NATIONAL NATIVE
TITLE TRIBUNAL

ANNUAL REPORT
2003 – 2004

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 obtained from any registry of the National Native Title Tribunal (see back cover for contact details), or online at www.nntt.gov.au in HTML format that may be enlarged to suit the reader. The online version of the report also includes 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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29 September 2004

The Hon. Philip Ruddock
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 2004.

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

Yours sincerely

Graeme Neate
President

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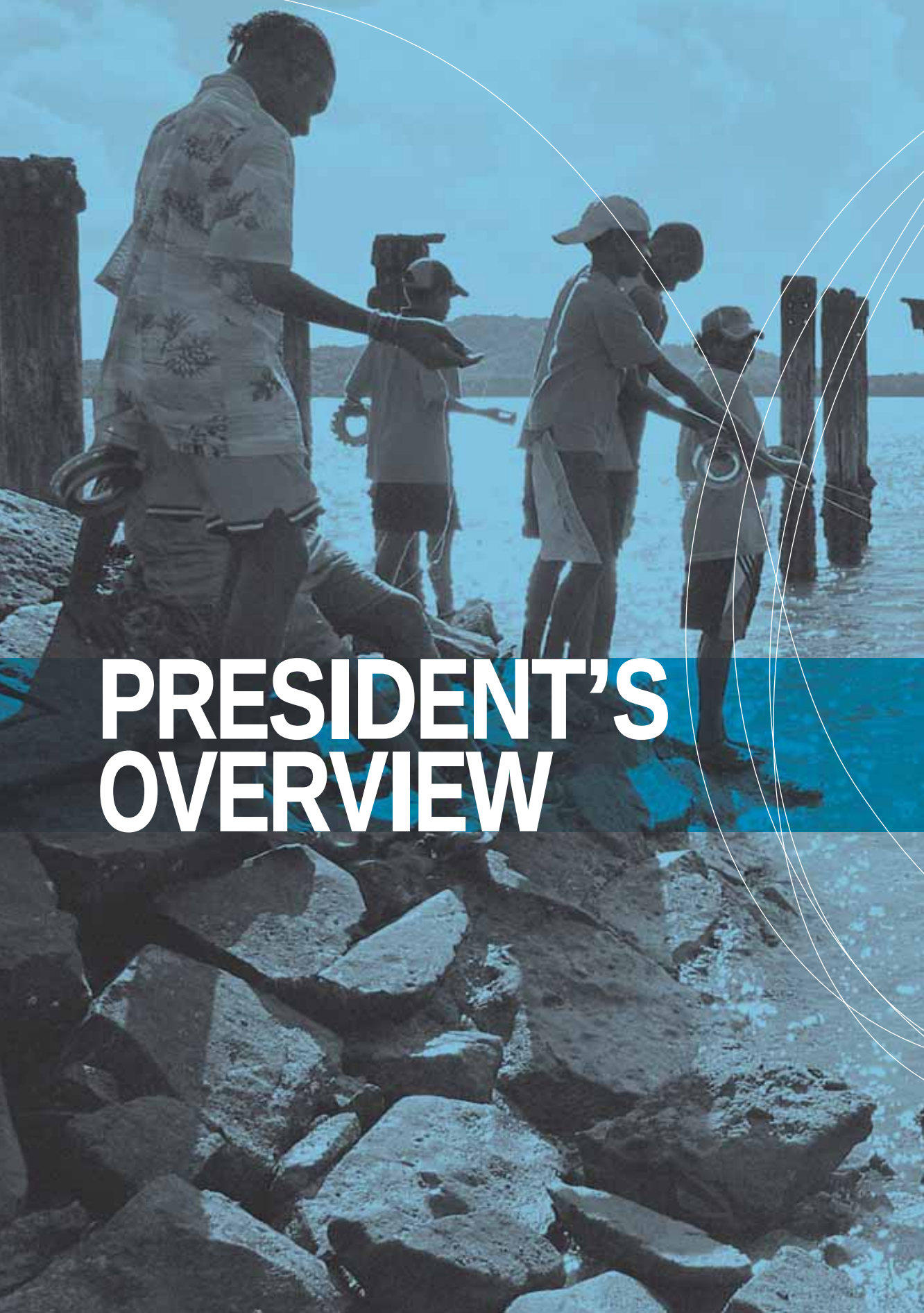


PRESIDENT'S OVERVIEW

THE YEAR IN REVIEW

Introduction

1 January 2004 was the tenth anniversary of the date on which most of the *Native Title Act 1993* (the Act) commenced to operate.

By contrast with the level of debate that surrounded the introduction, amendment and passage of the original Bill, the tenth anniversary of the Act passed virtually unheralded. The fact that it attracted so little attention shows how much has changed in public attitudes about native title in the past decade. Such lack of overt attention cannot detract from the enormous amount of activity and achievement in that period. Nor should there be any misunderstanding about the volume and variety of work that remains to be done.

This report has been prepared in accordance with the requirement of the Act that the President of the National Native Title Tribunal (the Tribunal) prepare a report of the management of the administrative affairs of the Tribunal during each financial year.

Governmental reporting requirements mean that a document such as this must focus on outputs and outcomes, structures and spending. This report describes which outputs were achieved and illustrates some of the resources that were invested in producing them.

But figures and graphs, output and process compliance statements only tell part of the story. As the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund noted in its examination of the Tribunal's *Annual Report 2002–2003*, 'the performance of the work of the Tribunal as described within the parameters required of Commonwealth organisations may not necessarily be complete when viewed merely in terms of unit cost or the number of units achieved'.

Accordingly, although the report is primarily about the Tribunal, its focus is not confined to the management of the Tribunal's administrative affairs and its scope extends beyond what is required of an annual report.

People are involved at every stage of native title proceedings. The process of negotiating agreements about native title can also result in the creation or strengthening of relationships which, for some parties, may prove to be more valuable than the terms of the formal agreement they have reached.

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. Some of those stories are vividly captured in the prize-winning video *Native Title Stories: Rights, Recognition, Relationships* launched by the Tribunal in February 2004.

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 these human dimensions that 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;
- external assessments of the Tribunal and the native title system; and
- trends in relation to native title that are likely to continue into the foreseeable future.

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 which refers matters to the Tribunal for mediation and supervises the mediation processes.

These factors make it difficult to predict accurately the number of agreements and other outputs. The Tribunal's expenditure for 2003–04, however, closely matched the estimate in the Attorney-General's Portfolio Additional Estimates Statements. The Tribunal reviewed its budget needs at the end of the first quarter and an amount of $2 million was returned through the Additional Estimates process in November 2003.

Although there were variations between what was achieved and the estimates for several outputs, they did not alter the Tribunal's overall workload. The budget outcome reflects the Tribunal's ability to assess and respond quickly to changes in its operating environment. In part, such successful management is possible because external factors are being understood better and the experience and knowledge of Tribunal members and employees is assisting in prioritising and managing the workload.

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 ways in which the Tribunal meets its obligations are influenced significantly by numerous factors over which it has no control. They include developments in the law, policies and procedures of governments, procedures and orders of the Federal Court, and roles and capacity of native title representative bodies.

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 amendment to s. 207 to extend the sunset provision in relation to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund from 23 March 2004 to 23 March 2006. The work of that committee is discussed later in this overview (see p. 14) and also 'External scrutiny', p. 109.

The Federal Court delivered approximately 50 written judgments on matters involving native title law during the year. They dealt with matters arising before, during and after the mediation or trial process in relation to native title applications.

Although these judgments are usually not of the same broad significance as landmark High Court judgments, they add to the detailed understanding of the law on native title and are relevant to more than the immediate parties. Rulings by the court can influence such practical matters as the application of the registration test, the nature and progress of mediation programs, whether applications can be struck out, who can (and cannot) be parties to the proceedings, the grounds on which an indigenous land use agreement (ILUA) can be registered, and whether a prescribed body corporate established to hold native title complies with the legal requirements for that purpose.

Members of the Tribunal are also involved in the development of the law as they make future act determinations under the Act.

A note on the various issues dealt with by the Federal Court during the reporting period and summaries of the main points of significant judicial decisions and Tribunal determinations are in Appendix II to this report, p. 120.

Although a considerable body of judicial rulings has been produced over the decade since the Act took effect, not all of those rulings are consistent. As a general practice, individual judges of the Federal Court tend to adopt the reasoning of other judges. But differences of opinion are expressed on some significant matters. In due course those matters may be resolved on appeal or by subsequent authoritative judgments.

A degree of uncertainty about aspects of the law may be inconvenient and even give rise to practical difficulties in some circumstances (such as delays in negotiating agreements), but some uncertainty should be expected. Late in 2003, a Full Court of the Federal Court wrote:

> When it comes to native title law, there is scope for significant differences of judicial opinion. That is not really surprising. It is still only eleven years since the High Court's historic decision, in *Mabo v Queensland*, rejecting the doctrine of *terra nulius* and holding that native title is recognised by Australian common law. The Native Title Act was enacted only ten years ago and it was radically amended

> in 1998 … The legislation is extremely complex— probably inevitably so, because of the variety of situations with which it has to deal. It always takes time for the ramifications of new legislation to be worked out. This is because courts develop the principles underlying new legislation on a case by case basis. They must wait until the relevant cases arise.

Some of the practical consequences of this uncertainty, including delays to the mediation of some applications, are discussed later in this report. However, despite (or perhaps because of) a degree of uncertainty, some parties are keen to negotiate agreements of various types that suit their circumstances.

Policies and procedures of governments

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

Governments, particularly state and territory governments, can also play a central 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 of native title.

During the reporting period, key aspects of the Commonwealth's approach to native title claimant applications and aspects of administering the native title system were articulated, and the Queensland Government took formal steps to revise the previous policy and procedures for dealing with native title applications. Other governments continued to develop or refine their practices in various ways.

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; or by intervening at any time in the proceeding, by giving written notice to the Federal Court.

In a speech at the native title conference in Adelaide on 4 June 2004, the present Attorney-General the Hon. Philip Ruddock stated that, in native title matters, the Australian Government's overarching objective is to ensure fair, effective and enduring outcomes for all parties in the native title system. He said that the government has a policy of preferring to resolve native title matters by negotiation rather than litigation.

The Attorney-General stated that, at all times, the Australian Government needs to ensure that native title outcomes are credible and consistent with the law. He reiterated that the government's consent determination principles require that any determination of native title:

- provides certainty of the rights recognised;
- is consistent with the common law;
- complies with the Act; and
- is reached through a transparent process.

The Attorney-General noted that, unfortunately, all of these processes take time, but they are fundamental to the integrity of the native title system. He argued that the checks and balances ensure that native title outcomes are clear and transparent. This avoids future disputes about interpretation, and ensures all parties understand the basis for an outcome.

To date the Australian Government has not published guidelines on its requirements in relation to evidence of a native title claim group's connection to an area of land or waters claimed.

During the reporting period the Australian Government announced its intention to abolish the Aboriginal and Torres Strait Islander Commission (ATSIC). The legislation to give effect to that decision, the *Aboriginal and Torres Strait Islander Commission Amendment Bill 2004*, was introduced in May 2004 but was not passed before 30 June 2004.

The most immediate effect of that legislation for the native title system will be to remove the references to ATSIC from Part 11 of the Native Title Act. Under that Part (which deals with native title representative bodies), ATSIC is involved in a range of financial matters including granting money to representative bodies so they can perform their statutory functions, imposing conditions on the grant of such money (where there is no representative body), deciding whether to grant money to persons who a representative body has decided not to assist, and (where there is no representative body) granting money to a person or body to perform all or some specified functions of a representative body.

Under the amending legislation, responsibility for ATSIC's functions will be given to the secretary of the relevant Australian Government department or to that department. Various administrative arrangements have been made pending the passage of that legislation, with responsibility for native title matters previously exercised by ATSIC being transferred to the Office of Indigenous Policy Coordination within the Department of Immigration, Multicultural and Indigenous Affairs.

The abolition of ATSIC comes at a time when the Australian Government is moving to a whole-of-government approach to indigenous issues. We are yet to see the

practical implications of that for the administration (including resourcing) of the native title system.

Queensland

In the reporting period the Queensland Government reiterated that it prefers to settle determinations of native title through a process of mediation with native title claimants and other parties. To assist native title claim groups provide the relevant evidence and arguments, the government published the *Guide to Compiling a Connection Report for Native Title Claims in Queensland* in October 2003 and the *Guide to Compiling a Connection Report for Native Title Claims in the Torres Strait* in November 2003.

The contents of the guides are essentially the same and include a suggested format for compiling a connection report, an outline of the content of a connection report, advice about preparing material, information about repositories and records relevant to native title research, as well as a summary of the history of the establishment of British sovereignty in Queensland.

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.

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. The procedural options developed or tested by the court during the past year include:

- a regional approach to case management;
- the identification of categories of applications for different types of case management (e.g. applications made in response to future act notices);
- the provision of early neutral evaluation of the prospects of success of some applications;
- the hearing of early evidence from applicants (particularly for the purpose of preserving the evidence of applicants who are elderly or unwell); and
- e-court as a means of managing the progress of some applications.

The case management practices of the court can profoundly influence a range of activities or potential activities undertaken by the Tribunal and the allocation of the Tribunal's resources, as well as the work and resources of parties.

In some regions the Tribunal has been directly involved in the preparation of regional work plans in relation to clusters of claimant applications. Those work plans, prepared

with the relevant representative bodies, government and major parties have provided the basis for prioritising the mediation of claims and for various orders and directions of the court. The role of the Federal Court is examined later in this report in 'Output 1.2.2 — Claimant, non-claimant and compensation agreements', p. 59.

The roles and capacity of representative bodies

Functions, powers and capacity

Representative bodies have important functions and powers under the Act.

For many Indigenous groups, their local representative body is the principal source of advice and representation on native title matters. The representative body may represent people in mediations concerning claimant applications, and may be involved in future act negotiations (e.g. in relation to the grant of mining interests) and the negotiation of ILUAs.

Properly functioning representative bodies are not just important for the people they represent. The Tribunal and parties to native title proceedings or negotiations benefit from them.

For some years various people have expressed concerns about the perceived inadequacy of the human and financial resources available to representative bodies to perform adequately their functions. In the reporting period, for example, there were risks to the continuation of some trials of claimant applications due to a lack of funding to the relevant representative bodies.

The Tribunal has observed apparent variations in the capacity of representative bodies to perform their statutory functions in relation to matters involving the Tribunal (such as their involvement in the mediation of claimant applications and responses to proposed future acts). However, it is not the role of the Tribunal to judge whether particular representative bodies are appropriately resourced or how they are prioritising the application of their resources.

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, in its 2003 report on the Inquiry into the Effectiveness of the National Native Title Tribunal, recommended that a further inquiry be conducted into the work demands and funding needs of the representative bodies.

The committee subsequently commenced an inquiry into the capacity of the representative bodies to discharge their responsibilities under the Act with particular reference to the structure and role of the representative bodies; resources available to representative bodies, including funding and staffing; and the inter-relationships with other organisations, including strategic planning and setting priorities, claimant

applications pursued outside the representative body structure and non-claimant applications. That inquiry was still under way at the end of the reporting period.

Regions where representative bodies operate

At the end of the reporting period there were 21 representative body areas with 15 recognised representative bodies for 16 of those areas.

There continued to be no representative body for New South Wales or Victoria. Much of the representative body work, however, was undertaken by the New South Wales Native Title Services and Native Title Services Victoria respectively, and the practical effect was similar to having representative bodies in those states.

There are still 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). The absence of representative bodies in these areas is of little or no practical significance to the Tribunal's operations.

Trends within the Tribunal

Changes to membership

Although the total number of members of the Tribunal remained fairly steady during the reporting period, there were changes to the membership. At the end of the reporting period there were 14 members. Ten were full-time and four were part-time. Details of the Tribunal's membership are found at 'Organisational structure', p. 31 and 'Appendix I Staffing', p. 118.

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, employees and members of the Tribunal in three main processes—the registration testing, notification and mediation of each application.

At 30 June 2004, there were 615 claimant applications at some stage between lodgement and resolution. The total was slightly lower than the 633 active claimant applications at 30 June 2003. In the reporting period, some 57 claimant applications were discontinued, dismissed, combined with other applications or were the subject of full approved native title determinations, and 36 new claimant applications were lodged.

In the period covered by this report 59 registration test decisions were made, about 46 per cent fewer than the 110 decisions made in the previous year. They included 18 registration tests made on applications for the second, third or fourth time.

There has been a steady reduction in the registration test workload in recent years. In the future, the level of registration testing will be influenced by, among other things, the number of applications that are amended (e.g. as a result of agreements) and to which the registration test has to be applied again.

The level of notifications remained steady in 2003–04, with 62 claimant applications being notified, compared with 61 in the previous year. Five non-claimant applications were notified. The level of notification reflects a reduction in the backlog and the decline in the rate of new claimant applications.

As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. At 30 June 2003, 324 currently active matters were with the Tribunal for mediation. At 30 June 2004, 359 currently active claimant applications were in mediation including 76 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, and the reasons for the changes in these aspects of the Tribunal's work, are recorded later in this report.

Forms of assistance offered by the 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.

Much of the assistance in the past year involved providing information products, maps and other geospatial services. This included a pilot geospatial project involving the Federal Court to enable visualisation of native title matters on the internet. Assistance was provided to parties on a case-by-case basis, as well as on a regional or state-wide basis (e.g. by way of training sessions or forums). Some assistance was provided in cooperation with other bodies, such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and ATSIC. Information about Tribunal assistance is provided under 'Output 1.4.1 — Assistance to applicants and other persons', p. 76.

Through 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. Examples of those initiatives and their effect are given in 'Output 1.4.1 – Assistance to applicants and other persons', p. 76.

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 35 during 2002–03 to 46 during 2003–04, bringing a total of 130 ILUAs on the Register of ILUAs at 30 June 2004.

This report contains information about the level of ILUA activity around the country ('Output 1.2.1 — Indigenous land use and access agreements', p. 56), ILUAs lodged with the Tribunal for registration during the reporting period ('Output 1.1.3 — Indigenous land use agreement registration decisions', p. 52 and 'Output 1.4.2 — Notification', p. 85) and Tribunal assistance in other forms of agreement-making ('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 determinations of native title

In the reporting period, the Tribunal registered six determinations of native title—four that native title exists and two that native title does not exist in relation to specific areas of land or waters. Details of the determinations are set out under 'Output 1.1.2 — Claimant and non-claimant determination registrations', p. 47 and some are discussed in 'Appendix II Significant decisions', p. 120.

The relatively low number of determinations in the reporting period reflects, among other things, the effect of judicial decisions on the negotiating position of parties (e.g. 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) and other delays.

Various other factors affect the rate at which claimant applications are finalised. Where matters are litigated, the trial process can involve many hearing days over an extended period, then time is taken for final submissions to be made and judgment to be delivered. In some cases, the judge delivers reasons for judgment and provides draft orders but seeks further submissions about the final determination of native title that the court should make.

During the reporting period, for example, judgments were delivered by trial judges in five cases. The trials in those cases commenced between September 1999 and October 2002. The number of hearing days ranged from six to 81, and it took between four months and 17 months to deliver judgment once final submissions were made. In some instances, although reasons for judgment were delivered during the reporting period, final orders had not been made. In one case where final orders were made, an appeal on numerous grounds was made to the Full Federal Court.

The long-running *Ward* litigation ended almost a decade after the original application was presented to the Tribunal in April 1994 with orders made by the Full Federal Court on December 2003.

Litigation in relation to some aspects of applications that are in mediation can also delay settlement by consent. In the reporting period the Full Federal Court heard argument and delivered judgment in relation to whether certain public works on parcels of land in the Torres Strait extinguished native title rights and interests. An application to the High Court for special leave to appeal that decision was withdrawn and those claimant applications are being negotiated.

Judgments in relation to one application may affect the mediation of others. In April 2004 a judge of the Federal Court delivered judgment in relation to a claimant application over land south-east of Tennant Creek in the Northern Territory. The court held that native title exists in relation to specified areas and set out the nature and extent of the native title rights and interests recognised in relation to the determination area. In the detailed reasons for judgment, the court ruled on the effect on native title of the grant of certain pastoral leases in the Northern Territory. That ruling appears to be different from rulings by other judges on similar questions. The judgment is being appealed to the Full Federal Court. That appeal is not likely to be heard until November 2004. In the meantime, much of the substantive mediation of other claimant applications over areas with similar tenures has been effectively stalled while the law is clarified.

Many of the basic legal principles are clear and, as key parties reach a common understanding of the legal requirements, 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'. It is likely that some claimant applications will be resolved by partial determinations of native title and other forms of settlement (see the discussion of agreement-making in 'Future trends' at page 16 of 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. Details of the

future act work are set out later in this report (see 'Output 1.2.3 — Future act agreements', p. 67 and 'Output group 1.3 — Arbitration', p. 70)

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. During the reporting period 19 of the 20 future act determinations were made by consent.

Twenty-seven of the 46 ILUAs registered in that period involved exploration or mining.

There has been a reduction in the number of objections to the use of the expedited procedure under the Act, and that trend is likely to continue.

One of the major reasons why objections are made to the use of the expedited procedure is the desire by native title parties to ensure that their cultural heritage will not be disturbed if the proposed activity proceeds. It is clear that the resolution of cultural heritage concerns will result in fewer objections being made. That issue is being addressed in various ways.

In Western Australia, standard heritage agreements were finalised between native title representative bodies, the Government of Western Australia and industry in two regions of the state (Goldfields and South West) and are well-advanced in three other regions (Geraldton, Pilbara and the Central Desert). Negotiations are continuing in the Kimberley region and with an industry subgroup, the prospectors, through their association. The effect of such agreements is that the state government will only use the expedited procedure where the grantee party has signed an agreement and forwarded it to the native title party for consideration. If preparedness to reach agreement is not demonstrated, the full right to negotiate will apply. With more agreements in place, the rate of objections to the expedited procedure is expected to reduce significantly in the future.

As a result of the 2003 transition in Queensland to the Commonwealth future act scheme, and in order to satisfy requirements of the expedited procedure, the Queensland Mining Council, Queensland Indigenous Working Group and the state government developed Native Title Protection Conditions (NTPCs). Where an explorer qualifies for standard environmental authority and accepts the NTPCs, the government will automatically invoke the expedited procedure, thereby (it is hoped) minimising objections to the applications and facilitating entry onto land to undertake exploration activities in accordance with the *Mineral Resources Act 1989* (Qld). The NTPCs contain provisions for, among other things, identifying and protecting items of cultural heritage.

Launched in April 2004, a set of nine pro forma native title mining agreements has been endorsed by the Victorian Government, the Victorian Minerals and Energy Council and Native Title Services Victoria after more than five years of negotiation. The pro forma agreements provide terms and conditions for ILUAs, state deeds and project consent deeds, and cover such topics as access, cultural heritage management and environmental management. They are being used in negotiations in Victoria and have already provided the basis for agreement.

External assessments of the native title system

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 (PJC).

In addition to examining the annual report of the Tribunal, 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 such a general inquiry. It attracted written and oral submissions from various stakeholders (including governments, native title representative bodies, industry groups and individual parties to native title proceedings) and from the Tribunal.

At the launch of the pro forma agreements in April 2004 are (left to right) Tribunal president Graeme Neate and Victorian officials Attorney-General Rob Hulls, Victorian Minerals and Energy Council president Dick Sandner, Minister for Energy, Industry and Resources Theo Theophanous and Graham Atkinson, chairperson of Native Title Services Victoria.

On 4 December 2003, the report of the PJC was tabled in the Federal Parliament and is available at www.aph.gov.au/senate/committee .

The PJC acknowledged that making any determination as to the Tribunal's effectiveness would be difficult because the Tribunal's core function is to provide mediation services to help resolve native title claims. Measuring the effectiveness of mediation is problematic given that a Tribunal mediator has no power or authority to determine an outcome.

The PJC observed that the Tribunal mediates in a widely variable, complex and dynamic environment and concluded that, in this environment, the Tribunal has developed 'practices and procedures that are virtually without precedent'. It would be understandable if the Tribunal 'merely had clung to the rigors of the law and the legislation that underpins their work'. However, there have been demonstrable efforts by the Tribunal to pursue the statutory objectives placed on the conduct of its duties.

The PJC made a number of positive general comments about the Tribunal. It wrote, for example, that:

- it frequently heard evidence supportive of the professional and helpful manner of the members and staff of the Tribunal;
- the Tribunal had developed an administrative system that was skilled in managing and responding to the peaks in workloads experienced as a consequence of the legislative regime;
- the Tribunal had demonstrated its willingness to address the emerging issues during the inquiry and used the inquiry process to gain feedback on its performance and to respond to these issues, not just to the PJC but also to those who raised the concerns;
- there was other evidence of the Tribunal's concern to review and update the way in which it performs its functions;
- the Tribunal has been important in the service of the legislation and it has sought to develop cooperative approaches to the emerging issues;
- while some expressed concern about the fairness of the role played by the Tribunal in mediation, others testified that, in their experience in mediation, the Tribunal had proved to be extremely fair, extremely helpful and very competent, and is there to assist all parties; and
- the work of the Tribunal is clearly demanding, with a number of competing interests, yet, in the ten years since its establishment, the Tribunal has pursued its functions in a manner that has been fair, just and objective.

Elsewhere, the PJC noted, in effect, that some criticisms of the Tribunal were really criticisms of the Act. In other words, although the Tribunal has been effective in administering the Act (as amended from time to time and as interpreted by the courts), the performance of its functions in accordance with the law was criticised in some submissions. But the PJC noted that the sense of frustration and, at times,

injustice which many feel about the native title process was rarely attributable to the manner in which the Tribunal performs its functions.

Aspects of the PJC's report and the recommendations relevant to the Tribunal are set out under 'External scrutiny', p. 109. The Tribunal has since acted on a number of the recommendations in the report. The Australian Government had not responded by the close of the financial year.

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.

In the *Native Title Report 2003* the Commissioner discussed in detail native title and the right to development; the native title policy of the Australian Government, each state and the Northern Territory; and agreement-making by reference to experience in Canada and the United States of America.

FUTURE TRENDS

Events in the reporting period have confirmed many of the observations I made in the previous three annual reports about future trends, and I will note some of them.

The law in relation to native title will become clearer

As noted earlier, a degree of uncertainty remains in respect of some aspects of the law. Indeed some of that uncertainty emerged during the reporting period when different judges expressed apparently divergent views about questions such as the effect of the grant of pastoral leases on native title rights and interests.

Although these are not differences about major legal matters, one immediate practical effect is a delay in negotiations about applications where the judgments are relevant. The resumption of substantive negotiations, at least on such matters, may depend on the outcome of an appeal to a Full Court of the Federal Court or possibly the High Court.

Those matters aside, judgments of the Federal Court in the reporting period have served to clarify our understanding of the law and helped to resolve many specific (and sometimes quite technical) issues in relation to native title. Consequently the legal environment in which some negotiations occur or cases are argued is much more certain than in previous years.

Although some 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 20 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. The outcome of compensation litigation currently before the Federal Court may 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, while there is likely to be a continuing and substantial reduction in the number of objections to expedited procedure notices in some parts of the country, that decrease in objections will be offset by an increase in agreements in relation to exploration.

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

Although relatively few determinations of native title were registered in the reporting period, and only two of those were by consent, many more should be registered in the next few years. Detailed negotiations are taking place about consent determinations of native title that should conclude in the next year or two. The terms of those determinations are informed by recent legal developments and discussions are motivated by a general desire to negotiate outcomes where possible rather than to litigate.

In these circumstances, parties may negotiate about the determination and associated agreements (such as ILUAs) to give effect to the terms of the determination 'on the ground'. Such negotiations take place in an environment where the substantive and procedural requirements are reasonably clear.

Evidence of the trend toward agreement-making was provided in the reporting period by the continuing and significant increase in the number of ILUAs registered and other ILUAs lodged for registration.

Many other types of agreements are being negotiated, whether or not the law requires them.

In recent years, exploration and mining companies have negotiated an increasing number and range of agreements with local Indigenous communities.

The desire of companies to negotiate agreements is consistent with the notion that they require a 'social licence to operate' and is evident in the Australian Minerals Industry Indigenous Relations Statement published by the Minerals Council of Australia in June 2004. It includes a vision of a 'thriving minerals industry working in partnership with Indigenous communities for the present and future development of mineral resources and establishment of vibrant, diversified and sustainable regional economies and Indigenous communities'.

The statement recognises that the present and future operations of minerals companies are 'inextricably linked to building and enhancing our strong relationships with Indigenous communities' and commits the industry to carrying out operations and activities in ways that embody specified values. Those values include promoting the negotiation of 'mutually beneficial and sustainable agreements as an effective mechanism through which to achieve the intended outcomes of sustainable relationships and partnerships between minerals companies and Indigenous communities'.

People can and do make agreements about many native title issues. However, developments in law and practice mean that, a decade on from the commencement of the Act, questions are being asked about various aspects of agreement-making: Should groups of Indigenous peoples enter negotiations even if they may not be able to prove that they have native title? What might be included in a negotiated agreement? What makes some agreements sustainable while others falter after they are signed?

These questions raise issues beyond the matters contemplated by those sections of the Act dealing with determinations that native title exist; but the answers can be given in the context of mediation under the Act, which provides that parties may make agreements involving matters other than native title and that parties may request assistance from the Tribunal in negotiating such agreements.

Negotiations with groups who may not be able to prove native title: 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.

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.

The contents of negotiated outcomes: 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.

Where agreements involve dealings in land they may be described colloquially as 'land swaps'. In some instances, a claimant application will be withdrawn as part of the agreement. In other cases, there may be a determination that native title does not exist over specified areas of land or waters, or native title will be surrendered so that title to land can be granted (either as ordinary freehold or a special form of freehold title under land rights legislation).

Various options may be included as part of an overall settlement 'package', as was the case for the in-principle agreement in relation to the Wotjobaluk claimant application in Victoria. Some agreements may be recorded in a form created by the Act (such as ILUAs and land access agreements under s. 44B), while others will be made outside the Act.

There are indications that some governments may be considering legislating to create a new form of indigenous land tenure to meet some of the issues about the use to which such land can be put.

What makes agreements endure: Although it is widely accepted that the best way to deal with native title issues is to negotiate agreements tailored to meet the local circumstances of the parties, relatively little attention has been given to what makes a sustainable agreement in the months and years after the ink of the signatures is dry.

