NATIONAL NATIVE
TITLE TRIBUNAL

ANNUAL REPORT
2004–2005

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.

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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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16 November 2005

The Hon. Philip Ruddock MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

I am pleased to submit to you, for presentation to the Parliament, the annual report of the National Native Title Tribunal for the year ended 30 June 2005.

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

Yours sincerely

Graeme Neate
President

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THE YEAR IN REVIEW

Introduction

Eleven years after the *Native Title Act 1993* (the Act) commenced to operate, positive results have been achieved for many groups of Indigenous Australians, especially in northern Australia. There are dozens of determinations that native title exists, and more than 180 indigenous land use agreements (ILUAs) have been registered. Numerous other agreements have been reached.

We have been through, and perhaps are near the end of, a 'pioneering' period when the law has been clarified on major issues and on numerous technical aspects of the Act. Parties, parliamentarians and courts have come to grips with the implications of native title generally and the particular provisions of the Act.

There has been a dramatic change in the attitude of many people to native title and to involving Indigenous Australians in decision-making about activities on their traditional land and waters. As a direct or indirect result of the native title system, Indigenous Australians have a seat at the table to negotiate or to be consulted on a wide range of issues. Negotiations often take place whether or not Aboriginal people have the right to negotiate under the Act.

The extent of that change was reflected in comments by the deputy chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account (PJC) when tabling the PJC's report on the National Native Title Tribunal's *Annual Report 2003–2004*. Mr McMullan said:

> We see here evidence of a major social reform settling down and being embedded in the operations of society and the economy. We see evidence from the tribunal of indigenous land use agreements being negotiated and registered in a steadily increasing number and that future act consent determinations are becoming an increasingly common means of finalising negotiations ... [W]e have had a major change in the Australian economic and social fabric as a result of native title and it is now settling down and working in ways that many people hoped it would.

This annual report provides further evidence of how native title claims are being resolved and native title rights and interests are being recognised, alongside other rights and interests. It also deals with the range of registration, mediation, arbitration, assistance and other statutory functions performed by the Native Title Registrar and members and employees of the National Native Title Tribunal (the Tribunal).

As President, I am required to prepare a report of the management of the administrative affairs of the Tribunal during each financial year. Although such a report focuses on outputs and financial performance, 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. Consequently, figures and graphs, output and process compliance statements give an incomplete picture.

This report is primarily about the Tribunal. Its focus however, is not confined to the management of the Tribunal's administrative affairs and its scope extends beyond what is required of an annual report. As a national body that has been involved in native title matters since 1994, the Tribunal has extensive knowledge and experience of how the native title system works and of the variations in and between states and territories in relation to native title issues. Because of those variations, the Tribunal operates differently in each state and territory, while administering one national Act.

The nature and volume of the work undertaken by the Tribunal vary significantly over time, as well as 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 native title applications to the Tribunal for mediation and supervises the mediation processes. These and other factors, including the negotiating stances of parties, make it difficult to predict accurately the number of agreements and when they will be finalised.

Although there were variations between what was achieved and the estimates for outputs, they did not alter the Tribunal's overall workloads. The budget outcome reflects the Tribunal's ability to assess and respond to changes in its operating environment.

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 significantly influenced by numerous factors such as developments in the law, policies and procedures of governments, procedures and orders of the Federal Court, and the roles and capacity of native title representative bodies.

The native title environment is also influenced by various recent legislative and policy changes at a national level including the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the restructuring of the Australian Government's service delivery to Indigenous Australians by following a whole-of-government approach, and the reduction in real terms of the amount of money to be appropriated for the native title system over the four financial years 2005–09 when compared with the amount appropriated for the preceding four years. The practical implications of those changes for the native title system have yet to be identified.

Developments in the law on native title

Developments in native title law occur by way of legislation or decisions of courts and tribunals. Both took place during the reporting period.

Legislation

Amendments to the Act made by the *Financial Framework Legislation Amendment Act 2005* and the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* took effect during the reporting period. Some of the changes were minor.

The main changes were made by the legislation which abolished ATSIC. That legislation commenced to operate in March 2005. Its most immediate effect for the native title system was to remove the references to ATSIC from Part 11 of the Act, which deals with native title representative bodies. ATSIC was involved in a range of matters including granting money to representative bodies to enable them to perform their statutory functions or exercise their powers, imposing conditions on the grant of such money, consulting with each representative body about the preparation of its strategic plan, receiving each representative body's annual report and financial statements and transmitting them to the Minister for tabling in Parliament.

Under the amending legislation, responsibility for ATSIC's functions is given to the secretary of the relevant Commonwealth department (the Department of Immigration and Multicultural and Indigenous Affairs) or to the department. Under the new administrative arrangements, responsibility for native title matters previously exercised by ATSIC was transferred to the Office of Indigenous Policy Coordination within the department (OIPC).

The new arrangements are felt directly by representative bodies, but any significant changes to the way in which they are administered by OIPC could affect the broader operations of the native title system.

The main difference for the native title system flowing from the new arrangements is likely to be the absence of an indigenous body to take on the advocacy role previously performed by ATSIC in relation to native title policy and practice.

Judgments

The Federal Court delivered almost 50 written judgments on matters involving native title law during the year. Some of those were at the end of a trial and contained determinations of native title. Most judgments, however, involved other technical issues in relation to the interpretation of the Act and aspects of native title practice and procedure. That volume and range of judgments continues the trend in recent years of the court delivering scores of written judgments each year on native title matters.

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 set out in 'Appendix II Significant decisions', p. 121.

Although a considerable body of judicial rulings has been produced over the 11 years 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.

Karajarri native title holders: (left to right) Elma Bin Rashid, Nita Marshall, Amy King and Edna Hopiga with their part determination, Bidyadanga WA, 8 September 2004.

Some uncertainty in the law is not necessarily a barrier to negotiated outcomes. When delivering a consent determination in relation to part of the Karajarri people's application in Western Australia (*Nangkiriny v State of Western Australia* [2004] FCA 1156), Justice North noted that aspects of the determination represented a compromise on a number of issues. In the absence of judicial pronouncements directly on point, there was a degree of uncertainty about how they might be resolved by the Federal Court. The compromise was the result of intensive mediation undertaken by the parties. In all the circumstances of the case, the Court considered it appropriate to make the orders sought.

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 cannot be made. Governments can set the tone and influence the pace of mediation. Some parties take a lead from a government's approach.

In various statements made during the reporting period, the Federal Attorney-General has observed that the Australian Government seeks to settle native title claims through mediation wherever possible. He reiterated that such mediation, however, can only be conducted within a sound legal framework and some issues may require clarification from the Federal Court.

Although compliance with the current state of native title law is critical to native title outcomes (particularly determinations of native title), many substantive related outcomes can be negotiated unfettered by the requirements of the Act. Government policies that provide a framework for dealing with issues can expand the scope of what is being discussed by parties to native title proceedings.

Governments, particularly state and territory governments, can 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.

Broader policy issues need to be considered beyond the resolution of individual native title claims. These include how native title fits into Indigenous affairs policy generally, and how various levels of government can cooperate in developing native title and related outcomes.

At a national level, the vision for the administration of Indigenous affairs following the abolition of ATSIC was described by the Secretary of the Department of Prime Minister and Cabinet, Dr Peter Shergold, as a 'whole of government approach which can inspire innovative national approaches to the delivery of services to Indigenous Australians, but which are responsive to the distinctive needs of particular communities'. The whole-of-government approach involves public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Responses can be formal and informal. They can focus on policy development, program management and service delivery. The principles underlying the new arrangements are collaboration, regional need, flexibility, accountability and leadership.

Incorporating native title into policy development, program management and service delivery is consistent with those principles. Native title needs to be taken into account to ensure that policies do not cut across native title developments and to explore opportunities for native title to provide a basis for economic and other returns to Indigenous communities. Indeed, as the Aboriginal and Torres Strait Islander Social Justice Commissioner has argued, any failure to coordinate the goals of the native title system with the government's strategies to address the economic and social development of Indigenous people not only isolates the native title process from these broader policy objectives, it limits the capacity of the broader policy to achieve those objectives.

There are numerous potential links between policies and programs and native title. The Federal Attorney-General, for example, has suggested that at least one consent determination of native title offers to provide a secure basis for economic development in the area, including further shared responsibility initiatives.

The Tribunal is developing contacts with OIPC at national, state and territory levels to help inform the whole-of-government approach and ensure that relevant groups or communities are involved and opportunities are identified and pursued.

The collaborative approach to these issues should not be confined to Australian Government departments and agencies. The national framework of principles agreed to by the Council of Australian Governments (COAG) in June 2004 includes 'sharing responsibility'. An aspect of that principle is 'committing to cooperation between jurisdictions on native title,

consistent with Commonwealth native title legislation'. There is much room for such a cooperative approach to be adopted when negotiating native title and related outcomes.

At their meeting in June 2005, members of COAG 'reaffirmed their commitment to work together in an ongoing partnership to improve outcomes for Aboriginal and Torres Strait Islander Australians'. In particular, COAG noted 'the importance of governments working together with local indigenous communities on the basis of shared responsibility'.

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 continues to take an active role in the case management of individual 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 mediation progress reports and regional work plans in relation to clusters of claimant applications. Those work plans, prepared with (or by) the relevant representative bodies together with government and other 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. 64.

The court has also taken an increasing role in mediating aspects of some claimant applications, sometimes after referring those applications to the Tribunal for mediation. That approach appears to be inconsistent with the broad scheme of the Act—that the Tribunal is responsible for mediating most claimant applications (under the supervision of the Federal Court) and the court is responsible for deciding questions of fact or law, either as referred to it by the Tribunal or in hearing an application where parties have not reached a mediated outcome on some or all of the relevant matters.

Although the Act does not give the court the mediation function, the court has a general power to mediate under the *Federal Court of Australia Act 1976* and it seems that the power may be used in the exercise of its native title jurisdiction. Different views have been expressed by judges about whether court-annexed mediation should be used in relation to native title proceedings, and there is an ongoing discussion between the court and the Tribunal about the roles of the institutions in relation to the mediation of claimant applications.

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. Although, as noted earlier, Part 11 of the Act was extensively amended in 2005, the powers and functions of representative bodies were not changed.

As I have stated in previous annual reports, properly functioning representative bodies are not just important for the people they represent. The Tribunal and parties to native title proceedings or negotiations also benefit from them.

For some years, there have been concerns about the perceived inadequacy of the human and financial resources available to representative bodies to perform their functions.

Concerns have been raised, for example, by companies in the resources sector about the capacity of representative bodies to assist Indigenous groups in future act negotiations. At the Minerals Week 2005 conference, Mr Charlie Lenegan, Managing Director of Rio Tinto Australia, referred to 'a problem … in the under capacity of the crucial native title representative bodies' that makes it hard for them 'to deliver timely and pragmatic agreements for the benefits of their clients and resource companies alike'. He urged the Australian Government to commit 'greater resources' to the capacity development of 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.

Issues about the resourcing and capacity of representative bodies remain to be resolved. During the reporting period the PJC continued 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. The Tribunal made a written submission to the PJC. 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 14 recognised representative bodies for 15 of those areas.

On 23 June 2005, the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone, announced that she had withdrawn recognition of the Queensland South Representative Body as a representative body under the Act. The Minister announced on 28 June 2005 that the Australian Government is funding a new body, Queensland South Native Title Services, to provide native title services to claimants in the south Queensland region. The corporation has been funded to perform the functions of a representative body for an initial period of six months.

There continued to be no representative body for New South Wales or Victoria. Much of the representative body work, however, was undertaken by New South Wales Native Title Services Ltd and Native Title Services Victoria Ltd respectively.

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 some changes to the membership. I note with sadness the death of the Hon EM (Terry) Franklyn QC soon after his term as a Deputy President concluded in December 2004. Mr Franklyn contributed much to the development of future act law and practice surrounding the right to negotiate during his six years with the Tribunal.

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 'Tribunal Overview', p. 29 and 'Appendix I Human Resources', p. 119.

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 2005, there were 584 claimant applications at some stage between lodgement and resolution. The total was slightly lower than the 615 active claimant applications

at 30 June 2004. In the reporting period, 65 claimant applications were discontinued, dismissed, withdrawn, struck-out, combined with other applications or were the subject of approved native title determinations, and 32 new claimant applications were lodged.

In the period covered by this report 54 registration test decisions were made, fewer than the 59 decisions made in the previous year. They included 22 registration tests made on applications for the second, third or fourth time.

There has been a steady reduction in the registration test workload in relation to claimant applications 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 dropped significantly in 2004–05, with 24 claimant applications being notified, compared with 62 in the previous year. Twenty 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. Some 91 per cent of active claimant applications had been notified by 30 June 2005.

As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. At 30 June 2004, 359 currently active matters were with the Tribunal for mediation. At 30 June 2005, 346 currently active claimant applications were in mediation, including 32 matters that were referred to the Tribunal during the past year. The number of applications referred to the Tribunal for mediation is likely to increase next year.

It should be noted that although about 60 per cent of the active claimant applications have been referred to the Tribunal for mediation, many of those are not being substantively mediated. Much work remains to be done in relation to numerous applications (including collating and presenting information about the native title claim groups' traditional connection to the relevant areas of land or waters, and resolving disputed overlaps between neighbouring groups) before such mediation with respondent parties will occur.

Details of the Tribunal's performance in delivering the services of registration testing, notification and mediation 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, research and library assistance, maps and other geospatial services. Assistance was provided to parties on a case-by-case basis, as well as on a regional or state-wide basis (e.g. by way of training sessions or workshops). Information about Tribunal assistance is provided in 'Output 1.4.1 — Assistance to applicants and other persons', p. 81.

During this reporting period the Tribunal completed a second year of capacity-building initiatives in accordance with its *Strategic Plan 2003–2005*. The Tribunal continued to develop innovative ways to assist participants in native title processes, creating productive relationships with clients and enhancing their capacity to achieve agreements (for more information see pp. 84–9).

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 steady increase in the number of ILUAs registered in the reporting period, from 46 during 2003–04 to 52 during 2004–05, bringing a total of 182 ILUAs on the Register of ILUAs at 30 June 2005.

This report contains information about the level of ILUA activity around the country ('Output 1.2.1 — Indigenous land use and access agreements', p. 60), ILUAs lodged with the Tribunal for registration during the reporting period ('Output 1.1.3 — Indigenous land use agreement registration decisions', p. 55) and Tribunal assistance in other forms of agreement-making ('Output group 1.2 — Agreement-making', p. 60), as well as descriptions of some ILUAs, which illustrate the variety of matters that are covered by such agreements.

Some ILUAs provide the basis for the exercise of various rights and interests in areas where there are consent determinations that native title exists. Others deal with local government issues (see the case study on p. 63) or commercial developments, and can include substantial benefits for the local Indigenous community. The Argyle Participation Agreement (see p. 59) is an example of a large scale, stand alone ILUA concluded in 2004–05. The number and variety of ILUAs demonstrates that parties find them appropriate to meet a range of needs and aspirations.

Although there has been a reduction in the rate of notifying claimant applications, there has been an increase in the notification of ILUAs, so that in 2004–05 about two thirds of the notification workload involved ILUAs (80 applications).

Increase in number of determinations of native title

In the reporting period, the Tribunal registered 16 determinations of native title — 14 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. 121.

