168**	156	**n/a**	n/a
Less: provision for doubtful debts	4B	**–**	–	**–**	–	**–**	–	**–**	–	**(3)**	(3)	**(3)**	(3)		
Total		**5,891**	3,273	**–**	–	**–**	–	**–**	–	**169**	160	**6,060**	3,433		
Total Assets												**8,388**	5,858		
Financial Liabilities															
Trade Creditors	7	**–**	–	**–**	–	**–**	–	**–**	–	**–**	–	**467**	413	**n/a**	n/a
Total		**–**	–	**–**	–	**–**	–	**–**	–	**–**	–	**467**	413		
Total Liabilities												**4,120**	3,566		

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

Note 15: Financial Instruments (continued)

Note 15C – Net fair values of financial assets and liabilities

Financial assets

The net fair values of cash and non-interest-bearing monetary financial assets equal their carrying amounts.

Financial liabilities

The net fair value of financial liabilities equal 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 2003*

Note 16: Appropriations

Note 16A – Cash basis acquittal of appropriations from Acts 1 and 3

Particulars	Administered Expenses $	Departmental Outputs $
Year ended 30 June 2003		
Balance carried forward from previous year	–	864,631
Appropriation for reporting period (Act 1)	–	33,484,000
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)	–	1,015,870
Annotations to 'net appropriations' (FMA s. 31)	–	253,253
Other annotations	–	–
Transfer to/from other agencies (FMA s. 32)	–	–
Administered expenses lapsed (expended)	–	–
Available for payments	–	33,717,754
Payments made	–	(30,238,163)
Balance carried forward to next year	–	5,379,591
Represented by:		
Cash		3,479,591
Savings identified in the Budget process		1,900,000
		5,379,591
Year ended 30 June 2002		
Balance carried forward from previous year	–	320,897
Total annual appropriation	–	28,493,000
Adjustments and annotations to appropriations	–	1,543,299
Available for payment	–	30,357,196
Payments made during the year	–	(29,492,565)
Balance carried to the next year	–	864,631
Represented by:		
Cash	–	864,631

Note 16B – Cash basis acquittal of appropriations from Acts 2 and 4

Particulars	Administered	Non-operating				Total
		Equity	Loans	Previous years' outputs	Admin assets and liabilities	
	$	$	$	$	$	$
Year ended 30 June 2003						
Balance carried forward from previous year	–	2,415,000	–	–	–	2,415,000
Appropriation for reporting period (Act 2)	–	–	–	–	–	–
Appropriation for reporting period (Act 4)	–	–	–	–	–	–
Adjustments determined by the Finance Minister	–	–	–	–	–	–
Amounts from Advances to the Finance Minister	–	–	–	–	–	–
Refunds credited (FMA s. 30)	–	–	–	–	–	–
GST credits (FMA s. 30A)	–	–	–	–	–	–
Transfers to/from other agencies (FMA s. 32)	–	–	–	–	–	–
Administered appropriation lapsed	–	–	–	–	–	–
Available for payments	–	2,415,000	–	–	–	2,415,000
Payments made	–	–	–	–	–	–
Appropriations credited to Special Accounts	–	–	–	–	–	–
Balance carried forward to next year	–	2,415,000	–	–	–	2,415,000
Represented by:						
Cash	–	2,415,000	–	–	–	2,415,000
Year ended 30 June 2002						
Balance carried forward from previous year	–	2,415,000	–	–	–	2,415,000
Total annual appropriation	–	–	–	–	–	–
Adjustments and annotations to appropriations	–	–	–	–	–	–
Transfers to/from other agencies (FMA s. 32)	–	–	–	–	–	–
Administered appropriation lapsed	–	–	–	–	–	–
Available for payments	–	2,415,000	–	–	–	2,415,000
Payments made during the year	–	–	–	–	–	–
Appropriations credited to special accounts	–	–	–	–	–	–
Balance carried to the next year	–	2,415,000	–	–	–	2,415,000
Represented by:						
Cash	–	2,415,000	–	–	–	2,415,000

NATIONAL NATIVE TITLE TRIBUNAL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS *for the year ended 30 June 2003*

Note 17: 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	
	2003 $'000	2002 $'000
Balance carried forward from previous year	–	–
Receipts during the year	**39**	26
Available for payments	**39**	26
Payments made	**(39)**	(26)
Balance carried forward to next year	–	–

Note 18: 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).