Most of the energy of parties in recent years has been on securing the desired outcome by agreement—often a difficult, frustrating and drawn out process.

In 2003, the Tribunal commissioned some exploratory research to identify key issues in the implementation and resourcing of native title and related agreements (see 'Output 1.4.1 – Assistance to applicants and other persons', p. 76). The research will inform the Tribunal when assisting parties to negotiate agreements, for example to encourage parties to focus on both the substantive terms of agreements and the structures which will strengthen their durability.

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 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 (e.g. 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).

Legislation will specify the forms of agreement necessary in certain circumstances. For example, the Northern Territory Parks and Reserves (Framework for the Future) Act, enacted in 2003, provides for ILUAs to be negotiated and registered over certain jointly managed parks and reserves.

Timeframes for negotiating agreements should, on average, be reduced

This trend is taking longer to develop than may have been anticipated some years ago. However, it is apparent particularly in the future act arena. Some parties and representatives of parties have become more experienced in negotiations, and the scope of potential outcomes is becoming more predictable in light of, for example, agreements previously negotiated on similar subjects and pro forma agreements such as those published in Victoria and the standard heritage agreements in Western Australia. Various agreements are now publicly available from sources such as the 'Agreements, Treaties and Negotiated Settlements' database created by the University of Melbourne and the University of Technology Sydney, and subsequently developed further with the assistance of the Tribunal (at www.atns.net.au).

The potential for shorter average timeframes will, however, be tempered by factors such as continued uncertainty about some aspects of the law; 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.

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. Although it is easy enough to identify these issues, we do not know how some of them will be resolved or who will take responsibility for dealing with them.

For example, although prescribed bodies corporate (PBCs) 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.

In a speech delivered on 4 June 2004, Attorney-General Ruddock stated that the issue of PBCs and their funding illustrates the proposition that 'genuine progress with native title extends well beyond the roles and responsibilities of the Government'.

He argued that, although the Australian Government has a continuing interest in the effectiveness of PBCs, other participants in the system have (or should have) a key interest in their establishment and operation. So, for example, native title representative bodies may use their native title government funding to assist in establishing PBCs. The Australian Government believes that it is appropriate that the states and territories (with primary responsibility for the day-to-day management of land), along with other proponents of future acts (who benefit from land development), should contribute to the costs of that development, including costs associated with the establishment of PBCs.

According to the Attorney-General, contributions could take the form of in-kind assistance. He argued that this approach would bring native title holders, governments and industry closer together, and that there is a 'very sound case' for parties looking beyond the Australian Government to fund the establishment and maintenance of PBCs.

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

An ongoing issue in relation to the native title system is whether the parties and their representatives, and the institutions that administer the system, are adequately resourced—either in terms of the work they could or should do, or relative to each other. Despite some efficiencies that may be gained by the use of technologies (such as email, e-court, teleconferences and video conferences), native title work is, and is likely to remain, a resource-intensive endeavour. Much of the work must be done face-to-face and many of the necessary resources involve appropriately qualified and experienced people.

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 equal, if not more pressing, concern is the limited availability of people with relevant qualifications and experience.

Resource issues will continue to influence all aspects of the native title scheme, including the prioritisation of allocations to various types of work (e.g. future act negotiations, ILUA negotiations, claim mediations, court proceedings).

The Federal Court has recognised that, in working out mediation programs, the Tribunal and the parties may have regard to the resources limitations and other practical constraints under which each of them must operate.

One way to deal with, or at least reduce, the constraints of limited resources is to develop ways to optimise their use. Targeted Tribunal research and capacity-building may assist.

In the reporting period, the Tribunal received a report it commissioned about the capacity of anthropologists in native title practice. The research identified patterns in relation to the ages, qualifications and types of employment (primarily consultancies, salaried positions with bodies engaged in native title work, or academia) of such anthropologists. It looked at native title anthropology within the wider discipline of anthropology, the types of work undertaken by anthropologists engaged in native title matters, the impact of that work on their careers, and various challenges in ensuring that sufficient suitably qualified people are available to do the work.

The Tribunal also cooperated with AIATSIS and ATSIC in a mentoring program for less experienced anthropologists who worked for native title representative bodies (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 76).

Following a review of the native title system, the Australian Government provided additional funding of $86 million over four years from 2001–02 to improve the delivery of native title services. The period covered by the additional funding ends in 2004–05. Consequently, at the end of the reporting period there was a clear need for an informed assessment of the resources available to, and needed by, the native title system to meet the anticipated demands of the next few years.

To inform the setting of allocations from the 2005–06 Budget onwards, a review of funding of all Australian Government agencies involved in the native title system is being conducted. The review is being coordinated by the Attorney-General's Department.

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. These are indications that the court will want to take an increasingly directive role in the disposition of native title applications.

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 this discussion is the continuing reluctance of some parties to have their executed agreements recorded on a public database for access by others who are negotiating similar agreements.

There is a 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 website, providing targeted seminars and forums, and producing research and other documents and the periodic *Native Title Hot Spots* (see 'Output 1.4.1 — Assistance to applicants and other persons', p. 76).

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

During the reporting period, there was some ongoing debate about the practical benefits of native title to Indigenous communities and the capacity of the native title system to produce significant outcomes for them. As I have previously observed, too great a weight of expectation has been put on native title to deliver what it was not capable of delivering.

The native title system, however, operates within a social context which it can influence for the potential benefit of Indigenous communities and groups.

Although native title itself may not be an economically valuable commodity, economic and other benefits such as heritage protection are being secured by groups as by-products of native title processes. People are using their procedural rights to negotiate agreements before, after, and independently of a determination of native title. Consequently, 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 mind-set 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.

A matter which is assuming increasing practical significance is the relationship between native title and what might be described as 'cultural heritage' matters, particularly matters involving sites of particular significance to Indigenous communities in accordance with their traditions. Indeed, cultural heritage is often relevant to native title claim groups being able to establish that native title exists. For example, it is now relatively common practice for the Federal Court to take evidence 'on country', including at significant sites, and sometimes that evidence is taken on a restricted basis. Courts have observed the significance of peoples' rights and responsibilities to their traditional country at such sites.

There have been numerous examples of determinations of native title in relation to cultural heritage matters. For example, determinations have included native title

rights to 'maintain and protect places of importance under traditional laws, customs and practices in the determination area' and to 'conduct and maintain cultural, spiritual and religious practices and institutions through ceremonies and proper and appropriate maintenance and use of the Determination Area'.

Although cultural heritage factors are relevant to the proof and determination of native title, separate cultural heritage protection legislation continues to be necessary. Native title will not be recognised over many areas where significant sites or objects are located because native title has been extinguished, for example, by the grant of fee simple titles or certain other tenures. Separate cultural heritage legislation can operate in such areas.

In Queensland two recent pieces of legislation have substantially affected which aspects of indigenous cultural heritage are protected under state law and have set out detailed procedures to accord that protection. *The Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld), commenced to operate on 16 April 2004. Each is in substantially similar terms to the other and deals with, among other things, areas of particular significance to Aboriginal people or Torres Strait Islanders, wherever those areas are located.

For the purposes of this overview it is worth noting that:

- the legislation operates on land irrespective of tenure and hence has more comprehensive operation than the Native Title Act;
- it is the first legislation after the Native Title Act to deal comprehensively with cultural heritage issues and expressly refers to key concepts in the Act;
- the legislation gives preferred status to people who are native title holders or registered native title claimants in relation to certain procedural rights;
- the legislation provides that it must not be interpreted so as to allow the provisions to operate in a way that prejudices native title rights and interests.

That legislation, and its counterparts elsewhere in the country, will have a bearing on the content of at least some native title agreements, whether in relation to claimant applications or future acts. It is already apparent that some parties to native title proceedings are seeking to use those negotiations to deal with cultural heritage issues at the same time as native title.

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.

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 that native title 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. But there is a widespread desire to sort out as many of those issues by agreement. Examples of the variety of agreements illustrate this report.

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

ROLE AND FUNCTION

The *Native Title Act 1993* (Cwlth) established the Tribunal and sets out its functions and powers. The Tribunal's purpose is to work with people to develop an understanding of native title and reach enduring native title and related outcomes: 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 indigenous land use agreements (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 of Australia. 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 agreements', p. 59).

Future act applications (applications for a determination about 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 agreements', p. 67 and 'Output 1.3.1 — Future act determinations', p. 70).

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 (five full-time and five 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 Graeme Neate was reappointed as the President for a period of three years from March 2004;
- Dr Gaye Sculthorpe was reappointed from a part-time member to a full-time member for a period of four years from April 2004;
- Mr Neville MacPherson was appointed as a full-time member for a period of three years from September 2003;
- Mr John Catlin was appointed as a full-time member for a period of three years from October 2003;
- Professor Laurence Boulle was appointed as a part-time member for a period of three years from March 2004;
- Mr Tony Lee's term as a full-time member expired in July 2003;
- Professor Geoffrey Clark resigned as a part-time member in December 2003; and
- Mrs Jennifer Stuckey-Clarke resigned as a part-time member in April 2004.

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—ten full-time and four 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 mediations, 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).

Members of the National Native Title Tribunal in Adelaide, March 2004: (back row, left to right,) Gaye Sculthorpe, Laurence Boulle, Ruth Wade, Graham Fletcher Christopher Doepel (Registrar), Bardy McFarlane, Doug Williamson, Neville MacPherson, John Catlin and Jennifer Stuckey-Clarke; (front row) Terry Franklyn, Graeme Neate (President), Christopher Sumner, Dan O'Dea, John Sosso (Fred Chaney and Geoff Clark not present).

ORGANISATIONAL STRUCTURE

The organisational structure of the Tribunal underwent a comprehensive review during the reporting period, resulting in several key changes. In December 2003 the two-division structure was reorganised to create a third division—Information and Knowledge Management (IKM)—in recognition of the importance of information and knowledge management to the effectiveness of Tribunal functions (see figures 1and 2 on pp. 32 and 33 for the organisational structures before and after 12 December 2003).

In addition to the creation of the IKM division, there were other organisational reforms undertaken at the section level:

- creation of a new Planning and Strategic Review section within the Corporate Services and Public Affairs division. The role of the section includes the management of strategic and operational planning, monitoring and reporting on the performance of the Tribunal, and overseeing key corporate requirements in relation to statutory compliance, governance and accountability to clients and stakeholders;
- a restructure of the People Services section to improve the Tribunal's position in the development and implementation of a workforce planning framework, and the management of performance and workplace relations;
- reorganisation of the Information Technology and Applications Development sections within the new IKM division, with the two new sections leading the design and implementation of the IT redevelopment program of the Strategic Information Management Plan (see 'Corporate planning', p. 98);
- amalgamation of the Financial Services and Administrative Services sections, enhancing the integration of key administrative functions, including financial management, security, risk management, and property and assets management; and
- creating the position of Chief Financial Officer to head the reorganised Finance and Administrative Services section, in recognition of the increased complexity and strategic importance of financial management, reporting and accountability.

The Director of Service Delivery is Hugh Chevis, the Director of Corporate Services and Public Affairs is Marian Schoen, and the IKM division is directed by Michael Cook who was appointed in June 2003 in the newly created position of Chief Information Officer.

Figure 1 National Native Title Tribunal organisational structure 1 July 2003 to 11 December 2003

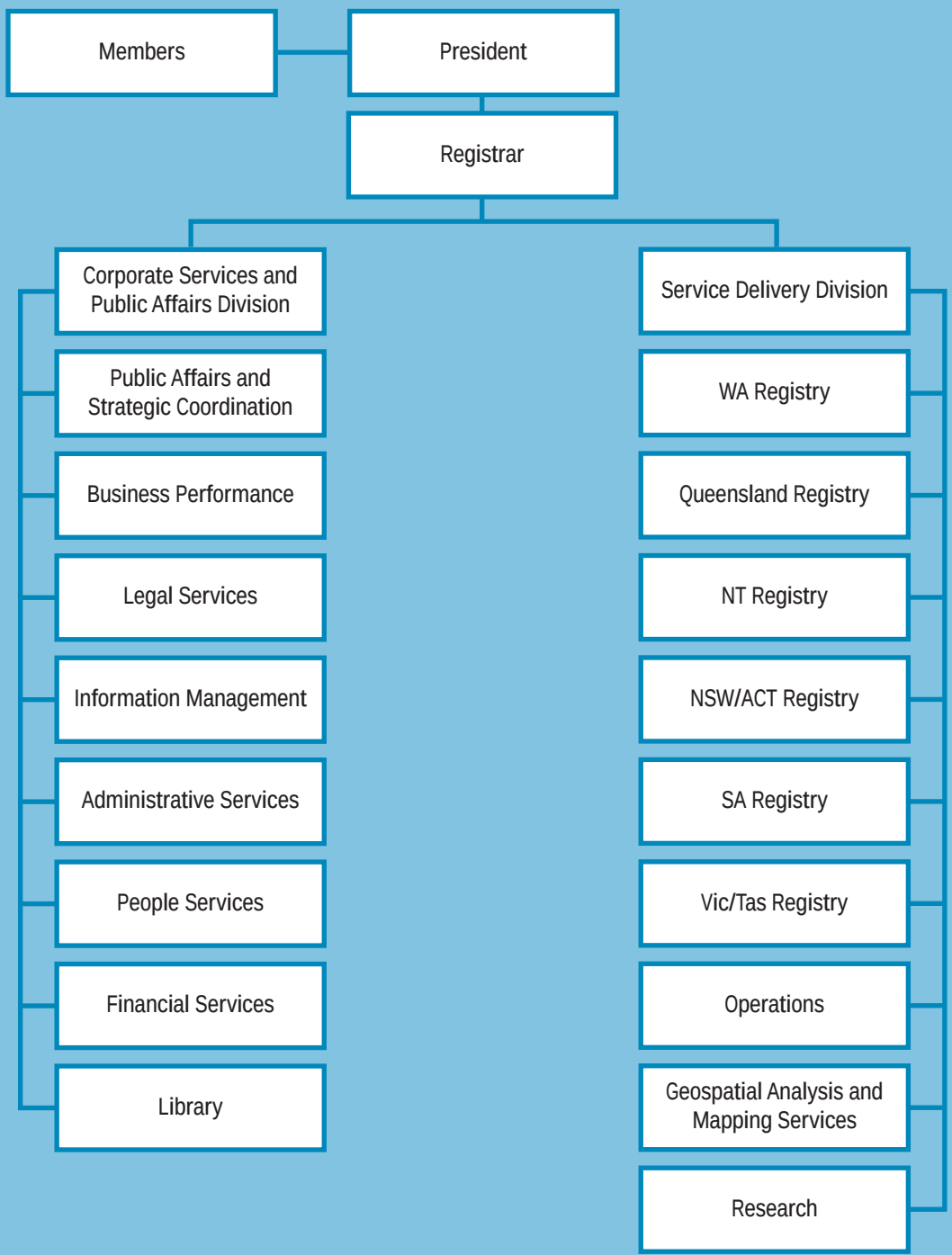
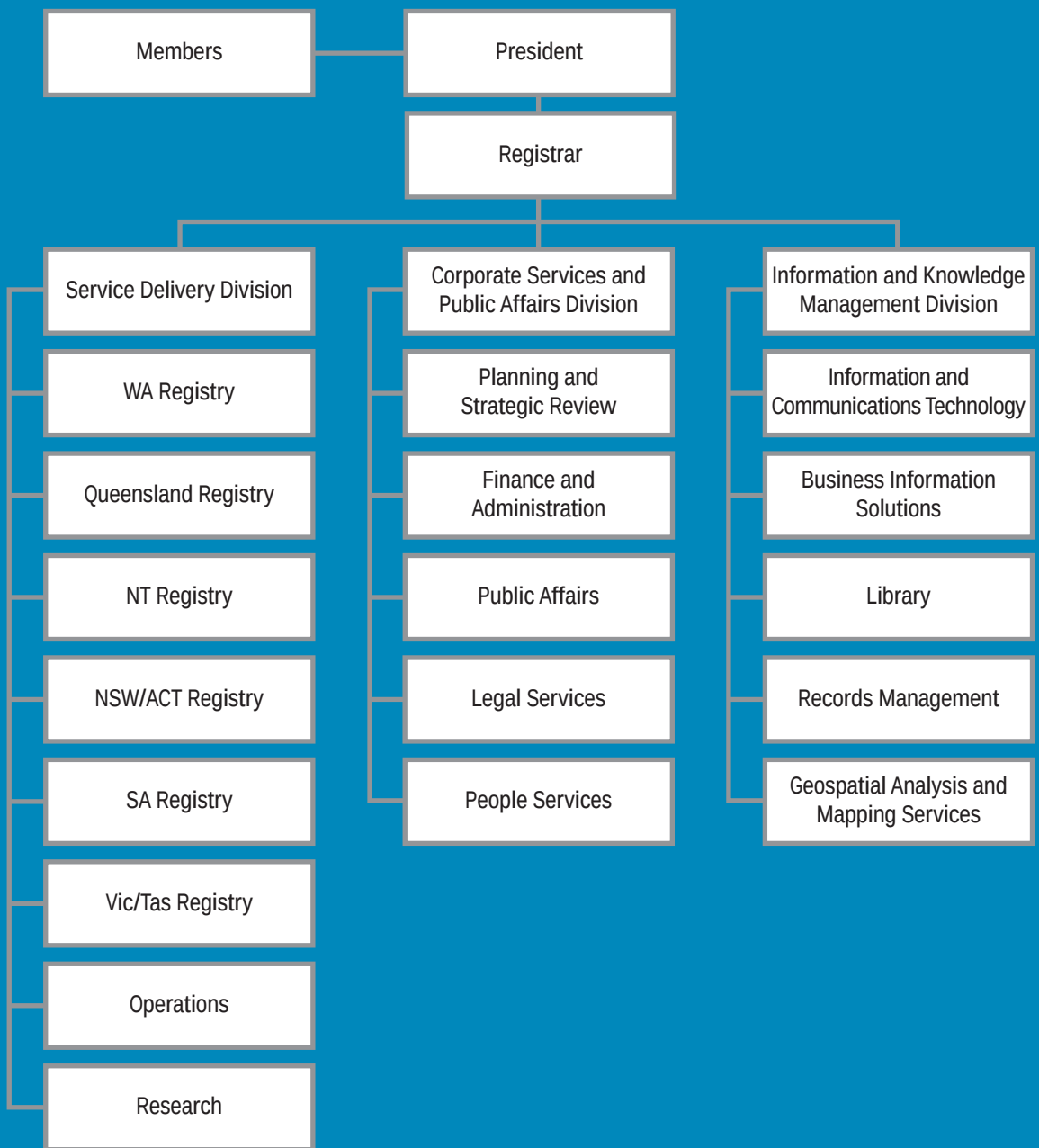


Figure 2 National Native Title Tribunal organisational structure 12 December 2003 to 30 June 2004



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.

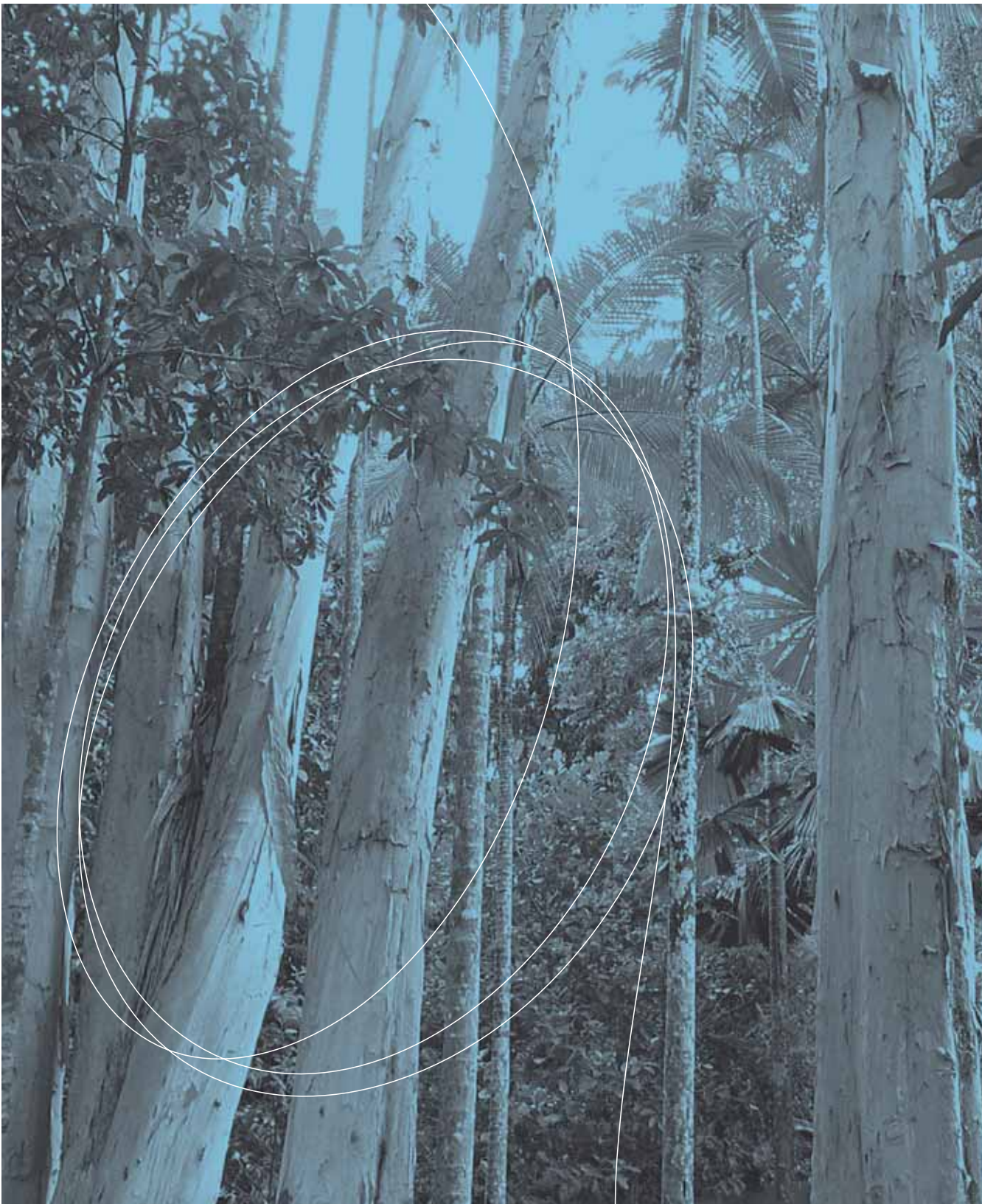
Outcomes are the results, impacts or consequences of action by the Australian Government—in this case, the Tribunal—on the Australian community. Outputs are the goods or services produced by agencies (the Tribunal) on behalf of the Australian Government for external organisations or individuals, including 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 Act. In the 2003–04 Additional Estimates, the Tribunal merged two sub-outputs under 'Output 1.4.2 — Notification'.

The output groups are:

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

Figure 3 on page 41 illustrates the Tribunal's outcome and output framework. Details of the Tribunal's performance and costs in accordance with this framework are provided in the section 'Report on performance', p. 38.



REPORT ON PERFORMANCE

FINANCIAL PERFORMANCE

The Tribunal's actual expenditure for the 2003–04 financial year was $32.226m. This closely matched the estimate in the Attorney-General's Portfolio Additional Estimates Statements. There were variations from estimates for several outputs, but this did not alter the Tribunal's overall workload.

The Tribunal had reviewed its 2003–04 budget needs at the end of the first quarter and identified $2m for return through Additional Estimates.

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

Table 1 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 2003–04 $'000	(2) Actual 2003–04 $'000	(2) minus (1) Variation 2003–04 $'000	Actual as a % of total appropriation
Departmental appropriations				
Output group 1.1 – Registrations				
Output 1.1.1 – Claimant application registration decisions	2,116	2,591	475	8%
Output 1.1.2 – Claimant and non-claimant determination registrations	217	85	-132	0%
Output 1.1.3 – Indigenous land use agreement registration decisions	1,304	1,050	-254	3%
Subtotal output group 1.1	**3,637**	**3,726**	**89**	**11%**
Output group 1.2 – Agreement-making				
Output 1.2.1 – Indigenous land use and access agreements	1,666	2,666	1,000	8%
Output 1.2.2 – Claimant, non-claimant and compensation agreements	13,330	9,010	-4,320	28%
Output 1.2.3 – Future act agreements	514	1,937	1,423	6%
Subtotal output group 1.2	**15,510**	**13,613**	**-1,897**	**42%**
Output group 1.3 – Arbitration				
Output 1.3.1 – Future act determinations	632	815	183	3%
Output 1.3.2 – Objections to expedited procedure finalised	2,055	2,340	285	7%
Subtotal output group 1.3	**2,687**	**3,155**	**468**	**10%**
Output group 1.4 – Assistance, notification and reporting				
Output 1.4.1 – Assistance to applicants and other persons	6,966	8,620	1,654	27%
Output 1.4.2 – Notification	2,026	1,539	-487	5%
Output 1.4.3 – Reports to the Federal Court	1,195	1,338	143	4%
Subtotal output group 1.4	**10,187**	**11,497**	**1,310**	**36%**
Total revenue from government (appropriations) contributing to price of departmental outputs	**32,022**	**31,991**	**-31**	
Revenue from other sources				
Output 1.1.1 – Claimant application registration decisions	20	22	2	
Output 1.1.2 – Claimant and non-claimant determination registrations	2	1	-1	
Output 1.1.3 – Indigenous land use agreement registration decisions	-	-	-	
Output 1.2.1 – Indigenous land use and access agreements	-	-	-	
Output 1.2.2 – Claimant, non-claimant and compensation agreements	-	-	-	
Output 1.2.3 – Future act agreements	-	-	-	
Output 1.3.1 – Future act determinations	-	-	-	
Output 1.3.2 – Objections to expedited procedure finalised	128	212	84	
Output 1.4.1 – Assistance to applicants and other persons		-	-	-
Output 1.4.2 – Notification		-	-	-
Output 1.4.3 – Reports to the Federal Court				
Total revenue from other sources	**150**	**235**	**85**	**1%**
Total price of departmental outputs (Total revenue from government and other sources)	**32,172**	**32,226**	**54**	
Total estimated resourcing for outcome 1 (Total price of outputs and administered expenses)	**32,172**	**32,226**	**54**	
Average staffing level (number)	**270**	**275**	**5**	

OUTCOME AND OUTPUT PERFORMANCE

The estimation model

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

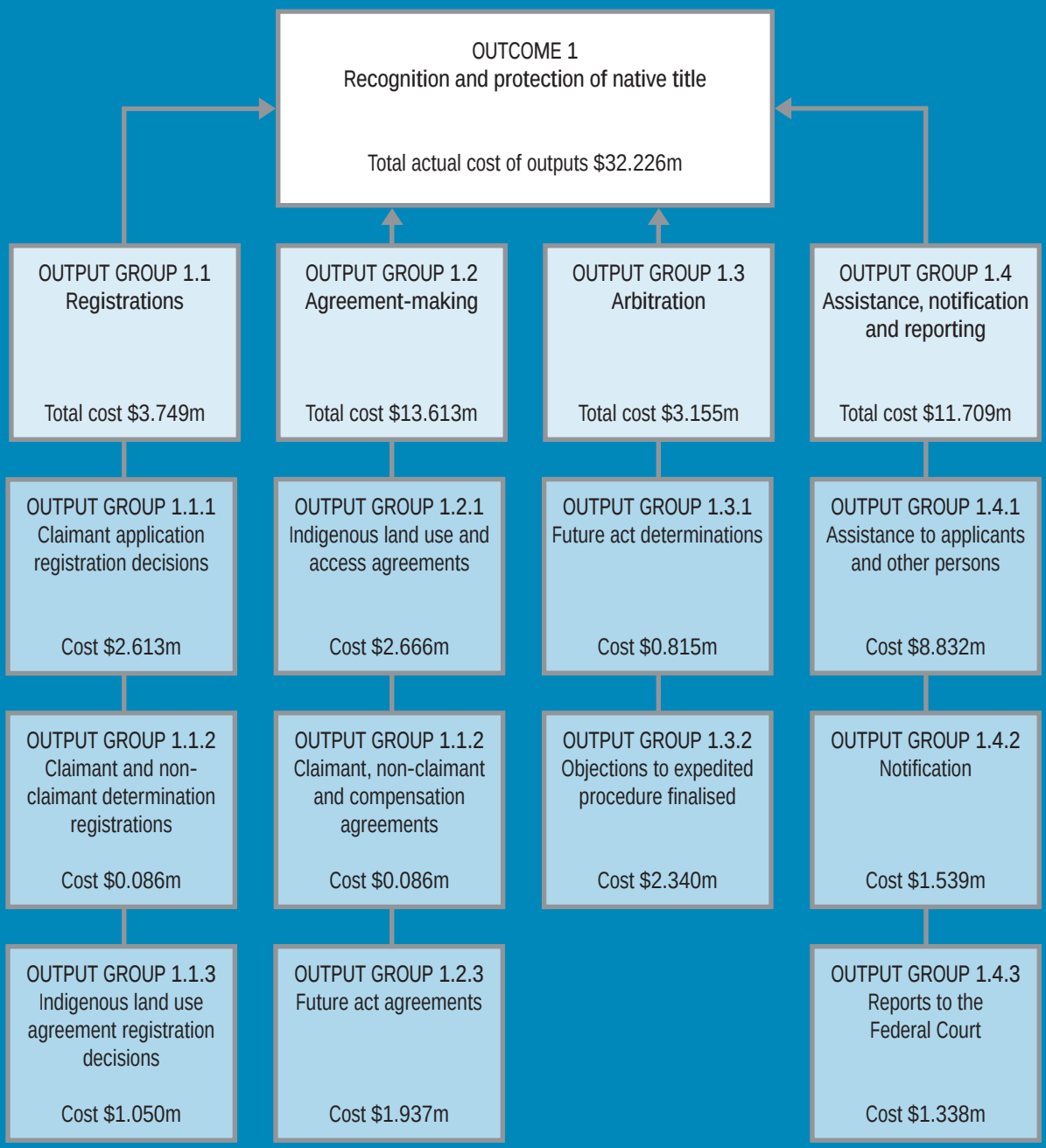
- In March/April of each year the Portfolio Budget Statement (PBS) is prepared for the following financial year.
- In July, the output prices are reviewed based on actual salary and administrative cost data for the just completed financial year. These figures are used in the annual report for that year.
- 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.
- The Tribunal used three-quarter year actual figures to inform the output pricing for the 2004–05 PBS.