These determinations are on the public record. They set out quite precisely the native title rights and interests that are legally recognised as well as the rights and interests of others in the same areas of land or waters. They identify who the native title holders are. In other words, they provide a clear and comprehensive statement about the key features of native title and other legally recognised rights and interests for each area.

The number of determinations in the reporting period reflects, among other things, a substantial statistical increase in the number of determinations registered in the reporting period when compared with the six determinations registered in 2003–04. Although that increase is heartening (particularly as most of the determinations were by consent), it should not be interpreted as evidence of a sudden change in the negotiating stance of major parties. Rather, it is a result of various factors which influence the time it takes to reach and register a determination. Some of those factors are noted in the discussion of 'Future trends' at page 15 of this overview.

Most applications take many years to move from filing to determination (whether by consent or after a trial). 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.

Not all applications will result in a determination that native title exists and, when they do, the finalisation of claimant applications will often involve a range of agreements. The Tribunal engages 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 and that others will be settled without such a determination (for more information see the discussion of agreement-making in 'Future trends').

There is likely to be an increase in the number of determinations that native title does not exist, primarily in relation to land in New South Wales. Most non-claimant applications are in that state. Twenty-five of the 28 active non-claimant applications at 30 June 2005, and all 18 non-claimant applications filed in 2004–05, were in New South Wales.

Six of the 18 non-claimant applications filed in 2004–05 were by Aboriginal Land Councils (ALCs), bringing to 20 the number of non-claimant applications made by ALCs in New South Wales. It is likely that more such applications will be made by ALCs that want to capitalise on their land holdings for economic and social development opportunities. Most of the parcels involved are a few hectares in size. As a general rule,

under s 40AA of the New South Wales *Aboriginal Land Rights Act 1983*, an ALC may not deal with land vested in it that is subject to native title rights and interests unless the land is the subject of an approved determination of native title. Once a determination is made by the Federal Court, the land can be mortgaged, sold, leased or dealt with in other ways. Usually the determination is made on the basis that no person has lodged a native title determination application over the land during the notice period. At 30 June 2005, eleven of those applications had been resolved by unopposed determinations that native title does not exist.

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. 70 and 'Output group 1.3 — Arbitration', p. 74).

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 16 of the 20 future act determinations were made by consent.

Seventeen of the 52 ILUAs registered in that period involved exploration or mining.

ILUAs are being used increasingly in relation to the grant of mining and exploration tenements in Victoria. A set of nine *pro forma* native title mining agreements (endorsed by the Victorian Government, the Victorian Minerals and Energy Council and Native Title Services Victoria Ltd and launched in April 2004) is being used in negotiations in Victoria and has provided the basis for agreement.

In recent annual reports I referred to the development of standard forms of cultural heritage protection agreements in Western Australia and Queensland to deal with the concerns of native title parties about how proposed mineral exploration might affect areas of cultural significance. It was hoped that the adoption of those agreements would result in a substantial decline in the number of objections to the use of the expedited procedure under the Act.

Despite those expectations, there has been an increase in the number of objections to the use of the expedited procedure under the Act, up from 761 in 2003–04 to 1,230 in 2004–05.

As in previous years, most of those objections were in Western Australia where some native title claim groups not affiliated with the native title representative bodies (with which the regional standard heritage agreements were negotiated) have refused to adopt standard agreements, seeking instead to negotiate alternative agreements. In addition,

some representative bodies have launched objection applications where no or incorrectly executed regional standard heritage agreements are served on them.

An increase in the number of objection applications lodged in Queensland reflects, among other things, an increase in the number of parties lodging objections to instigate or secure the negotiation of agreements as an alternative to the Native Title Protection Conditions. Numerous agreements have been negotiated. Of the 180 objections finalised in Queensland in 2004–05, 131 (73 per cent) were finalised by the withdrawal of the objection because of an agreement.

Revised outcome and outputs

As the PJC 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'.

During the year covered by this report, the Tribunal completed a review of the outputs by which it reports its performance. The objective was to capture more accurately the complexity of changes in workload and the nature of the work influenced by these external factors.

The Tribunal will start the 2005–06 financial year with a new outcome statement and a revised outputs structure that more clearly reflects the purpose of the Tribunal and its changed operating environment. The new outcome statement, 'Resolution of native title issues over land and waters', better identifies the role and responsibilities of the Tribunal than the previous outcome statement 'Recognition and protection of native title'.

In line with Australian Government requirements, the Tribunal has introduced effectiveness indicators for the outcome. These indicators will help to assess the quality of agreement-making processes and the impact of the Tribunal's work on the type of native title outcomes achieved by parties (for more information see 'Tribunal Overview' p. 34).

Budgetary constraints

In recent years, including the reporting period, the Tribunal has not used the entire amount appropriated to it. The Parliament appropriated $33.854 million for the reporting period which, together with some modest income from other sources, meant that $33.997 million was available to the Tribunal. Of that, $31.918 million was spent, $2.079 million was retained in an equity fund.

The budgetary position for 2005–09 was decided following the review of the funding of all Australian Government agencies involved in the native title system. The review was coordinated by the Attorney-General's Department. Budget papers published in May

2004 stated that the Tribunal's appropriation and expenditure grew steadily from its inception in 1994 until it reached a peak in 2004–05. The 2005–06 and forward estimates years show a slight decrease in appropriation from 2004–05. The level of appropriation will remain relatively flat for the duration of the next four year budget cycle. Rising costs will erode the value of that funding, and continuing work demands are likely to put pressure on the Tribunal.

The effect of the budgetary constraints on the Tribunal will become clearer in the years ahead. It is apparent, however, that to meet the challenges of the new budgetary circumstances there will need to be some restructuring of the organisational side of the Tribunal. That will be done having regard to the Tribunal's task and client focus, the need to fit its resources to needs, and the need to enhance the Tribunal's ability to do its core business and deliver outcomes. The Tribunal is also looking at its internal decision-making processes and other activities to ensure that it concentrates on the performance of its core functions while enhancing the prospects of job satisfaction for employees.

External assessments of the native title system

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

The work of the Tribunal is scrutinised by the PJC. In addition to examining the annual report of the Tribunal, the PJC inquires into and reports to the Parliament on 'the effectiveness of' the Tribunal', from time to time. On 4 December 2003, the report of the PJC was tabled in the Federal Parliament (see www.aph.gov.au/committees/senate). The Tribunal has acted on a number of recommendations in the report.

Social Justice Commissioner

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

In the *Native Title Report 2004*, tabled in April 2005, the Commissioner discussed a project that aims to investigate how native title can be utilised to improve the economic and social conditions of Indigenous peoples' lives. He set out a series of principles for promoting economic and social development, and described the framework of principles as putting 'the economic and social development of the traditional owner group at the centre of the native title process'. He suggested that native title 'needs to move beyond the legal framework into a policy framework that ensures consistent and dependable outcomes for traditional owner groups'.

Client satisfaction survey

In 2005 research into the satisfaction of its clients and stakeholders was undertaken on behalf of the Tribunal.

The survey was the second commissioned by the Tribunal. The results of the first survey, conducted in 2002–03 and referred to in the Tribunal's Annual Report for that year, provided a useful benchmark for assessing the results of the 2005 survey.

Among the main results of the most recent survey was an overall increase in the satisfaction rating. Information about the client satisfaction research is at 'Accountability to Clients', p. 113.

The results of the survey will be used to inform the improvement of the Tribunal's service and to develop qualitative measures as part of the Tribunal's new output and outcome framework in 2005–06.

FUTURE TRENDS

In previous annual reports I have looked ahead to predict some key trends in native title law and practice and the factors that will affect how native title issues are resolved. Such 'crystal ball gazing' is risky in any sector of public policy and practice, and is certainly so in the dynamic environment of native title. It is, however, useful to consider the trends identified in previous reports to see whether, and to what extent, they are holding.

The law in relation to native title will become clearer

Judgments

For the most part, the clarification of the law is a result of judicial decisions.

Judgments of the Federal Court in the reporting period enhanced our understanding of the law and helped to resolve specific (and sometimes quite technical) issues in relation to native title, particularly the meaning or operation of sections of the Act. Consequently, the legal environment in which some negotiations occur or cases are argued is more certain than in previous years.

As noted earlier, a degree of uncertainty remains in respect of some aspects of the law. Although these are not differences about major legal matters, the immediate practical effect is a delay in negotiations about applications where the judgments are relevant. The resumption of substantive negotiations on such matters may depend on the outcome of an appeal to a Full Court of the Federal Court or possibly the High Court.

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 for areas where native title has been extinguished in whole or in part.

At the end of the reporting period there were 16 active compensation applications; a small proportion of the overall number of native title applications. 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.

Legislation

Apart from judicial decisions, the law can also change or be clarified by legislation. At the end of the reporting period there were no indications that the Act would be amended substantially. From time-to-time, the Federal Attorney-General has stated that he would consider amendments of a technical nature that would improve the working of the native title system. In February 2005, for example, he stated that the Australian Government 'keeps the native title system under continual review' and he is 'always interested in constructive suggestions to finetune it'.

That message was reiterated by the Prime Minister in an address to the National Reconciliation Planning Workshop in Canberra on 30 May 2005, when he said: '[L]et me make it clear that the Government does not seek to wind back or undermine native title or land rights ….We want to make native title and communal land work better.'

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 made to the Tribunal, more matters were mediated or arbitrated by the Tribunal, and other agreements were reached without the direct involvement of the Tribunal.

The increase in the volume of native title work is likely to continue into the foreseeable future, although the reasons for it might not be the same nationally. For example, while it is to be hoped that there will be a 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.

There will be an ongoing and increasing workload in relation to native title applications that are already in the system. Although some longstanding native title applications have been resolved, much more work remains to be done. As at 30 June 2005 there were 628 active native title applications (584 claimant, 16 compensation and 28 non-claimant applications). That total is just over one third of the 1,649 applications made since the Act commenced, but the challenge is to deal with those and future applications effectively and efficiently, reducing transaction costs where possible.

The Federal Court and the Tribunal will need to continue to work closely. Each native title application is a proceeding in the Federal Court, and the court supervises those matters in mediation by the Tribunal. To a greater or lesser extent, the court case manages each application and rules on a range of issues as they arise.

It is clear that, for so long as there are hundreds of active native title applications, there will be substantial work for the court to do in case management, ruling on preliminary points of law, and hearing and determining those applications that go to trial (as well as any questions of fact or law referred to it by the Tribunal). Most of that work will be done by judges. In addition, judges will hear occasional judicial review applications in relation to decisions taken by the Native Title Registrar or his delegates and determinations made by Tribunal members in relation to future act applications.

A substantial increase in the number of applications in substantive mediation by the Tribunal may relieve the court of some of its workload but, on present indications, at least some applications will proceed to trial. The trials of matters which led to determinations registered in the reporting period ranged in length from six to 77 days, an average of 47 sitting days for evidence and submissions. Although not all trials are lengthy, the matters that go to trial are usually complex and take some time for judges to determine.

It should be noted that, at 30 June 2005, five claimant applications were part-heard and 22 other applications were in a pre-trial phase. Judgment was reserved in three other matters. Appeals had been lodged in relation to three judgments of single judges of the Federal Court making determinations in relation to claimant applications.

Although there is an increasing trend towards settling claimant applications, experience suggests that those applications that are well along the litigation pathway will take some years to resolve.

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

The trend towards finalising claimant applications by negotiated agreement is illustrated by the determinations of native title registered under the Act since the Act commenced, particularly in the reporting period.

Of the 66 native title determinations made and registered between 1 January 1994 and 27 June 2005, 47 were determinations that native title exists in all or parts of the determination area. Most of the determinations that native title exists (36, or 77 per cent) were made by consent of the parties. In the year covered by this report, 16 determinations of native title were made and registered. Of those, 14 were that native title exists and most of those determinations (11, or 79 per cent) were made by consent.

The following observations illustrate some of the factors that may have a bearing on particular consent determinations.

- First, although some are negotiated without the need for a trial, other consent determinations have followed judicial proceedings, for example, the Karajarri people's determination (see p. 51). In some cases, litigation on questions of law (such as the effect on native title of pastoral leases or certain public works) has lengthened

proceedings that were resolved by consent, although judgments about those legal issues may have provided the basis for a negotiated settlement.

- Second, the size of the area claimed does not preclude determination by consent, as seen in the relatively small areas of land in the Torres Strait, and the largest area to be determined to date (the Ngaanyatjarra Lands application—for more information see the case study on p. 53).
- Third, although the time taken between lodging a claimant application and a determination of native title is measured in years, it usually takes less time to resolve claims by agreement than it does to argue matters in court and obtain judgment. (This aspect is discussed in more detail at page 21 of this overview).
- Fourth, as key parties reach a common understanding of the legal requirements, the possibility of consent determinations in some cases should improve. As more claimant applications in a broad geographical region are determined, it should be easier for the major parties to negotiate appropriate outcomes in relation to other claimed areas within those regions.

Agreement-making is not confined to consent determinations, and determinations are often not the only formal outcome of claimant applications. Parties may negotiate a determination and associated agreements (such as ILUAs) to give effect to the terms of the determination 'on the ground'. In the reporting period, approximately half of the determinations of native title only took effect when the related ILUAs were registered.

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

An ILUA gives effect to how native title rights will be exercised in the Barron Gorge National Park: (left-centre-right) Michael Neal, legal representative for the Djabugay people and Tribunal President Greame Neate with native title holder Willie Brim, at the Djabugay native title determination, Kuranda Qld, 17 December 2004.

Other types of agreements are also being negotiated. In recent years, for example, exploration and mining companies have negotiated an increasing number and range of agreements with local Indigenous communities.

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. In those circumstances, parties will need to consider whether other outcomes might be negotiated in the context of Tribunal-convened mediation.

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

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

Because we live in a federal system, there are different laws in each state and territory relating to 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).

Such differences are apparent also in the types of standard cultural heritage agreements used in relation to mineral exploration activities in Queensland and Western Australia.

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 and amended in 2004 and 2005, provides for ILUAs to be negotiated and registered over certain jointly managed parks and reserves. Thirty-one such agreements were lodged with the Tribunal for registration during April, May and June 2005.

In March 2005, the Queensland Government published a Discussion Paper in relation to its ongoing review of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. That paper included extensive discussion of the interaction of those state laws (which were enacted well before Commonwealth native title legislation) and the Act. Significant issues have arisen about various aspects of the operation of the Act and state laws to the same areas of land, and the Queensland Government is considering legislative and other ways of improving the current situation.

Timeframes for negotiating agreements should, on average, be reduced

In his judgment making a consent determination in *Mervyn, Young and West and Others*

on behalf of the Peoples of the Ngaanyatjarra Lands v State of Western Australia [2005] FCA 831, Chief Justice Black noted that the proceeding was commenced by the Ngaanyatjarra Lands application filed in the Federal Court on 23 April 2004. His Honour described as 'especially noteworthy' the efforts of all the parties and their representatives. The parties had 'gone ahead with commendable speed to achieve an agreement within little more than a year after the filing of this application'.

Encouraging as the speed of resolution was, the single application was in response to six earlier applications that were filed between 1995 and 2002, five of which were discontinued shortly after the determination. Those applications included nearly all of the area that was covered by the consent determination. So, on one analysis, the claim took between 1995 and 2005 to resolve. The commitment of the parties to resolve the proceedings by agreement was, however, most clearly evident in the lodgement of the single application which resulted in a determination of native title some 14 months later.