Output Group 1

1.1 Claimant applications
1.2 Native title determinations
1.3 Indigenous land use agreement applications

Output Group 2

2.1 Indigenous land use
2.2 Claimant, non-claimant and compensation
2.3 Future act

Output Group 3

3.1 Future act determinations
3.2 Objections to the expedited procedure

Output Group 4

4.1 Assistance to applicants and other persons
4.2 Notification
4.3 Reports to the Federal Court

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Note 18A – Total cost/contribution of outcome (Whole of Government)

	Outcome	
	2003	2002
	$'000	$'000
Administered expenses	–	–
Departmental expenses	**29,632**	28,425
Total expenses	**29,632**	28,425
Costs recovered from the provision of goods and services to the non-government sector		
Administered	–	–
Departmental	**(103)**	(172)
Total costs recovered	**(103)**	(172)
Other external revenues		
Administered	–	–
Departmental — interest on cash deposits	**(115)**	(152)
Total other external revenues	**(115)**	(152)
Net cost of outcomes	**29,414**	28,101

Note 18B – Major departmental revenues and expenses by output groups and outputs

Output Group 1	Output 1.1.1		Output 1.1.2		Output 1.1.3		Total Output 1	
	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000
Departmental expenses								
Employees	2,463	1,986	62	169	703	582	3,228	2,737
Suppliers	1,350	1,322	34	113	385	387	1,769	1,822
Depreciation and amortisation	101	91	3	8	29	27	133	126
Total departmental expenses	3,914	3,399	98	290	1,117	996	5,130	4,685
Funded by:								
Revenues from government	4,174	3,409	104	291	1,192	998	5,470	4,698
Sale of goods and services	14	20	0	2	4	6	18	28
Other non-taxation revenues	15	18	1	2	4	5	20	25
Total departmental revenues	4,203	3,447	105	295	1,200	1,009	5,508	4,751

Output Group 2	Output 1.2.1		Output 1.2.2		Output 1.2.3		Total Output 2	
	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000
Departmental expenses								
Employees	1,232	1,103	3,528	4,705	1,185	1,300	5,945	7,108
Suppliers	675	734	1,933	3,132	650	865	3,258	4,731
Depreciation and amortisation	51	51	145	216	49	60	245	327
Total departmental expenses	1,958	1,888	5,606	8,053	1,884	2,225	9,448	12,166
Funded by:								
Revenues from government	2,088	1,893	5,978	8,077	2,009	2,231	10,075	12,201
Sale of goods and services	7	11	19	49	7	14	33	74
Other non-taxation revenues	8	10	22	43	7	12	37	65
Total departmental revenues	2,103	1,914	6,019	8,169	2,023	2,257	10,145	12,340

Note 18B – Major departmental revenues and expenses by output groups and outputs (continued)

Output Group 3	Output 1.3.1		Output 1.3.2		Total Output 3	
	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000
Departmental expenses						
Employees	**636**	611	**1,694**	1,764	**2,330**	2,375
Suppliers	**349**	407	**928**	1,174	**1,277**	1,581
Depreciation and amortisation	**26**	28	**69**	81	**95**	109
Total departmental expenses	**1,011**	1,046	**2,691**	3,029	**3,702**	4,065
Funded by:						
Revenues from government	**1,078**	1,048	**2,870**	3,029	**3,948**	4,077
Sale of goods and services	**4**	6	**9**	18	**13**	24
Other non-taxation revenues	**4**	6	**10**	16	**14**	22
Total departmental revenues	**1,086**	1,060	**2,889**	3,063	**3,975**	4,123

Output Group 4	Output 1.4.1		Output 1.4.2		Output 1.4.3		Total Output 4	
	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000	2003 $'000	2002 $'000
Departmental expenses								
Employees	**5,289**	2,707	**1,130**	1,023	**724**	657	**7,143**	4,387
Suppliers	**2,898**	1,802	**619**	681	**397**	437	**3,914**	2,920
Depreciation and amortisation	**218**	125	**47**	47	**30**	30	**295**	202
Other	**1**	1	**0**	0	**0**	0	**1**	1
Total departmental expenses	**8,406**	4,635	**1,796**	1,751	**1,151**	1,124	**11,353**	7,510
Funded by:								
Revenues from government	**8,963**	4,646	**1,915**	1,756	**1,227**	1,128	**12,105**	7,530
Sale of goods and services	**29**	28	**6**	10	**4**	7	**39**	45
Other non-taxation revenues	**33**	25	**7**	9	**4**	6	**44**	40
Total departmental revenues	**9,025**	4,699	**1,928**	1,775	**1,235**	1,141	**12,188**	7,615

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Note 18C – Major classes of administered revenues and expenses by outcome

	Outcome	
	2003	2002
	$'000	$'000
Administered revenues		
Fees	**5**	6
Total administered revenues	**5**	6
Total administered expenses	**–**	–

Appendix VIII Glossary

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

AIATSIS: Australian Institute of Aboriginal and Torres Strait Islander Studies

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 an Australian Government 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.

'On country': description for when activities take place out on the relevant area of land, for example meetings taking place on or near the area covered by a native title application.

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 .

Section 29 (s. 29 of the Native Title Act): 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.

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