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. There was less variation in most prices for the reporting period; however there were exceptions due to external influences, for example the price of output 1.2.2 (claimant, non-claimant and compensation agreements) has fallen due to a change in Federal Court practices.

The estimation process in 2003–04

This year the Tribunal followed the process outlined above. However, two sub-categories of assistance—number of applications advertised and number of letters sent—were merged as they were considered to contribute to the same output (see 'Output 1.4.2 — Notification', p. 85).

Figure 3 Outcome and output framework for 2003–2004



OVERVIEW OF ACTIVE CLAIMS

In the reporting period:

- 57 claimant applications were discontinued, dismissed, combined with other applications or were the subject of full native title determinations; and
- 36 new claimant applications were filed.

At the end of the reporting period:

- 615 claimant applications were active, i.e. at some stage between filing and resolution (see Figure 4 below for a breakdown by state and territory);
- 506 applications were on the Register of Native Title Claims;
- 137 applications had not been accepted for registration;
- 37 applications remain to be tested; and
- 24 were not identified for testing.

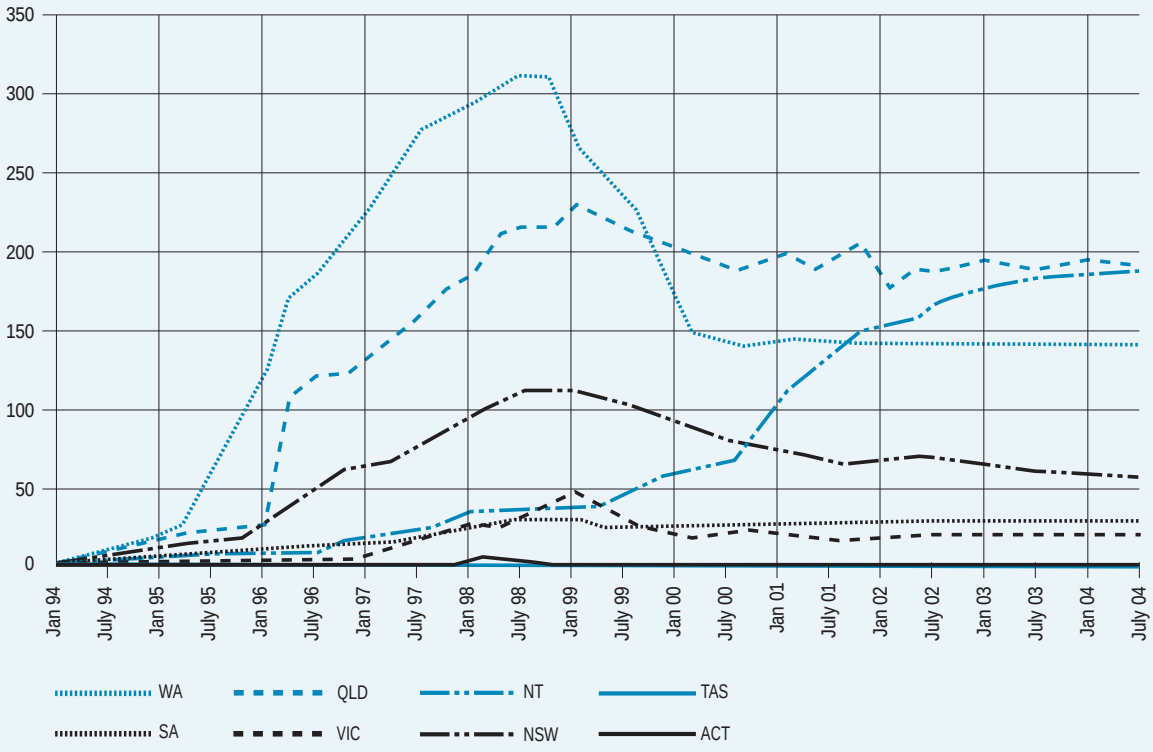


Figure 4 Active native title claimant applications by state or territory, 1 January 1994 – 30 June 2004

OUTPUT GROUP 1.1 — REGISTRATIONS

The Tribunal's registration activities relate to:
- the application of statutory registration conditions to claimant applications;
- the application of statutory registration conditions to 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 has a statutory duty 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 application registration decisions;
- claimant and non-claimant determination registrations; and
- ILUA registration decisions.

Output 1.1.1 — Claimant application registration decisions

Description of output

Each claimant application is made to the Federal Court by Indigenous Australians who are seeking a determination that native title exists over a specified area of land or waters. The Federal Court refers each application to the Native Title Registrar. Under the Act the Registrar is required to apply the registration test to most claimant applications. The test is comprised of a series of merit and procedural conditions.

If an application satisfies all the registration test conditions, then it must be accepted for registration and placed on the Register of Native Title Claims. Once registered, the applicant (the registered native title claimant) gains certain procedural rights under the Act, such as the right to negotiate about certain future acts.

Written reasons for each registration test decision are given to the claimants. The reasons for the decision are posted to the Tribunal's website 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 website.

If the application does not satisfy all of the conditions of the registration test and is not accepted for registration, the applicants can either seek a review of the Registrar's decision by the Federal Court or change their application to address the conditions it did not meet. Once the application is amended and referred to the Registrar, the registration test is reapplied.

Where an application is amended (e.g. to reduce the area covered by it), the registration test is applied to the amended application.

Performance

The performance measures for registration decisions of claimant applications are:

- quantity — number of registration decisions, for applications which meet and do not meet the conditions of the test;
- quality — 70 per cent of applications for registration decided within two months of receipt from the Federal Court; and
- resource usage per decision.

Performance at a glance

Measure	Estimate	Result
Quantity	60	59
Quality	70% of applications decided within two months of receipt from Federal Court	31% of applications decided within two months of receipt from Federal Court
Resource usage — unit cost per decision	$ 35,584	$ 44,289
Resource usage — output cost	$2,135,000	$2,613,076

Comment on performance

Number of decisions made

Over the past three years, there has been a significant decrease in registration work. This reflects the gradual reduction of a backlog created by the introduction of the test in the 1998 amendments to the Act and a reduction in the rate at which new claimant applications are lodged.

During the reporting period, testing focused predominantly on applications that were filed or amended in the Northern Territory and Queensland. See Table 2 for a state and territory breakdown of the number of claimant applications processed for registration.

In the Northern Territory the rate of applications being filed is declining; from 43 in 2001–02 to 27 in 2002–03 and to seven for this financial year.

In Queensland it is difficult to predict the registration test workload arising from the new future act mining regime (see 'Output group 1.3 — Arbitration', p. 70) and the recently implemented cultural heritage scheme. In relation to the latter, the new state legislation affords certain procedural rights to registered native title claimants (as defined in the Act). These factors are likely to contribute to Queensland maintaining a significant registration test workload during the next three years.

In Western Australia, the rate of amendment of applications has sharply increased during the reporting period and, at the end of that reporting period, 17 matters were

waiting for the registration test to be applied. It is expected that this trend will continue in the state over the next few years.

Table 2 Number of registration tests by state or territory 2003–2004

State	Accepted	Not Accepted	Not Accepted - Abbreviated	Total
Australian Capital Territory	0	0	0	0
New South Wales	0	3	0	3
Northern Territory	12	2	1	15
Queensland	31	6	0	37
South Australia	1	0	0	1
Tasmania	0	0	0	0
Victoria	0	0	0	0
Western Australia	1	2	0	3
Total	**45**	**13**	**1**	**59**

Of these 59 decisions,

- 45 satisfied all the conditions of the registration test; and
- 14 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.

A number of court decisions have further clarified the law, including in relation to the composition of claim groups and what is required for authorisation of applicants by a claim group. These decisions have generally been regarded as having toughened the test, and the Registrar's delegates have appropriately followed the court's decisions in their appraisal of the material supplied by applicants in their applications.

The registration delegates based in the New South Wales Registry continued to be an effective mechanism for streamlining the claimant application registration process. This team of four delegates made most of the registration test decisions during the reporting period. Members of this team also conducted intensive training for staff in other registries (Western Australia, Northern Territory and Queensland) and conducted workshops for four representative bodies in Western Australia during May and June 2004. The training and workshops were to inform staff of the requirements relating to the registration test.

Parties may seek a review of the Registrar's registration test decisions under the Act or under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth). One registration decision *(Northern Territory v Doepel)* was judicially reviewed during the year. Several other court decisions made during the reporting period also affected the application of the registration test, for example *Western Australia v Ward* and *De Rose v South Australia* (Full Federal Court decisions), *Daniel v Western Australia*, *Neowarra v Western Australia*, and *Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory* (see 'Appendix II Significant decisions', p. 120).

In the future, several factors will influence the number of registration test decisions. These include increases in agreement-making and the Federal Court initiating amendments to applications, tempered by the judicial decisions that affect some of the registration test conditions. Nationally, it is expected the level of registration testing will slowly decline over the next few years.

Timeliness of decisions

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.

While the statutory timeframe for future act affected applications (23) was met, thus not prejudicing native title applicants, the Tribunal's overall performance estimate of 70 per cent was not met because:

- following preliminary assessments (identifying potential problems for registration), the Tribunal gave applicants additional time to provide more information or make an amendment to their application;
- many existing applications waiting for registration tests raise complex issues and often interact with other applications. These are often on their second or subsequent test, and require intensive work by the applicant's representative to bring them into line with the current state of the law on registrable applications; and
- requests from the applicant and/or other parties not to apply the test while specific mediation was under way or specific court activity was occurring.

Resource usage

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

The time expended per registration test decision varies for reasons including:

- whether the application complied with the requirements of the Act at the time of filing (applicants are afforded the opportunity to amend under s. 190A(5A));
- whether applicants were represented by the representative body—unrepresented applicants tend to request high levels of assistance, for example in mapping; and
- the impact of court decisions, i.e. on registrable rights, authorisation, claim group description or what the Registrar can or cannot take into account in applying the registration test.

Output 1.1.2 — Claimant and non-claimant determination registrations

Description of output

A determination of native title 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 Registrar 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, where native title exists or does not exist, information about any native title rights and interests that do exist, who the common law holders of the native title are (if applicable), and the prescribed body corporate that holds the native title (if applicable).

Performance

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

- quantity — the number of claimant, non-claimant and compensation determinations registered;
- quality — 80 per cent of determinations registered within two working days from the receipt of notice; and
- resource usage per registration.

Performance at a glance

Measure	Estimate	Result
Quantity	10	6
Quality	80% of determinations registered within two working days from the receipt of notice	66% of determinations registered within two working days from the receipt of notice
Resource usage — unit cost per registration	$ 21,922	$ 14,216
Resource usage — output cost	$219,000	$ 85,294

Comment on performance

Number of determinations registered

In the reporting period, six determinations were registered: four determinations that native title exists and two determinations that native title does not exist. These six determinations brought the cumulative total to 51 registered determinations on the National Native Title Register. Three of these six determinations were outcomes of litigation, two were by consent, and the sixth was an unopposed determination.

There were seven determinations projected for the Torres Strait which did not eventuate. These were to be determinations by consent, but have been delayed due to a question of law arising over areas of public works carried out on five Deed of Grant in Trust communities.

See Table 3 for the breakdown by state and territory of claimant, non-claimant and compensation determinations

Table 3 Native title determinations by state and territory 2003–2004

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

Table 4 Registered determinations of native title, claimant, non-claimant and compensation applications 2003–2004

Application name	Application type	Location	Date of court decision	Process	Number of applications affected in whole or part by the determination
Miriuwung-Gajerrong and Balangarra	Claimant	Western Australia	9 Dec 2003	Consent	1
Miriuwung-Gajerrong	Claimant	Northern Territory	9 Dec 2003	Consent	1
Davenport/Murchsion	Claimant	Northern Territory	23 Apr 2004	Litigated	1
Wellesley Islands Sea Claim	Claimant	Queensland	23 Mar 2004	Litigated	1
Barkandji People No 1	Compensation	New South Wales	16 Feb 2004	Litigated	1
Darkinjung Local Aboriginal Land Council	Non-claimant	New South Wales	17 Dec 2003	Unopposed	1

Miriuwung-Gajerrong – 9 December 2003

Miriuwung-Gajerrong and Balangarra – 9 December 2003

On 9 December 2003, the Full Court of the Federal Court ratified two consent determinations which concluded almost 10 years of court cases and negotiation as the Miriuwung and Gajerrong peoples of Western Australia and the Northern Territory reached agreement on where native title exists in their traditional country in northern Australia.

These consent determinations provided for the respective parts of the claim area in Western Australia and Northern Territory, as well as settling aspects of law over parts of the claim in the Northern Territory (see 'Appendix II Significant decisions', p. 120, *The Attorney-General of the Northern Territory v Ward*).

Davenport/Murchsion – 23 April 2004

The claimant application was brought by the Alyawarr, Kaytetye, Warumung, Wakay native title group. While this claim group was described by reference to these four language or tribal groupings, it also comprised several landholding or estate groups. The Federal Court found that these seven groups held non-exclusive rights over two blocks of land in the proposed Davenport Murchison National Park (the principal claim area) and exclusive rights over land set aside for the proposed town of Hatches Creek, both south-east of Tennant Creek.

Wellesley Islands Sea Claim – 23 March 2004

The Federal Court recognised that the Lardil, Yangkaal, Kaiadilt and Gangalidda peoples held non-exclusive rights in line with traditional law and customs over areas of sea surrounding the Wellesley Island group in Queensland's Gulf of Carpentaria. The claim went to trial several years ago and during the intervening years a number of key native title cases were decided by the High Court of Australia, including *Commonwealth v Yarmirr*, *Yorta Yorta Aboriginal Community v Victoria* and *Western Australia v Ward*. These decisions provided the legal basis for the *Lardil* judgment.

Phyllis Ningamara shaking hands with Federal Court Judge Murray Wilcox while Annette Chunama looks on, Kununurra WA, December 2003.

Barkandji People No 1 – 16 February 2004

This litigation concentrated on the legal effect on any native title of the 1922 vesting in freehold of the area to the South Australia Government (part of provisions to ensure water supply for lower Murray River and Adelaide). The court held that the act extinguished native title in relation to the lands.

Darkinjung Local Aboriginal Land Council – 17 December 2003

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

Timeliness of registrations

The Tribunal aims to register the details of a native title determination within two days of receipt of the notice. During the reporting period the performance indicator was not met. This is attributable to the complexity of the *Western Australia v Ward* decision and consequently interpreting how to record the decision on the National Native Title Register.

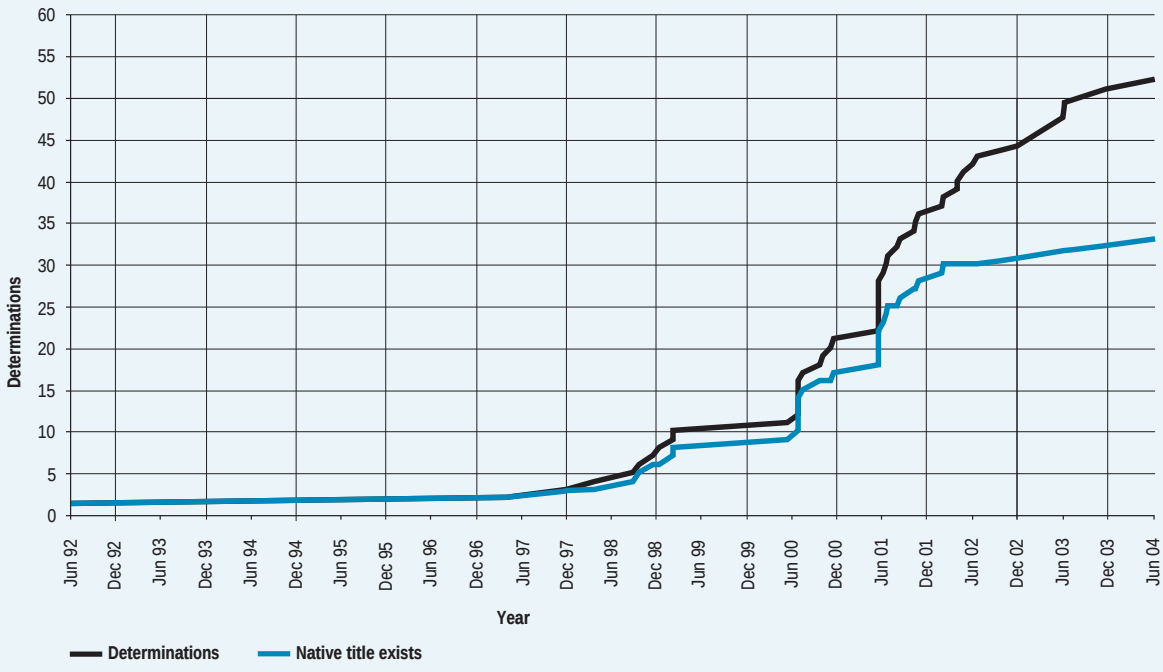
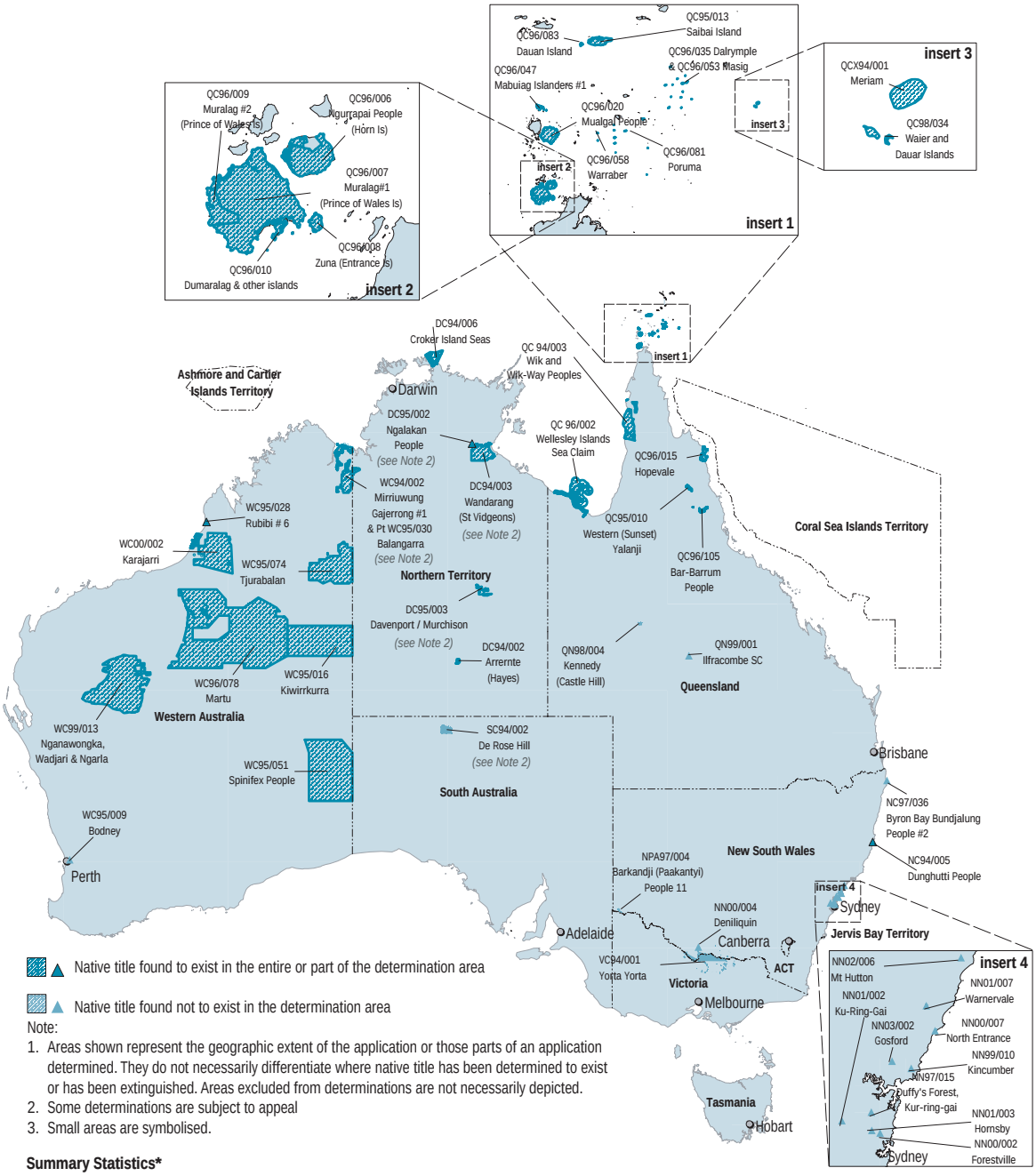


Figure 5 Cumulative determinations of native title to 30 June 2004



Native title found to exist in the entire or part of the determination area

Native title found not to exist in the determination area

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. Small areas are symbolised.

Summary Statistics*

Category**	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
▲	0	1	5	19	0	0	0	8	33
▲	0	12	0	2	1	0	1	1	17
Total	**0**	**12**	**5**	**20**	**1**	**0**	**1**	**9**	**50**

Notes:

* Where determination falls within two or more jurisdictions, allocation is assigned only to one — where application filed.

** As shown in legend

Data Statement

Spatial data sourced from and used with permission of: DLI, WA; DIPE, NT; DSE, Vic; DNRM&E, Qld; Lands, NSW; DEH, SA and GA, Commonwealth.

Figure 6 Map of native title determinations to 30 June 2004

Output 1.1.3 — Indigenous land use agreement registration decisions

Description of output

ILUAs are agreements reached 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 (if it does not already have that effect) 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 Registrar must:

- check for compliance against the registration requirements of the Act and regulations;
- notify the public, and individuals and organisations with an interest in the area, of the proposed ILUA; and
- determine any objections to registration of the ILUA.

If requested, the Tribunal can assist the parties to negotiate the withdrawal of an objection to the registration of an area agreement or an alternative procedure agreement. In some circumstances, the Tribunal can inquire into an objection to the registration of an alternative procedure agreement.

Performance

The performance measures for ILUA registration decisions are:

- quantity — number of ILUA registration decisions (including decisions that do not meet the requirements);
- quality — 70 per cent of ILUA registration decisions made within six months (including the three-month notification period) where no objection is lodged; and
- resource usage per decision.

Performance at a glance

Measure	Estimate	Result
Quantity	42	46
Quality	70% decided within six months (including three-month notification period) where no objection is lodged	78% decided within six months (including three-month notification period) where no objection is lodged
Resource usage — unit cost per decision	$ 31,046	$ 22,829
Resource usage — output cost	$1,304,000	$1,050,131

Comment on performance

A total of 44 ILUAs were lodged with the Registrar for registration in 2003–04; an increase from 35 in the previous reporting period. Table 5 shows the state and territory distribution of ILUAs lodged and registered.

Table 5 Number of ILUAs lodged for registration 2003–2004

	ACT	NSW	NT	Qld	SA	Tas.	Vic.	WA	Total
ILUAs lodged	0	0	13	27	2	0	1	0	**43**
ILUAs registered	0	0	13	30	1	0	1	1	**46**

Forty-six registration decisions were made in the reporting period, with all 46 applications accepted for registration and placed on the Register of Indigenous Land Use Agreements. As at 30 June 2004, the Registrar had registered a total of 131 ILUAs and 130 remain registered. Figure 7 shows the number of ILUA registrations for each financial year since 1998–1999 and the growth in registered ILUAs. There was also a sustained upward trend in the use of ILUAs to provide for mining and exploration during this reporting period.

Although Queensland and the Northern Territory continue to be the main areas of ILUA activity, there has been a gradual uptake by other states. The Queensland ILUAs assisted the state's ongoing strategy to deal with the issue of backlog exploration permits and also included a significant agreement for sapphire mining.

Registered ILUAs in Western Australia and South Australia provide for mining and exploration activities. The Antakirinja Minerals agreement was the first mining ILUA registered in South Australia, providing an alternative framework to the *Mining Act 1971* (SA) in respect of negotiations between native title claimants and mineral explorers, including heritage protection.

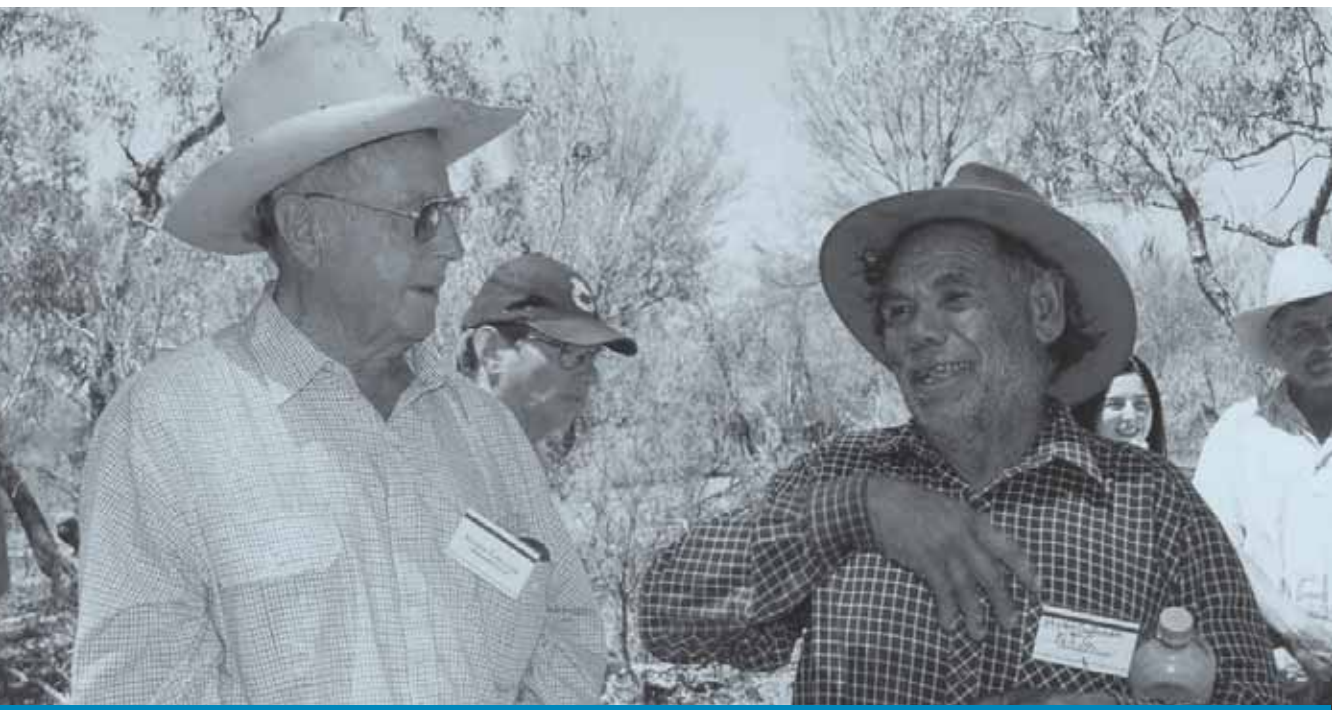
ILUAs registered in the current reporting period reflect a varied range of agreement–making. The following are some examples.

The Kalkadoon Northridge Industrial Estate ILUA is an agreement between the Kalkadoon People, Mount Isa City Council and the State of Queensland and is about the 'mutually beneficial exchange of lands'. The Kalkadoon People agreed to surrender to the state any native title that may exist over two lots of unallocated state land in the Mount Isa township area (which were under claim by the Kalkadoon People). The state agreed to then transfer freehold title over the unallocated state land to the council so that it could develop an industrial estate. In exchange for the surrender of native title, the state agreed to create reserves for Aboriginal people (*Land Act 1994* (Qld)) over two areas, one of which has been leased to the Kalkadoon Tribal Council. Subject to certain conditions, the state further agreed to investigate the transfer of that reserve land under the *Aboriginal Land Act 1991* (Qld).

The Hughenden Industrial Estate ILUA is an agreement between the Jirandali People, Flinders Shire Council and the State of Queensland which allows for the transfer of Crown land into freehold for development of an industrial estate. The Jirandali People consented to the surrender of native title in exchange for a grant of freehold title to them over a parcel of land. A broader framework agreement between the shire and the Jirandali People will provide for recognition of traditional ownership and development of a cultural heritage management plan.

The negotiations for the Central Queensland Gemfields ILUA commenced in November 2001 and involved the State of Queensland, the Kangoulu People, the Gurang Land Council and the Queensland Sapphire Producers Association. The agreement covered an area of approximately 614 square kilometres (known as a restricted area) which is the centre of sapphire mining in the state. The agreement also allowed for the immediate granting of about 250 mining claims and 50 mining leases in the area.

Also in Queensland, the Winton ILUA, although registered in June 2002, has had a flow-on effect with nineteen mining leases issued in the first two months of 2004 which was a big increase on previous years.



Todmorden leaseholder Gordon Lillecrapp and Huey Cullinan, one of the native title claimants, were among the many people who gathered at Todmorden Station to sign the ILUA in March 2004.

In Victoria, the Lara-Birregurra ILUA—a gas pipeline from Lara to Birregurra in the south-west of Victoria—was registered on 8 April 2004. It was the first ILUA nationally to receive an objection. The mediation of the objection was instrumental in developing national policies and procedures for how such objections are handled. Ultimately, the mediation did not result in the objection being withdrawn. After considering the objection, the Registrar's delegate made a decision to accept the ILUA for registration.

In the Northern Territory, a number of community living areas in remote areas were finalised using ILUAs.

See Figure 7 below for the number of ILUA registrations for each financial year.

Timeliness

The Tribunal's performance standard of 70 percent was exceeded with 78 per cent of ILUA decisions made within six months of the application being lodged. Three applications were the subject of an objection and the Registrar's delegates received information relating to the authorisation requirements on a further four applications. The achievement of the performance standard can be attributed to a maturing and 'bedding down' of the process within the Tribunal and an understanding of the requirements by clients and stakeholders.