Many factors influence the time taken to negotiate agreements. Judgments in relation to one application may affect the pace of mediation of others and the possible outcome. 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 Davenport Murchison application). 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. The appeal was heard by a Full Court of the Federal Court in November 2004 and judgment had not been delivered at the end of the reporting period. 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.

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. As noted earlier (see p. 4), some agreements may be reached about determinations of native title even when the law is uncertain.

The determinations of native title made and registered in the reporting period show that:

- the period between lodgement of the claimant application and the Federal Court delivering a determination of the four matters that were resolved by a litigated outcome ranged from 8 years and 6 months to 10 years and 11 months, an average of 9 years and 4 months;
- three of the cases resolved by judgment in the reporting period were referred to the Federal Court for trial before the 1998 amendments to the Act took effect;
- the period between lodgement of the claimant application and the Federal Court

delivering a determination of the 10 matters (other than Ngaanyatjarra Lands) that were resolved by consent ranged from three years and 8 months to 9 years and 4 months, an average of 7 years and 6 months.

Whether finalised by consent or by judgment after a trial, each case had special features. The determination by a Full Federal Court that native title exists in the De Rose case, for example, was made on appeal from a judgment that native title did not exist of the claim area. The average period for consent determinations in the Torres Strait would have been much shorter had it not been for the litigation before a Full Federal Court about the effect on native title of certain public works.

It is increasingly common for consent determinations of native title to take effect after associated ILUAs are registered. Consequently, many determinations will not be registered for at least some months after they are made. An objection to the registration of the ILUA may delay the registration of the determination. In some litigated proceedings, the court has given reasons for judgment then directed parties to prepare a determination of native title to give effect to the judgment. In *Sampi v State of Western Australia* ([2005] FCA 777), Justice French directed that the applicants submit a draft determination. In order to reduce any dispute that may arise about the terms of the draft determination, he recommended that the Tribunal be asked to facilitate agreement about the terms.

In general terms, however, it is apparent that it has taken a shorter period to resolve matters by negotiation than by litigation. Importantly, although the periods involved were relatively long whatever process was followed, the costs of negotiation were significantly less than the costs of litigation over those periods.

This trend toward shorter timeframes is taking longer to develop than may have been anticipated some years ago. However, it is apparent in the future act arena where some parties and representatives of parties have become more experienced in negotiations. The scope of potential outcomes is also becoming more predictable with agreements negotiated on similar subjects and pro forma agreements such as those published in Victoria and the standard regional heritage agreements in Western Australia. Various agreements are now publicly available from such sources as the Agreements, Treaties and Negotiated Settlements database created by Melbourne University and the Tribunal (at www.atns.net.au).

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, there is no provision for resources to be provided to enable these bodies to operate. When deciding whether to make a consent determination that native title exists over land in the Kimberley region, Justice North of the Federal Court took into account the apparent lack of resources for the PBC (see *Nangkiriny v State of Western Australia* [2004] FCA 1156 at [9]–[11]).

A PBC holds the native title in trust or performs other functions under the Act. At the end of the reporting period there were 47 registered determinations that native title exists. As more such determinations are made and large areas of the country are subject to those determinations, PBCs are assuming increasing importance as the bodies with whom other people should negotiate in relation to use of those areas of land.

The relative paucity of resources available to PBCs is restricting the capacity of some of them to negotiate in relation to the grant of exploration and mining interests, with consequent delays and potential economic losses to companies, native title holders and the broader community.

The issue of PBC resourcing (by way of funding and skills capacity) has been raised with the Tribunal over many years. There have been concerns about the workability of native title in the absence of resourced and effective structures to support native title holders.

There are policy issues for Australian, state and territory governments in dealing with this significant practical issue that affects both the enjoyment of native title and effective access to native title lands by miners and others.

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 government funding to assist in establishing PBCs. The Australian Government believes that the states and territories (with primary responsibility for the day-to-day management of land), along with others 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 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 must be done by 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 equally, 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.

The Federal Court has recognised that, in working out mediation programs, the Tribunal and the parties have to consider resources limitations and other practical constraints under which they operate.

But the mediation process is not open-ended. Justice French has noted that native title applications are 'judicial proceedings in respect of which the Act reflects a concern that they not be unduly delayed notwithstanding the high value it places on negotiated settlements' (*Bropho v Western Australia* [2000] 96 FCR 453, 169 ALR 365 at [18]).

One way to deal with, or at least reduce, the constraints of limited resources is to develop ways to optimise their use including by reference to regional work plans and regional mediation programs developed with the assistance of the Tribunal.

The level of available resources also influences matters proceeding to trial. When ruling on the case management of some claimant applications in late 2004, three Federal Court judges made the general point that the programming of native title matters in the Court's docket 'cannot be determined by the decisions of funding agencies or the views of representative bodies, the state or any other parties about appropriate priorities. These are all matters to be taken into account in settling realistic timeframes. But if it should happen that want of funding means that some applicants will be unrepresented at trial, that is not a bar to proceeding with a trial although it will raise obvious difficulties in the management of the trial process.' (*Bennell v Western Australia* [2004] FCA 338 at [37]).

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

There are indications that the Federal Court will want to take an increasingly directive role in the disposition of native title applications, and a more active role in the mediation of them.

The court is constantly urging parties and the Tribunal to consider various ways under the Act and the *Federal Court of Australia Act 1976* to finalise native title applications more quickly than has been done to date. The suggested procedures include early neutral evaluation of evidence of the native title claim group's traditional connection with the relevant area of land or waters; reference of questions of fact or law to the court for resolution in order to expedite the reaching of an agreement on a matter that is the subject of mediation; and taking early evidence (or 'preservation evidence') from witnesses, particularly Aboriginal people or Torres Strait Islanders who are aged or infirm.

These procedures need not be considered in isolation from each other. Indeed, in certain circumstances, the use of such procedures could be linked as part of an overall mediation strategy to avoid the need for a trial or to limit the number of issues and parties at trial. So, for example, preservation evidence might be used as part of the material considered in early neutral evaluation of the strength of the native title claim group's application and may inform the general mediation of the application.

To date, however, parties have made little use of these options, preferring to proceed with the more conventional (and perhaps convenient) mediation process. The court, for its part, has resisted the urge to set down numerous matters for trial, preferring to monitor the progress of individual applications (or regional clusters of claims) through case management conferences and directions hearings. In some regions, the court is informed by work plans or programs developed by the applicants or their representatives in consultation with major respondent parties and assisted by the Tribunal.

It should be noted that judges of the court do not act uniformly in case management practices or the orders they make. Each judge with responsibility for native title matters (either as the provisional docket judge for groups of matters in a state, territory or region, or as the judge to whom particular applications have been substantively assigned) exercises his or her independent discretion in matters of case management. To some extent the variation of approach evident between judges is a reflection of local circumstances. In other cases, it evinces the approach that an individual judge has chosen in order to move matters to resolution, whether by determination, strike-out or withdrawal.

There will be an increased focus on who can have access to and use information generated in relation to native title matters

An example of this ongoing discussion is the continuing reluctance of some parties to have their executed agreements recorded on a public database.

There is a real 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. 84).

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

As I have previously observed, too great a weight 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 as well 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 in ways and with people that could not have been imagined a decade ago.

There was significant debate during the reporting period about the extent to which Indigenous Australians are, or should be, able to obtain individual interests in parcels of communal land or use that land as security for the development of economic enterprises. For the most part, that debate concerned state or Commonwealth statutory land rights regimes where the grant of leases or other interests is permitted in certain circumstances but the title, as a general rule, cannot be sold or mortgaged.

In an address to the National Reconciliation Planning Workshop in Canberra on 30 May 2005, the Prime Minister said:

> I want to see greater progress in relation to land.
>
> We support very strongly the notion of indigenous Australians desiring to turn their land into wealth for the benefit of their families. We recognise the cultural importance of communal ownership of land, and we are committed to protecting the rights of communal ownership and to ensure that indigenous land is preserved for future generations. …
>
> [W]e want to add to opportunities for families and communities to build economic independence and wealth through use of their communal land assets. We want to find ways to help indigenous Australians secure, maximise and sustain economic benefits. We want to make native title and communal land work better.

Similar questions will be asked about the extent to which land where native title exists (particularly in a form of exclusive possession) can be used by individuals or in relation to commercial enterprises. Answers to those questions will have to take into account the differences between native title and statutory land rights.

As I noted earlier (see p. 14), the Aboriginal and Torres Strait Islander Social Justice Commissioner is involved in a project that aims to investigate how native title can be utilised to improve the economic and social conditions of Indigenous peoples' lives. He has identified, however, particular features of native title that reduce the likelihood of the legal system providing recognition of commercially useful rights. The 'inconsistency of incidents test' operates to remove from the bundle of native title rights those which might provide a basis for commercial enterprise and opportunity.

Important policy issues need to be considered. It may be that, given the unique nature of native title rights and interests, the best mechanism for achieving such outcomes is the use of ILUAs.

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 and Australia's native title scheme is of interest to international bodies and to communities overseas.

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.

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.

CONCLUSION

Although much has been and is being achieved, the Tribunal acknowledges that the native title system will deliver few if any direct benefits (such as the formal recognition of native title) for many groups of Aboriginal people. Those people now recognise that native title falls short of many of their land aspirations. There is, however, a widespread desire to sort out many of those issues and, where possible, to do so by agreement.

In a legal sense, some of the solutions lie outside the Act and are in the hands of governments (particularly state and territory governments) to provide. They require policy initiatives, political will and practical implementation to succeed.

Examples of the options available (such as grants of title to land and the involvement of Indigenous people in joint management of land) are described in this and previous annual reports. The time may be right to look beyond claim or group specific options to broader structural and policy initiatives at a state or territory level. There may be ways of involving traditional owners of land in decision-making without the need to invoke the native title claims process with the attendant costs for the parties and their representatives, the Federal Court, the Tribunal and, ultimately, the Commonwealth.

The Tribunal also acknowledges that the transaction costs to reach native title outcomes are often high, and usually inversely high when compared to the outcomes reached. For example, the more tenure history and connection research is required to support a determination of native title, the fewer will be the recognised native title rights and interests, particularly in southern Australia.

The Tribunal will continue to work toward improving the operation of the native title system (and the transaction costs) by improving the processes that it controls, identifying possible technical amendments to the Act, and encouraging governments to explore other means of dealing with issues that give rise to native title claims, so that real issues are resolved without going through unnecessary processes and incurring such high costs. 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 future acts that are proposed to take place on areas where native title exists or might exist; and
- where parties cannot agree, 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. 64).

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. 70 and 'Output 1.3.1 — Future act determinations', p. 74).

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 last reporting period, there were 14 members, comprising four presidential members (three full-time and one part-time) and 10 other members (seven full-time and three part-time). There were some changes to the composition of the Tribunal during the reporting period:

- Mr Robert Faulkner PSM was appointed as a part-time member for a period of five years from August 2004;
- Professor Doug Williamson QC was re-appointed as a part-time member of the Tribunal for a period of one year from December 2004;
- The Hon. Terry Franklyn's term as a part-time deputy president was completed on 16 December 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.

Members of the National Native Title Tribunal, Surfers Paradise Qld, March 2005: (left to right,) Dan O'Dea, Gaye Sculthorpe, Graham Fletcher (back row), John Sosso, Doug Williamson, Graeme Neate—President (back row), Christopher Doepel—Registrar, Laurence Boulle (back row), John Catlin, Bardy McFarlane (back row), Ruth Wade, Neville MacPherson (back row), Fred Chaney, Robert Faulkner (back row) and Christopher Sumner.

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).

ORGANISATIONAL STRUCTURE

Given the comprehensive organisational review undertaken in the last reporting period, there were no significant structural changes during the current reporting period. The Tribunal currently has three divisions: Service Delivery division, Corporate Services & Public Affairs division and Information & Knowledge Management division (IKM).

The Director of Service Delivery is Hugh Chevis and the IKM division is directed by Michael Cook, Chief Information Officer. Following the departure of the Director of Corporate Services & Public Affairs, Marian Schoen, the position had not been permanently filled at the end of the reporting period and a selection process was underway.

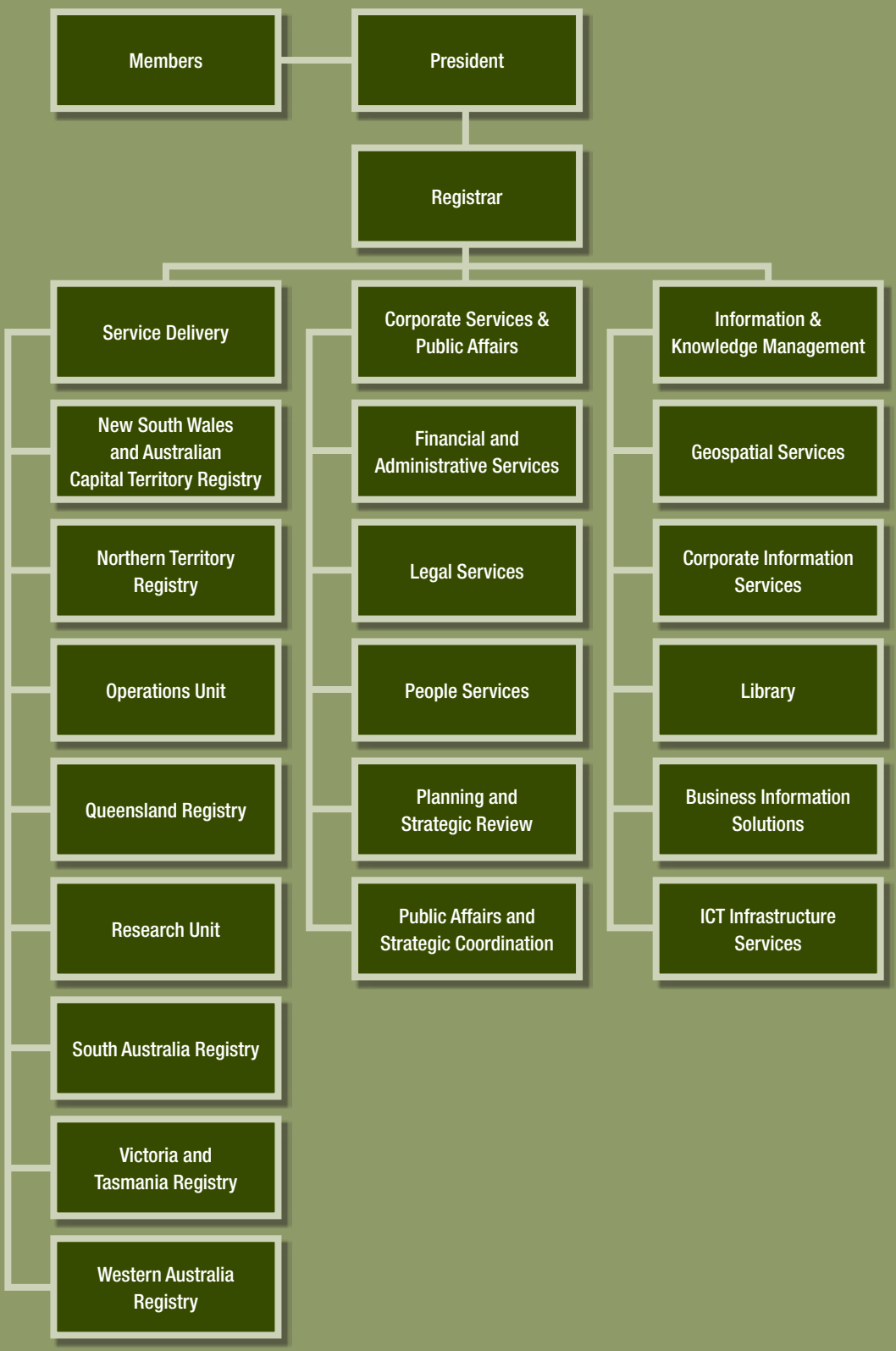


Figure 1 National Native Title Tribunal organisational structure

OUTCOME AND OUTPUT STRUCTURE

The Tribunal forms part of the 'justice system' group within the Attorney-General's portfolio. The Tribunal's outcome and output framework complies with the Australian Government's accrual budgeting framework, which came into effect on 1 July 1999.