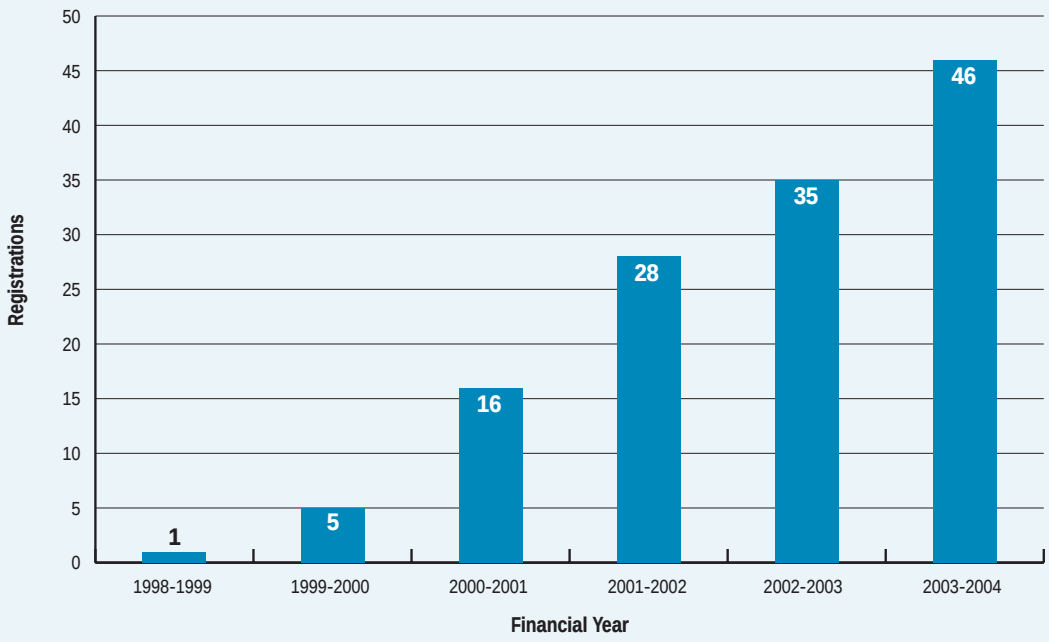


Figure 7 Number of ILUA registrations for each financial year.

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 carried out to achieve 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 and access agreements;
- claimant, non-claimant and compensation agreements; and
- future act agreements.

Output 1.2.1 — Indigenous land use and access agreements

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.

Performance

The performance measures for indigenous land use and access agreements are:
- quantity — indigenous land use agreements and other access agreements negotiated with the assistance of the Tribunal and completed;
- quality — the level of client satisfaction; and
- resource usage per agreement.

Performance at a glance

Measure	Estimate	Result
Quantity	15	15
Quality	Level of client satisfaction	Assessed through client surveys (see below)
Resource usage — unit cost per agreement	$ 111,027	$ 177,702
Resource usage — output cost	$1,665,000	$2,665,527

Comment on performance

People who wish to make an ILUA may ask the Tribunal for assistance in negotiating the agreement.

During the reporting period, the Tribunal finalised 15 ILUA negotiation matters. These covered a wider range of topics than previously experienced and, as a result, required ongoing education and provision of information to parties and their representatives.

In Queensland, there were requests for assistance to negotiate proposed local government ILUAs and pastoral ILUAs. Two pastoral projects are ongoing and the nature of assistance is generally to help the parties to negotiate memoranda of understanding (MoU) which may lead to ILUAs.

The Queensland pastoral project was successful in achieving a number of agreements between pastoralists and traditional owners. These included the first use and access MoU signed at Kowanyama on 24 February 2004, which will allow traditional use of and access to Inkerman Station. The Tribunal played a pivotal role in the negotiation of this agreement which is to be further negotiated as an ILUA.

The Tribunal has received requests for assistance based on positive outcomes and relationships established in other matters, such as assistance to facilitate housing and infrastructure development in Cape York and the Torres Strait. Additionally, the Aboriginal and Torres Strait Islander Services approached the Tribunal to discuss an agreed protocol for such requests and the possible development of a template ILUA.

In New South Wales, ILUAs are being put forward by both the state and New South Wales Native Title Services as a way to settle some native title applications.

The Tribunal assisted at various stages in the development of a set of pro forma ILUA and other agreements for miners and explorers in Victoria. Launched in April 2004, the pro forma agreements were the result of extensive negotiations between the State of Victoria, the Victorian Minerals and Energy Council and Native Title Services Victoria.

In South Australia, the Tribunal assisted in: the Statewide ILUA process in relation to several pilot ILUA negotiations; negotiations between the state and Aboriginal Legal Rights Movement in relation to developing criteria and processes for consent determinations; and the negotiation of five pilot ILUAs, in particular, three relating to alternative processes for dealing with future acts for local government development, mineral exploration, heritage processes and pastoral issues.

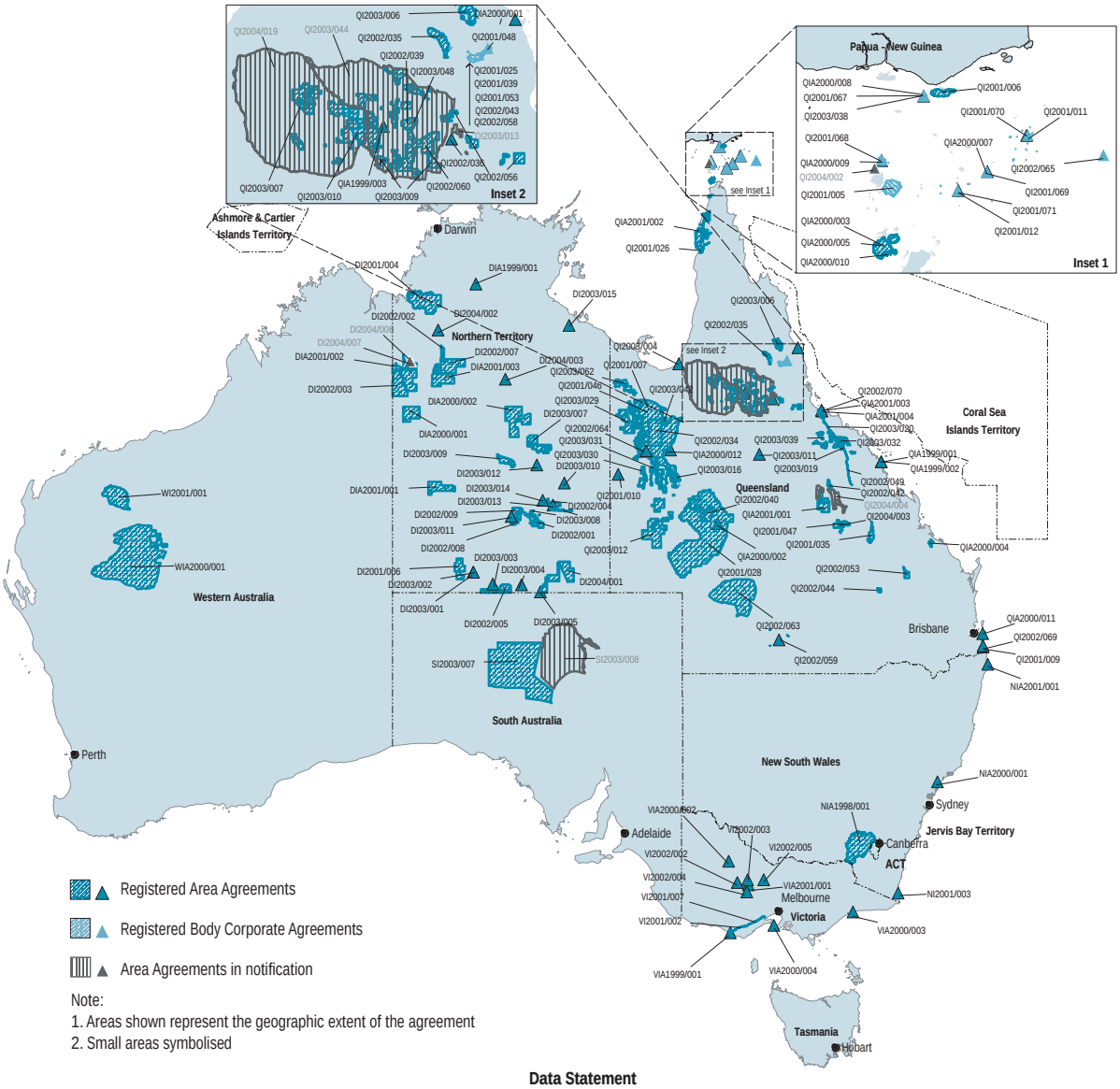
In the Northern Territory, the Tribunal has responded to requests for assistance relating to 31 prospective ILUAs under the *Parks and Reserves (Framework for the Future) Act 2003* (NT), the Larapinta residential subdivision ILUA in Alice Springs and an extractive mineral template ILUA for the Darwin region.

There is some evidence of an increasing interest in ILUAs in Western Australia, for example the Tribunal has provided assistance to local government and mining interests.

One reason why the average unit cost per agreement was higher than the estimated cost is because of the trend toward more complex and regional ILUA negotiations, rather than more limited future act negotiations.

Client and stakeholder satisfaction

The Tribunal has a policy to formally measure client satisfaction with its services every second year: the next survey will be done in 2004–05.



Note:
1. Areas shown represent the geographic extent of the agreement
2. Small areas symbolised

Summary Statistics

	Area	Body Corp	Total
Registered	116	14	130
In notification	8	0	8

Data Statement

Reference spatial data sourced from:
Dept of Land Information, WA; Dept of Infrastructure, Planning and Environment, NT; Dept of Natural Resources, Mines & Energy, Qld; Dept of Lands, NSW. Dept of Sustainability and Environment, Vic; Dept of Primary Industries, Vic; Geoscience Australia, Commonwealth

Figure 8 Map of indigenous land use agreements to 30 June 2004

Output 1.2.2 — Claimant, non-claimant and compensation agreements

Description of output

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

These types of agreements can be negotiated parallel with ILUAs (for more information, see 'Output 1.2.1 — Indigenous land use and access agreements', p. 56).

Performance

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

- quantity — agreements that resolve or partly resolve the application where the Tribunal has assisted;
- quality — level of satisfaction; and
- resource usage per agreement.

Performance at a glance

Measure	Estimate	Result
Quantity	150	198
Quality	Level of client satisfaction	Assessed through client surveys (see below)
Resource usage — unit cost per agreement	$ 88,836	$ 45,508
Resource usage — output cost	$13,325,000	$9,010,516

Comment on performance

Number of claimant, non-claimant and compensation agreements finalised

The opportunity for parties to assess the consequences of major court decisions in the *Yorta Yorta* case, *Western Australia v Ward*, *Wilson v Anderson* and *De Rose v South Australia* ended a hiatus in agreement-making. This meant there was an increased number of agreements achieved in the reporting period, reflecting a renewed trend to deal with native title applications and related matters by agreement.

This trend can also be attributed to:

- the Federal Court actively shaping the agreement-making environment by ordering that: with Tribunal assistance, parties to applications agree and file mediation programs, protocols and timelines; and the Tribunal conduct regional

case management conferences. In so doing, the Federal Court further delineated the respective roles of the court and the Tribunal in the management of native title applications; and
- Tribunal-led initiatives such as regional planning meetings.

A high percentage of process agreements led to the output being higher than estimated, and the average unit cost being lower than estimated. See Table 6 for a state breakdown of the agreements negotiated with the assistance of the Tribunal.

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

	NSW	NT	Qld	SA	Vic.	WA	Total
Number of agreements	12	26	66	15	4	75	198

The Federal Court's role

The way in which the Federal Court shaped the agreement-making environment during the reporting period is outlined below by state and territory.

New South Wales

During the reporting period, the Tribunal, New South Wales Government, New South Wales Native Title Services and several other applicants' legal representatives agreed to categorise all the active native title applications in the state to assist the 12 Federal Court judges manage those matters.

The Federal Court has responded to this work favourably and it is anticipated that it will lead to a more coordinated approach in progressing and resolving the 60 active applications over the next few years. The categorisation will be reviewed on a regular basis.

In several matters, intensive mediation programs have been settled and are assisting in progressing those matters.

Queensland

The court has divided the Queensland native title provisional docket into four regions, using boundaries of native title representative bodies. The majority of applications in the North West and Queensland South regions have been substantively allocated to interstate judges as 'clusters'. This was done to facilitate more intensive case management of native title applications by the court and involved the court undertaking regional direction hearings in each region twice during the year. In between listings, a Deputy District Registrar of the Federal Court has undertaken regional case management conferences.

The regional case management approach adopted by the court suits the operating environment of the Tribunal and the native title representative bodies. In particular, the Tribunal (in conjunction with representative bodies and major stakeholders) has developed a system of reporting to the court through regional mediation reports and work plans. This approach has been very successful in streamlining and coordinating the reporting process and providing the court with a regional picture. The court has indicated that this reporting system will remove the necessity for the regional case management conferences.

Northern Territory

In the Northern Territory, the court has used a combination of regional case management conferences, user group meetings and formal directions hearings to manage the caseload. In some instances, the conferences have covered all regional applications regardless of status. In other instances they have been convened to cover only applications of a particular status or type, for example applications affecting a pastoral estate that have been formally referred to the Tribunal for mediation. The conferences are convened informally by the Federal Court Registrar, while the user group meetings and formal directions hearings are presided over by the docket judge. Case management conferences effectively facilitate discussion about the state of preparation or the progress of applications, which then inform things such as priority setting, the timetabling of referrals to mediation, other formal orders of the court, or trial dates.

The court has not made detailed mediation programming orders, as in some other states, but has made orders requiring Tribunal members to report to it on the development of agreed protocols covering the mediation process, the proposed timetable for dealing with identified issues and the progress of the mediation. The court also makes formal orders at directions hearings that impose requirements on the parties to take certain steps in order to progress the applications.

Victoria

The Federal Court commonly works with the Tribunal to convene case management conferences either before or at the time of referring claims for mediation. The purpose of the conference is to set out the supervisory role of the court in managing native title claims and the court's relationship with the Tribunal in the mediation of the claim, as well as to agree on timeframes for the resolution of the claim. Further conferences may be held from time to time to refine timeframes, although a trend is emerging where parties agree on a proposed timetable as part of the Tribunal mediation and report on those agreed timetables to the court.

South Australia

The Tribunal has collaborated with the State of South Australia, Aboriginal Land Rights Movement (ALRM) and the Statewide ILUA negotiating parties to develop a joint mediation and ILUA assistance program. This was requested by the Federal

Court at its user group meeting in June 2003 in preparation for conferences and call-overs held by the Federal Court to consider what the mediation program should be for South Australia. The planning process involves individual and joint meetings with those stakeholders to develop an agreed position. That position is communicated to the Federal Court, both formally and informally. Recently, it was agreed that the draft program would be provided to parties to mediations, along with the draft mediation reports, for comment before going to court.

This approach has proved extremely effective in that the program has at all times been accepted by the court. However, the court has occasionally added to that program as a result of either submissions from individual and unrepresented parties, or in order to progress the court's stated agenda to identify what evidence needs to be preserved, or to quickly identify which matters referred for mediation can be listed and prepared for hearing. This has caused some strain on the resources of the ALRM, and resulted in a temporary reduction in the program by the court at the call-over in April 2004.

Western Australia

The Federal Court has adopted a regional approach to managing its caseload. The Federal Court convenes regional case management conferences in each region of the state on a regular basis. This approach has been supported by the Tribunal convening regular planning meetings between the representative body and the state in each region to discuss timeframes for mediation and negotiation. These priorities are communicated to the Federal Court through members' mediation reports, and by the parties during direction hearings and regional case management conferences.

The Federal Court held a user group meeting on 28 April 2004 which involved parties and stakeholders involved in native title matters. At that meeting the court encouraged more innovative approaches to mediation. The Federal Court has used a number of different mechanisms to progress matters, including holding hearings to preserve evidence, early neutral evaluation and appointment of court experts.

The Federal Court has also progressed a number of trails in the state including Rubibi (combination), Wanjina – Wunggurr Wilinggin #2, Bardi Jawi, Karajarri and Wongatha.

Range of agreements

Options that have been agreed or considered as, or as part of, the settlement of claimant applications are outlined below; and the Tribunal's involvement in the range of agreement-making during the reporting period follows on a state-by-state basis.

Grants of estates or interests in, or rights in relation to, land, for example:

- grants of freehold title, a perpetual lease or other tenure to a claim group or incorporated body;

- grant of access to public reserves for specific purposes (such as seasonal camping);
- the right to exercise traditional cultural responsibilities for the care of areas of land owned by the state;
- the creation of appropriate types of reserves; and
- a grant of land for lease back to government for national parks (such as under land rights legislation).

Roles in managing what happens on the land, for example:

- joint management or co-management of some national parks or other conservation areas or Crown reserves;
- membership of advisory boards or consultative committees for national parks or state forests;
- membership of management committees for certain reserves or other public lands;
- involvement in cultural heritage surveys and other aspects of cultural heritage protection; and
- participation in relevant town planning and other administrative processes (such as by consultative committees on the development and management of land).

Symbolic recognition of traditional affiliations with the land, for example:

- signage indicating that the area is the traditional country of a named group of people or a building is constructed on that group's traditional country;
- place naming rights;
- involvement of representatives of the group at certain official functions or events; and
- statements of formal recognition of traditional ownership of lands in which native title has been or might have been extinguished.

Employment and other economic opportunities in relation to the land, for example:

- employment and training as rangers in national parks;
- employment, training, scholarship and education opportunities provided by the owner or lessee of the land, such as a mining company;
- business arrangements (such as equity participation) in relation to commercial enterprises on the land;
- the right to conduct businesses (such as eco-tourism) on the land; and
- provision of goods, services or infrastructure to the group.

Financial payments or grants to the group, for example:

- financial assistance for capital works on the land (such as the construction of a cultural centre or keeping place);
- financial assistance to enable the group to administer the land (such as funding of a prescribed body corporate or local tribal council); and
- payment of compensation for acts in relation to the land.

New South Wales

A memorandum of understanding (MoU) between the Kamilaroi People of north-western New South Wales, the Coonabarabran Local Aboriginal Land Council, the Coonabarabran Shire, the Coonabarabran Showground Reserve Trust and the Coonabarabran Pony Club was signed at a celebratory event in Coonabarabran. Arranged by the Tribunal, more than 100 local people gathered on the land that is the subject of the agreement to hear speeches and watch local children perform dances. The MoU resolves the Kamilaroi native title claim and makes way for a land rights claim over the bushland site—once a camping ground used by the Kamilaroi. The local pony club has secured its licence to use the land for cross-country events. Speeches at the ceremony referred to the fact that the native title process had strengthened relationships and brought people together.

Queensland

Tribunal member Graham Fletcher and case management staff assisted parties to conclude successful negotiations for a cultural heritage management plan with nine traditional owner groups in relation to the three Enertrade ILUAs on the Mooranbah to Townsville gas pipeline. Processes for dealing with cultural clearance along the pipeline were also settled.

Member Dan O'Dea speaks to the gathering at Spear Creek, South Australia, in May 2004.

Northern Territory

The Tribunal's activities have focused on establishing an agreed mediation framework for its 26 pastoral mediation matters. This framework was achieved in November when the parties agreed on the ground rules and the timetable for the matters.

Reaching these agreements not only helps to maintain the momentum of mediation, but also provides opportunities to build and foster positive relationships amongst the parties. This creates a negotiation environment that supports a constructive and creative approach by the parties to identify possible options that they can agree on.

Victoria

The Tribunal held numerous mediation meetings which resulted in several agreements dealing with the progress of certain matters. Reaching agreement on these process issues not only assists in maintaining the momentum of mediation, but also provides opportunities to build and foster positive relationships among the parties, which in turn helps the parties to reach enduring outcomes.

South Australia

The Tribunal held a series of mediation meetings at Spear Creek, near Port Augusta, at the request of the native title representative body, the Aboriginal Legal Rights Movement (ALRM), to attempt to resolve longstanding intra-Indigenous disputes about nine overlapping claims in the state's central-west. Importantly, the mediations involved the input of over 100 senior people from the Anangu Pitjantjatjara lands, Yalata, Oak Valley and the Tjuntjuntjara communities as advisors to claimants participating in the various mediation meetings. The ALRM also made available the expertise of consultant anthropologists and lawyers to assist the claimants with their negotiations and mediation meetings.

The ALRM has reported that the mediation meetings were extremely successful, and achieved their objective to bring people together, and to use traditional law and custom to sort out some of the issues with the overlapping claims. Further discussion, work and funding will now be necessary to give effect to the outcomes achieved at those mediation meetings.

Western Australia

In Western Australia, representatives of the Noongar traditional owners in the South West region—the South West Aboriginal Land and Sea Council (SWALSC)—and the Western Australian Local Government Association (WALGA) signed a memorandum of understanding in Perth on 8 July 2003. The Western Australia Minister for Indigenous Affairs, John Kobelke, witnessed the signing and commended the Tribunal for its involvement. The MoU established how WALGA and SWALSC will work together to develop template agreements to enable local governments and traditional owners to work in partnership on issues such as land management and use, heritage protection and planning processes.

Representatives from the Goldfields Land and Sea Council (GLSC), the Pastoralists and Graziers Association (PGA), the Government of Western Australia and the Tribunal gathered at Kings Park on 3 February 2004 to finalise the Goldfields Pastoral Access Agreement. GLSC chairman Ian Tucker and PGA president Barry Court signed the agreement, witnessed by Western Australia's acting Premier at the time, Eric Ripper. Tribunal member Bardy McFarlane facilitated the negotiation of the 14 principles that provide a guide for the development of agreements between Indigenous groups and pastoralists throughout the region.

The Nyikina Mangala People, represented by the Kimberley Land Council and the Shire of Derby signed a MoU on 22 March 2004 in the Jarlmadangah Burru community near Derby. This memorandum of understanding sets out how the groups will negotiate native title matters within the Shire of Derby. Tribunal member Dan O'Dea facilitated discussions between the groups during the development of the MoU. It establishes a precedent for other groups in the Kimberley, setting out a process to follow when seeking a native title agreement.

Client and stakeholder satisfaction

The Tribunal has a policy to formally measure client satisfaction with its services every second year: the next survey will be done in 2004–05.

In 2002–03 almost two thirds, or 65 per cent, of the 139 clients interviewed were satisfied with the services of the Tribunal. Of these, 48 per cent were satisfied and 17 per cent were extremely satisfied. Sixteen percent were dissatisfied, with 19 per cent of clients being neither satisfied nor dissatisfied.

Suzanne Rigney from the Shire of Derby West Kimberley and Aggie Portelaneo and Annie Milgin of the Nyikina and Mangala group chat after the agreement was signed at Jarlmadangah Burru, east of Broome WA, in March 2004.

Output 1.2.3 — Future act agreements

Description of output

This output relates to agreements that allow a proposed future act to proceed where Tribunal members or staff have assisted with 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 that a conference be held to resolve issues related to the inquiry.

There are two main types of future act agreements. One type of agreement relates to whether the proposed future act should proceed and the conditions under which it can proceed (s. 31 of the Act). The second type of agreement relates to whether or not the proposed future act should be expedited (fast-tracked) through the right to negotiate processes (s. 32). The agreement can be that the expedited procedure applies thus allowing the future act to proceed. Alternatively, the agreement can be that the expedited procedure does not apply, resulting in the matter moving into the right to negotiate stream—however, the Act does not explicitly make provision for agreement under s. 32.

The two main provisions in the Act under which the Tribunal may provide mediation assistance in future act matters are:

- section 31, which affects parties in cases where the right to negotiate applies; and
- section 150, which allows the parties to request, or the President of the Tribunal to direct, that a conference be conducted to help resolve outstanding issues relevant to future act inquiries already before the Tribunal, i.e. either an expedited procedure application or a future act determination application.

Performance

The performance measures for future act agreements are:

- quantity — Tribunal mediated agreements that a proposed activity or acquisition can proceed;
- quality — 70 per cent of mediations (s. 31) and conferences (s. 150) concluded within six months from lodgement; and
- resource usage per agreement.

Performance at a glance

Measure	Estimate	Result
Quantity	15	55
Quality	70% concluded within six months from lodgement	36% concluded within six months from lodgement
Resource usage — unit cost per agreement	$ 34,252	$ 35,224
Resource usage — output cost	$ 513,000	$1,937,315

Comment on performance

From a national perspective, Western Australia continues to account for the bulk of future act mediation assistance. Table 7 shows the breakdown by state and type of agreement.

Table 7 Future act agreements mediated by the Tribunal by state 2003–2004

State	Agreement	Total
NT	Future act agreement (State/Territory Deed — s. 31/s. 41A (old s. 34))	1
WA	Future act section 150 agreement	2
WA	Future act agreement s. 38 by consent (FADA)	10
WA	Future act agreement (State/Territory Deed — s. 31/s. 41A (old s. 34))	41
Qld	Future act agreement (State/Territory Deed — s. 31/s. 41A (old s. 34))	1
Total		**55**

The full-year figure illustrates the uncertainty associated with over-correcting the estimated quantity of outputs based on first quarter results.

Facilitation of agreements

The Tribunal provided assistance to the Victoria State Government, the Victorian Minerals and Energy Council and Native Title Services Victoria (replacing Mirimbiak Nations Aboriginal Corporation) in the development of pro forma agreements containing terms and conditions for state deeds and project consent deeds. These pro forma agreements are now in use.

The Queensland Government is offering parties the option of negotiating agreements as an alternative to Native Title Protection Conditions currently in place under state legislation. Parties can ask the Tribunal to review the model agreement to ensure that it meets the requirements of the Act and Tribunal processes.

In the Northern Territory, Deputy President Chris Sumner successfully facilitated mediation of the Sweetpea agreement concerning petroleum tenure in Central Australia. The parties involved in this agreement had been negotiating unproductively for several years before being referred to the Tribunal for assistance. The negotiations facilitated by the Tribunal were substantively concluded in July 2003 and the agreement was lodged with the Tribunal in December 2003. The Territory Government has stated its intention to allow independent negotiations for a finite period only before referring complex matters to the Tribunal for mediation. The onus will be on grantee parties in the first instance to request mediation assistance but the Territory Government will monitor the progress of independent negotiations to ensure that matters do not remain unresolved for an unacceptable length of time.

During the reporting period, the Tribunal played an integral role in mining agreement negotiations in the Hunter Valley area of New South Wales.

In Western Australia, the Tribunal assisted key stakeholders, i.e. the state government, native title representative bodies and industry, to develop standard heritage agreements in five regions of the state. For more information, see 'Output 1.4.1 — Assistance', p. 76.

Agreement-making in the right to negotiate process

Northern Territory Government statistics reveal that over 100 mining titles that attract, or may attract, the right to negotiate remain either advertised and unresolved, or are yet to be advertised. The government has advised that it encourages formal requests for Tribunal mediation assistance, and that it is monitoring the progress of mediation with respect to one tenement initially. This matter will be used to test the timeliness and effectiveness of Tribunal mediation processes.

Similarly, the Queensland Government commenced advertising mining tenements under the right to negotiate provisions in June 2004, and it is anticipated that three or four tenements will be notified each month. The first notifications will involve tenements that are significant in terms of size or complexity.

Before resuming the Commonwealth scheme, the Queensland Government advertised a number of petroleum exploration permits in the south-west region. The Tribunal facilitated negotiations with respect to one of these permits, with the other parties opting to attempt agreement-making without Tribunal assistance.

In Western Australia, the general trend has been that approximately 40 per cent of tenement applications activated under the right to negotiate process have been referred by the state government to the Tribunal, resulting in 47 requests for mediation assistance. A large majority of these requests relate to tenement applications in the Goldfields region, which is also the region with the largest proportion of native title parties not represented by recognised native title representative bodies. Approximately 20 per cent of the requests relate to applications in the South West region.

The nature of mediation is varied: it can involve guiding parties from commencement of negotiations and establishing mediation protocols, facilitating comprehensive all-day mediation sessions 'on country', facilitating agreements and settling the execution of a state deed or referral to an arbitral Tribunal member for a consent determination. During the reporting period, there was also an increase in grantee parties directly requesting mediation assistance from the Tribunal.

OUTPUT GROUP 1.3 — ARBITRATION

The Tribunal arbitrates certain future act matters when requested to do so. The Native Title Act gives registered native title claimants a right to negotiate over developments on land or waters while their application for a determination of native title is progressing. Tribunal members may be asked to decide whether or not a proposed future act can go ahead and, if so, whether specific conditions should apply (s. 38), or whether or not an objection to a proposed future act should be fast-tracked without the right to negotiate applying (s. 32(4),(5)). These rulings are referred to as future act determinations or objection to the 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 expedited procedure finalised.

Output 1.3.1 — Future act determinations

Description of output

This output concerns determinations made by the Tribunal that a proposed future act may or may not be done and, if the future act may be done, whether it is to be done subject to conditions or not.

Any party to the future act application may apply to the Tribunal for such a determination, provided at least six months have passed since the notification day contained in the s. 29 notice and there have been negotiations in good faith during that period. If a party contests that negotiations in good faith have occurred, then the Tribunal must hold a preliminary inquiry to establish whether or not it has jurisdiction to proceed with the substantive inquiry.

Performance

The performance measures for future act determinations are:
- quantity — decisions (by tenement or compulsory acquisition) made by the Tribunal that a proposed act may or may not proceed;
- quality — 70 per cent of future act determination applications determined within six months from application; and
- resource usage per determination.

Performance at a glance		
Measure	**Estimate**	**Result**
Quantity	35	34
Quality	70% determined within six months from application	94% determined within six months of application
Resource usage — unit cost per determination	$ 18,051	$ 23,975
Resource usage — output cost	$632,000	$815,141

Comment on performance

Western Australia remains by far the most significant region for future act determination applications. All but one of the applications made in the reporting period came from that state.

Twenty-one of the 22 applications (affecting 32 tenements) in Western Australia finalised in the reporting period were determined by consent, with no substantive inquiry being required. In the majority of these cases, a future act consent determination was requested to overcome the logistic and resource difficulties encountered in executing a state deed, and reflects the climate of cooperation and negotiation fostered by the Tribunal.

Victoria and the Northern Territory each saw one future act consent determination application finalised during the reporting period. The Northern Territory application was lodged in similar circumstances to the majority in Western Australia, where the procurement of signatures from native title applicants living in remote areas for a state deed was not considered feasible within strict commercial timeframes.

Table 8 Number of future act determination applications lodged and determined 2003–2004		
State or territory	**Lodged**	**Determined**
Australian Capital Territory	0	0
New South Wales	0	0
Northern Territory	0	1
Queensland	0	0
South Australia *	0	0
Tasmania	0	0
Victoria	1	1
Western Australia	59	32
Total **	**60**	**34**

* South Australia continued to operate its own alternative regime.

** Quantity counted by tenement.

Activity levels

In November 2003 the Queensland Government commenced advertising mining tenements under the Commonwealth right to negotiate stream. Requests for Tribunal mediation (under s. 31), rather than future act determination applications, are expected initially.

The Northern Territory's anticipated activity in future act determination applications for 2003–04 did not eventuate. However, as with the Tribunal, the Territory Government would prefer to see negotiated outcomes and will only refer tenement applications to the Tribunal for a determination if negotiations have failed after a reasonable period. These referrals will be monitored closely by all stakeholders to gauge the timeliness and effectiveness of arbitration as distinct from mediated outcomes.

Output 1.3.2 — Objections to expedited procedure finalised

Description of output

The expedited procedure is a fast-tracking process for the grant of certain 'minimal impact' tenements and licences which, under s. 237 of the Act, are considered not likely to:

- interfere directly with the 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 expedited procedure applies to a tenement application and, therefore, the right to negotiate does not apply. The Act includes a mechanism for registered native title parties to lodge an objection to this assertion.

This output concerns the processing of these objections by the Tribunal. The expedited procedure is used in Western Australia, the Northern Territory and Queensland. Other states either use their own alternate state provisions to process tenements considered to have minimal interference or impact, or opt not to use the expedited procedure provisions.

Performance

Performance measures for dealing with objections to the expedited procedure are:

- quantity — objections finalised;
- quality — 80 per cent of objections finalised within six months from the s. 29 closing date; and
- resource usage per objection

Performance at a glance

Measure	Estimate	Result
Quantity	700	761
Quality	80% of objections finalised within six months from s. 29 closing date	55% of objections finalised within six months from s. 29 closing date
Resource usage — unit cost per objection	$ 2,935	$ 3,074
Resource usage — output cost	$2,054,000	$2,339,475

Comment on performance

The national picture for the reporting period was that 55 per cent of objections were finalised within six months from the s. 29 closing date, which is 69 per cent of the estimate. Details of the objection outcomes are shown in Table 9.

In general, the lower than estimated finalisation rate resulted from the Tribunal's willingness to allow parties additional time to negotiate agreements rather than imposing resolution by determination. The Tribunal agreed to adjournments of groups of objections in the Yamatji and Pilbara regions of Western Australia pending agreement and implementation of the standard heritage agreements across those regions.

Table 9 Objection outcomes by tenement finalised 2003–2004

Tenement outcome	Northern Territory	Queensland	Western Australia	Total 2003–2004
Consent determination — expedited procedure does not apply	0	0	44	44
Determination — expedited procedure applies	0	0	11	11
Determination — expedited procedure does not apply	0	0	3	3
Dismissed — s. 148(a) no jurisdiction	0	0	68	68
Dismissed decision — s. 148(b)	0	0	93	93
Dismissed — s. 148(a) tenement withdrawn	0	6	109	115
Objection not accepted	0	3	47	50
Objection withdrawn — agreement	3	0	334	337
Objection withdrawn — no agreement	0	0	6	6
Objection withdrawn prior to acceptance	0	0	2	2
Tenement withdrawn — not dismissed	0	0	18	18
Tenement withdrawn prior to objection acceptance	0	0	11	11
No outcome recorded	0	0	3	3
Total	**3**	**9**	**749**	**761**

Strategies to eliminate tenement backlog

There was a 17 per cent reduction in the number of objection outcomes finalised in the reporting period when compared with the previous year. In 2002–03 there were 917 outcomes—124 in the Northern Territory and 793 in Western Australia.

The reduction was most dramatic in the Northern Territory, where the backlog of tenements to be advertised has been dealt with and notification by the Department of Business Industry and Resource Development is now monthly rather than fortnightly. Merit testing of objections by the Northern Land Council has also resulted in a dramatic fall in the rate of objections lodged.

In Western Australia, the Heritage Protection Working Group (which is facilitated by the Tribunal) has been developing regional heritage protection agreements. If ratified by native title claimants and executed by tenement applicants, these will ensure the grant of minimal impact exploration and prospecting tenements notified under the expedited process without objection from the registered native title parties. Standard heritage agreements, developed with the support of the Goldfields Land and Sea

Council and the South West Aboriginal Land and Sea Council, have been implemented. Individual claimant groups in the Geraldton and Pilbara areas represented by Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation are also in the process of endorsing a separate agreement.

Negotiation on a similar regional agreement in the Ngaanyatjarra Council region is close to completion.

The implementation of regional heritage protection agreements backed by the Government of Western Australia has led to a reluctance by grantee parties to agree to use alternative heritage agreements currently used by some native title parties, which has resulted in an increasing number of objection applications going to inquiry (although most have been dismissed for failure to comply with the Tribunal's directions). There is also a growing trend for native title parties not represented by representative bodies to lodge objections as a means of opening negotiations on their alternative heritage agreements.

In Queensland, the first notifications of tenement applications to which the expedited procedure was said to apply commenced in November 2003. The flow of objections has been slower than anticipated. At least one claimant group has indicated that they will be objecting to all expedited procedure assertions in an attempt to secure determinations that the expedited procedure does not apply and thus refer the matters into the right to negotiate stream, or to secure existing negotiations. All other objections lodged as at 30 June 2004 have been to secure existing negotiations.

The Queensland Government also encourages agreement-making to resolve objections to the expedited procedure rather than resorting to the Tribunal's arbitral processes. As a consequence, the majority of objections lodged in Queensland will continue to be made to protect ongoing negotiations close to completion, rather than because the native title party prefers the arbitral route.

Capacity-building

During the reporting period, the future act units in Western Australia and Queensland saw a significant increase in requests for assistance and capacity-building activities. For further details, see 'Output 1.4.1 – Assistance to applicants and other persons', p. 76.

Table 10 Time taken to process objection applications

	Northern Territory	Queensland	Western Australia	National
Not more than six months between s. 29 closing date and objection finalised date	100%	100%	54%	55%

OUTPUT GROUP 1.4 — ASSISTANCE, NOTIFICATION AND REPORTING

Output group 1.4 contributes to the Tribunal's outcome 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 others through activities and services ranging from help with the preparation of applications and information about native title to the provision of maps, research reports, seminars and media information. During the reporting period, the Tribunal also continued its collaboration with representatives of applicants and other parties to contribute to building parties' capacities to participate effectively in native title and related processes.

Categories of assistance

The Tribunal has three categories of assistance activities:
- contacts — including assistance provided through telephone conversations, correspondence, media statements, maps and written descriptions, and searches of the registers;
- events — including research reports for parties in agreement-making, information materials such as fact sheets and the Tribunal's quarterly newsletter *Talking Native Title*, education programs and information sessions; and
- initiatives — including large scale projects and activities contributing to building the capacity of participants in the native title process.

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: 13,269	Estimated: 300 Achieved: 376	Estimated: 30 Achieved: 23
Quality	Level of client satisfaction (see below)	Level of client satisfaction (see below)	Level of client satisfaction (see below)
Resource usage — unit cost per instance of assistance	Estimated: $155 Achieved: $221	Estimated: $6,417 Achieved: $7,940	Estimated: $100,000 Achieved: $126,820
Resource usage — output cost	Estimated: $2,167,000 Achieved: $2,930,253	Estimated: $1,925,000 Achieved: $2,985,488	Estimated: $3,000,000 Achieved: $2,916,855

Comment on performance

Number of assistance contacts, events and initiatives

The total number of recorded assistance contacts for the reporting period was 13,269. This figure, which does not include Tribunal responses to media enquiries, is marginally less than the estimated 14,000. One reason for this may be that many people increasingly turn to the Tribunal's website for initial information about native title processes (see additional information on website below).

Figure 9 shows the distribution of assistance contacts by type of assistance. The most common type of assistance requested was information about native title applications and the registers, including searches of the registers. People also contacted the Tribunal for information on the future act process and mediation.

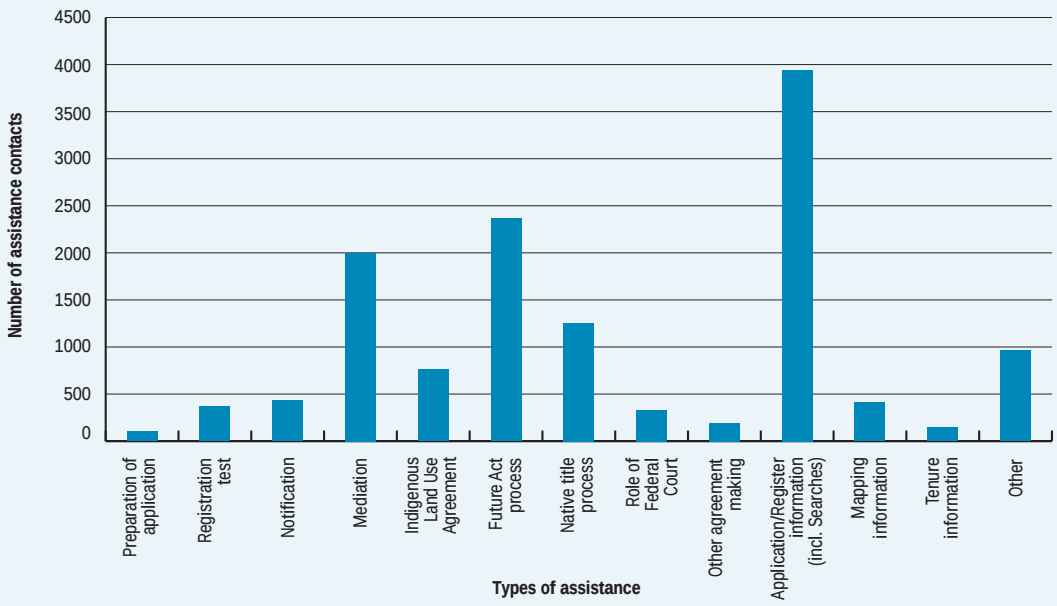


Figure 9 Assistance to applicants and other persons by type 2003–2004

There were 376 assistance events and 16 major initiatives during 2003–04. The categories 'events' and 'initiatives' both include activities contributing to building the capacity of parties to participate in native title processes. There were fewer initiatives than anticipated. Two planned initiatives did not go ahead and were being reassessed at the end of the reporting period. In addition, the Tribunal directed resources to meet the demand for information sessions and workshops, leading to a higher number of events than estimated. The higher unit cost for initiatives was due to two major projects requiring significantly larger budgets than average. One was a strategy aimed at developing a coordinated approach to the pastoral industry and native title negotiations in Queensland. The other was a comprehensive mediation strategy to resolve long-standing claim overlaps in the central-west region of South Australia, conducted in partnership with the Aboriginal Legal Rights Movement.

Information products

The Tribunal produces two national newsletters: *Talking Native Title* provides general native title news each quarter and has a distribution of more than 4,000 people; and *Native Title Hot Spots* is aimed at legal practitioners and is produced about every eight weeks, depending on the level of legal activity in native title. *Native Title Hot Spots* is a key source of updated information on legal developments and delivered electronically to more than 400 people. Both publications are available on the Tribunal's website.

The Tribunal developed a plain English guide to the requirements of the registration test based on the form for claimant applications ('Form 1') contained in the regulations. The guide, aimed at applicants and representative body lawyers, is available on the Tribunal's website.

A major initiative aimed at building knowledge and understanding of people involved in native title proceedings was the production of a documentary-style video called *Native Title Stories: Rights, Recognition, Relationships*. Produced in video and DVD formats, the information has been used to link outcomes to people involved in, or about to enter, the native title process. The 37-minute production is divided into six sections, showing case studies of different types of native title or related outcomes around Australia. *Native Title Stories* was a finalist in the annual Australian Teachers of Media (ATOM) awards in the Best Indigenous Reference category.

Mariana Babia of the Saibai Island Council being interviewed in the Torres Strait during the Native Title Stories video shoot.

Publications

The Tribunal has a wide range of publications in plain English, providing targeted information to clients and stakeholders. During the reporting period, more than 40,000 publications were distributed.

Website

The Tribunal's website attracted 6,500 individual users a month and 4,200 hits a day. This is an increase from 2002–03 when the number of users was 3,500. Independent research conducted during the reporting period found a very high satisfaction level with the site and its information.

Media

Throughout the year, Tribunal media staff and members responded to hundreds of requests for information from mainstream and specialist journalists around the country. They assisted journalists to attend events in remote locations, including: the signing of the Todmorden ILUA in northern South Australia; an agreement signing between the Shire of Derby West Kimberley and the Nyikina and Managala People at Jarlmadangah Burru east of Broome; and the signing of memoranda of understanding between pastoralists and native title claimants at Kidston, 500 kilometres south-west of Cairns.

Contributing to building parties' capacities

Claimant groups and other parties, including government agencies and industry bodies, sometimes do not have the knowledge, skills, infrastructure or resources to effectively participate in native title processes. For example, parties often need up-to-date and impartial information about the options available to them in a native title environment that changed significantly with the 2002 and 2003 court decisions and a closer management of the process by the Federal Court. Overcoming capacity issues promotes a more productive approach to native title mediation and related Tribunal functions. This, in turn, helps participants achieve results.

Ewamian representative Darce Richards (left), pastoralist Vince Hooley and Ewamian Aboriginal Corporation chair Elmer Lingard sign one of the memoranda of understanding at Kidston, Queensland, in March 2004.

With its expertise and experience, the Tribunal is well placed to play a key partnership role in contributing to building the capacity of parties including Indigenous communities, Indigenous organisations, industry bodies and government agencies.

Fostering relationships between Indigenous organisations, industry groups and government agencies

The Tribunal's capacity-building role included organising or facilitating forums and conferences which brought together peak industry bodies, Indigenous organisations and government agencies.

In October 2003, the Tribunal organised the national Indigenous Fishing Rights Conference in partnership with all major players in the fishing industry, including the Aboriginal and Torres Strait Islander Services (ATSIS), Fisheries Research and Development Corporation, the Department of Agriculture, Fisheries and Forestry, National Oceans Office, and the Western Australian departments of Fisheries, Industry and Resources, and Premier and Cabinet. Significantly, representatives of peak industry groups such as the Western Australian Fishing Industry Council and the South Australian Seafood Council also participated. Held in Fremantle, Western Australia, the conference was the first to bring together such a large contingent of people involved in various aspects of customary and commercial fishing and the regulation of fishing activity. A CD-ROM of the conference proceedings was distributed to the 250 participants.

At the Indigenous Fishing Rights conference held in Fremantle WA in October 2003 are (left to right) Doc Reynolds, Farley Garlett and Tipene O'Regan.

As a result of the conference, the Tribunal convened a technical working group that included key stakeholders and, on 1 June 2004, the working group endorsed a framework for fisheries policy development at all levels.

In Queensland, the Tribunal organised a native title forum held in December 2003. Key stakeholders exchanged information and discussed a range of developments that had influenced the Queensland native title environment over the previous 12 months. These developments included changes in native title practice of the Federal Court, release of the state government's policy on connection and the introduction of indigenous cultural heritage protection legislation. Participants agreed they needed an ongoing forum to engage in high level strategic discussions: the Tribunal was appointed to organise follow-up forums, with the next forum planned for August 2004.

The Tribunal also facilitated two events in partnership with spatial information industry bodies and federal government agencies. In September 2003 a conference was held in Canberra and jointly sponsored by the Intergovernmental Committee on Surveying and Mapping, ATSIS and the Spatial Science Institute. The key objective was to provide a broader understanding of the geospatial characteristics of native title. The workshop proceedings were distributed on CD-ROM to all attendees and published on the Tribunal's website.

In May 2004 a workshop took place in Cairns for Queensland native title representative bodies, and was done in partnership with ATSIS. Participants formed a working group to collectively develop a business plan for improving their capacity for geospatial information management. A similar group—formed among representative bodies in Western Australia in the previous financial year—progressed local spatial issues related to native title and reinforced partnerships to achieve outcomes for all parties.

Research assistance and partnerships

During the reporting period, the Tribunal's Research Unit completed a total of 36 research reports relating to native title applicant group identity and areas claimed. These reports assisted mediation teams across all states and territories.

The Tribunal and ATSIS jointly funded a research project, carried out by the AIATSIS, to investigate the capacity of native title representative body staff to resolve native title disputes within Indigenous communities. The project's findings will help develop suitable training for Indigenous people to undertake mediation.

Another project funded jointly with ATSIS involved identifying and assisting senior anthropologists to mentor native title representative body anthropologists in Queensland and Western Australia for 12 months. This pilot project has delivered its intended outcome of testing the effectiveness of mentoring.

The Tribunal's research and geospatial units also assisted the University of Melbourne and the University of Technology Sydney in the development of the Agreements, Treaties and Negotiated Settlements database (www.atns.net.au). The database aims to compile a complete record of current agreements involving Indigenous Australians. The database will be capable of 'geo-enabling' historical agreements so they can be visualised and assist in future agreement-making processes. It will provide a resource for people negotiating agreements or undertaking research in agreement-making involving Indigenous people.

In 2003, the Tribunal commissioned some exploratory research to identify key issues in the implementation and resourcing of native title and related agreements. The research report was intended to assist Tribunal members and employees mediate and facilitate agreement-making between parties.

The researchers found that, although large numbers of agreements have been made since the commencement of the Act, most of the literature ignores issues of implementation and sustainability. Instead, there is a preference to focus on matters of process such as setting up and conducting negotiations.

The research report suggests that parties need to be clear about the goals of the agreement, to take account of factors relevant to Indigenous communities, to ensure effective governance of the parties, and to have an implementation plan. The researchers also argue that the elements of agreement-making should be considered as a whole.

The research will inform the Tribunal when it assists parties to negotiate agreements and is available on the Tribunal's website.

Working with claimants and Indigenous organisations

During the reporting period, Tribunal staff conducted more than 40 information sessions for claimant groups, usually on request from representative bodies. Most sessions focused on providing information to claimant groups who needed to progress their application. In Queensland and Western Australia, the Tribunal also conducted sessions specifically on future act processes.

The main objectives of the information sessions were to help claimants understand why an agreed outcome is preferable to litigation and to provide them with the information needed to assess their options for progressing their claims.

Tribunal teams with legal, geospatial and case management expertise worked in partnership with native title representative bodies to deliver tailored workshops to more than 550 claimants in Western Australia, Queensland, South Australia, New South Wales and Victoria. Overall, the feedback from claimants and their representatives was that these workshops helped the claimants to see the 'big picture'.

They gained a better understanding of what to expect from the legal process so that they could make informed decisions about how to progress their application.

The sessions led to progress for many applications, indicating that building the claimants' capacity to look at the costs and benefits of the native title process may assist in resolving claims by agreement.

In an effort to increase stakeholders' understanding of the future act processes, the Tribunal conducted a presentation to the Kimberley Land Council in March 2004, which proved effective and timely.

As part of a Tribunal-funded project, a consultant (assisted by native title representative body staff) gave presentations outlining the benefits of accepting a standard heritage agreement (see 'Output 1.3.2 — Objections to the expedited procedure', p. 73) to claimant groups in the Western Australian Pilbara and Yamatji regions, represented by the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation.

In Queensland, the Tribunal established a work program for James Cook University to help teach native title representative body staff about future act processes under the Commonwealth right to negotiate scheme.

From July to November 2003, the Tribunal delivered future act workshops to the North Queensland, Carpentaria, Gurang and Cape York Land Councils, the Queensland South Representative Body and the Central Queensland Land Council. Copies of workshop materials were also forwarded to the Torres Strait Islander Regional Authority.

In Western Australia, the Tribunal conducted workshops on registration test requirements for four representative bodies in May and June 2004.

In the Northern Territory, the Tribunal delivered ILUA seminars in Alice Springs and Darwin in response to requests from government and other stakeholders. The seminars focused on the information needs of legal practitioners and specialist advisers.

Innovative approaches in geospatial assistance

The Tribunal maintains spatial records and associated reference information to support the native title matters it administers. It remains the custodian of native title spatial datasets and adds value to these by integrating spatial records with other data held by the organisation and external custodians. As part of its work towards improving data sharing across the spatial sciences industry, the Geospatial Analysis and Mapping Unit liaises with a cross section of government agencies at state, territory and federal levels, as well as the private sector.

In the past year, the Tribunal's geospatial staff assisted with register searches, preparation of maps and written descriptions, and preliminary assessments of claimant applications before registration testing. The unit provided general mapping of native title matters, statistical information and spatial analysis of claimant applications. It also played a key role in educational forums and workshops for claimants, and developing tailored maps.

Three-dimensional visualisation of overlapping applications and agreements were provided for mediation in the field and contributed to positive outcomes. This innovative view of the spatial information was credited for improving the understanding of all parties in relation to the spatial aspect of the native title process, bringing about swifter results.

Timely, accurate, valued-added spatial information has led to better decision-making amongst parties. Collaborative capacity-building activities such as geo-enabling projects and educational forums resulted in partnerships which promoted the sharing of knowledge and expertise in geospatial information management practices. Examples of this included providing Native Title Services Victoria with a mapping tool to streamline their ability to produce future act products, and facilitating working groups in Western Australia and Queensland (see 'Fostering relationships between Indigenous organisations, industry groups and government agencies' above).

Another significant initiative was the engagement of the Federal Court in a pilot project to enable the visualisation of native title matters on the internet. Positive feedback from the Federal Court demonstrated the benefits of this type of service, which will be a catalyst for identifying other information-sharing opportunities with the Federal Court.

Level of client satisfaction

The level of client satisfaction for these activities was mostly assessed through participants' feedback and evaluation forms provided at the conclusion of workshops, seminars and other projects. The majority of clients who provided feedback indicated that they were satisfied or very satisfied with workshops and information sessions conducted by the Tribunal.

Output 1.4.2 — Notification

Description of output

Notification is a written notice given by the Registrar to the general public and those with interests in an area affected by native title applications (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 and to participate in mediation. The Registrar's notification objective is to provide relevant information to people who may have an interest in any part of the area covered by an application.

The main purpose of the notification of a non-claimant application is to ensure that any potential native title holders have an opportunity to lodge a native title claim in response.

The main purpose of the notification of an application for registration of an ILUA is to ensure that any native title holders who are not a party to the agreement have an opportunity to give information or oppose the registration if the authorisation process did not meet the requirements of the Act and ILUA regulations.

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.

It is the policy of the Registrar to notify all interest holders directly where possible, rather than just conducting a general notification of the public through advertisements. The Tribunal 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 — applications (including claimant, non-claimant or compensation applications and applications to register ILUAs) notified in writing to individuals or bodies with interests in the areas and/or advertised in newspapers and other media;

- quality — renotification (full or partial) necessary in less than five per cent of applications; and
- resource usage per application.

Performance at a glance		
Measure	**Estimate**	**Result**
Quantity	135 applications advertised	116
Quality	Renotification (full or partial) necessary in less than 5% of applications	0% of applications renotified
Resource usage — unit cost per application	$15,000 per application advertised	$ 13,266
Resource usage — output cost	applications advertised: $2,025,000	$1,538,804

Comment on performance

The Registrar initiated the notification of 116 applications in this reporting period — 62 claimant, five non-claimant and 49 applications to register ILUAs. The Tribunal has now notified 87 per cent of all active native title claimant applications.

Table 11 gives the distribution of different applications notified during the reporting period.

Table 11 Applications notified 2003–2004

State or territory	Claimant	Non-claimant	Compensation	ILUA	Total
ACT	0	0	0	0	0
NSW	4	5	0	0	9
NT	21	0	0	15	36
Qld	34	0	0	32	66
SA	0	0	0	2	2
Tas.	0	0	0	0	0
Vic.	0	0	0	0	0
WA	3	0	0	0	3
Total	**62**	**5**	**0**	**49**	**116**

The workload in notification is following a sustained trend: the gradual decline in claimant applications was balanced by the increased notification of ILUAs. The decrease in notification of claimant applications shows that the Tribunal has reduced its backlog of those notifications, predominantly in Queensland. The initiatives (agreement with a service provider for provision of information) implemented in the last reporting period have resulted in the Registrar notifying 66 claimant and ILUA applications in Queensland in the reporting period.

The Queensland Registry has developed a strategy for directly notifying identified interest holders. This follows a period where, due to the resource constraints of the state government, the necessary information was not readily available. Although significant human resources are required to analyse and process the data that is provided, the registry has been able to fulfil its obligations to notify applications and, at the same time, notify interest holders directly.

The registry liaises closely with relevant stakeholders in relation to notification, particularly the Local Government Association of Queensland, Local Government Authorities and AgForce as the peak body for pastoral interests.

Nationally, no applications had to be renotified in this reporting period.

In Western Australia, the Federal Court ordered that the Registrar give special notice of the applications commencing the Bardi Jawi No. 2 and the Wongatha non-claimant proceedings. Special notice was given through public advertisement and related to *inter alia* joinder of parties to the applications. These notices are in addition to the notice required to be given under s. 66 of the Act.

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 Federal 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 Federal Court when:

- the court requests information about the progress of the mediation;
- the member considers that a report would assist the Federal Court in progressing the proceeding; or
- the mediation is successfully concluded.

Mediation reports to the Federal 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 these would help the proceedings. Status reports inform the court of the current situation of an application before 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 Federal Court to maintain mutually convenient and efficient reporting processes.

Performance

Performance measures for reports to the Federal Court are:

- quantity — mediation and status reports provided to the Federal Court;
- quality — 85 per cent of reports provided within the timeframe set by Federal Court; and
- resource usage per report.

Performance at a glance		
Measure	**Estimate**	**Result**
Quantity	650	922
Quality	85% of reports provided within timeframe set by Federal Court	99% of reports provided within timeframe set by Federal Court
Resource usage — unit cost per report	$ 1,838	$ 1,451
Resource usage — output cost	$1,194,000	$1,338,264

Comment on performance

Where the Federal Court requests a mediation progress report, the Tribunal aims to give the reports to the court within the timeframe established by the court.

Number of reports

There were 922 mediation and status reports provided to the court. About 36 percent of the mediation progress reports were volunteered by Tribunal members.

Table 12 Mediation and status reports by state and territory

	Mediation reports		Status reports		Total
State or territory	**Ordered**	**Voluntary**	**Ordered**	**Voluntary**	
ACT	0	0	0	0	0
NSW	23	15	1	0	39
NT	60	0	53	0	113
Qld	60	177	37	20	294
SA	37	8	0	0	45
Tas.	0	0	0	0	0
Vic.	26	11	0	0	37
WA	184	3	1	206	394
Total	**387**	**214**	**92**	**226**	**922**

Timeliness of the reports

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

MANAGEMENT

CORPORATE GOVERNANCE

Members' meetings

The President and members held two members' meetings in the reporting period: in Perth during October 2003 and in Adelaide during March 2004.

A range of issues was 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;
- Federal Court case management practices and the Tribunal's relationship with the court;
- responses to the client satisfaction survey and the PJC's report on the effectiveness of the Tribunal;
- training of members and employees;
- governance arrangements within the Tribunal;
- various forums and workshops facilitated or supported by the Tribunal;
- resource issues in relation to the native title system; and
- research undertaken by the Tribunal.

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 President Graeme Neate, Deputy President Chris Sumner, Deputy President Fred Chaney, ILUA Member Coordinator Ruth Wade, Chair of the Research Strategy Group Professor Doug Williamson, Agreement-Making Strategy Group Member Dr Gaye Sculthorpe, the Registrar and the three divisional directors. Other members are involved from time to time.

The group integrates management and administration with the strategic direction of the organisation as described in the Tribunal's *Strategic Plan 2003–2005*. It met eight times during the reporting period to advise on high-level budget priorities for 2003–04, monitor the Tribunal's performance and make recommendations to facilitate Tribunal projects such as implementing the agreement-making strategy.

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. Other members and employees attend as required.

In October 2003, the first edition of *Mediating Native Title Applications: A Guide to National Native Title Tribunal Practice* (the *Guide*) was printed for the Tribunal. It was the product of some 18 months of work by the Agreement-Making Strategy Group with input from other Tribunal members and employees. They explored and analysed the practice and experience of the Tribunal, including analysing mediation concepts and the applicability of the phases of an agreement-making continuum to the work of the Tribunal, in light of the requirements of the Act.

The *Guide* acknowledges the unique aspect of each native title application, and notes the wide-ranging discretionary powers conferred on the Tribunal by the Act for the conduct of mediation.

Because of the unusual features of native title mediation, the *Guide* is not and could not be rigidly prescriptive. It is not intended to have any legally binding status. Each Tribunal member who is mediating a native title application has broad discretionary powers under the Act, and will develop an appropriate mediation strategy on a case-by-case basis.

The first edition of the *Guide* was prepared for the use of Tribunal members and employees—it has not been published externally. A limited number of copies were printed so that the Tribunal could 'road test' the *Guide* in its mediation practice, prepare a curriculum for training Tribunal members and employees in the particular features of native title mediation, and revise the *Guide* for our internal use and possible external distribution in light of that experience and training.

Although most members and case managers had undertaken external training in mediation (such as LEADR, Trillium) at least at an introductory level, many had commented that there were no courses focusing specifically on native title mediation and its unique characteristics.

The Agreement-Making Strategy Group developed a curriculum for a course to provide tailored training for members and employees who are engaged in native title mediation. Suitably qualified people (ADR Plus) were engaged to deliver the training. The course covers a range of topics including the phases of mediation, cross cultural issues, negotiation and strategic thinking, skills for agreement-making, power and ethics and other critical issues in Tribunal agreement-making.

The week long course was delivered twice in the reporting period: in Perth from 29 March to 2 April and in Brisbane from 31 May to 4 June 2004. A third course is planned for late 2004. By the time the third course is delivered, most Tribunal members and employees directly or indirectly involved in mediation practice will have received the training.

The first edition of the *Guide* will be revised in light of experience and the advanced training courses. Members and employees are providing specific feedback on the form and content of the *Guide* so that a second edition can be prepared.

The Agreement-Making Strategy Group has also initiated other projects associated with the agreement-making practice of the Tribunal.

National Future Act Liaison Group

The National Future Act Liaison Group was established in November 2000 to identify and address 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 bi-monthly and played a key role as the executive forum 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.

During the reporting period, the group oversaw the establishment of future act processes in the Queensland Registry and the implementation of heritage protection arrangements in Western Australia. Other activities included having all future act determinations from 1994 onwards published on the Austlii website, giving greater access by the public and legal representatives, and developing and implementing operating procedures and practice directions.

ILUA Strategy Group

The Indigenous Land Use Agreement Strategy Group was established in November 2000 to facilitate the integration and management of ILUA activity across the Tribunal. It is chaired by the ILUA Member Coordinator Ruth Wade, and comprises the Registrar, 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.