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

For the current reporting period, the Tribunal's outcome 'Recognition and protection of native title' and four output groups are applicable.

The output groups are:
- registrations;
- agreement-making;
- arbitration; and
- assistance, notification and reporting.

Details of the Tribunal's performance and costs in accordance with this framework are provided in the section 'Report on performance', pp. 37–95.

Revised outcome statement and outputs structure 2005–06

During the reporting period, the Tribunal revised its outcome statement and outputs structure which will come into effect on 1 July 2005 and be applicable for the next reporting period. The new statement and structure, announced in the Portfolio Budget Statement 2005–06, more clearly reflect the purpose of the Tribunal and its changed operating environment.

The new outcome 'resolution of native title issues over land and waters' describes the key objective of the Tribunal simply and is a more accurate reflection of its purpose than the previous outcome statement, 'recognition and protection of native title'. Many participants in the native title process achieve satisfactory agreements that do not result in formal 'native title' outcomes such as a determination or an ILUA. The Tribunal has also introduced effectiveness indicators for the outcome that will help to assess the quality of agreement-making processes and the impact of the Tribunal's work on the type of native title outcomes achieved by parties.

The Tribunal has also changed some outputs and revised the outputs structure. The new output structure has three output groups: stakeholder and community relations, agreement-making and decisions.

NEW STRUCTURE	
Outcome	
Resolution of native title issues over land and water	
Output groups and contributing outputs	
1.	**Stakeholder and community relations**
1.1	Capacity-building and strategic/sectoral initiatives
1.2	Assistance and information
2.	**Agreement-making**
2.1	Indigenous land use agreements
2.2	Native title agreements and related agreements
2.3	Future act agreements
3.	**Decisions**
3.1	Registration of native title claimant applications
3.2	Registration of indigenous land use agreements
3.3	Future act determinations
3.4	Finalised objections to the expedited procedure

OLD STRUCTURE	
Outcome	
Recognition and protection of native title	
Contributing outputs	
1.4.1	Assistance to applicants and other persons (part)
1.4.1	Assistance to applicants and other persons (part)
1.2.1	Indigenous land use and access agreements
1.2.2	Claimant, non-claimant and compensation agreements
1.1.2	Claimant and non-claimant determination registrations
1.4.3	Reports to the Federal Court
1.2.3	Future act agreements
1.1.1	Claimant application decisions
1.4.2	Notification (part)
1.1.3	Indigenous land use agreement registration decisions
1.4.2	Notification (part)
1.3.1	Future act determinations
1.3.2	Objections to the expedited procedure finalised

Figure 2 Outcome and output groups (new structure in comparison with the old structure).

report on performance

FINANCIAL PERFORMANCE

The Tribunal's actual expenditure for the 2004–05 financial year was $31.918m. This was $2.079m less than the estimate in the Attorney-General's Portfolio Additional Estimates Statements. There were variations from estimates for several outputs, and this resulted in a slight reduction in the Tribunal's overall workload.

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	(2) Actual	Variation (column 2 minus column 1)	Actual as a % of total appropriation
	2004–05 $'000	2004–05 $'000	2004–05 $'000	
Departmental appropriations				
Output group 1.1 – Registrations				
Output 1.1.1 – Claimant application registration decisions	2,680	2,322	-358	-13%
Output 1.1.2 – Claimant and non-claimant determination registrations	424	452	28	7%
Output 1.1.3 – Indigenous land use agreement registration decisions	2,528	1,496	-1,032	-41%
Subtotal output group 1.1	**5,632**	**4,270**	**-1,362**	**-24%**
Output group 1.2 – Agreement-making				
Output 1.2.1 – Indigenous land use and access agreements	3,051	1,195	-1,856	-61%
Output 1.2.2 – Claimant, non-claimant and compensation agreements	9,822	13,346	3,524	36%
Output 1.2.3 – Future act agreements	2,510	1,415	-1,095	-44%
Subtotal output group 1.2	**15,383**	**15,956**	**573**	**4%**
Output group 1.3 – Arbitration				
Output 1.3.1–Future act determinations	918	863	-55	-6%
Output 1.3.2 – Objections to expedited procedure finalised	1,957	2,269	312	16%
Subtotal output group 1.3	**2,875**	**3,132**	**257**	**9%**
Output group 1.4 – Assistance, notification and reporting				
Output 1.4.1 – Assistance to applicants and other persons	6,904	6,061	-843	-12%
Output 1.4.2 – Notification	1,695	1,579	-116	-7%
Output 1.4.3 – Reports to the Federal Court	1,365	854	-511	-37%
Subtotal output group 1.4	**9,964**	**8,494**	**-1,470**	**-15%**
Total revenue from government (appropriations) contributing to price of departmental outputs	33,854	31,852	-2,002	-6%
Revenue from other sources				
Output 1.1.1 – Claimant application registration decisions	13	6	-7	-54%
Output 1.1.2 – Claimant and non-claimant determination registrations	2	1	-1	-77%
Output 1.1.3 – Indigenous land use agreement registration decisions	13	3	-10	-77%
Output 1.2.1 – Indigenous land use and access agreements	15	3	-12	-80%
Output 1.2.2 – Claimant, non-claimant and compensation agreements	47	28	-19	-40%
Output 1.2.3 – Future act agreements	12	3	-9	-75%
Output 1.3.1 – Future act determinations	5	1	-4	-80%
Output 1.3.2 – Objections to expedited procedure finalised	9	4	-5	-56%
Output 1.4.1 – Assistance to applicants and other persons	33	12	-21	-64%
Output 1.4.2 – Notification	8	4	-4	-50%
Output 1.4.3 – Reports to the Federal Court	7	2	-5	-71%
Total revenue from other sources	**164**	**67**	**-97**	**-59%**
Total price of departmental outputs (Total revenue from government and other sources)	**34,018**	**31,919**	**-2,099**	**-6%**
Total estimated resourcing for outcome 1 (Total price of outputs and administered expenses)	**34,018**	**31,919**	**-2,099**	
Average staffing level (number)	**273**	**262**	**-11**	

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 ¾ year actual figures to inform the output pricing for the 2005–06 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.

The estimation process in 2004–05

This year the Tribunal followed the process outlined above.

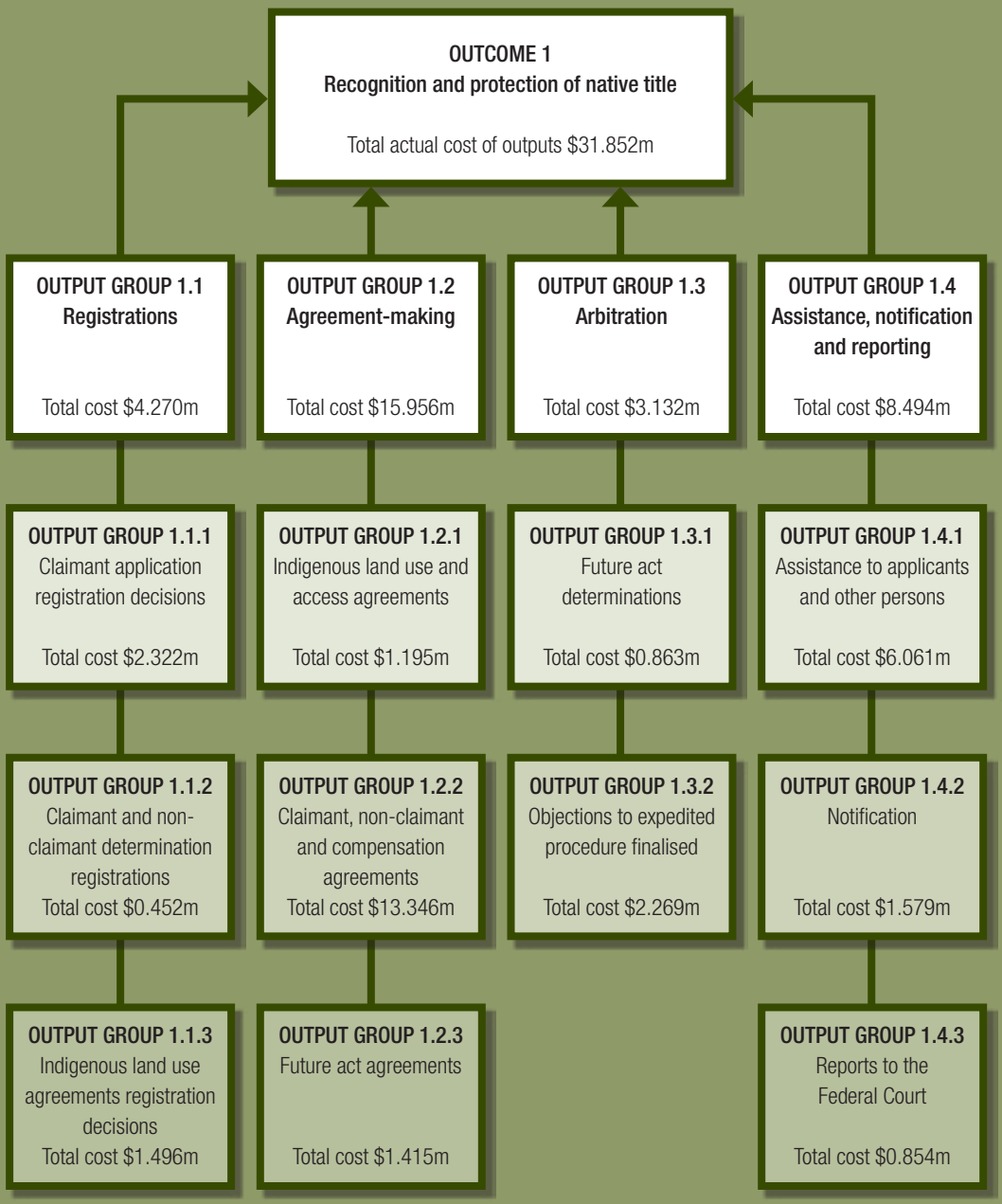


Figure 3 Outcome and output framework for 2004–05

OVERVIEW OF ACTIVE CLAIMS

Between the commencement of the Act on 1 January 1994 and the end of the reporting period, a total of 1,649 native title determination applications were made, comprising claimant, non-claimant, compensation and revised native title determination applications.

Table 2 Native title determination applications made since commencement of the *Native Title Act 1993* (Cwth)

Type of application	Number of applications made	Number of applications finalised*
Claimant	1384	800
Non-claimant	232	204
Compensation	32	16
Revised Native Title Determination	1	1
Total	**1,649**	**1,021**

** Finalised includes discontinued, dismissed, withdrawn, rejected, struck-out, combined with other applications or the subject of non-approved or full-approved native title determinations.*

In the reporting period, 51 new native title applications were made.

Table 3 Native title applications made 2004–05

Type of application	Number of applications made	Number of applications finalised
Claimant	32	65
Non-claimant	18	8
Compensation	0	4
Revised Native Title Determination	1	1
Total	**51**	**78**

Specifically in relation to claimant applications, at the end of the reporting period:

- 584 were active, i.e. at some stage between filing and resolution;
- 488 applications were on the Register of Native Title Claims;
- 84 applications had not been accepted for registration;
- 36 applications remain to be tested for registration; and
- 12 applications were identified as not requiring registration testing.

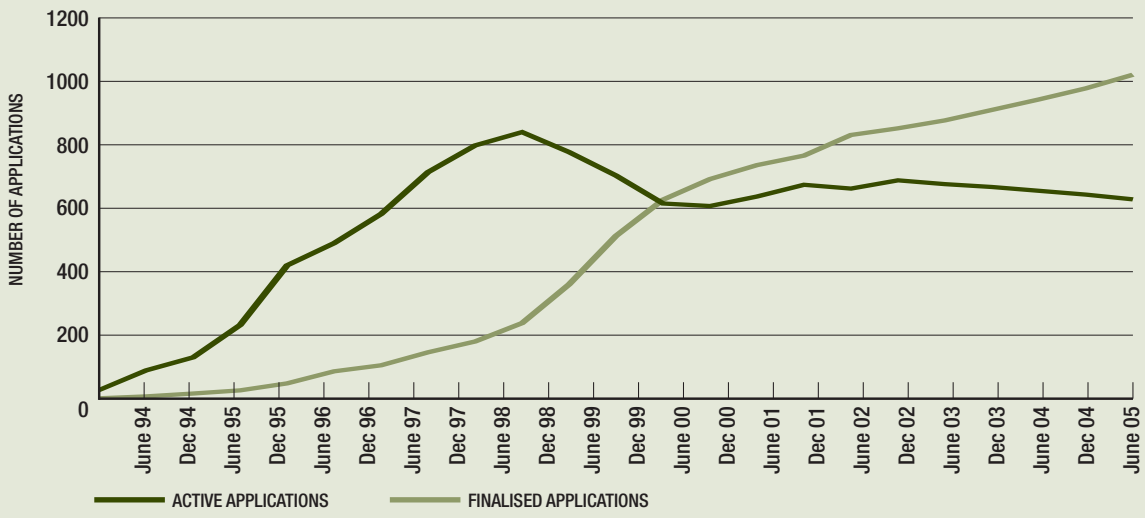


Figure 4 Active and finalised native title determination applications

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:
- 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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included under output group 3 (Decisions) as output 3.1 — Registration of native title claimant applications.

Performance

The performance measures for registration decisions of claimant applications are:

- quantity — number of registration decisions, including decisions for applications that 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	74	54
Quality	70% of applications decided within two months of receipt from Federal Court	28% of applications decided within two months of receipt from Federal Court
Resource usage — unit cost per decision	$36,395	$43,095
Resource usage —output cost	$2,693,230	$2,327,121

Comment on Performance

Number of decisions made

The trend of a decreasing registration test workload continued in the current reporting period. Although there was a decrease in the overall number of decisions made, there was a noticeable shift in registration test workloads between the Tribunal's individual registries. Consequently registration testing focused predominantly on applications that were filed or amended in Queensland and Western Australia. See Table 4 for a state and territory breakdown of the number of claimant applications processed for registration.

Although there has been a decrease in the number of applications undergoing registration testing, there has been a substantial increase in the number of applications lodged with the Tribunal for draft comments prior to filing in the Federal Court. The Tribunal has encouraged this approach in order to improve the standard of applications and reduce the timeframes for completion of registration tests.