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.

Research Strategy Group

In acknowledging the important research role the Tribunal has in supporting native title agreement-making strategies, the Research Reference Group was re-formed as the Research Strategy Group in August 2003. The group is chaired by Member Professor Doug Williamson, and comprises five members, the three divisional directors, representatives of the Principal, state and territory registries, plus the managers of the Research Unit, Legal Services and Library.

The Research Strategy Group met four times in the reporting period. It is responsible for developing and overseeing national policies and priorities for the Tribunal's research activities, monitoring operational research performance, monitoring the need for shifts in work emphasis, and coordinating all research projects.

The Research Strategy Group also develops policies and strategies for research undertaken by, or for, the Tribunal in conjunction with other organisations involved in native title issues.

Information and Knowledge Management Strategy Group

The establishment of the Information and Knowledge Management (IKM) division was accompanied by the creation of an Information and Knowledge Management Strategy Group to develop policies and strategies relating to the information and knowledge management needs and direction of the Tribunal.

The IKM Strategy Group comprises the Registrar and divisional directors. Following the appointment of the Chief Information Officer, the IKM Strategy Group will provide guidance for the development of the new division.

TRIBUNAL EXECUTIVE

Role and responsibilities

The executive of the Tribunal's administration comprises the President, Registrar and directors of the three divisions: Service Delivery, Corporate Services and Public Affairs and Information and Knowledge Management (see Figure 2, p. 33). A description of the qualifications and background of the Tribunal executive is available on the Tribunal's website.

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 of the various types of applications and managed the three statutory registers (for more information, see 'Output Group 1.1 — Registrations', p. 43 and 'Output 1.4.2 — Notification', p. 85).

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

The Tribunal's newly-appointed Chief Information Officer Michael Cook.

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 comprising the Registrar, divisional heads and Chief Financial Officer reviews the assessment of internal audit control measures. The committee obtains information from employees of the Tribunal and internal auditors as needed and discusses 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 the division to coordinate the implementation of cross-organisational projects and services, and communication strategies.

Pending the appointment of the Chief Information Officer, managers within the Information and Knowledge Management division met regularly to develop the structure, staffing and role of the new division, and to establish governance, accountability and resources necessary for the effective delivery of information and communications services.

Senior managers meet twice a year in the Principal Registry in Perth, and every eight weeks by videoconference, for training, development and planning activities. This is an extremely useful forum for cross-divisional communication and gives managers the opportunity to focus on planning and implementation issues.

SES remuneration

Senior executive service (SES) employees are employed under Australian Workplace Agreements (AWAs). The SES Band 1 salaries are set by the Registrar. (See 'Certified Agreement and AWAs', p. 103).

CORPORATE PLANNING

During the reporting period, the *Strategic Plan 2003–2005* (developed and published in the 2002–03 period) was implemented.

As outlined in the previous annual report, the strategic plan sets out four key success areas:
1. Taking a leadership role on native title issues
2. Providing excellence in native title services
3. Enhancing our organisational capability to anticipate and respond to change, and
4. Ongoing improvement in our performance.

As part of the implementation, section and registry operational plans were developed to take into consideration issues in the external and internal operating environments, external client and stakeholder feedback and the future direction of the Tribunal.

Strategic Information Management Plan

A direct outcome of the *Strategic Plan 2003–2005* was the presentation of the final report of the Strategic Information Management Plan (SIMP) to the President and Registrar in December 2003. The report set out a plan for reviewing, assessing and enhancing the information and knowledge management capacity of the Tribunal across a wide range of needs relating to networks, applications and databases. A critical component of the report is a description of the future operating environment of the Tribunal, focusing on information and communications activities.

As a result of the SIMP report, a coordinated program of 27 projects and sub-projects have been identified and will be progressively planned, researched and undertaken during 2004–05 and 2005–06. These projects cover network and information technology infrastructure, new or enhanced applications and software tools, and methodologies for improved governance in the information and knowledge management area.

The outcomes and benefits of these projects are that the Tribunal will meet its information and knowledge management objectives and provide improved client services across a broad range of activities.

MANAGEMENT OF HUMAN RESOURCES

Some of the main people management activities during the reporting period were:

- development and implementation of the Tribunal's third certified agreement (2003–2006);
- implementation of CHRIS 21, a new human resource management information system;
- development and delivery of a training workshop on agreement-making practice;
- enhancement of the Tribunal's online performance management program; and
- continued development of the Tribunal's formal workforce planning framework.

Learning and development

A new training workshop on the Tribunal's agreement-making practice was developed and implemented. Two five-day courses were conducted—one in Perth and the other in Brisbane — and most Tribunal members and employees directly involved in mediation and related agreement-making practice have participated in the training. A third course is planned for the next reporting period (see 'Agreement-Making Strategy Group', p. 92).

Other learning and development activities continued in three key areas.

Corporate compliance, including:

- targeted occupational health and safety training for those travelling in the field, especially in remote locations (for example remote first aid and four-wheel drive training);
- dealing with diversity issues in the workplace and in the field (for example indigenous cultural awareness);
- a comprehensive induction strategy, including flexible training materials and comprehensive checklists and a buddy system for new starters; and
- selection and recruitment practices for selection panels.

Skills development, including:

- case management training (for example agreement-making, mediation, registration testing and ILUAs); and
- media skills for senior and regional managers.

Professional and career development, including:

- participation in seminars and conferences relating to native title issues (as participants or presenters), for example the AIATSIS Native Title Conference held in Adelaide in June 2004 and the Mawul Rom Project (cross-cultural mediation training workshop) held in Arnhem Land also in June 2004.

Workforce planning

The workforce planning framework is used to consider what the current and future workforce requirements of the Tribunal will be, taking into account internal and external factors. In the reporting period this has included, or is affected by:

- participating in and informing the Australian Government's 2004 review of resourcing for the native title system;
- realising productivity improvements consistent with the *Certified Agreement 2003–2006;*
- managing information and business processes to support operational activities;
- delivering corporate services in regions through the implementation of financial management and human resource management information systems; and
- ensuring that the organisational structures required to support agreement-making processes are in place.

Effective implementation of the Tribunal's agreement-making processes includes considering related issues such as: current and future workloads and environmental impacts; specialist roles; professional and technical assistance and support; role of members and staff in the context of the agreement-making process; and relationships to other functions such as registration and arbitration

A major component of workforce planning is to link the expenditure on employees to business outcomes. Total expenditure on the salaries of the members, Registrar and employees for 2003–04 was $19,202,188 compared with $17,770,189 for the previous reporting period—an increase of 10.85 per cent.

At 30 June 2004, the Tribunal had 15 Holders of Public Office (President, Registrar and members) and 292 people employed under the *Public Service Act 1999* (Cwlth) (PSA), an overall increase of 11 from the end of the previous reporting period. Of the 292 PSA employees, 284 were covered by the Tribunal's *Certified Agreement 2003–2006* and eight were on Australian Workplace Agreements (see 'Certified Agreement and AWAs', p. 103).

During the reporting period 29 PSA employees resigned. This represented 10 per cent of the workforce (calculated on staff numbers at 30 June 2003). In the previous reporting period 17 PSA employees had resigned, which represented 9.85 per cent of the workforce (calculated on staff numbers at 30 June 2002).

Minister John Kobelke with Edward Brown and his granddaughter Tianna at NAIDOC celebrations in Perth, July 2003 where Mr Brown was presented with a public sector award in recognition of his work on native title during his career in the public service.

Of the 292 people employed under the PSA, 199 were female and 93 were male, 256 were full-time and 36 part-time, 246 were ongoing staff and 46 non-ongoing (for more information, see 'Appendix I Staffing', p. 118). Thirty-seven people identified themselves as being either Aboriginal or Torres Strait Islander, six people identified themselves as having a disability, and 13 people as coming from a linguistically diverse background.

Indigenous employees

In the State of Service report issued in November 2003, the Public Service Commissioner advised that, at 30 June 2003, the average number of ongoing Indigenous employees in Australian Public Service agencies was 2.4 per cent. In the same reporting period, Indigenous employees made up 12.9 per cent of the Tribunal's national ongoing workforce. Of the 75 agencies providing statistical information, the Tribunal ranked fifth in number of Indigenous employees behind AIATSIS, Aboriginal and Torres Strait Islander Services, Torres Strait Regional Authority and Aboriginal Hostels Limited. At 30 June 2004, the Tribunal's percentage of Indigenous employees was 13.8 per cent of ongoing employees, an increase of 0.9 per cent from the previous reporting period.

Indigenous study awards, traineeships and cadetships

The Tribunal had two successful graduates under the Indigenous Employee Undergraduate Study Award during the reporting period. The undergraduate award gives Indigenous employees the opportunity to study full-time at Australian universities or other tertiary institutions in an area relevant to a career in the Tribunal or the APS. Two awards are offered each year for a period of twelve months.

Of the two Indigenous cadets recruited in 2002, one has successfully completed her studies in 2003, and is now employed on a full-time basis with the Tribunal. The remaining cadet is expected to complete her studies in June 2005.

During the reporting period, the Indigenous Traineeship guidelines were developed and are now in place. A recruitment exercise commenced in June 2004 and the Tribunal expects to employ two Indigenous trainees in 2004–05.

Indigenous Advisory Group

As reaffirmed in the *Certified Agreement 2003–2006*, the Tribunal is committed to the maintenance and continued development of an Indigenous Advisory Group (IAG).

The IAG elects a steering committee each financial year to represent Indigenous employees in a range of forums and to progress matters identified by the broader group. The steering committee meets with the Tribunal Registrar every two months and reports back to the full IAG after each meeting.

Each committee member has a portfolio, however, all Indigenous employees contribute to IAG activities and may be delegated to represent the IAG.

Registry and section managers are required to consider strategies and programs relevant to recruitment, retention and development of Indigenous employees in their operational plans. The role of Indigenous staff in mediation, agreement-making and assistance within service delivery is currently under review.

Occupational health and safety performance

The Tribunal's occupational health and safety policy and agreement has been in place since 30 April 1996. Occupational health and safety remained a standing agenda item for the Tribunal's consultative forum during the period and reports were provided every six weeks.

During the reporting period, there were no accidents that were notifiable under s. 68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (Cwlth). Specially commissioned tests were conducted in the Tribunal's Queensland Registry (Brisbane) for airborne contaminants and testing of microwave ovens for radiation leaks. 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, the focus remained on safety while working in remote areas with an emphasis on conducting medical assessments to confirm fitness of those employees required to travel in the field. Training in four-wheel driving, bush survival skills and remote first aid continued to be provided to employees and members who undertake field travel for the Tribunal.

The Tribunal continued its program of employment medical examinations for all ongoing employees. The program includes provision of 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 people with disabilities.

CERTIFIED AGREEMENT AND AWAs

Certified Agreement 2003–2006

The Tribunal's *Certified Agreement 2003–2006* was overwhelmingly approved by the vote of employees and certified by the Australian Industrial Relations Commission on 23 December 2003. This is the third certified agreement for the Tribunal.

Features of the new agreement include:

- commitment to the development of a substantive consultation framework;
- introduction of a reward and recognition program;
- streamlined under-performance management procedures;
- development of an energy management system in line with government policy;
- improved process for assigning duties of a temporary nature;
- provision of healthy lifestyle assistance;
- provision of an allowance in lieu of excess hours for certain groups of employees;
- extension of ordinary spread of hours;
- introduction of controls for management of personal (sick and carer's) leave and commitment to the development of an absence management program;
- an additional twelve weeks of paid maternity leave;
- access to an additional one week of paid parental leave through personal leave provisions;
- provision of career interval leave without pay;
- streamlined remote localities allowances;
- introduction of occupational health and safety allowances; and
- introduction of a community language allowance.

Salary increases are payable from the Tribunal's budget under the annual appropriations and are based on achieving productivity improvements. The Tribunal will be implementing a number of initiatives over the life of the agreement as part of organisational improvements such as:

- improving the process and structures to implement the Agreement-Making Strategy Group's outcomes (see 'Agreement-Making Strategy Group', p. 92);
- implementing the new divisional structure to include Information Knowledge Management and achieving the outcomes of the Strategic Information Management Plan;
- introducing a new document management system;
- implementing performance reporting, operational planning, risk management and workforce planning;
- reviewing levels of unscheduled absence and developing and implementing an absence management strategy;
- improving internal communication culture and use of information and communications technology, including email use and audits and maintenance of disc space; and
- reducing the use of energy and consumables.

Australian Workplace Agreements

Eight employees of the Tribunal are currently working within an Australian Workplace Agreement. Three of these employees are SES and the remaining five are non-SES. Of the five non-SES, four are Executive Level 2 or equivalent and one is Executive Level 1 or equivalent.

RISK MANAGEMENT

The Tribunal has continued to progress the implementation of a risk management regime within its practices and procedures.

The Tribunal's *Strategic Plan 2003–2005* will form the basis of a risk and business continuity review planned for the next reporting period. This will include an updated environmental scan to help identify current risks.

Several initiatives from the Tribunal's Protective Security Treatment Plan developed in the previous reporting period have been implemented. This includes improved reception facilities and building access procedures.

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.

To ensure the continuing security and integrity of the registers and associated data, the Tribunal conducted a review of current practices and procedures as they relate to backup and recoverability and business continuity planning. The review was carried out in accordance with the Australian Communications–Electronic Security Instruction 33 (ACSI 33) issued by Defence Signals Directorate. Recommendations from the review will be progressively implemented during 2004–05.

ACCOUNTABILITY


MURA
ART
STUDIO

ETHICAL STANDARDS AND ACCOUNTABILITY

Code of conduct

Information on ethical standards continues to be provided to employees through a comprehensive induction program, the provision of ongoing information sessions and a range of supporting guidelines available on the Tribunal's intranet.

The induction program summarises employees' responsibilities as public servants and includes references to ethical guidelines such as whistleblowing 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.

Specific expectations on levels of accountability and compliance with the ethical standards are detailed through examples of performance indicators in the Tribunal's Capability Framework and measured through the performance management program.

During the reporting period, two outstanding complaints of alleged breaches of the APS Code of Conduct against the same employee for the same incident were finalised. It was determined that the employee had breached the Code of Conduct and appropriate sanctions were applied.

Members of the Tribunal continue to be subject to various statutory provisions relating to behaviour and capacity. As Tribunal members are not members of the APS, 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, procedures for dealing with alleged breaches of the members' voluntary code of conduct, and an extended conflict of interest policy. One complaint was made under the voluntary code of conduct.

EXTERNAL SCRUTINY

Judicial decisions

There were no High Court decisions made on native title during the reporting period but there were several Federal Court decisions including one reviewing the Registrar's decision to register a native title application.

Significant decisions are summarised in 'Appendix II', p. 120. The effect of some decisions on the Tribunal's operations is discussed in the President's overview, p. 4.

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. In September 2001, the PJC announced the commencement of the Inquiry into the Effectiveness of the National Native Title Tribunal. The findings and recommendations of the PJC were tabled on 4 December 2003 in the Federal Parliament. The report can be viewed online at www.aph.gov.au/senate/committee/ntlf_ctte/nat_nattitle_trib/report/index.htm .

The PJC decided that a reasonable assessment of the Tribunal's effectiveness would consider whether the Tribunal is discharging its statutory duties and if it is doing so in accordance with the objectives set out in s. 109 of the Act.

The report considered various aspects of the Tribunal's work, including a range of functions performed by the Registrar and his delegates. The PJC looked, in particular, at:

- registration testing, notification and mediation of native title applications (including whether the Tribunal is impartial, what mediation strategies are applied, whether just outcomes are reached and the range of assistance provided by the Tribunal to parties);
- whether the Tribunal is over-funded and over-resourced, whether native title representative bodies are under-resourced, and the levels of funding available to respondent parties and non-native title claimants; and
- whether the Tribunal is prompt and legalistic or informal in relation to geospatial requirements, statutory deadlines and future act work.

Although the inquiry related to the effectiveness of the Tribunal, the PJC took the view that, as the duties of the Tribunal are prescribed by the Act, there was an opportunity to consult on the operation of the Act as it relates to the work of the Tribunal. Consequently, the PJC made a number of recommendations that do not directly affect the Tribunal but affect other stakeholders (such as native title representative bodies).

The PJC made nine recommendations, of which two relate to the Registrar and four to the Tribunal generally. The PJC recommended that:

- the Registrar or his delegate, in the written reasons for decisions taken in the registration tests include for unsuccessful applications, a brief plain English explanation as to the decision-making process for the application;
- the Registrar, in consultation with the native title representative bodies, should give consideration to notifying the native title parties of outcomes from the Tribunal;
- the Tribunal continue to explore partnerships to develop programs aimed at capacity-building within organisations involved in the native title process;
- within the next 12 months and on both a national, state and territory basis, the Tribunal should develop a broad framework for setting priorities that includes consultation with each of the 'stakeholders';
- the Tribunal should, within the time limits set by the Act, seek to reduce the time lines associated with the registration of ILUAs;
- the Tribunal amend the guidelines on acceptance of expedited procedure objection applications to include a provision that a registered native title party wishing to lodge an objection may discuss, within the time limits set by the Act, issues related to compliance with the appropriate Tribunal member.

The PJC's report 'Examination of Annual Reports for 2002–2003' was tabled in Parliament in June 2004, and is available online at www.aph.gov.au/senate/committee/ntlf_ctte/annual02-03/report.pdf .

Freedom of information

During the reporting period, three 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 (see 'Appendix IV Freedom of information', p. 137).

Other scrutiny

The Human Rights and Equal Opportunity Commission tabled the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Native Title Report 2003* on native title in March 2004. None of the recommendations were directly actionable by the Tribunal.

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

Communication survey

The Tribunal conducted an evaluation of its external communication during the reporting period, in line with its *Strategic Plan 2003–2005*. The results found that stakeholder satisfaction with the communication practices of the Tribunal varied according to the length of time they had been in the native title process and how much communication they received in the early part of the process.

More than 100 people from the Tribunal's primary stakeholder groups took part in the evaluation through telephone or direct interviews. The outcome of the research has led to the development of a national stakeholder communication plan which will be implemented in the next reporting period.

Client satisfaction

The Tribunal has a policy to formally measure client satisfaction with its services every second year: the next survey will be done in 2004–05.

In 2002–03 almost two thirds, or 65 per cent, of the 139 clients interviewed were satisfied with the services of the Tribunal. Of these, 48 per cent were satisfied and 17 per cent were extremely satisfied. Sixteen percent were dissatisfied, with 19 per cent of clients being neither satisfied nor dissatisfied.

Regular feedback was qualitatively sought from clients during the reporting year as part of the Tribunal's quarterly performance reporting. This information was used to make changes in practice or business processes as required.

Client Service Charter

A review of the Tribunal's Client 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. There were no complaints received during the reporting period.

Social justice and equity in service delivery

The Tribunal's single outcome is the recognition and protection of rights of a significant section of the Australian community. This must be done without impairing the rights of others. Thus the work of the agency impacts significantly on matters of social justice. According to the *Strategic Plan 2003–2005* the Tribunal, in carrying out its functions, seeks to:

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

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

- agreement-making 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', p. 85);
- the fair and transparent operation of the statutory functions it is required to perform under the Act, such as registrations and arbitration; and
- the allocation of almost a quarter of the Tribunal's budget to the assistance of parties, including building the capacity of people and organisations to participate in native title processes.

The Australian Government is mindful of the social justice implications of the work of the Tribunal. The Tribunal is continuously scrutinised by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (PJC) (see 'External scrutiny', p. 109).

Additionally, s. 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 and may deal directly with aspects of the Tribunal's work (see 'President's Overview', p. 2).

Online services

The Tribunal tested its online services with stakeholders during the year (see 'Communication survey', p. 111). Stakeholders had a high level of satisfaction with the Tribunal's website but provided several areas of potential improvement. This led to a review of the Tribunal's website and a program of enhancements, which was still under way at the end of the reporting period.

These incorporate changes to useability, accessibility and content. The site was tested and found to meet Australian Government online standards.

The Tribunal's intranet is regularly reviewed by users and improved to accommodate their needs wherever possible. It will be formally reviewed in 2004–05.

The Tribunal began the introduction of new electronic document and records management systems (EDRMS) during the year. The EDRMS will improve the management, storage and archiving of paper files and electronic documents. The new systems have allowed the Tribunal to standardise records management practices in line with government and National Archives requirements.

A pilot program with EDRMS was undertaken in the Tribunal's New South Wales Registry during April 2004 and other registries will be given access to the system during the first half of 2004–05.

PERFORMANCE AGAINST PURCHASING POLICIES

Procurement

The *Financial Management and Accountability Act 1997* (Cwlth) expenditure delegations were amended to require any guarantees, warranties, indemnities and letters of comfort in proposed expenditure to be referred to the Chief Financial Officer.

During the reporting period, development of a procurement guide for senior managers and staff began. The guide will give an outline of all procurement methods, including how to go about procuring specific office machines, vehicle hire and the use of the endorsed supplier arrangements. The completion of the guide was delayed due to changes in business practices associated with the development of a new financial management information system (see below).

Information technology outsourcing

During the reporting period, the Tribunal has opted for a one-year extension on its current outsourcing contract for LAN/WAN administration and database administration support.

Human resource and finance information systems

For the last six months of the reporting period, staff within the Tribunal worked intensively towards the 1 July 2004 implementation of the Tribunal's mainframe human resource and finance information systems. The new systems are CHRIS 21 (for human resource management) and Finance One (for financial management). The introduction of the new systems is one of the major developments from the Strategic Information Management Plan (SIMP) (see 'Strategic Information Management Plan', p. 98). Both systems will integrate with other systems being introduced as part of the SIMP program and will help the Tribunal achieve a one-stop-shop for its work.

Consultancies

Consultancies and competitive tendering and contracting

The Tribunal did not contract out any other government activities during the reporting period.

Consultancies

The Act provides for consultancies in two circumstances: s. 131A specifies that the President may engage consultants for any assistance or mediation activity specified in the Act; s. 132 provides that the Registrar may engage consultants with suitable qualifications to undertake administrative and research activities. The full list of consultancies is supplied in 'Appendix III Consultants', p. 135.

Actual expenditure on consultancies for the reporting period was $1,132,460 which was made up of the following:

Information technology	$ 535,226
Mediation (s. 131A of the Act)	$ 12,304
Corporate Services and Public Affairs	$ 304,134
Service Delivery	$ 280,796
Total	$ 1,132,460

There was a 37 per cent reduction in overall expenditure associated with the engagement of consultants compared to the previous reporting period. An increase in Corporate Services and Public Affairs expenditure was due to the implementation of the human resource and finance information systems. The expenditure for Service Delivery mainly related to assistance initiatives. A reduction in information technology expenditure was due to the expiration of the information technology outsourcing contract in the previous reporting period.

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 website. This list identifies whether these contracts contain confidentiality clauses in line with the Senate Order directions.

Asset management

The annual stocktake of the Tribunal's financial assets was carried out in June 2004. Information on all financial assets has been transferred to the asset module in the new finance system, Finance One.

ENVIRONMENTAL PERFORMANCE

The Tribunal maintains an environmental management system in accordance with the requirements of Environment Australia. A review of all offices was carried out in 2003 using an Environment Australia checklist, and administrative staff were advised of ways that they could be proactive in regard to environmental issues. Where practical, Tribunal offices have implemented improved workplace practices.

Environmental management was incorporated into the new *Certified Agreement 2003–2006* to promote environmentally sound decision-making within the Tribunal. This includes consultation and participation by all offices.

Energy management

Measures have been introduced over the past four years to reduce energy consumption; however, the age of some buildings (and the size of tenancy as a minor tenant) restricts any further significant cost-effective reductions. The Tribunal continued to be proactive in investigating energy saving programs that might be both environmentally and economically viable, including the installation of flat screen computer monitors. During the reporting period the Tribunal continued an energy audit of a large tenancy within a particular building to identify potential savings in energy consumption operating costs.

An expansion of the Tribunal's accommodation space in 2001–02 resulted in a slight increase in energy usage for 2002–03. The subsequent implementation of energy saving initiatives has resulted in a slight decrease in most offices for the current reporting period.

APPENDICES


Brisbane
Bitter

APPENDIX I STAFFING

Employees

Table 13 Employees by classification, location and gender at 30 June 2004

Classification	Location															
	Male								Female							
Registry	Principal	WA	NSW	Qld	Vic.	SA	NT	Total	Principal	WA	NSW	Qld	Vic.	SA	NT	Total
Cadet	-	-	-	-	-	-	-	-		1	-	-	-	-	-	1
APS level 1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
APS level 2	1	3	2	1	1	-	-	8	11	8	1	15	3	1	1	40
APS level 3	2	1	-	1	-	-	-	4	13	7	1	2	-	-	1	24
APS level 4	5	1	-	3	1	-	1	11	9	8	5	11	3	3	1	40
APS level 5	7	-	-	-	-	-	-	7	9	-	-	1	-	-	-	10
APS level 6	11	4	4	7	2	1	-	29	12	14	7	8	1	1	3	46
Legal 1	1	-	-	1	-	-	-	2	5	-	-	1	-	-	-	6
Legal 2	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-
Media 1	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Media 2	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	2
Library 1	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	1
Library 2	-	-	-	-	-	-	-	-	1	-	1	2	-	-	-	4
Executive level 1	7	2	1	4		1	-	15	8	7	-	4	-	-	-	19
Executive level 2	7	3	1	1	1	-	1	14	3	-	-	-	-	1	-	4
Senior executive	2		-		-	-	-	2	1	-	-	-	-	-	-	1
Total employees	**44**	**14**	**8**	**18**	**5**	**2**	**2**	**93**	**75**	**45**	**16**	**44**	**7**	**6**	**6**	**199**

Performance pay

The Tribunal does not have a performance-based pay program in place and no performance-based pay was approved during the reporting period.

Members

Table 14 Tribunal members at 30 June 2004

Name	Title	Appointed	Term	Location
Mr Graeme Neate	President	1 Mar 1999*	5 years	Brisbane
		1 Mar 2004	Reappointed for 3 years	
The Hon. Frederick (Fred) Chaney AO	Full-time Deputy President	18 Apr 2000*	3 years	Perth
		18 Apr 2003	Reappointed for 4 years	
The Hon. Christopher Sumner AM	Full-time Deputy President	18 Apr 2000*	3 years	Adelaide
		18 Apr 2003	Reappointed for 4 years	
The Hon. Edward M (Terry) Franklyn QC	Part-time Deputy President	17 Dec 1998	3 years	Perth
		17 Dec 2001	Reappointed for 3 years	
Mr John Sosso	Full-time member	28 Feb 2000	3 years	Brisbane
		28 Feb 2003	Reappointed for 4 years	
Mr Graham Fletcher	Full-time member	20 Mar 2000	3 years	Cairns
		20 Mar 2003	Reappointed for 4 years	
Mr Alistair (Bardy) McFarlane	Full-time member	20 Mar 2000	3 years	Adelaide
		20 Mar 2003	Reappointed for 4 years	
Mr Daniel (Dan) O'Dea	Full-time member	9 Dec 2002	3 years	Perth
Mr Neville MacPherson	Full-time member	1 Sep 2003	3 years	Melbourne
Mr John Catlin	Full-time member	6 Oct 2003	3 years	Perth
Dr Gaye Sculthorpe	Full-time member	2 Feb 2000	3 years (part-time)	Melbourne
		2 Feb 2003	Reappointed for 3 years (part-time)	
		2 Feb 2004	Reappointed for 4 years as full-time	
Prof. Douglas Williamson QC	Part-time member	4 Dec 1996	5 years	Melbourne
		17 Dec 2001	Reappointed for 3 years	
Mrs Ruth Wade	Part-time member	2 Feb 2000	3 years	Perth
		2 Feb 2003	Reappointed for 3 years	
Prof Laurence Boulle	Part-time member	1 Mar 2003	3 years	Brisbane

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

APPENDIX II SIGNIFICANT DECISIONS

The Federal Court delivered approximately 50 written judgments on matters involving native title law during the year. They dealt with matters arising before, during and after the mediation or trial process in relation to native title applications. For example, the court ruled on:

- whether a native title representative body had properly refused financial assistance to a claimant group;
- whether a particular claimant application should be registered;
- the grounds on which various claimant applications should or should not be struck out;
- whether amendments to claimant applications (e.g. to change the named applicant) could be made;
- whether claimant applications should be combined;
- how mediation programs should be developed;
- how clusters of claimant applications in a region would be case managed;
- whether particular individuals or bodies could be a party to claimant application proceedings; and
- whether mediation should cease or trial dates should be vacated.

Where matters went to trial, individual judges and a Full Court of the Federal Court dealt with the many issues that must be addressed in determining whether native title has been shown to exist on onshore and offshore areas and the composition of the relevant community or group of native title holders. The court provided detailed guidance about the preparation of experts' reports for the purpose of native title litigation, the admissibility of some evidence, the way in which the rules of evidence apply in relation to expert evidence, the basis for imposing restrictions on access to certain gender restricted evidence, and the weight to be given to (or inferences to be drawn from) some evidence. The court also ruled on whether various types of dealings in relation to land had extinguished native title (and, if so, to what extent), and whether in some circumstances any extinguishment could be ignored. In a major case where the parties had agreed on most aspects of a consent determination of native title, a Full Federal Court ruled on the outstanding issues between the parties and delivered a comprehensive determination.

Judgments were also delivered on whether particular bodies corporate complied with the legal requirements to be prescribed bodies corporate to hold native title, whether a particular ILUA satisfied the legal requirements for registration, and in what circumstances the court would or would not make orders for costs in native title proceedings.

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

General developments in native title law

High Court decisions

There were no decisions of the High Court in relation to native title for the reporting period.

Federal Court decisions

There have been several contested native title determinations or proposed determinations during the reporting period. They are of significance because they illustrate interpretation and application of the principles laid down by the High Court particularly in *Western Australia v Ward* (2002) 213 CLR 1, *Commonwealth of Australia v Yarmirr* (2001–2002) 208 CLR 1 and *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 194 ALR 538.

Proposed native title determinations

Daniel v Western Australia [2003] FCA 666

This decision of Justice RD Nicholson provides the basis for a proposed determination of native title under s. 225 of the *Native Title Act 1993* (Cwlth) (the Act) in relation to claimant applications brought on behalf of a composite claim group, namely the Ngarluma and Yindjibarndi people.

The decision also deals with the Yaburara Mardudhunera and the Wong-Goo-TT-OO claimant applications to the extent that they overlap the area covered by the Ngarluma and Yindjibarndi people's application. Both the Bunjima Niapaili Innawonga and the Kariyarra claimants were joined as respondents but did not take an active role in the proceedings. The claim related to areas of the western Pilbara in Western Australia and adjacent offshore areas.

Key elements of the determination included:

- the starting point for a determination of native title is s. 225 which (in turn) leads to the definition of native title in s. 223 of the Act;
- some rights and interests in relation to the Ngarluma and Yindjibarndi were held to exist as a matter of fact (subject to extinguishment) over almost the entire area covered by the application. Others were severely limited to areas where they are exercised today. No rights were held to exist over the Burrup Peninsula and the islands and offshore waters;
- no exclusive native title rights were found to exist;
- the Yaburara and Mardudhunera had shown no relevant connection with any society present in the area at the time of sovereignty;
- the Wong-Goo-TT-OO's argument that they had native title to the Burrup Peninsula by virtue of a process of succession was rejected;

- if the claimants are a 'group', it is not necessary to find whether they are a 'community' in the sense of a 'composite community'. What is required of the court is to identify what native title rights and interests exist, and where they are held, and that is the means by which the locus of the rights in a society, community or group is identified;
- following *Western Australia v Ward*, native title rights on pastoral leases were not subject to the reservation in favour of Aboriginal people to be found in most Western Australian pastoral leases. Thus any issues relating to unenclosed and unimproved parts of the leaseholds did not arise. Nevertheless, the grant of a pastoral lease was held to extinguish the native title right to control access to, or the use of, the land;
- all vested reserves considered in this case completely extinguished native title upon vesting;
- some, but not all, non-exclusive native title rights and interests were extinguished over various mining leases.

The parties were given a limited opportunity to make submissions in relation to the preliminary views expressed by his Honour on inconsistency between extinguishing interests and the non-exclusive native title rights and interests found to exist as a matter of fact. Supplementary reasons refining certain decisions on extinguishment were handed down in *Daniel v Western Australia* [2003] FCA 1425.

At the end of the reporting period, the determination in relation to this case had yet to be settled.

Neowarra v Western Australia [2003] FCA 1402

This decision relates to three claimant applications of the Wanjina–Wunggurr community living in the Kimberley region of Western Australia.

His Honour Justice Sundberg found 'a right to possession, occupation, use and enjoyment of the claim area as against the whole world' to exist in the claim area, subject to extinguishment.

In considering matters of extinguishment:

- it was held necessary to 'unbundle' the exclusive right of possession, occupation and use into its component parts and then consider whether these are rights 'in relation to land and waters';
- these rights must be then compared with the non-native title rights in the application area, e.g. pastoral leases, various mining leases and non-vested reserves were found to extinguish 'a right to possession, occupation, use and enjoyment of the claim area as against the whole world';
- following the High Court in *Western Australia v Ward*, vested reserves and special leases were found to extinguish native title;

- insufficient evidence of occupation was presented to warrant the disregarding of prior extinguishment on certain reserves as required under s. 47A; and
- there was sufficient evidence of occupation over certain areas of Crown land to be able to disregard prior extinguishment as required under s. 47B.

One aspect to note was his Honour's determination that native title rights on pastoral leases were still to be subject to the reservation in favour of Aboriginal people to be found in most Western Australian pastoral leases. Thus, in relation to leases granted after 1934, the applicants may enter the land but seek sustenance 'in their accustomed manner way only from unenclosed and unimproved parts of the land'. This is a different approach from that adopted by RD Nicholson J in *Daniel v Western Australia* noted above.

His Honour did not provide a draft determination in his reasons for decision and at the end of the reporting period the matter was yet to be settled.

Determinations of native title

The Lardil Peoples v Queensland [2004] FCA 298

This case is of significance because it is only the second contested determination solely in relation to native title over offshore areas.

This decision relates to a claimant application brought by the Lardil, Kaiadilt, Yangkaal and Gangalidda Peoples seeking a determination of native title in respect of the land and waters below the high water mark in an area of sea adjacent to the Wellesley Islands and adjacent to the coast of Queensland between Massacre Inlet and the Leichhardt River, in the Gulf of Carpentaria.

Following the High Court decisions in *Western Australia v Ward* and *Yorta Yorta*, the applicants claimed the non-exclusive right to occupy, use and enjoy the waters and land.

The key findings of his Honour Justice Cooper included:

- the applicants established the requisite continuity of occupation and maintenance of a normative system of traditional laws and customs by which persons are allocated to a country and rights are allocated to those persons in respect of that country;
- the sea claim did not translate into identifiable rights and interests in relation to the area beyond that within which the claimant groups habitually hunted, fished and foraged. Specifically, it did not translate into a right to control access to the outer areas;
- control of access to the land and waters of the inter-tidal zone and the territorial seas with the right of exclusion will not be recognised by the common law following the High Court decisions in *Commonwealth v Yarmirr* and *Western Australia v Ward*; and

- native title rights and interests in the seas were found 'as far as the eye can see'. This area extended to the horizon and included the observable deep waters and any island or reef which could be seen between the land and the horizon, which could be defined using hydrographic data as five nautical miles from the coast.

Native title was determined to exist in part of the determination area only:

- some native title rights and interests were recognised over reefs and sand bars within five nautical miles of the high water mark of the inhabited islands and mainland coastline, and one-half of a nautical mile of the high water mark of the uninhabited islands lying outside of five nautical miles from the inhabited islands or mainland coast;
- the Gangalidda people were found to have the right to access a tidal river, in accordance with traditional law and custom, for hunting, fishing and gathering for personal, domestic and non-commercial consumption; and religious and spiritual purposes;
- certain shared rights were found between the Yangkaal, Gangalidda and Kaiadilt peoples;
- among other things, the native title rights and interests are subject to regulation, control, curtailment or restriction by valid laws of the Commonwealth and the State of Queensland; and
- native title rights and interests must yield to other rights and interests to the extent of any inconsistency.

In general, the native title rights and interests recognised over the claim area were:

- the right to access the land and waters seaward of the high water line in accordance with and for the purposes allowed by and under their traditional laws and customs;
- the right to fish, hunt and gather living and plant resources, including the right to hunt and take turtle and dugong, in the inter-tidal zone and the waters above and adjacent thereto for personal, domestic or non-commercial communal consumption in accordance with and for the purposes allowed by and under their traditional laws and customs;
- the right to take and consume fresh drinking water from fresh water springs in the inter-tidal zone in accordance with and for the purposes allowed by and under their traditional laws and customs; and
- the right to access the land and waters seaward of the high water line in accordance with, and for the purposes allowed under, their traditional laws and customs for religious or spiritual purposes, and to access sites of spiritual or religious significance in the land and waters within their respective traditional territory for the purposes of ritual or ceremony.

Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory [2004] FCA 472

This was a determination of native title in relation to an area of land and waters south-east of Tennant Creek in the Northern Territory. The application was brought on behalf of the Alyawarr, Kaytetye, Warumungu, Wakay native title group who were also expressed as members of seven landholding groups or estates.

His Honour Justice Mansfield concluded that the applicants had established through their evidence that they continued to enjoy rights to possess, occupy, use and enjoy the area according to their traditional laws and customs. His Honour considered certain incidents and activities arising from those rights. The applicants accepted that none of the rights claimed (other than a right to be recognised as the native title holders) were exclusively held. His Honour then separately considered whether those rights and interests were native title rights and interests recognised under the Act when he considered issues of extinguishment.

A large part of the claim area is designated as the proposed 'Davenport Range National Park'. Extinguishment issues primarily arose through the existence of historic pastoral leases over the whole of the claim area. Most of these leases contained a reservation permitting full and free access by Aboriginal persons. Unlike similar reservations in Western Australian pastoral leases considered by the High Court in *Western Australia v Ward*, they did not contain any geographical limitation excluding enclosed or improved areas.

In *Daniel v Western Australia*, RD Nicholson J interpreted the High Court as deciding in *Western Australia v Ward* that any native title right to control access to the claim area and make decisions about its use was extinguished by the grant of a pastoral lease in Western Australia. This case is interesting because Mansfield J adopted a different interpretation in relation to pastoral leases in the Northern Territory. His Honour decided that the claimants retained a general right to control access to and make decisions about the use and enjoyment of the claim area, subject to the rights and interests of the pastoralists to use the land for pastoral purposes, or use by other persons with statutory rights and entitlements. His Honour gave the following practical examples of what this conclusion could mean:

- the claimants might retain the right to decide that a type of bush food should not be exploited in certain areas at particular times of the year, or to make fishing area restrictions, or control access to areas during times of ceremonies and the like; and
- the claimants might also retain the right to place restrictions on members of the public as to where they might camp, if at all, in relation to significant sites.

This decision is currently the subject of an appeal by the Northern Territory.

Full court appeal in the De Rose case

De Rose v State of South Australia [2003] FCAFC 286

This was an appeal from a decision of his Honour Justice O'Loughlin who held that the claimants had failed to prove that they had retained a connection to the claim area by the traditional laws and customs acknowledged and observed by them sufficient to satisfy s. 223 of the Act.

The critical issue, and on appeal, was whether the appellants, as a group, held 'native title rights and interests' under the traditional laws acknowledged and the traditional customs observed by them in relation to the claim area, as defined in s. 223(1) and (2) of the Act.

Their Honours Justices Wilcox, Sackville and Merkel found Justice O'Loughlin had erred in:

- attributing importance to the absence of evidence of a cohesive community or group on or near the claim area; and
- concluding that the appellants had failed to prove the necessary connection to the claim area by their traditional laws and customs.

O'Loughlin J was held to have placed too much emphasis on the absence of physical contact with the claim area after 1978, despite the words of the Full Court in *Western Australia v Ward* (2000) 99 FCR 316, not contradicted by the High Court, that physical presence is not essential in circumstances where it is no longer practicable or access to traditional lands is prevented or restricted by European settlers.

Their Honours in effect allowed the appeal and proposed that the parties make further submissions identifying what issues, if any, remain in dispute with a view to the Full Court making a determination that native title exists over the claim area.

Determination of native title in Ward's case

Attorney-General of the Northern Territory v Ward [2003] FCAFC 283

On 8 August 2002, this matter was remitted by the High Court to the Full Court of the Federal Court to resolve certain issues. The Full Court dealt with two proposed native title determinations by consent concerning the Western Australian and the Northern Territory portions of the determination area respectively.

Western Australia

The parties agreed that exclusive native title existed in certain areas (mainly areas where prior extinguishment must be disregarded under provisions of the Act). In some other areas it was agreed that non-exclusive native title rights to 'occupy, use and enjoy the land and waters in accordance with traditional laws and customs'

existed. Finally, in certain other areas where land was held in freehold, or was a vested reserve, exclusive lease or a public work, native title had been extinguished. The determination operates in two phases: the determination in relation to the areas where native title has been extinguished took effect immediately on the making of the orders in this matter; whereas in relation to areas where native title existed, the determination would take effect on the determination of the prescribed body corporate for the native title holders.

Northern Territory

The parties had agreed on the form of a determination subject to seven issues which they wished the court to resolve. After certain alterations to the proposed determination the court made orders, including a determination of native title, stating the common law recognition of non-exclusive native title rights to use and enjoy the land and waters in accordance with their traditional laws and customs, being the rights to:

- hunt and gather;
- camp and move about the land;
- engage in cultural and ceremonial activities;
- maintain and protect significant sites; and
- make decisions about the use and enjoyment of the Northern Territory determination area by Aboriginal people who are governed by the traditional laws and customs acknowledged and observed by the native title holders.

The determination recognised native title rights and interests as being held on the basis of estate groups. Subject to the rights and interests of the members of the three estate groups, other Aboriginal people were also recognised as having an interest in an estate not their own. These interests derived from membership of neighbouring estates, spousal relationships with estate group members, and possession of ritual authority.

All parties accepted that there were no exclusive native title rights and interests in flowing and subterranean waters.

The court omitted the use of the term 'occupy' in the preamble to the proposed determination in relation to the Northern Territory portion of the claim area as it tended to imply the notion of 'control' and therefore go against the High Court's consideration of s. 225(e) in *Western Australia v Ward*.

Their Honours also flagged the possibility of employing s. 13(5) of the Act in the future if it is considered necessary to vary the determination by adding other native title holders or other specified rights and interests.

Case management issues

Anderson v Western Australia [2003] FCA 1058

This case is important to the Tribunal because it reflects the Federal Court's intention to develop a process for the more orderly management of claimant applications, which has been, in his Honour Justice French's words, 'bedevilled for many years with intra-indigenous conflict which has effectively prevented meaningful progress in the mediation of native title determination applications'. The implementation of this approach was first signalled by French J in *Frazer v Western Australia* (2003) 128 FCR 458, 198 ALR 303, and noted in the Tribunal's 2002–03 annual report.

Registration test

Federal Court review of the Registrar's decision to register a native title application

Northern Territory of Australia v Doepel (2003) 203 ALR 385

This case is important to the Tribunal because his Honour Justice Mansfield examined the range of different tasks imposed upon the Native Title Registrar (the Registrar) by s. 190B and s. 190C of the Act when applying the registration test and, to some extent, redefined certain duties of the Registrar.

This was an application made by the Northern Territory Government under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) to set aside a decision of the Registrar to accept for inclusion on the Register of Native Title Claims the 'Killarney' native title application covering parts of the Northern Territory. The native title claim group comprised the Wardaman, Liyi, Yingawurnarri and Narrwan groups. The Territory contended the Registrar failed to comply with various requirements of s. 190B and s. 190C of the Act in accepting the claim for registration.

None of the grounds of review was found to be made out and the court dismissed the application to set aside the decision to register the Killarney application.

Among the more significant findings of importance to the application of the registration test were:

- the Registrar's function under s. 190A is simply to determine whether the requirements of s. 190B and s. 190C are satisfied according to their terms, rather than generally to consider the accuracy of the information in the application;
- the basis upon which claim group composition is to be considered under s. 190C(2) has been substantially narrowed from previous decisions and is limited to determining whether, on the face of the application, the claim group as described includes all the persons in the native title claim group as defined in s. 61;
- the Registrar is not required, when addressing s. 190C(2), to consider whether, as a matter of fact, the claimants are properly authorised by all the relevant members of

the native title claim group, only that the application was accompanied by affidavits sworn by the claimants that they are 'authorised by all the persons in the native title claim group' to make the application and to deal with matters concerning it and stating the basis for that authorisation. This was not to say that other subsections may not impose different requirements, for example those imposed by s. 190B(5);

- paragraph 190C(4)(a) does not require the Registrar to consider the correctness of the certification by the representative body, only its compliance with the requirements of s. 203BE;
- the reference to 'native title claim group' in s. 190B(3) should be read down so that it is not referable to the definition in s. 61, but rather to the group defined in the application;
- if on its face a claim is arguable, whether involving disputed questions of fact or disputed questions of law, it should be accepted on a *prima facie* basis; and
- an inadvertent error on the Register can be addressed administratively.

An appeal against his Honour's decision on all grounds was lodged by the Northern Territory Government but has since been withdrawn.

Future acts decisions by 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.

Good faith

Strategic Minerals Corporation NL/Allan Kynuna on behalf of the Woolgar Group/Queensland, NNTT QF 03/1, [2003] NNTTA 83 (9 July 2003) the Hon. C.J. Sumner

The native title party asserted that the grantee party had not been honest or reasonable in s. 31(1)(b) negotiations and negotiated with the intention to induce the native title party to accept its offer by deceit. Dishonest or deceitful conduct, if established, would amount to bad faith in that the grantee party would not have conducted itself in an open and honest way during the negotiations as required.

The Tribunal found that, if the information provided by the grantee party is insufficient to assess any impact on native title rights and interests, then this may impact on whether negotiations in good faith can occur. However, every case must be considered on its merits. The Tribunal noted that:

- it is 'desirable and indicative of good faith in negotiations' for a grantee party to keep a native title party up-to-date on relevant developments during the course of the negotiations and to disclose any relevant new information to the native title party, such as the company's annual reports or reports to the Australian Stock Exchange;

- a failure to disclose relevant information or documents may amount to a failure to negotiate in good faith, for example deliberately or inadvertently failing to disclose information that is in the sole possession of the grantee may provide such an indication;
- where the relevant information is publicly available, it is not unreasonable to expect representatives acting for the native title parties to search for that information.

The grantee party was found to have fulfilled its obligation under s. 31(1)(b) of the Act to negotiate with the native title party in good faith.

Townson Holdings Pty Ltd & Anor/Ron Harrington-Smith & Ors on behalf of the Wongatha People and June Ashwin & Ors on behalf of the Wutha People/Western Australia, NNTT WF03/2, [2003] NNTTA 82 (9 July 2003) the Hon. C.J. Sumner

The native title party raised the issue of the lack of good faith but, despite directions to do so, did not file any contentions or evidence in relation to it. The matter proceeded on to the substantive issue where ultimately a lack of good faith was alleged. The Tribunal expressed the view it was unsatisfactory to raise good faith at this late stage with no adequate reason to explain the delay. The Tribunal found the situation was novel and referred to the Tribunal's obligations as discussed in *Anaconda Nickel Ltd & Ors v Western Australia* (2000) 165 FLR 116. The Tribunal held that, despite the inconvenience of the late challenge, normally the Tribunal will have no alternative but to consider and resolve a challenge to good faith whenever it is made. A possible qualification may be where irreversible prejudice has been caused to another party by the failure to challenge at the outset or in accordance with the Tribunal's directions. In this instance, the Tribunal dealt with the jurisdictional (good faith) question and the substantive question (whether the future act should be done in any case) together.

In holding that the grantee had fulfilled its s. 31(1)(b) obligations and that the Tribunal had jurisdiction to conduct an inquiry and determine the application, the Tribunal considered the following matters:

- an offer of compensation based on disturbance to land and not on the value of gold extracted, while not a common way of providing compensation as part of a negotiated agreement, did not indicate a failure to negotiate in good faith;
- the grantee party's proposal to make payment of compensation into trust did not indicate a failure to negotiate in good faith as this is consistent with s. 41(3) and s. 52—there is no requirement in the Act mandating upfront payments;
- the grantee party initially proposed a regional agreement dealing with future acts not the subject of the proceedings but later compromised on this issue. The Tribunal noted that there would be a serious question about good faith if the grantee party had insisted on a regional agreement when negotiating about particular future acts;

- with respect to the alleged failure of the grantee party to consider or provide comment on a draft agreement provided by the native title party, the Tribunal found that the grantee party's heritage agreement contained similar clauses about which negotiations had already commenced with other native title parties. The Tribunal found it was reasonable for discussions to continue on that basis and there was no substance in the contentions about which document should have been used in negotiations;
- the grantee party's refusal to negotiate on 'issues already dealt with' was not unreasonable as he believed the issues had been dealt with, even though agreement on those issues had not been reached;
- the grantee party's refusal to execute the grantee party's agreement when the native title party agreed to do so after the s. 35 application was made. The Tribunal referred to earlier Tribunal decisions and held that conduct subsequent to the making of a s. 35 application may be relevant in corroborating either good faith, or the lack of it, prior to the application being made. The Tribunal found that the grantee party's refusal was justified because the agreement which the native title party offered to sign was not the same as that proposed by the grantee party prior to the s. 35 application and which it had advised it was still prepared to execute.

Authorisation of applicants

Yarran/Hamill Resources Ltd/Western Australia, and others NNTT WO01/187, [2003] NNTTA 99, (11 September 2003) the Hon. C.J. Sumner

This preliminary inquiry by the Tribunal had to determine whether expedited procedure objection applications, lodged by a sole objector on behalf of the Ballardong People, were properly authorised. This is the first time the question of authorisation has arisen in right to negotiate proceedings before the Tribunal.

Twenty-eight objection applications were lodged by one of the fourteen people who jointly comprise the applicant in an application brought on behalf of the Ballardong People. A challenge to that individual's authority to lodge objections on behalf of the Ballardong People was made by the South West Aboriginal Land and Sea Council (SWALSC). The Tribunal directed SWALSC to advise the Tribunal whether the objector was authorised and if not, to provide the parties with contentions, supporting documents and affidavits to support its submission. The objector submitted that the Ballardong People were still represented by the Noongar Land Council (NLC).

A s. 66B process had commenced in the Federal Court to remove the objector as one of the groups named as the applicant on the Ballardong application. In *Anderson v Western Australia* [2002] FCA 1558, French J dismissed the application due to insufficient evidence, particularly in relation to authorisation issues in terms of s. 251B.

The Tribunal held that the failure of a s. 66B application to replace the applicant was not necessarily determinative of the issue. The Tribunal had to consider whether or not there was sufficient evidence to support a finding that the objector was not authorised to bring objections on behalf of the group, not whether there was evidence to support a s. 66B application.

The Tribunal held both that the purpose of the Act and its workability would be severely compromised if each person named as one of those constituting the applicant (and therefore the registered native title claimant under s. 253) could lodge objections and then seek to negotiate separate agreements in relation to them. The Tribunal's approach to making consent determinations in circumstances where one of the people in the group named as the registered native title claimant refused to sign a s. 31 agreement against the wishes of other members of the native title claim group would no longer be possible.

The Tribunal accepted that the authorisation requirements in s. 251B also govern the procedures adopted by the claimant group to determine who has authority to act in relation to right to negotiate inquiries. Even if s. 251B was not strictly applicable, it was nevertheless appropriate to apply the principles of that provision. As a matter of commonsense, in a situation where there are traditional laws and customs of a group governing its decision-making, those principles should be applied.

The Tribunal held that there was insufficient evidence to suggest traditional law and custom operates in relation to a decision-making process to lodge objection applications by one person.

The objections were dismissed under s. 148(a).

Need for cogent evidence

Dorothy Tucker & Ors/Western Australia/Fraserx Pty Ltd, NNTT WO02/409 & WO03/188, [2003] NNTTA 126 (24 December 2003) Mr Daniel O'Dea

Member O'Dea adopted the observation of Member Sosso in *Judy Hughes/Western Australia/Taipan Resources NL*, NNTT WO01/618, [2003] NNTTA 69 (1 May 2003) in relation to dealing with evidence. The making of a predictive assessment of what is likely to occur under s. 237 means that where facts are peculiarly within the knowledge of a party and not tendered or not revealed from some other source, including the Tribunal's own inquiry, the Tribunal may draw the inference that such facts do not exist or would not support the proposition contended for. Irrespective of the effect of s. 109, a native title party cannot succeed in an objection to the application of the expedited procedure in the absence of cogent evidence.

Who constitutes a 'native title party'?

Mt Gingee Munjie Resources Pty Ltd/Victoria/Graham (Bootsie)Thorpe and Ors on behalf of the Gunai/Kurnai People, NNTT VF03/1, [2003] NNTTA 125 (22 December 2003) the Hon. C.J. Sumner

The native title claim group had split into two factions, the Gunai and Kurnai factions. The Tribunal considered as a preliminary point whether the Kurnai faction was a native title party with authority to assert that the other parties lacked good faith in negotiations. The government party contended the native title party is a single entity and must act jointly and relied on earlier Tribunal decisions. The Kurnai faction attempted to distinguish the native title claim group under s. 61(1) of the Act, a collective non-severable entity, from the native title party in the right to negotiate provisions.

The Tribunal was not persuaded by the Kurnai faction and found:

- the native title claim group and the native title party are inextricably linked;
- the fact that at the claimant stage there is no incorporated body did not mean that each person named as part of the applicant is a native title party and at liberty to act individually without reference to and without authorisation from, the claim group;
- allowing individuals named on an application to have separate negotiations and agreements with grantee parties would impede the workability of the Act;
- section 30A does not support a plurality of native title parties from one claim, but allows for more than one claimant application to be lodged over a particular area thus creating more than one native title party; and
- the Tribunal's interpretation was supported in the Federal Court decision *Johnson on behalf of the Barkandji (Paakantyi) People v Minister for Land and Water Conservation for NSW* [2003] FCA 981.

Relationship between sections 29(7) and 237 of the Act (expedited procedure)

Leonne Velickovic on behalf of the Widji People/Westex Resources Pty Ltd/Western Australia, NNTT WO03/386, [2004] NNTTA 13 (4 March 2004) Mr Daniel O'Dea

The native title party filed submissions on the impact of an exploration licence but no specific evidence in support of their objection application. It was submitted all three limbs of s. 237 of the Act were attracted. Amongst the native title party submissions were the assertions that the *Aboriginal Heritage Act 1972* (WA) and the government guidelines issued to persons obtaining exploration licences were inadequate to protect Aboriginal sites and that the expedited procedure should not apply in any situation where the grantee party refuses to enter into a heritage agreement (see s. 237(b)).

The Tribunal noted that the state government's option to include a statement that the expedited procedure applies pursuant to s. 29(7) is 'entirely unfettered'. Further, it was noted that in some parts of Western Australia, the government party is exercising its s. 29(7) discretion, or proposing to do so, after determining whether a grantee party

is prepared to enter into a generic heritage agreement. However the objection in this matter was not subject to the government party's new approach. The Tribunal confirmed the manner in which the s. 29(7) discretion is exercised has no impact on the law relating to s. 237. The task of the Tribunal is confined to an assessment of whether the proposed act is one which offends any of the limbs of s. 237 or not.

The Tribunal held the grant of the exploration licence was an act which attracts the expedited procedure.

Indigenous land use agreements

Full Court appeal in relation to registration of an ILUA

Murray v Registrar of the National Native Title Tribunal [2003] FCAFC 220

This is an appeal on a limited basis from the decision of his Honour Justice Marshall handed down on 20 December 2002 in *Murray v Registrar of the National Native Title Tribunal*. That case was the first involving an appeal from the decision of a Registrar's delegate to register an ILUA and was reported in the 2002–03 annual report.

The case is of significance because it clarifies the meaning of 'native title group' for the purposes of registering an ILUA.

The issue before the court was whether an agreement was an ILUA, as defined by s. 24CA of the Act. To be an ILUA, the agreement must (among other things) satisfy s. 24CD. Subsection 24CD(1) requires that all the persons in the 'native title group' must be parties to the ILUA.

In this case, the mandatory parties were 'any person claiming to hold native title' in relation to the area (s. 24CD(3)(a)). No representative body was a party to the ILUA. Therefore, the major issue before the court was whether the word 'any' in that paragraph required that *all* persons claiming to hold native title in relation to the area must be a party to the ILUA or only that any *one or more* persons claiming to hold native title in relation to the area must be a party to the agreement.

The court thought it unlikely that s. 24CD(3) required that *all* persons claiming to hold native title in the agreement area must be parties to the ILUA because of practical difficulties. It was held that, when s. 24CD is read as a whole, it is clear that s. 24CD(3) does not require the identification of all persons who claim to hold native title in relation to land or waters in an area. It is only necessary that at least one such person is a party.

As a result, the appeal was dismissed with costs.

APPENDIX III CONSULTANTS

Table 15 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	

Table 16 Consultants engaged under section 132 of the Native Title Act (over $10,000)

Consultant	Purpose	Contract price	Period	Selection process	Comments
Kinetic IT	Provision of IT support services	$55,000	May 2003 – Jul 2003	Public tender	Interim contract
Kinetic IT	Help desk software and support	$55,000	Mar 2003 – Feb 2006	Public tender	Extension of contract
Simon White	Indigenous economic development phase 1	$30,000	Jun 2003 – Aug 2003	Select tender	
Bearcage Productions	Video production	$66,754	Jan 2003 – Aug 2003	Select tender	
Junipers	Document management	$28,000	May 2003 – Jun 2004	Direct engagement	Assist with DMS project
Australian Institute of Aboriginal and Torres Strait Islander Studies	Research and development of agreement-making strategies	$140,000	Jul 2003 – Jun 2006	Direct engagement	Joint project with ATSIC
Anthropos Consulting	Provide mentor services to representative bodies	$25,825	Jun 2003 – Jun 2004	Direct engagement	Capacity-building
James Cook University	Research	$275,000	Jun 2001 – Jun 2006	Direct engagement	Engagement of Native Title Centre staff for research consultancies
Gryphon Consultants Pty Ltd	Provision of Web development services	$93,677	Jan 2004 – ongoing	Extension of select tender	
Colmar Brunton	External communication research	$88,418	Jun 2003 – Oct 2003	Extension of select tender	
Quadrant Group	Strategic Information Management Plan (SIMP) project	$210,000	Jun 2003 – Mar 2004	Select tender	
Gel Group P/L	Web development services	$59,317	Oct 2003 – Mar 2004	Extension of select tender	
Nick Green	Assistance to Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation in rolling out new standard heritage agreement	$96,195	Jan 2004 – Apr 2004	Direct engagement	
Frontier Software	CHRIS 21 (HRMIS)	$230,000	Jan 2004 – ongoing	Market expressions of interest – select tender	

Table 16 Consultants engaged under section 132 of the Native Title Act (over $10,000) continued

Consultant	Purpose	Contract price	Period	Selection process	Comments
Technology One	Finance One (FMIS)	$258,158	Jan 2004 – ongoing	Market expressions of interest – select tender	
Newpalm Holdings Pty Ltd trading as Kinetic IT	Provision of IT support services	$290,000	Feb 2004 – Jan 2005	Extension of select tender	
ADR Plus Ltd	Training and curriculum development	$70,000	Feb 2004 – Jun 2004	Select tender	
Tactics consulting Pty Ltd	Research web review	$32,670	Mar 2004 – May 2004	Select tender	
Madison Red Pty Ltd	Security review of information and communication technology	$46,460	Jun 2004 – Jul 2004	Public tender	
Dialog Pty Ltd (Baillard) trading as Dialog Information Technology	Visual basic maintenance services	$15,840	Jun 2004 – Aug 2004	Direct engagement	

APPENDIX IV FREEDOM OF INFORMATION

Section 8 of the *Freedom of Information Act 1982* (Cwlth) 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 regional registries or offices.

Organisation

The Tribunal's organisational structure as at 30 June 2004 is provided in Figure 2, p. 33. An outline of the responsibilities of its executive and senior management committees is provided under 'Tribunal executive', p. 96.

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* (Cwlth) (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 notification of native title applications and 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 people 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 three formal requests for access to documents under the Freedom of Information Act:

Date received	Nature of request	Conclusion
April 2004	Documents related to a registration test application	Ongoing
April 2004	Seeking access to s. 31 agreement and ancillary agreement	Ongoing
April 2004	Documents relating to registration of an ILUA	Withdrawn

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 Client Service Charter and feedback procedures are the formal mechanisms in which the public can participate (for more information see 'Client Service Charter', p. 111).