In Queensland the decreasing workload can be attributed to a number of factors:

- the progressive reduction of the previous backlog;
- native title representative body resource issues impacting on the ability to prepare applications;

- reluctance to amend applications due to the potential loss of rights to cultural heritage work if the amendments do not meet the registration test conditions;
- delays in filing and amending applications while anthropological project reports are completed. It had been anticipated that up to seven new or amended applications in the north-west Queensland area would have been filed and registration tested within the current reporting period, but these applications are expected to be filed in August 2005;
- ten applications were lodged with the Tribunal in the week commencing 18 April 2005. A number of these applications required amendment; hence registration testing was not completed in this reporting period.

In Western Australia there was a sharp increase in registration testing with 19 applications tested in comparison to three in the previous reporting period. This increased workload included applications that remained to be tested at the end of the last reporting period, as well as new and amended applications made in the current reporting period. It is likely that this rate of registration testing will be maintained over the next few years, as the trend for amended applications is expected to continue.

In the Northern Territory the registration test workload decreased to approximately half the decisions made last year, however the rate of applications filed has remained constant (seven). There is no backlog of applications to be tested, mainly because the majority of applications filed are in response to s. 29 notices (see Glossary, p. 153) and hence are tested within the statutory timeframe for a future act affected application.

Anticipated registration test activity for Victoria and Tasmania did not eventuate as one application was withdrawn prior to application of the registration test and the testing of another application was postponed to the next reporting period.

In South Australia it was anticipated that there would be a significant increase in the number of amended applications as a result of the successful mediations at Spear Creek last year. This would have lead to an increase in the number of registration tests being applied. However, the amendments were slower to occur than anticipated and consequently fewer registration tests were applied. In addition, the new applications which were expected to be lodged, and subsequently registration tested, had not been lodged by the end of the reporting period. This means that there is an expectation that these new and amended applications will be lodged in the next reporting period with a consequent increase in the number of registration decisions to be made.

Table 4 Number of registration test decisions by state or territory 2004–05

State	Accepted	Not accepted	Not accepted —abbreviated	Total
Australian Capital Territory	0	0	0	0
New South Wales	1	1	0	2
Northern Territory	8	0	0	8
Queensland	22	2	0	24
South Australia	1	0	0	1
Tasmania	0	0	0	0
Victoria	0	0	0	0
Western Australia	10	4	5	19
Total	**42**	**7**	**5**	**54**

Of these 54 decisions:

- 42 satisfied all the conditions of the registration test; and
- 12 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.

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). During the reporting period there was one application seeking review of a registration decision (*Evans v Native Title Registrar*) which was dismissed by the Federal Court (for more information see 'Appendix II Significant Decisions', p. 133).

The National Registration Delegates Team based in the Sydney Registry continues to be an effective mechanism to meet the demand for the registration of claimant applications nationally. Additionally the delegates have continued to look at opportunities to improve both practice and understanding of the registration test including:

- producing plain English summaries of decisions for the applicant where they have not passed the test;
- undertaking more preliminary assessments on draft applications and amendments to enable better prepared applications to be filed that are more likely to satisfy the conditions of the test; and
- conducting a workshop at the 2005 Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Native Title Conference.

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.

The trend in relation to timeliness of decisions is similar to the last reporting period. Of the 32 future act affected applications, the statutory timeframe was met in relation to the majority of them. However, the Tribunal's overall performance estimate of 70 per cent was not met. The reasons for failing to meet this target remain the same as those identified in previous reporting periods. They are:

- 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 delayed the testing.

Notwithstanding the above factors, the Tribunal is beginning to see some improved timeframes where applicants have sought preliminary assessments from the National Registration Delegates Team on draft applications or amendments well in advance of filing in the Federal Court.

Resource usage

The testing of applications has remained complex and is a resource-intensive activity. 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).

Output 1.1.2 is not classified as an output in the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35) as the activity required to fulfil the statutory function of registration of native title determinations requires limited resources. However, the number of registrations of native title determinations will continue to be reported in the Annual Report, on the Tribunal's website and in other relevant documents.

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	19	16
Quality	80% of determinations registered within two working days from the receipt of notice	81% of determinations registered within two working days from the receipt of notice
Resource usage — unit cost per registration	$22,421	$28,331
Resource usage — output cost	$425,999	$453,290

Comment on Performance

Of the 16 determinations registered, 14 were that native title exists and two were that native title does not exist. These 16 determinations brought the cumulative total to 66 registered determinations on the National Native Title Register. Four of the

determinations were outcomes of litigation, 11 were made by consent and one was unopposed. A large number of consent determinations have been made in the past, but the trend was significant in this reporting period as approximately half were conditional upon the registration of an ILUA.

See Table 5 for a breakdown by state and territory of claimant, non-claimant and compensation determinations.

Table 5 Native title determinations by state and territory 2004–05

State	Claimant	Non-claimant	Compensation
New South Wales	1	1	0
Northern Territory	0	0	0
Victoria	0	0	0
Queensland	9	0	0
South Australia	1	0	0
Tasmania	0	0	0
Western Australia	4	0	0
Total	**15**	**1**	**0**

Table 6 Registered determinations of native title claimant and non-claimant applications 2004–05

Determination name	Application type	Location	Date of court decision	Process	Number of applications affected in whole or part by the determination
Ngaanyatjarra Lands	Claimant	Western Australia	29 June 2005	Consent	6
Nowra Local Aboriginal Land Council	Non-claimant	New South Wales	15 June 2005	Unopposed	1
De Rose Hill	Claimant	South Australia	08 June 2005	Litigated	1
Yam Islanders/Tudulaig People	Claimant	Queensland	24 May 2005	Consent	1
People of Boigu Island #2	Claimant	Queensland	24 May 2005	Consent	1
Ugar (Stephen Islanders) #1	Claimant	Queensland	24 May 2005	Consent	1
Erubam Le (Darnley Islanders) #1	Claimant	Queensland	24 May 2005	Consent	1
Badu Islanders #1	Claimant	Queensland	24 May 2005	Consent	1
Ngarluma/Yindjibarndi	Claimant	Western Australia	02 May 2005	Litigated	1
Wik and Wik Way Native Title Determination No. 2	Claimant	Queensland	24 March 2005	Consent	1
Wik and Wik Way Native Title Determination No. 3	Claimant	Queensland	24 March 2005	Consent	1
Gebara Islanders #1	Claimant	Queensland	13 December 2004	Consent	1
Kulkalgal People	Claimant	Queensland	07 December 2004	Consent	1
Karajarri People	Claimant	Western Australia	08 September 2004	Consent	1
Darug People	Claimant	New South Wales	07 September 2004	Litigated	1
Wanjina-Wunggurr Wilinggin Native Title Determination No 1	Claimant	Western Australia	27 August 2004	Litigated	3

New South Wales

Gale on behalf of the Darug People v Minister for Lands – 7 September 2004
This was an application for a determination of native title over a small area of land on the north western outskirts of Sydney. The Court found insufficient evidence to establish that the claimants constituted a society observing traditional laws and customs and that there was no acceptable evidence to identify any relevant native title rights and interests. The outcome of the proceedings was that native title does not exist.

Non-claimant application
In NSW, one unopposed determination was made by the Federal Court in relation to a Local Aboriginal Land Council non-claimant application. It is expected that more parties, some asserting traditional Aboriginal connection to the area, will join LALC applications in the next reporting period.

Northern Territory

No determinations were handed down in the Northern Territory, partly because of the current appeal before the Full Federal Court in relation to the Davenport Murchison application. Another two matters are likely to be decided in the next reporting period.

Victoria / Tasmania

There were no determinations of native title in Victoria/Tasmania in the reporting period, however work has continued on a proposed determination in a major country claim and two related polygon claims that should be resolved in 2005–06.

Queensland

In Queensland, nine determinations were registered in the reporting period; in every case native title was found to exist, and these determinations were all made by consent.

Determinations for the Torres Strait
Seven of the nine Queensland determinations were for land in the Torres Strait (previously delayed due to a question of law) and were handed down by the Federal Court in hearings that took place on Torres Strait islands over five days in December 2004. Of these seven determinations, five were made conditional upon the registration of specified ILUAs which were subsequently registered on 24 May 2005. These five determinations are:

Badu (Badu Islanders) – 24 May 2005
The Badu Islanders' determination area is the largest of the Torres Strait determinations, covering approximately 104 square kilometres, including Badu Island and surrounding islands.

Erubam Le (Darnley Islanders) #1 – 24 May 2005
The Erubum Le people's (Darnley Islanders') determination area covers the island of Erub and nearby Nepean Island, Tobin Cay, Rebes (Black Rocks), Underdown Islet and Bramble Cay. The total area is approximately six square kilometres.

Native title holder and elder George Mye is congratulated: native title rights and interests were determined for the Darnley Islanders', Erub (Darnley) Island, 8 December 2004.

People of Boigu Island #2 – 24 May 2005
The determination for the people of Boigu Island covers part of Boigu Island, and also Aubisi Island and Moimi Island and amounts to approximately 74 square kilometres.

Ugar (Stephen Island) #1 – 24 May 2005
The Stephen Islanders' determination covers Ugar, nearby Campbell Island, and Pearce Cay. The area covered is approximately one square kilometre.

Yam Islanders/Tudulaig Combined – 24 May 2005
The Yam Islanders/Tudulaig peoples' determination covers approximately 12 square kilometres, including Yam Island, Zagai Island, Cap Islet, and Tudu Island.

The remaining two determinations for the Torres Strait were not conditional, and they are:

Gebara Islanders – 13 December 2004
The Gebara Islanders' determination covers the land area of Gebara Island, approximately 4 square kilometres.

Kulkalgal people – 7 December 2004
The Kulkalgal people's determination is over Aureed Island covering approximately half a square kilometre.

Cape York Peninsula
Wik and Wik Way determinations – 24 March 2005
On 13 October 2004 the Federal Court made two consent determinations recognising the Wik and Wik Way peoples' native title rights and interests over 12,530 square kilometres, the majority of the claimed area on the west coast of Cape York Peninsula. These determinations were the first native title consent determinations to be made over pastoral leases in Queensland. These determinations were conditional upon the registration of specified ILUAs, which were subsequently registered on 24 March 2005.

South Australia

De Rose v State of South Australia (No 2) – 8 June 2005
This was a litigated matter in which the Full Court of the Federal Court handed down its final decision on the appeal on 8 June 2005. The court made the judgment after calling for extra submissions on the issue of connection, following a decision by Justice O'Loughlin in 2002 that the claimants had lost their continuous link to the area.

The Full Court's decision found the lead claimant, Peter De Rose, had passed through ceremonial Western Desert law and was bound by the rules of the country. His evidence showed he, and others were regarded as *Ngururitja* (traditional custodians or owners) for the area by other Western Desert Bloc *Ngururitja* and had non-exclusive native title rights over the area. The judgment showed native title was extinguished where there were improvements built in accordance with the pastoral leases. These things include houses, sheds, airstrips and constructed dams.

Western Australia

In Western Australia, there were four claimant determinations in the reporting period; in every case native title was found to exist. Two of the determinations were litigated and two were made by consent.

Wanjina-Wunggurr Wilinggin – 27 August 2004
The determination area covers 67,000 square kilometres of land including pastoral leases, crown land, national parks and rivers. The Federal Court recognised that the Wanjina-Wunggurr Wilinggin group has the right of exclusive possession in places where native title has not already been extinguished. The determination was litigated and followed 59 days of hearings and three years of process.

Karajarri People – 8 September 2004
This consent determination finalised the Karajarri people's native title claim, and recognised the Karajarri people's rights and interests over 5,647 square kilometres. They have non-exclusive rights to use the land and waters in areas of pastoral lease, reserve and unallocated Crown land that was previously subject to a reserve. The court

also recognised their non-exclusive rights in the inter-tidal zone and other areas of tidal waters. This determination follows another consent determination made in 2002 which recognised their native title rights over a further 24,711 square kilometres in the Kimberley region.

Ngarluma/Yindjibarndi – 2 May 2005
In this litigated determination, the court found that the Ngarluma/Yindjibarndi Peoples held non-exclusive native title rights over parts of the claim area. This is the first determination in the Pilbara region, and finalises the claim over almost 2,500 square kilometres situated 100 kilometres south-west of Port Hedland.

Ngaanyatjarra Lands – 29 June 2005
The Ngaanyatjarra Lands native title determination is located in the Central Desert of Western Australia and encompasses approximately 187,700 square kilometres. The court ratified the consent determinations which recognised that the traditional owners of the Ngaanyatjarra Lands hold exclusive native title rights over the majority of the area. The determination covers the area of six Central Desert applications and is the largest native title determination to be made in Australia. For more information see the case study on the following page.

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 met.

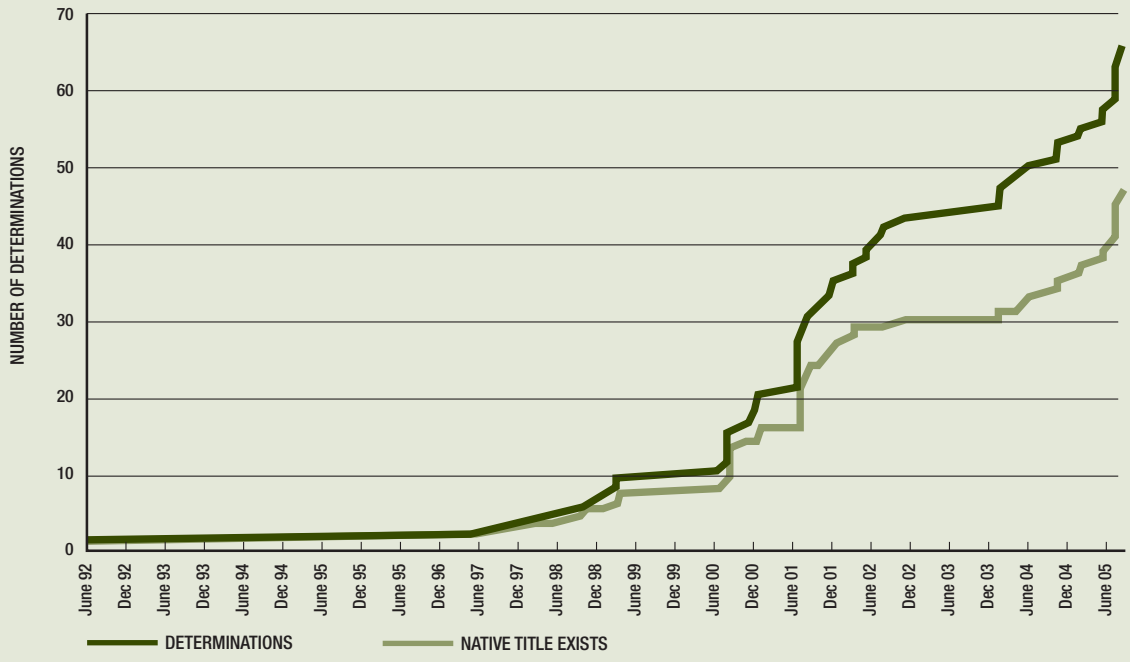


Figure 5 Cumulative determinations of native title to 30 June 2005

CASE STUDY

Ngaanyatjarra Lands determination

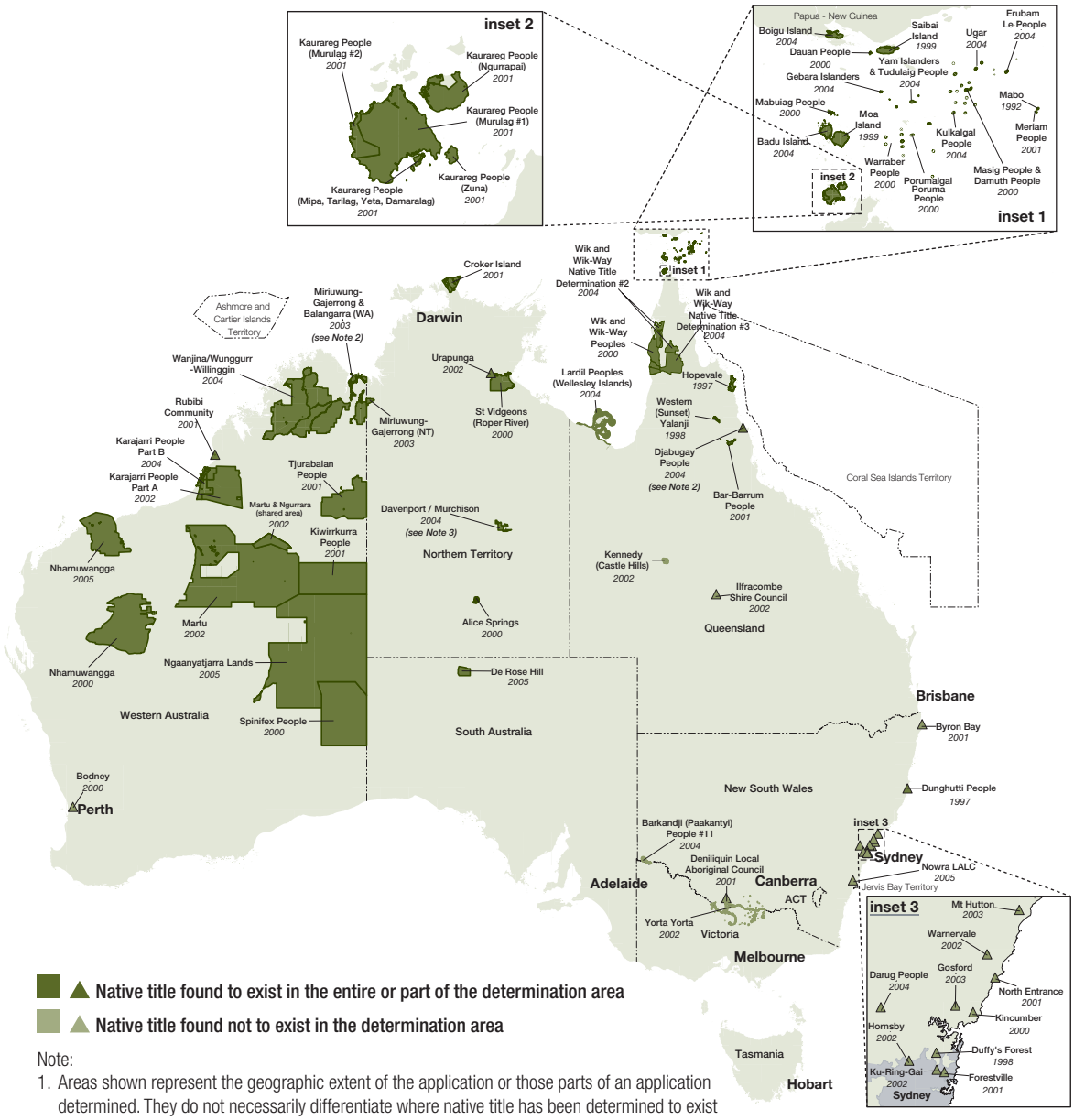
The Ngaanyatjarra Lands determination, made on 29 June 2005, marks the largest determination area to date. The determination hearing was held near the remote community of Jameson, or Mantamaru, 125 kilometres east of Warburton and near the tri-state border.

The claim was settled by agreement from all parties, removing the need for a lengthy and expensive trial process. The claim is over an area originally covered by six claims and its final resolution saw a single claim filed over the entire area in April 2004.

The determination recognised that the traditional owners of the Ngaanyatjarra Lands hold exclusive native title rights over the majority of almost 188,000 square kilometers. Other parties to the determination included the state government, the Commonwealth, WMC Resources, Telstra, Airservices Australia and the Shire of Laverton. The parties agreed that there should be certainty of tenure, access and maintenance of all telecommunications, meteorological and aircraft navigational facilities within the determination area.

Tribunal Deputy President Fred Chaney, who helped facilitate the settlement, said that the single claim simplified the process and lead to an in-principle agreement in less than 12 months. He described the hearing and associated ceremonies as a significant moment in history for Ngaanyatjarra people who have pursued recognition of their ownership of land for more than 25 years.

Official recognition: Ngaanyatjarra elder Fred Forbes reads the ceremonial copy of the determination scroll held by David Brooks, Principal Anthropologist for the claim, at Jameson WA, 29 June 2005.



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 or parts of some determinations may not yet be in effect or on the National Native Title Register as they are conditional.
3. Some determinations are subject to appeal
4. Small areas are symbolised.
5. Year shown is the date of latest court decision.

Summary Statistics**

Conditional Determinations not included in statistics. (see Note 2)

Category***	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
▲	0	1	6	28	1	0	0	12	**48**
▲	0	14	0	2	0	0	1	1	**18**
	0	15	6	30	1	0	1	13	**66**

Notes:

** Where determinations falls within two or more jurisdictions allocation is normally only assigned to one.

*** As shown in legend

Figure 6 Map of native title determinations to 30 June 2005

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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included under output group 3 (Decisions) as output 3.2— Registration of indigenous land use agreements.

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	80	53
Quality	70% decided within six months (including three-month notification period) where no objection is lodged	91% decided within six months (including three-month notification period) where no objection is lodged
Resource usage — unit cost per decision	$31,758	$28,286
Resource usage — output cost	$2,540,640	$1,499,167

Comment on performance

A total of 92 ILUAs were lodged with the Registrar for registration in 2004–05; more than twice as many lodged in the previous reporting period. Table 5 shows the state and territory distribution of ILUAs lodged and registered.

Table 7 Number of ILUAs lodged for registration 2004–05

	ACT	NSW	NT	Qld	SA	Tas.	Vic.	WA	Total
ILUAs lodged	0	0	41	42	3	0	5	1	92
ILUAs registered	0	0	11	34	3	0	3	1	52

A total of 53 registration decisions were made in the reporting period, with 52 applications accepted for registration and placed on the Register of Indigenous Land Use Agreements. As at 30 June 2005, the Registrar had registered a total of 183 ILUAs and 182 remain registered, with one ILUA removed from the Register at the request of the parties. Figure 7 shows the number of ILUA registrations for each financial year since 1998–99 and the growth in registered ILUAs for the same period. The trend in the use of ILUAs for mining and exploration matters continued during this reporting period.

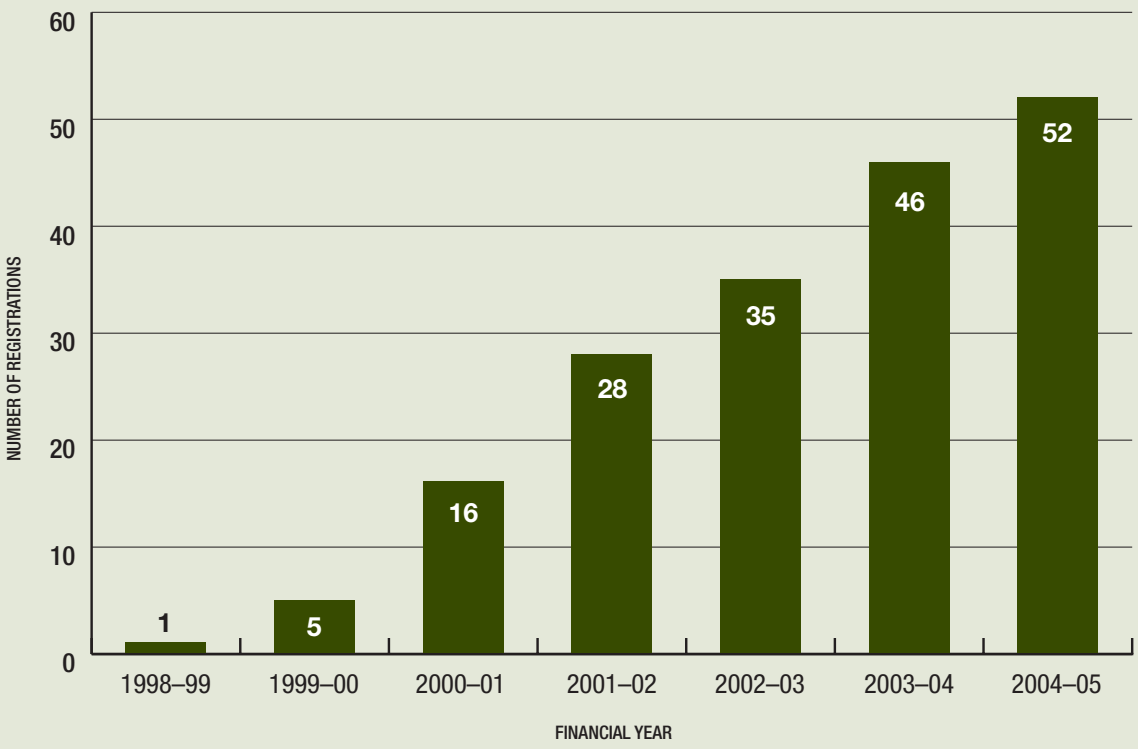


Figure 7 Number of ILUA registrations for each financial year

Despite the substantive increase in numbers lodged, the same trend was not evident in the numbers registered. This is because a large number of the ILUAs, such as the Northern Territory National Park ILUAs, were lodged in the final quarter of the reporting period. Consequently these matters had not completed the registration process by the end of the reporting period. Decisions as to registration will be made in the next reporting period.

Queensland and the Northern Territory continue to be the main areas of ILUA activity with modest increases in South Australia, Victoria and Western Australia. ILUAs registered in the current reporting period reflect a diverse range of agreement-making as evident in the following examples.

Queensland

In Queensland the use of ILUAs continues to grow, with 42 applications lodged in the current reporting period, an approximate increase of one third over the previous reporting period. This increased number of ILUAs covers a varied range of subject matter, including mining, infrastructure and access to traditional country. A significant milestone was reached with the registration of Queensland's 100th ILUA during the reporting period and a total of 112 agreements registered by the end of the reporting period.

Torres Strait ILUAs

Queensland's 100th ILUA was one of 15 made in the Torres Strait during the reporting period and the registration of five of these ILUAs finalised the process for the formal recognition of native title, as a result of determinations made by the Federal Court in December 2004. These agreements establish how the native title holders and the state will work together so that the communities receive the services they require while ensuring protection of native title rights and interests.

Pastoral ILUAs, North Queensland

The Wik and Wik Way peoples, lessees of three pastoral holdings on the west coast of Cape York Peninsula, and the State Government negotiated three ILUAs that set out how they will coordinate their rights and activities on the pastoral holdings. The Tribunal's registration of these agreements, and a further agreement between the Wik and Wik Way peoples and Cook Shire Council on 24 March 2005, brought into effect two native title consent determinations the Federal Court made in October 2004.

Northern Territory

The Northern Territory received more than three times the number of applications for registration over the previous reporting period, from 13 in the last reporting period to 41 in the current reporting period. Matters covered include community living areas, mining and national parks and reserves. Four of the national park ILUAs have been registered (body corporate agreements) and the remaining lodged ILUAs have either commenced, or been prepared for, notification in the current reporting period with registration decisions to be made in the next reporting period.

Victoria

In Victoria, the three registered ILUAs provided for mining and exploration activities. The remaining two ILUAs are currently being progressed through the notification process and decisions as to registration will be made in the next reporting period.

South Australia

Registered ILUAs in South Australia provided for mining and exploration activities as well as South Australia's first ILUA over a pastoral property. This particular ILUA is significant in that it is one of the five pilot ILUAs for which the Tribunal provided assistance. It was anticipated that more ILUAs would be lodged for registration this reporting period year, however some of those anticipated ILUAs were still nearing completion or in notification.

Western Australia

Western Australia registered one ILUA in the current reporting period which provided for mining activities. This ILUA, the Argyle Participation Agreement, covers an area of 797.5 square kilometres and is an agreement between Argyle Diamonds (owned by Rio Tinto) with the Miriwung, Gidja, Wularr and Malgnin people. The agreement was registered in April 2005. For more information see the case study on the following page.

Timeliness

The Tribunal's performance standard of 70 per cent was exceeded with 91 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 application. The achievement of the performance standard can be partly attributed to the increased uptake by parties of preliminary assessment by the Tribunal of draft agreements well in advance of authorisation and signing of agreements.

CASE STUDY

Argyle Participation Agreement, East Kimberley WA

This ILUA, signed in September 2004, makes a strong statement of mutual respect and obligation, provides traditional owners with access to jobs and other economic opportunities, and includes the consent of the traditional owners for a proposed underground mine at Argyle. Major features of the agreement include increasing opportunities for employment of Indigenous people, the establishment of a trust account with the traditional owners and providing for the transfer of the Argyle pastoral lease to the traditional owners to enable revival of full native title.

On 8 June 2005, following the registration of the ILUA, about 500 Indigenous people, high-ranking government and industry officials and Argyle staff gathered at the mine to celebrate a turning point in the company's relationship with the traditional owners. Tribunal Deputy President Fred Chaney, who facilitated the negotiation of the agreement, said the Tribunal joined the traditional owners and Argyle in celebrating the registered ILUA, which was the result of lengthy negotiations.

Coming together: Governor-General Michael Jeffery is welcomed to sacred country by senior traditional owner Goodie Barrett, Argyle Diamond Mine, 8 June 2005.

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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be reported under output group 2 (Agreement-making) as output 2.1—Indigenous land use agreements.

Performance

The performance measures for indigenous land use and access agreements are:

- quantity — ILUAs 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	27	6
Quality	Level of client satisfaction	Assessed through client surveys (see below)
Resource usage — unit cost per agreement	$113,556	$199,502
Resource usage — output cost	$3,066,012	$1,197,011

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 six ILUA negotiation matters. At first glance this appears to be a substantive drop in activity since the last reporting period (15 agreements were recorded under this output in 2003–04). This is because the

stated output figure only reflects assistance provided for 'stand alone' ILUAs (i.e. those ILUAs that do not flow from a native title determination application). An analysis of the assistance provided by the Tribunal, over the current reporting period, reveals that there has been a decrease in assistance to 'stand alone' ILUAs but because of a significant rise in ILUAs flowing from native title determination applications, there has been a subsequent increase in assistance activity in these circumstances. This discrepancy has been taken into account in the Tribunal's revised outputs structure (for more information see 'Tribunal Overview', pp. 34–5). Further, this figure does not reflect the significant work undertaken on matters that were not finalised in the reporting period.

The Tribunal, in a number of matters, has assisted parties to reach agreements on a range of issues before finalisation (milestone agreements). These agreements help to sustain negotiations and contribute towards the finalisation of an ILUA party's negotiations for an ILUA. These ILUA milestone agreements, achieved through the provision of assistance are not captured in the Tribunal's current output framework. This omission has been identified by the Tribunal in its revised outputs structure.