Documents or information available for purchase or subject to a photocopy fee

The information available for purchase is:

- 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.
- books published by the Tribunal.

The following information is available free of charge but may be subject to a photocopy fee. Information 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 available free of charge

The following documents are available free of charge upon request or from the Tribunal's website:

- brochures, flyers and fact sheets
- Client 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
- *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 website.

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 (see 'Information management', p. 105).

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 website.

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. These are not available to the general public. No formal or written application is required. Inquiries should be directed to the case manager for the application. It may be necessary to obtain some documents from the Federal Court.

APPENDIX V USE OF ADVERTISING AND MARKET RESEARCH

The National Native Title Tribunal used the services of a market research organisation during the reporting period. The Tribunal paid $131,576 for the conduct of research and evaluation into the following projects: client satisfaction (Indigenous clients), national communication development, and an employee survey during the development of the *Certified Agreement 2003–2006*.

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 $6,864 (Sundream Pty Ltd operating as Northside Distributors) plus $26,121 (Lasermail Pty Ltd).

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

- notification of applications as required under the Act $627,845
- staff recruitment $100,374
- other advertising (for example, tenders and consultants) $14,199

The total amount for market research, distribution and advertising was $906,980

APPENDIX VI
AUDIT REPORT AND NOTES TO THE FINANCIAL STATEMENTS

Australian National Audit Office

INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope

The financial statements and Chief Executive's responsibility

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 and Contingencies;
- Schedule of Administered Items; and
- Notes to and forming part of the Financial Statements

of the National Native Title Tribunal for the year ended 30 June 2004.

The Chief Executive of the National Native Title Tribunal is responsible for the preparation and true and fair presentation of the financial statements in accordance with the Finance Minister's Orders. This includes responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

I performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, Accounting Standards and other mandatory financial reporting

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requirements in Australia, a view which is consistent with my understanding of the National Native Title Tribunal's financial position, and of its performance as represented by the statements of financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Chief Executive.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate Australian professional ethical pronouncements.

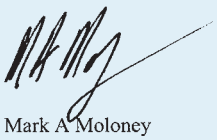
Audit Opinion

In my opinion, the financial statements:

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

(ii) give a true and fair view, of the matters required by 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 2004, and of its performance and cash flows for the year then ended.

Australian National Audit Office



Mark A Moloney
Acting Executive Director

Delegate of the Auditor-General

Canberra
13 September 2004

NATIONAL NATIVE TITLE TRIBUNAL

Statement by the Chief Executive

In our opinion, the attached financial statements for the year ended 30 June 2004 are based on properly maintained financial records and 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

7 September 2004

ERWIN WINKLER
Chief Finance Officer

7 September 2004

STATEMENT OF FINANCIAL PERFORMANCE for the year ended 30 June 2004

	Note	2004 $'000	2003 $'000
Revenues from ordinary activities			
Revenues from Government	3A	32,022	31,598
Goods and services	3B	235	103
Interest	3C	-	115
Revenues from ordinary activities		32,257	31,816
Expenses from ordinary activities			
Employees	4A	20,483	18,646
Suppliers' Expense			
Operating lease rentals		2,990	2,955
Other suppliers' expenses from external entities		8,050	7,263
Depreciation and amortisation	4B	703	768
Write-down of assets	4C	-	1
Expenses from ordinary activities		32,226	29,633
Net surplus/(deficit) from ordinary activities		31	2,183
Total changes in equity other than those resulting from transactions with the Australian Government as owner	9	31	2,183

STATEMENT OF FINANCIAL POSITION as at 30 June 2004

	Note	2004 $'000	2003 $'000
ASSETS			
Financial assets			
Cash	5A	102	5,895
Receivables	5B	5,712	165
Total financial assets		5,814	6,060
Non-financial assets			
Land and buildings	6A,D	254	541
Infrastructure, plant and equipment	6B,D	999	734
Intangibles	6C,D	363	65
Other non-financial assets	6E	910	988
Total non-financial assets		2,526	2,328
Total Assets		8,340	8,388
LIABILITIES			
Provisions			
Employees	7	3,620	3,653
Total provisions		3,620	3,653
Payables			
Suppliers	8	421	467
Total payables		421	467
Total liabilities		4,041	4,120
NET ASSETS		4,299	4,268
EQUITY			
Contributed equity	9	2,415	2,415
Retained surplus	9	1,884	1,853
TOTAL EQUITY		4,299	4,268
Current assets		6,724	7,048
Non-current assets		1,616	1,340
Current liabilities		2,289	2,515
Non-current liabilities		1,752	1,605

STATEMENT OF CASH FLOWS for the year ended 30 June 2004

	Note	2004 $'000	2003 $'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		278	133
Appropriations		32,008	31,584
Interest		-	120
Net GST received from ATO		1,054	1,016
Total cash received		33,340	32,853
Cash used			
Employees		20,497	18,116
Suppliers		12,157	11,427
Cash transferred to the OPA		5,500	-
Total cash used		38,154	29,543
Net cash from/(used by) operating activities	10	(4,814)	3,310
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		655	593
Purchase of intangibles		324	78
Total cash used		979	671
Net cash from/ (used by) investing activities		(979)	(671)
FINANCING ACTIVITIES			
Cash received		Nil	Nil
Cash used			
Capital use charge paid		-	24
Total cash used		-	24
Net cash from/ (used by) financing activities		-	(24)
Net increase/(decrease) in cash held		(5,793)	2,615
Cash at the beginning of the reporting period		5,895	3,280
Cash at the end of the reporting period	5A	102	5,895

SCHEDULE OF COMMITMENTS as at 30 June 2004

	Note	2004 $'000	2003 $'000
BY TYPE			
Capital Commitments			
Infrastructure, plant and equipment		-	-
Total capital commitments		-	-
Other Commitments			
Operating leases[1]		4,174	1,309
Other[2]		308	230
Total other commitments		4,482	1,539
Commitments receivable		(407)	(140)
Net commitments		4,075	1,399
BY MATURITY			
Operating Lease Commitments			
One year or less		1,935	1,278
From one to five years		2,239	31
Total operating lease commitments by maturity		4,174	1,309
Other Commitments			
One year or less		308	230
Commitments receivable		(407)	(140)
Net commitments by maturity		4,075	1,399

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.

SCHEDULE OF ADMINISTERED ITEMS

	Note	2004 $'000	2003 $'000
Revenues Administered on Behalf of Government *for the year ended 30 June 2004*			
Non-taxation revenue			
Fees		10	5
Total Revenues Administered on Behalf of Government		10	5
Expenses Administered on Behalf of Government *for the year ended 30 June 2004*			
Write-down of assets		-	-
Total expenses Administered on Behalf of Government		-	-
Assets Administered on Behalf of Government *for the year ended 30 June 2004*	16	Nil	Nil
Liabilities Administered on Behalf of Government *for the year ended 30 June 2004*		Nil	Nil
Administered Cash Flows *for the year ended 30 June 2004*			
Cash received			
Fees		10	5
Cash Used			
Refund of Fee		1	-
Net increase in cash held		9	5
Cash at beginning of reporting period		-	-
Cash from Official Public Account		1	-
		10	5
Cash transfer to Official Public Account		10	5
Cash at end of reporting period		-	-
Administered Commitments *for the year ended 30 June 2004*		Nil	Nil
Administered Contingencies *for the year ended 30 June 2004*		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.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

Note	Description
1	Summary of Significant Accounting Policies
2	Adoption of AASB Equivalents to International Financial Reporting Standards from 2005 – 2006
3	Operating Revenues
4	Operating Expenses
5	Financial Assets
6	Non-Financial Assets
7	Provisions
8	Payables
9	Equity
10	Cash Flow Reconciliation
11	Contingent Liabilities and Assets
12	Executive Remuneration
13	Remuneration of Auditors
14	Average Staffing Levels
15	Financial Instruments
16	Administered Reconciliation Table
17	Appropriations
18	Assets Held in Trust
19	Reporting of Outcomes

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the National Native Title Tribunal

The objectives of the National Native Title Tribunal (the Tribunal) are:

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

The Tribunal is structured to meet one outcome: the recognition and protection of native title.

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.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

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.

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 Orders (Financial Statements for reporting periods ending on or after 30 June 2004)*);
- 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 that 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 11.

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.

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 1.14.

1.3 Changes in Accounting Policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2002–03.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

1.4 Revenue

Revenues from Government

Amounts appropriated for departmental outputs appropriations for the year (less any current year savings and reductions) are recognised as revenue.

Savings are amounts offered up in Portfolio Additional Estimates Statements. Reductions are amounts by which appropriations have been legally reduced by the Finance Minister under Appropriation Act No.3 of 2003–04.

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.

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.

1.5 Transactions with the Government as Owner

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2003–04, by agreement with the Department of Finance and Administration, the Tribunal relinquished control of surplus output appropriation funding of $2,000,000 which was returned 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.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

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 2004. 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.

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 Australian Government and is settled by the Australian Government in due course.

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

1.7 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, 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 2004.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

1.8 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

1.9 Other Financial Instruments

Trade Creditors

Trade 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).

Contingent Liabilities and Contingent Assets

Contingent Liabilities and Assets are not recognised in the Statement of Financial Position but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Remote contingencies are part of this disclosure. Where settlement becomes probable a liability or asset is recognised. A liability or asset is recognised when its existence is confirmed by a future event, settlement becomes probable or reliable measurement becomes possible.

1.10 Acquisition of Assets

Assets are recorded at cost on acquisition. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

1.11 Property, Plant and Equipment (PP&E)

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*. Valuations undertaken in any year are as at 30 June.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

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 & 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 2004 (30 June 2003: nil).

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 2003.

The Finance Minister's Orders require that all property plant and equipment assets be measured at up-to-date fair values from 30 June 2005 onwards. The current year is therefore the last year in which the Tribunal will undertake progressive revaluations.

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:

	2004	2003
Leasehold improvements	lesser of 5 years or lease term	lesser of 5 years or lease term
Plant and equipment	3 to 10 years	3 to 10 years

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

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

1.12 Impairment of Non-Current Assets

Non-current assets carried at up-to-date fair value at the reporting date are not subject to impairment testing.

Non-current assets carried at cost or deprival value have been assessed for indications of impairment. No indications of impairment existed at balance date.

1.13 Intangibles

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Tribunal's software is 5 years.

1.14 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 of Accounting Standards, Accounting Interpretations and UIG Consensus Views.

Administered Cash Transfers to and from the Official Public Account

Revenue collected by the Tribunal for use by the government rather than the Tribunal is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriations on behalf of government. These transfers to and from the OPA are adjustments to the Administered cash held by the Tribunal on behalf of the government and reported as such in the Statement of Cash flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 16. Thus the Schedule of Administered Items largely reflects the government's transactions, through the Tribunal, with parties outside the government.

Revenue

All administered revenues are revenues relating to the core operating activities performed by the Tribunal on behalf of the Commonwealth.

Fees are charged for lodgement of an application with the Tribunal.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

Note 2: Adoption of AASB Equivalents to International Financial Reporting Standards from 2005–2006.

The Australian Accounting Standards Board will shortly issue replacement Australian Accounting Standards to apply from 2005–06. The new standards will be the AASB Equivalents to International Financial Reporting Standards (IFRSs) which are issued by the International Accounting Standards Board. The new standards cannot be adopted early. The standards being replaced are to be withdrawn with effect from 2005–06, but continue to apply in the meantime.

The purpose of issuing AASB Equivalents to IFRSs is to enable Australian entities reporting under the *Corporations Act 2001* to be able to more readily access overseas capital markets by preparing their financial reports according to accounting standards more widely used overseas.

For-profit entities complying fully with the AASB Equivalents will be able to make an explicit and unreserved statement of compliance with IFRSs as well as with the AASB Equivalents.

It is expected that the Finance Minister will continue to require compliance with the Accounting Standards issued by the AASB, including the AASB Equivalents to IFRSs, in his Orders for the Preparation of Agency financial statements for 2005–06 and beyond.

Existing AASB standards that have no IFRS equivalent will continue to apply, including in particular AAS 29 *Financial Reporting by Government Departments.*

Accounting Standard AASB 1047 *Disclosing the Impacts of Adopting Australian Equivalents to International Financial Reporting Standards* requires that the financial statements for 2003–04 disclose:

a] an explanation of how the transition to Australian equivalents to IFRSs is being managed; and
b] a narrative explanation of the key differences in accounting policies that are expected to arise from adopting Australian equivalents to IFRSs.

The purpose of this note is to make these disclosures.

Management of the transition to AASB Equivalents to IFRSs

The Tribunal will take the following steps for the preparation towards the implementation of AASB Equivalents:

- During the 2004–05 financial year the Tribunal's Chief Finance Officer (CFO) and Financial Controller will develop a formal plan to manage the transition to and implementation of the AASB Equivalents to IFRSs. This plan will:
  - identify all major accounting policy differences between current AASB standards and the AASB Equivalents to IFRSs

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

  - identify any systems changes necessary to be able to report under the AASB Equivalents, including those necessary to enable capture of data under both sets of rules for 2004 – 05 and
  - identify any risks associated with the transition.
- The Financial Controller will be formally responsible for implementing the plan.
- The Tribunal will prepare an AASB Equivalent balance sheet at the same time as the 30 June 2005 statements are prepared.
- The Tribunal will ensure that reporting deadlines set by the Department of Finance for 2005 – 06 are met.

Major changes in accounting policy

Changes in accounting policies under AASB Equivalents will be applied retrospectively, ie as if the new policy had always applied. The preparation of an AASB Equivalent balance sheet at 30 June 2005 will enable the 2005 – 06 financial statements to report comparatives under the AASB Equivalents also.

Changes to major accounting policies which will affect the Tribunal are discussed in the following paragraphs.

Property, plant and equipment

It is expected that the Finance Minister's Orders will require property, plant and equipment assets carried at valuation in 2003 – 04 to be measured at up-to-date fair value from 2005 – 06. This differs from the accounting policies currently in place for these assets which, up to and including 2003 – 04, have been revalued progressively over a three-year cycle and which currently include assets at cost (for purchases since the commencement of a cycle) and at deprival value (which will differ from their fair value to the extent that they have been measured at depreciated replacement cost when a relevant market selling price is available).

Impairment of Non-Current Assets

Under the new AASB Equivalent Standard, non-current assets will be subject to assessment for impairment and, if there are any indications of impairment, measurement of any impairment. The impairment test is that the carrying amount of an asset must not exceed the greater of (a) its fair value less cost to sell and (b) its value in use. 'Value in use' is the depreciated replacement cost for assets which would be replaced if the Tribunal were deprived of them.

Employee Benefits

The provision for long service leave is measured at the present value of estimated future cash outflows using market yields as at the reporting date on national government bonds.

Under the new AASB Equivalent standard, the same discount rate will be used unless there is a deep market in high quality corporate bonds, in which case the market yield on such bonds must be used.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	2004 $'000	2003 $'000
Note 3: Operating Revenues		
Note 3A – Revenues from Government		
Appropriations for outputs	32,008	31,584
Resources received free of charge	14	14
Total revenues from government	32,022	31,598
Note 3B – Sales of Goods and Services		
Services	235	103
All services were rendered to external entities.		
Note 3C – Interest Revenue		
Interest on deposits	-	115
Note 4: Operating Expenses		
Note 4A – Employee Expenses		
Salary	16,867	15,757
Superannuation	2,430	2,046
Leave and other entitlements	495	415
Separation and redundancy	158	80
Other employee expenses	343	278
Total employee benefits expense	20,293	18,576
Worker compensation premiums	190	70
Total employee expenses	20,483	18,646
Note 4B – Depreciation and Amortisation		
Depreciation of property, plant and equipment	703	768
The aggregate amount of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	366	499
Plant and equipment	311	243
Intangibles	26	26
Total	703	768

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	2004 $	2003 $
Note 4C – Write down of assets		
Bad and doubtful debts expense	309	1,231
Total	309	1,231

	2004 $'000	2003 $'000
Note 5: Financial Assets		
Note 5A – Cash		
Departmental	102	5,895

Under banking arrangements in place up to 1 July 2003, moneys in the Tribunal's bank accounts were swept into the Official Public Account nightly and earned interest on the daily balance at rates based on money market call rates. Since 1 July 2003, no interest is earned on the Tribunal's bank balances.

Note 5B – Receivables		
Goods and services	16	20
Less: provision for doubtful debts	(3)	(3)
	13	17
Appropriations receivable	5,500	-
GST receivable from Australian Tax Office	199	148
Total receivables (net)	5,712	165

All receivables are current assets. Receivables (gross) are aged as follows:

Not overdue	5,704	161
Overdue by:		
less than 30 days	2	3
30 to 60 days	8	1
60 to 90 days	1	1
More than 90 days	-	2
	11	7
Total receivables (gross)	5,715	168

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	2004 $'000	2003 $'000
Note 6: Non-Financial Assets		
Note 6A – Land and Buildings		
Leasehold Improvements – at cost	3,929	3,850
Accumulated amortisation	(3,675)	(3,309)
Total land and buildings	254	541
Note 6B – Plant and Equipment		
Plant and equipment – at cost	2,172	1,605
Accumulated depreciation	(1,173)	(880)
Total plant and equipment at cost	999	725
Plant and equipment – at 1998-99 valuation	75	75
Accumulated depreciation	(75)	(66)
Total plant and equipment at valuation	-	9
Total Plant and Equipment	999	734
Note 6C – Intangibles		
Computer software – at cost	1,292	968
Accumulated amortisation	(929)	(903)
Total Intangibles	363	65

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

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

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

Item	Leasehold Improvements $'000	Plant & equipment $'000	Intangibles $'000	Total $'000
As at 1 July 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
Additions by purchase	79	576	324	979
Depreciation expense	(366)	(311)	(26)	(703)
Disposals	-	9	-	9
As at 30 June 2004				
Gross book value	3,929	2,247	1,292	7,468
Accumulated depreciation/amortisation	(3,675)	(1,248)	(929)	(5,852)
Net book value	254	999	363	1,616

TABLE B – Assets at valuation

Item	Buildings - Leasehold Improvements $'000	Plant & equipment $'000	Intangibles $'000	Total $'000
As at 30 June 2004				
Gross value	-	75	-	75
Accumulated depreciation	-	(75)	-	(75)
Net book value	-	-	-	-
As at 30 June 2003				
Gross value	-	75	-	75
Accumulated depreciation	-	(66)	-	(66)
Net book value	-	9	-	9

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	2004 $'000	2003 $'000
Note 6E – Other Non-Financial Assets		
Prepaid expenses	910	988
	910	988

All other non-financial assets are current assets.

Note 7: Provisions

Employee Provisions		
Salaries and wages	-	398
Leave	3,408	3,108
Superannuation	212	147
Aggregate employee entitlement liability	3,620	3,653
Current	1,868	2,048
Non-current	1,752	1,605

Note 8: Payables

Supplier Payables		
Trade creditors	421	467
	421	467

All payables are current liabilities.

Note 9: Equity

Analysis of Equity

Item	Accumulated Results		Contributed Equity		TOTAL EQUITY	
	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000
Opening balance at 1 July	1,853	(124)	2,415	2,415	4,268	2,291
Net surplus	31	2,183	-	-	31	2,183
Transactions with owner:						
Capital Use Charge	-	(206)	-	-	-	(206)
Closing balance at 30 June	1,884	1,853	2,415	2,415	4,299	4,268

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	2004 $'000	2003 $'000
Note 10: Cash Flow Reconciliation		
Reconciliation of net surplus to net cash from Operating activities:		
Net surplus	31	2,183
Depreciation/amortisation	703	768
Write down of non-current assets	-	1
(Increase)/decrease in receivables	(5,547)	(12)
Decrease in accrued revenues	-	5
(Increase)/decrease in prepayments	78	(187)
Increase/(decrease) in employee liabilities	(33)	500
Increase/(decrease) in supplier liabilities	(46)	52
Net cash from/(used by) operating activities	(4,814)	3,310

Note 11: Contingent Liabilities and Assets

Quantifiable and Unquantifiable Contingencies

The Tribunal had no quantifiable or unquantifiable contingencies at 30 June 2004.

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.

	2004	2003
Note 12: Executive Remuneration		
The number of executives who received or were due to receive total remuneration of $100,000 or more:		
$150,001 to $160,000	-	1
$160,001 to $170,000	1	1
$170,001 to $180,000	1	-
$190,001 to $200,000	1	1
The aggregate amount of total remuneration of executives shown above.	$536,368	$508,186
The aggregate amount of separation and redundancy payments during the year to executives shown above.	Nil	Nil

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	2004 $	2003 $
Note 13: Remuneration of Auditors		
Financial statement audit services are provided free of charge to the Tribunal		
The fair value of the services provided was:	14,250	14,000

No other services were provided by the Auditor-General.

	2004	2003
Note 14: Average Staffing Levels		
The average staffing levels for the business operation of the Tribunal during the year were:	275	273

Note 15: Financial Instruments

15A – 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							
		2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000
Financial Assets															
Cash at Bank	5A	-	5,891	-	-	-	-	-	-	102	4	102	5,895	n/a	3.50
Receivables for goods and services	5B	-	-	-	-	-	-	-	-	16	20	16	20	n/a	n/a
Other receivables	5B	-	-	-	-	-	-	-	-	5,699	148	5,699	148	n/a	n/a
Total			5,891	-	-	-	-	-	-	5,817	172	5,817	6,063		
Total Assets												8,340	8,388		
Financial Liabilities															
Trade creditors	8	-	-	-	-	-	-	-	-	-	-	421	467	n/a	n/a
Total		-	-	-	-	-	-	-	-	-	-	421	467	n/a	n/a
Total Liabilities												4,041	4,120		

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

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

	Notes	2004 Total Carrying Amount $'000	2004 Aggregate Net Fair Value $'000	2003 Aggregate Net Fair Value $'000	2003 Total Carrying Amount $'000
Departmental					
Financial Assets					
Cash at bank	5A	102	102	5,895	5,895
Receivables for goods and services (net)	5B	13	13	17	17
Other receivables	5B	5,699	5,699	148	148
Total financial assets		5,814	5,814	6,060	6,060
Financial Liabilities					
Trade creditors	8	421	421	467	467
Total financial liabilities		421	421	467	467

The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

The net fair value of trade creditors are approximated by their carrying amounts.

Note 15C – 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.

	2004 $	2003 $
Note 16: Administered Reconciliation Table		
Opening administered assets less administered liabilities at 1 July	-	-
Plus: Administered revenues	10	5
Less: Administered expenses	1	-
Administered transfers to/from Australian Government:		
Appropriation transfers from OPA	1	-
Transfers to OPA	10	5
Closing administered assets less administered liabilities at 30 June	-	-

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

Note 17: Appropriations

Note 17A – Cash Basis Acquittal of Appropriations from Acts 1 and 3

Particulars	Administered Expenses $	Departmental Outputs $
Year ended 30 June 2004		
Balance carried forward from previous year	-	5,487,260
Correction to previous year	-	2,415,000
Appropriation Act (No. 1) 2003–2004	-	33,929,000
Appropriation Act (No. 3) 2003–2004	-	-
Adjustments determined by the Finance Minister	1	-
Amounts from Advance to the Finance Minister	-	-
Refunds credited (FMA s. 30)	-	-
GST credits (FMA s. 30A)	-	1,147,832
Annotations to 'net appropriations' (FMA s. 31)	-	239,927
Adjustments on change of entity functions (FMA s. 32)	-	-
Appropriations lapsed or reduced	-	-
Total Appropriations available for payments	1	43,219,019
Payments made (GST inclusive)	1	(33,630,846)
Balance carried forward to next year	-	9,588,173
Represented by:		
Cash at bank and on hand	-	102,226
Savings identified in the Budget process	-	3,821,000
Add: Cash in Official Public Account	-	5,500,000
Add: GST receivable from debtors	-	1,494
Add: Net GST receivable from ATO	-	163,453
	-	9,588,173
Year ended 30 June 2003		
Balance carried forward from previous year	-	973,332
Total annual appropriation – basic appropriation	-	33,484,000
Adjustments to appropriations	-	-
GST credits (FMA s. 30A)	-	1,036,835
Annotations to 'net appropriations' (FMA s. 31)	-	229,488
Available for payment	-	33,823,655
Payments made during the year	-	(30,236,396)
Balance carried to the next year	-	5,487,260
Represented by:		
Cash	-	3,479,592
Savings identified in the Budget process	-	1,900,000
Add: GST receivable from debtors	-	1,767
Add: Net GST receivable from ATO	-	105,901
Total	-	5,487,260

Note 17B – 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 2004						
Balance carried forward from previous year	-	2,415,000	-	-	-	2,415,000
Correction to 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	-	-	-	-	-	-
Payments made	-	-	-	-	-	-
Appropriations credited to Special Accounts	-	-	-	-	-	-
Balance carried forward to next year	-	-	-	-	-	-
Year ended 30 June 2003						
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 in Official Public Account	-	2,415,000	-	-	-	2,415,000

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

Note 18: Assets Held in Trust

Other Trust Monies

This account holds moneys advanced to the Tribunal by COMCARE for the purpose of distributing compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1998*. Where the Tribunal makes payment against accrued sick leave entitlements pending determination of an employee's claim, permission is obtained in writing from each individual to allow the Tribunal to recover the payments from the moneys in the account.

	2004 $	2003 $
Balance carried forward from previous year	-	-
Receipts during the year	19	39
Available for payments	19	39
Payments made	(19)	(39)
Balance carried forward to next year	-	-

Note 19: Reporting of Outcomes

The Tribunal has one outcome, the Recognition and Protection of Native Title. The level of achievement against this outcome is constituted by activities that are grouped into the four output categories of registration (Group 1), agreements (Group 2), arbitration (Group 3) and assistance and information (Group 4).

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

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	Outcome	
	2004	2003
	$	$
Note 19A – Net Cost of Outcome Delivery		
Administered expenses	-	-
Departmental expenses	32,226	29,633
Total expenses	32,226	29,633
Costs recovered from the provision of goods and services to the non-government sector		
Administered	-	-
Departmental	(235)	(103)
Total costs recovered	(235)	(103)
Other external revenues		
Administered	-	-
Departmental – interest on cash deposits	-	(115)
Total other external revenues	-	(115)
Net cost of outcomes	31,991	29,415

Note 19B – Major Departmental Revenues & Expenses by Output Groups and Outputs

Output Group 1	Output 1.1.1		Output 1.1.2		Output 1.1.3		Total Output 1	
	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000
Departmental expenses								
Employees	1,658	2,463	54	62	675	703	2,387	3,228
Suppliers	898	1,350	29	34	352	385	1,279	1,769
Depreciation and amortisation	57	101	2	3	23	29	82	133
Total departmental expenses	2,613	3,914	85	98	1,050	1,117	3,748	5,130
Funded by:								
Revenues from government	2,593	4,174	85	104	1,051	1,192	3,729	5,470
Sale of goods and services	22	14	1	0	-	4	23	18
Other non-taxation revenues	-	15	-	1	-	4	-	20
Total departmental revenues	2,615	4,203	86	105	1,051	1,200	3,752	5,508

Output Group 2	Output 1.2.1		Output 1.2.2		Output 1.2.3		Total Output 2	
	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000	2004 $'000	2003 $'000
Departmental expenses								
Employees	1,714	1,232	5,793	3,528	1,245	1,185	8,752	5,945
Suppliers	894	675	3,021	1,933	650	650	4,565	3,258
Depreciation and amortisation	58	51	196	145	42	49	296	245
Total departmental expenses	2,666	1,958	9,010	5,606	1,937	1,884	13,613	9,448
Funded by:								
Revenues from government	2,668	2,088	9,019	5,978	1,939	2,009	13,626	10,075
Sale of goods and services	-	7	-	19	-	7	-	33
Other non-taxation revenues	-	8	-	22	-	7	-	37
Total departmental revenues	2,668	2,103	9,019	6,019	1,939	2,023	13,626	10,145

Note 19B – Major Departmental Revenues & Expenses by Output Groups and Outputs

Output Group 3	Output 1.3.1		Output 1.3.2		Total Output 3	
	2004	2003	2004	2003	2004	2003
	$'000	$'000	$'000	$'000	$'000	$'000
Departmental expenses						
Employees	524	636	1,504	1,694	2,028	2,330
Suppliers	273	349	785	928	1,058	1,277
Depreciation and amortisation	18	26	51	69	69	95
Total departmental expenses	815	1,011	2,340	2,691	3,155	3,702
Funded by:						
Revenues from government	816	1,078	2,342	2,870	3,158	3,948
Sale of goods and services	-	4	-	9	-	13
Other non-taxation revenues	-	4	-	10	-	14
Total departmental revenues	816	1,086	2,342	2,889	3,158	3,975

Output Group 4	Output 1.4.1		Output 1.4.2		Output 1.4.3		Total Output 4	
	2004	2003	2004	2003	2004	2003	2004	2003
	$'000	$'000	$'000	$'000	$'000	$'000	$'000	$'000
Departmental expenses								
Employees	5,466	5,289	989	1,130	860	724	7,316	7,143
Suppliers	3,174	2,898	516	619	449	397	4,138	3,914
Depreciation and amortisation	193	218	34	47	29	30	256	295
Other	-	1	-	0	-	0	-	1
Total departmental expenses	8,833	8,406	1,539	1,796	1,338	1,151	11,710	11,353
Funded by:								
Revenues from government	8,629	8,963	1,540	1,915	1,340	1,227	11,509	12,105
Sale of goods and services	212	29	-	6	-	4	212	39
Other non-taxation revenues	-	33	-	7	-	4	-	44
Total departmental revenues	8,833	9,025	1,540	1,928	1,340	1,235	11,721	12,188

NOTES to and forming part of the Financial Statements for the year ended 30 June 2004

	Outcome	
	2004	2003
	$	$
Note 19C – Major Classes of Administered Revenues and Expenses by Outcome		
Administered revenues		
Fees	10	5
Total Administered revenues	10	5
Total Administered expenses		
Refund of fees	1	-
Total Administered expenses	1	-

APPENDIX VII 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

Applicant: the person or persons who make an application for a determination of native title or a future act determination.

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.

ATSIS: Aboriginal and Torres Strait Islander Services.

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.

Old Act: is the *Native Title Act 1993*, as in force immediately before the commencement of the *Native Title Amendment Act 1998*.

'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.

Registered native title claimant: native title claimants who have met the conditions of the registration test.

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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