Queensland

In Queensland requests for assistance were received from parties interested in using an ILUA for the first time as well as 'repeat customers' who requested assistance as a result of positive outcomes and relationships established in other ILUA matters. Similarly to last year, the assistance provided included matters such as housing and infrastructure development in Cape York, local government and pastoral agreements.

The Tribunal's role in the negotiation of pastoral agreements was established in the last reporting period through one of its pastoral projects, and the Tribunal has built upon this foundation to assist parties achieve further agreements in the current reporting period. The nature of assistance has generally been in assisting parties to negotiate memoranda of understanding that may eventually become ILUAs.

In October 2004, the positive impact of native title negotiations on relationship building was reinforced when nine Indigenous groups and the North Queensland Gas Pipeline Project group won the Queensland Government Reconciliation Award for Business in the 'Joint Ventures' category. The Tribunal had assisted the groups, over 14 months, in their negotiations to develop three ILUAs (registered in December 2003) which enabled the North Queensland Gas Pipeline from Moranbah to Townsville while ensuring protection for the nine Indigenous groups' cultural heritage. A cultural heritage management plan was also developed during the process.

Northern Territory

In the Northern Territory, ongoing assistance was provided for the national park ILUAs, which included technical assistance from both the delegate and the Tribunal's geospatial services. Assistance was also provided for pro-forma agreements relating to gas pipeline

infrastructure. The Tribunal conducted seminars in Darwin and Alice Springs for land managers and legal practitioners, and the seminars were very well attended.

Victoria

In Victoria, the Tribunal has been providing assistance in relation to the negotiation of ILUAs relating to a proposed determination of native title. These agreements are likely to be lodged for registration during the next reporting period.

In addition, ILUAs are increasingly being used in relation to the grant of mining and exploration tenements in Victoria. This is largely attributable to the development and launch of template agreements by the State of Victoria, Native Title Services Victoria Ltd and the Victorian Minerals and Energy Council (now the Victorian Division of the Minerals Council of Australia) in April 2004. The Tribunal has provided procedural assistance for many of these agreements (including commenting on drafts and assisting with the production of maps) but the parties have not to date requested the Tribunal to provide mediation assistance.

South Australia

The Tribunal provided ongoing assistance for pilot ILUAs with several positive outcomes. The first is the registered pastoral ILUA, as reported at 1.1.3 above on page 58. Following the discussions and negotiations leading to this agreement, the South Australian Farmers Federation sent a template pastoral ILUA to their constituents. This template was endorsed by the South Australian Government and Aboriginal Legal Rights Movement and has since been used as the basis for negotiations with other communities in South Australia.

The other substantive achievement was the negotiation of South Australia's first native title local government agreement. The parties to the agreement worked together (with the Tribunal facilitating negotiations) for 20 months to achieve this outcome. This agreement establishes a process for planning infrastructure development including a protocol for protecting Aboriginal heritage. This agreement was lodged with the Registrar for registration in the last quarter of the reporting period. For more information see the case study on the following page.

Western Australia

In Western Australia, the Tribunal has provided assistance over several years for the Argyle Participation Agreement which included relationship building and negotiation. In September 2004 the agreement was signed by Argyle Diamonds (owned by Rio Tinto) and the traditional owners of the mining lease area. The agreement was registered in April 2005, as reported at 1.1.3 on page 58.

New South Wales

In New South Wales, the final settlement (including authorisation) of the Kattang/ Saltwater area agreement ILUA allowed traditional camping activity to take place at certain times of the year in the Saltwater National Park, near Taree. The agreement includes limited recognition of their native title rights. The resolution has taken 10 years

since lodgement of the application and has built solid and enduring relationships between the local government body, National Parks officers and the Saltwater community. The ILUA will be lodged for registration in the next reporting period.

Client and stakeholder satisfaction

The Tribunal commissioned research into the satisfaction of its clients and stakeholders which took place in April and May 2005 following baseline research completed in 2003. The Tribunal's overall satisfaction rating in agreement-making was 5.94 (out of a maximum of 10). For more information on client satisfaction see 'Accountability to Clients,' p. 113.

CASE STUDY

South Australia's first local government agreement

In December 2004, the first native title agreement negotiated by local governments and an Indigenous group in South Australia was signed at Maitland on the Yorke Peninsula. Four local councils, the Narungga people and the state government finalised an ILUA that sets out a process for planning infrastructure development, including a protocol for the protection of Aboriginal heritage. The agreement was finalised after 20 months of negotiations and recognises the Narungga people as the traditional owners of the Yorke Peninsula.

Tribunal Member Dan O'Dea, who facilitated the negotiations, said the agreement was the first of its kind in South Australia to establish a process to enable the parties to work through native title and cultural heritage matters. He noted the impressive efforts of the parties to get together and establish the protocol. The protocol gave the Narungga people assurance that their native title and cultural heritage priorities are taken into account, and gave the governments assurance that they could carry out their infrastructure plans.

South Australia's first native title–local government agreement: (left to right) Rose Sansbury, Tony Walker, Klynton Wanganeen, Lyle Sansbury and Clem O'Loughlin of the Narungga Nations Aboriginal Corporation signing the ILUA. Maitland SA, 3 December 2004.

Output 1.2.2 — Claimant, non-claimant and compensation agreements

Description of output

A range of agreements is recorded under this output (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 milestone 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').

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included under output group 2 (Agreement-making) as output 2.2—Native title agreements and related agreements.

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	195	418
Quality	Level of client satisfaction	Assessed through client surveys (see below)
Resource usage — unit cost per agreement	$50,610	$31,995
Resource usage — output cost	$9,868,950	$13,374,097

Comment on performance

Number of claimant, non-claimant and compensation agreements finalised

There was a dramatic increase in the practice of dealing with native title applications and related matters by agreement during the current reporting period—more than double the number of agreements were achieved than in the previous reporting period. This trend is consistent with the increased number of consent determinations and lodged ILUAs.

The Federal Court has continued its role in shaping the agreement-making environment by the ordering of mediation programs, protocols and timelines and the scheduling of regional case management conferences by the Tribunal. The Tribunal has also led agreement-making activities and initiatives, such as regional planning meetings.

There was a continued trend for a high number of process agreements as well as increased numbers of milestone agreements in which the parties resolved issues as part of the finalisation of agreement on substantive matters. The combination of these factors led to the output being higher than estimated, and the average unit cost being $31,995. See Table 8 for a breakdown by state or territory of the agreements negotiated with the assistance of the Tribunal.

Table 8 Claimant, non-claimant and compensation agreements negotiated with Tribunal assistance 2004–05

	NSW	NT	Qld	SA	Tas	Vic.	WA	Total
Number of agreements	9	16	228	33	1	15	116	418

The Federal Court's role

In the reporting period the Federal Court has continued to focus on developing a culture of progress and activity in its native title jurisdiction and this has significantly shaped the agreement-making environment. The court utilised a range of judicial tools to promote and expedite the resolution of native title matters including preservation of evidence hearings, court-annexed mediation and regional directions hearings.

The court maintained its regional case management approach nationally. It continued to develop and refine this approach and has used case management conferences in tandem with programming orders to complement the processes of the Tribunal.

Range of agreements

The agreements reached between parties are varied and can include a diverse range of issues such as:

- grants of estates or interests in, or rights in relation to, land;
- roles in managing what happens on the land;
- symbolic recognition of traditional affiliations with the land;
- employment and other economic opportunities in relation to the land; and
- financial payments or grants to the group.

The Tribunal's involvement in the range of agreement-making during the reporting period is described on a state-by-state basis as follows.

Queensland

In Queensland, agreement-making activities have been conducted through mediating individual applications as well as initiatives to deal with sectoral interests. A total of 228 agreements were negotiated in Queensland with Tribunal assistance during the reporting period.

Of particular note was a landmark agreement between Australia's largest beef producer, Australian Agricultural Company (AACo) and the Waluwarra/Georgina River people settling access and traditional activities on AACo's north-western Queensland flagship property, 'Headingly' in October 2004. For more information see the case study at p. 69.

Northern Territory

The number of agreements in the Territory was not as high as expected, as the parties wished to await the outcome of the appeal in the Davenport Murchison application. The Federal Court also requested the Tribunal to take no active steps to mediate the pastoral estate claimant applications pending the decision of the Full Federal Court in that case.

Milestone agreements have been reached on the mediation program for claimant applications in the towns of Tenant Creek and Jabiru, and those applications are progressing in accordance with the steps and timeframes agreed.

South Australia

The joint mediation and ILUA assistance program remains the key strategy for agreement making, however of significance this year was the integration of the Statewide ILUA strategy priorities with the Federal Court and the Tribunal's regional mediation program for South Australia. This integration also meant that several of the claims successfully mediated at Spear Creek were able to be given priority within the Statewide ILUA strategy for South Australia.

The Tribunal's series of mediation meetings held at Spear Creek, near Port Augusta, in May 2004 continues to provide flow-on results. These have included the finalisation of the 10 separate in-principle agreements which have led to the withdrawal of two native title claims. These withdrawals in turn have removed the overlaps to a third application. Other outcomes that have followed on from the in-principle agreements include an application to register an ILUA dealing with the extension to an area of mineral exploration, and the commencement of ILUA negotiations involving the Far West Coast claim group, the State Government and other parties; and the Gawler Ranges claim group, the State government and other parties.

Victoria

The number of agreements reached in Victoria increased with 15 agreements negotiated with Tribunal assistance during the reporting period (compared with four in the previous reporting period). While this reflects an increase in the levels of mediation activity and the advanced stage of a number of claim mediations, it is also partly attributable to the clearer definitions for recording agreements.

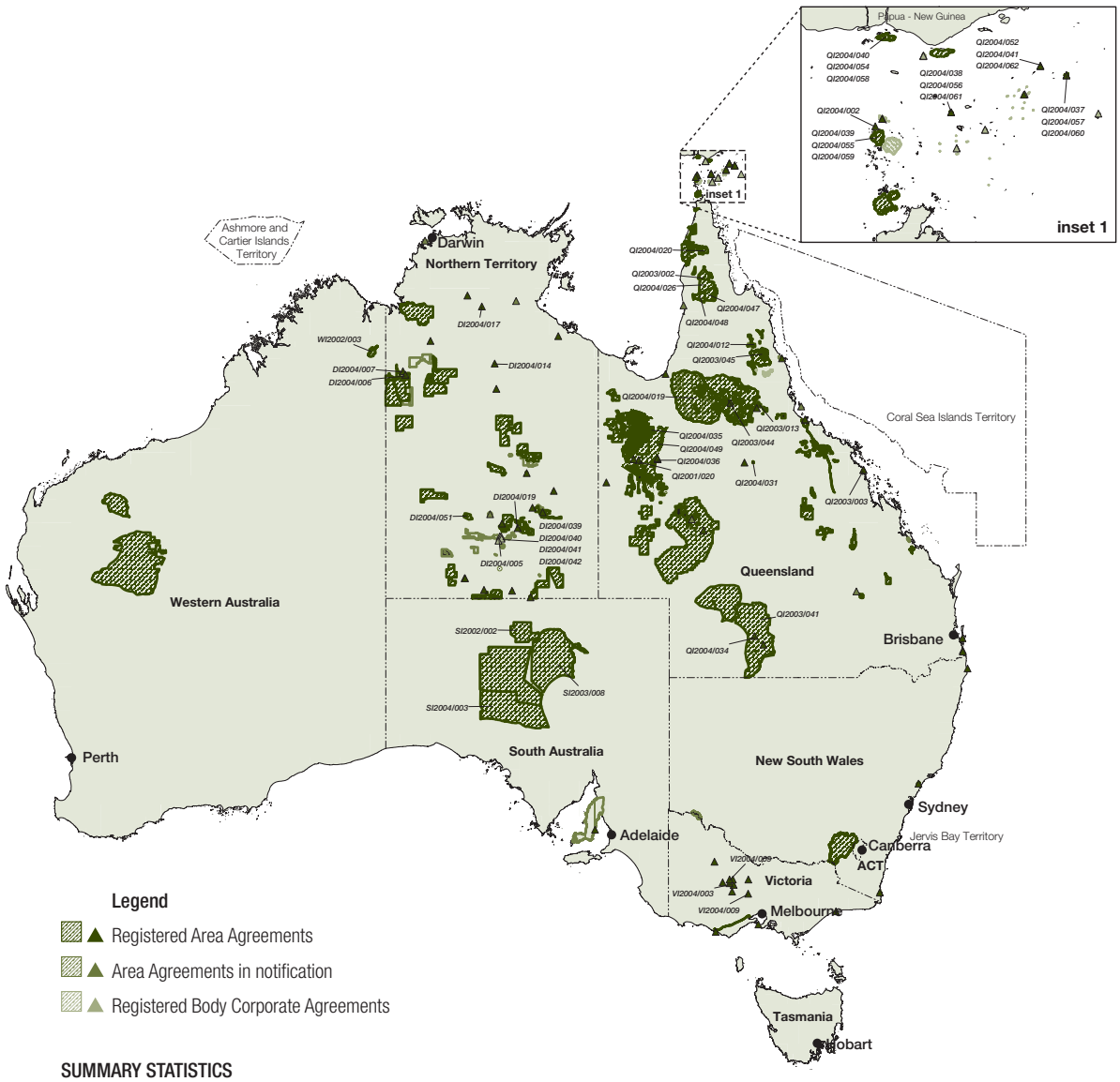
The majority of agreements reached during the reporting period can be characterised as 'process' or 'milestone' agreements in which the parties have agreed on a range of actions that will assist them to progress towards a final resolution. For example, in relation to a cluster of three claims in western Victoria, in late 2004 the parties agreed upon a 'closure schedule' that reflected an agreed timeframe for all remaining steps that needed to be undertaken to finally determine the matters.

Western Australia

In Western Australia, agreement-making has covered a number of outcomes, from consent determinations through to process agreements. Additionally there has been agreement activity where following a determination, the parties work together to further their relationships and to agree how to give effect to the determination.

Client and stakeholder satisfaction

The Tribunal commissioned research into the satisfaction of its clients and stakeholders which took place in April and May 2005 following baseline research completed in 2003. The Tribunal's overall satisfaction rating in agreement-making was 5.94 (out of a maximum of 10). For more information on client satisfaction see 'Accountability to Clients,' p. 113.



Legend

- Registered Area Agreements
- Area Agreements in notification
- Registered Body Corporate Agreements

SUMMARY STATISTICS

	Area	Body Corp	Total
Registered	163	19	**182**
In notification	34	0	**34**

Note:

1. Areas shown represent the geographic extent of the agreement
2. Small areas symbolised
3. Please refer to attached page for ILUA names.
4. Only those agreements which have been registered in the last 12 months have a label on this map. To view a list of all ILUAs, refer to the NNTTs web site.

Reference spatial data sourced from:
Dept of Land Information, WA; Dept of Natural Resources & Mines, Qld; Dept of Lands, NSW; Dept of Infrastructure, Planning & Environment, NT; Dept for Environment & Heritage, SA; Dept of Sustainability & Environment, Vic; Geoscience Australia, Australian Government

Figure 8 Map of indigenous land use agreements to 30 June 2005

CASE STUDY

'Headingly' Pastoral Access Agreement

In October 2004, Australia's largest beef producer (AACo) and the Waluwarrra/Georgina River people signed a landmark agreement that acknowledges the Waluwarra/Georgina River people as the traditional owners of the area, provides for protection of their significant sites and gives them access to country. The groups began negotiating a memorandum of understanding (MoU) in October 2003. The Tribunal convened several mediation meetings to develop a use and access protocol for the Headingly lease area and to develop a co-existence relationship between the company and the native title claimants. Representatives of both groups met at Marmanya Waterhole near Urandangie, 320 kilometres south-west of Mt Isa, and signed the MoU which acknowledged the Waluwarra/Georgina River people as the traditional owners of the area. The MoU provides for protection of the Waluwarra/Georgina River people's significant sites on the pastoral land and their access to country to pass on culture to younger generations.

Tribunal Member Ruth Wade said that the agreement demonstrated that practical agreements could be reached that assisted with the smooth operation of a property and recognised and protected the rights of Indigenous groups. She thanked the parties for their proactive attitude toward the process. Chief Executive and Managing Director of AACo, Don Mackay, acknowledged the integral role the Waluwarra/Georgina River People had played in developing the pastoral industry in the central-west of Queensland noting that AACo wouldn't be where it is today without the hard work of Aboriginal stockmen in the 'early days'.

Long relationship leads to pastoral access agreement: (left to right) Lizzie Dempsey, Mavis Sarmardin, Sally Maher, Emily Dempsey, Eileen Jard and Henry Burke signing the MoU, 'Headingly' Qld, 11 October 2004.

Output 1.2.3 — Future act agreements

Description of output

This output relates to agreements that allow a 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 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 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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included under output group 2 (Agreement-making) as output 2.3—Future act agreements.

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	72	40
Quality	70% concluded within six months from lodgement	33% concluded within six months from lodgement
Resource usage — unit cost per agreement	$35,032	$35,468
Resource usage — output cost	$2,522,304	$1,418,736

Comment on performance

From a national perspective, Western Australia continues to account for the bulk of future act mediation assistance. Table 9 shows the breakdown by state and type of agreement.

Table 9 Future act agreements mediated by the Tribunal by state or territory 2004–05

State/Territory	Type of future act agreement according to sections of the Act	Total
NT	State/Territory Deed–s.31/s.41 A (old s.34)	1
WA	s.150 agreement	2
WA	s.38 agreement by consent (FADA)	7
WA	State/Territory Deed–s.31/s.41 A (old s.34)	24
QLD	State/Territory Deed– s.31/s.41 A (old s.34)	3
VIC	State/Territory Deed–31/s.41 A (old s.34)	3
Total		**40**

On a national basis, there has been a decrease in referral of matters to the Tribunal for mediation assistance, with a significant decrease in Western Australia during the third quarter. Part of the reason for this is that grantee parties were waiting for the regulations to the amended *Mining Act 1978* (WA) to be enacted, which did not occur during the reporting period. On the other hand, the number of objection applications in WA resolved by agreement has significantly increased.

In South Australia, future act negotiations with regard to mining and mineral exploration are managed by an alternative regime under state legislation. Two ILUAs have been registered which provide an alternative framework to the right to negotiate procedures and heritage protection of the *Mining Act 1971* (SA) with regard to the grant of authorised exploration tenements and the carrying out of exploration activities.

Like South Australia, a greater number of future act matters in Victoria are being dealt with by way of ILUAs. During the reporting period two ILUAs in relation to mining and exploration have been registered and the Tribunal has been providing assistance in relation to the development of a further eight mining or exploration related ILUAs. This increase is largely attributable to the development of the pro forma agreements, including pro forma ILUAs, early in 2004.

Facilitation of agreements

Pro forma agreements were developed last year by the State of Victoria, the Victorian Minerals and Energy Council (now the Victorian Division of the Minerals Council of Australia) and Native Title Services Victoria Ltd with the assistance of the Tribunal. These pro forma agreements are now in widespread use and have been utilised this year in the drafting of eight future act agreements, including three agreements reached with the assistance of Tribunal mediation.

During the reporting period there were no new requests for assistance to mediate mining negotiations in New South Wales. The Tribunal is aware that several negotiations are ongoing and has advised parties that it can mediate if requested. Of the approximately 60 s.29 notices issued over the last five years in New South Wales (which were issued over a claim area, or had a claimant application lodged in response) nearly half have resulted in a negotiated agreement and one was arbitrated by the Tribunal. The Tribunal is not aware of the outcome in relation to the other 30 or so notices.

In the Northern Territory, the Tribunal facilitated mediation of the Arafura Resources agreement concerning mining near Pine Creek. The parties involved in this agreement had been negotiating without significant progress before requesting mediation assistance. Arafura Resources also commenced a formal procedure for a future act determination application which ran parallel to the negotiations. The negotiations facilitated by the Tribunal were successfully concluded in December 2004, the agreement was lodged with the Tribunal, and the future act determination application was withdrawn.

The Territory Government has reiterated its intention to allow independent negotiations for a finite period only before referring matters to the Tribunal for mediation. The level of requests for meditation assistance has been less in this period than was originally anticipated, however the Territory Government has been monitoring tenement applications to ensure that matters do not remain unresolved for an unacceptable length of time, and administratively concluding non-active tenement applications. When this process identifies the matters requiring active mediation assistance, the Tribunal anticipates an increase in both requests for mediation assistance and future act determination applications.

In Queensland, an increasing number of registered native title claimants are choosing to negotiate agreements (s. 31) for exploration as an alternative to the Native Title Protection Conditions (NTPCs). Parties choosing to negotiate an agreement must finalise and execute the agreement within four months after the notification day, following which the state will withdraw the exploration application from the expedited procedure. The NTPCs were introduced with the *Natural Resources and other Legislation Amendment Act 2003* with the intention of limiting the number of objection applications. These tenure conditions, aimed at protecting cultural heritage values, are a precondition to notification under the expedited procedure. To date 98 of these alternative agreements have been lodged with the Queensland registry—14 outside of the objection process. The parties have generally developed standard agreements; hence Tribunal mediation has not been requested.

In Western Australia, the Tribunal assisted key stakeholders, i.e. the State Government, native title representative bodies and industry, to develop a standard heritage agreement in the Ngaanyatjarra region, as well as in facilitating continuing negotiations in the Kimberley region. For more information see 'Output 1.4.1—Assistance', p. 87.

Agreement-making in the right to negotiate process

In addition to the increasing use of pro forma agreements, developments in Victoria have included the establishment of a negotiating team on behalf of the Gunai/Kurnai People for future act issues which has assisted in the finalisation of the first future act agreements in that claim area for many years.

Northern Territory Government statistics reveal that over 60 mining titles that attract the right to negotiate remain unresolved. The government has advised that it encourages formal requests for Tribunal mediation assistance, that it is monitoring the progress of tenement applications, and that it intends to administratively conclude non-active tenement applications. Of the current mining titles that remain unresolved the Territory Government has advised that approximately 20 are likely to require Tribunal mediation assistance and/or arbitration in the future.

At the end of the reporting period there were 16 active future act mediations under s. 31 of the Act in Queensland with agreements close to finalisation in a number of matters. All of these mediations relate to petroleum exploration permits in the South-West Queensland region which were notified prior to Queensland resuming the Commonwealth scheme. The Queensland Government has only notified 14 tenements under the right to negotiate provisions this financial year—eight of these in the final quarter—hence there has been limited opportunity for the Tribunal to facilitate negotiations.

In Western Australia, 26 requests for mediation assistance were received by the Tribunal. A large majority of these applications relate to tenements 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. The balance of the mediation applications largely relate to tenements in the Pilbara and lower Kimberley regions as a result of the recent resource boom in those areas.

OUTPUT GROUP 1.3 — ARBITRATION

The Tribunal arbitrates certain future act matters when requested to do so. The 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 future act can go ahead and, if so, whether specific conditions should apply (s. 38), or whether or not an objection to a 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 the expedited procedure finalised.

Output 1.3.1 — Future act determinations

Description of output

This output concerns determinations made by the Tribunal that a 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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be reported under output group 3 (Decisions) as output 3.3—Future act determinations.

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	50	43
Quality	70% determined within six months from application	67% determined within six months of application
Resource usage — unit cost per determination	$18,462	$20,072
Resource usage — output cost	$923,100	$863,101

Comment on performance

As in the last reporting period, Western Australia remains the most significant region for future act determination applications.

The Northern Territory saw one future act determination application lodged and finalised during the reporting period. The application was lodged by Arafura Resources relating to proposed mining tenements near Pine Creek, but was withdrawn following an agreement being reached with Tribunal mediation assistance.

In Queensland, 14 tenements were notified under the right to negotiate provisions, with eight of those tenements notified in the final quarter. Taking into account the timeframes and requirements for negotiation set out in the Act, there was limited scope for future act determination applications this financial year. The two future act determination applications lodged with the Tribunal this financial year related to tenements notified in 1998.

No applications for future act determinations were made in Victoria, Tasmania or New South Wales in the reporting period.

In Western Australia, 15 of the 19 applications (affecting 27 tenements) finalised in the reporting period were determined by consent, with no substantive inquiry being required. As in the last reporting period, in most 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.

Table 10 Number of future act determination applications lodged and determined 2004–05

State or territory	Lodged	Determined
Australian Capital Territory	0	0
New South Wales	0	0
Northern Territory	1	0
Queensland	3	1
South Australia *	0	0
Tasmania	0	0
Victoria	0	0
Western Australia	29	42
**Total ** **	**33**	**43**

** South Australia continued to operate its own alternative regime.*

*** Quantity counted by tenement.*

Activity levels

The Northern Territory Government has continued to monitor tenement applications to ensure that matters do not remain unresolved for an unacceptable length of time, and to enable administrative conclusion of non-active tenement applications. As previously mentioned, only one application was made to the Tribunal during the reporting period, however, the Tribunal does anticipate an increase in both requests for mediation assistance and future act determination applications during the next reporting period.

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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be reported under output group 3 (Decisions) as Output 3.4—Finalised objections to the expedited procedure.

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	655	1,230
Quality	80% of objections finalised within six months from s. 29 closing date	64% of objections finalised within six months from s. 29 closing date
Resource usage — unit cost per objection	$3,002	$1,849
Resource usage — output cost	$1,966,310	$2,273,738

Comment on performance

The number of objections to the expedited procedure remains high with a significant increase in finalised applications from the last reporting period (1,230 compared to 761 in the previous reporting period). This included a high number of dismissals for lack of compliance by the native title party, requiring few of the Tribunal's resources. Accordingly, this had the effect of reducing transaction costs.

Western Australia continues to record the highest number of objections to the expedited procedure, which the Western Australian Government routinely asserts is applicable to exploration and prospecting tenures. It was expected that there would be a continuing reduction in the number of objection applications lodged with the Tribunal as a consequence of regional standard heritage agreements being taken up. However, 2004–05 has seen a slight increase in Western Australia in the number of objections lodged.

The increase is as a consequence of a number of factors relating to the introduction of regional standard heritage agreements. In the Goldfields and Pilbara regions, native title claim groups not affiliated with the native title representative bodies, with which the regional standard heritage agreements were negotiated, have refused to adopt standard agreements, seeking instead to negotiate acceptance of alternative agreements. These claimants have lodged objections at much higher rates than previously and now account for 34 per cent of all applications lodged in this period. In addition, some representative bodies for which a regional standard heritage agreement is available, have adopted the practice of lodging objection applications where no or incorrectly executed agreements are served on them (accounting for over 50 per cent of the applications lodged in 2004–05).

The New South Wales Government uses other mechanisms available under the Act to fast track exploration. The main licences used in NSW include a 'Minister's consent' clause. This licence requires the explorer not to explore on areas where native title may exist without obtaining the Minister's consent. Obtaining that consent attracts the right to negotiate. Exploration licences mostly cover areas where native title has been extinguished and the onus is therefore placed on the explorer to identify the few remaining areas where native title may exist and not to explore on those areas, e.g. vacant crown land.

New South Wales also has an exemption under s. 26A for low impact exploration. This type of licence was mainly aimed at exploration in the Western Division of New South Wales, however, following the High Court's decision in *Wilson v Anderson* (that Western Division perpetual pastoral leases extinguish native title) little use has been made of this type of licence. Lastly, New South Wales also has an exemption to the right to negotiate process for opal licences under s. 26C in relation to some opal fields around Lightning Ridge although this, too, has been made less relevant by the decision in *Wilson v Anderson*.

To date, the expedited procedure has not been asserted by the State Government in Victoria.

Whilst national performance achieved in this reporting period (64 per cent of objection applications finalised within six months of the s. 29 closing date) is a marked improvement on last year, the Tribunal's willingness to allow parties additional time to negotiate agreements rather than imposing resolution by determination has continued to influence this output.

During the previous reporting period, in Western Australia the Tribunal agreed to adjourn groups of objections in the Geraldton and Pilbara regions whilst standard heritage agreements were being implemented across those regions. This process has continued as implementation has taken longer than anticipated, and has also contributed to the Tribunal not yet meeting its objection finalisation timeframe measure. Details of the time taken to process objection applications are shown in Table 11 below.

Table 11 Time taken to process objection applications 2004–05

	Northern Territory	Queensland	Western Australia	National
Not more than six months between s. 29 closing date and objection finalised date	100%	83%	60%	64%

The way in which Western Australian parties use the services of the Tribunal has also changed somewhat during this reporting period. Grantees that have executed regional standard heritage agreements have become increasingly reluctant to negotiate alternative agreements with claim groups not affiliated with the relevant representative body. As a consequence, such grantees have frequently requested an arbitrated outcome with the result that the number of objections finalised by determination has increased substantially. In 2003–04 there were 172 tenements cleared by a Tribunal inquiry as compared to 253 in 2004–05. The majority of the matters dealt with by inquiry have been dismissed by the Tribunal for failure to comply with its directions.

Table 12 Objection outcomes by tenement finalised 2004–05

Tenement outcome	Northern Territory	Queensland	Western Australia	Total 2004–05
Consent determination — expedited procedure does not apply	0	0	22	22
Determination — expedited procedure applies	0	0	79	79
Dismissed — s. 148(a) no jurisdiction	0	0	3	3
Dismissed — s. 148(a) tenement withdrawn	0	0	68	68
Dismissed decision — s. 148(b)	0	0	171	171
Expedited procedure statement withdrawn — s. 31 agreement lodged	0	129	0	129
Objection not accepted	0	22	31	53
Objection withdrawn — agreement	1	5	607	613
Objection withdrawn — no agreement	0	24	37	61
Objection withdrawn prior to acceptance	0	0	25	25
Tenement withdrawn	0	0	6	6
Total	**1**	**180**	**1,049**	**1,230**

Strategies to eliminate tenement backlog

In the Northern Territory, the government's clearance of its backlog of tenements to be advertised has resulted in a continuation of the monthly advertising by the Department of Business, Industry and Resource Development of tenement applications. During the reporting period, only five objection applications were received by the Tribunal from the Central Land Council. In accordance with its asserted merit-based approach to future act matters, the Northern Land Council has not participated in the future act processes.

There has been a significant increase in the number of objection applications lodged in Queensland this financial year—230 compared to 39 in the 2003–04 financial year. Whilst this increase can be linked to the increased number of exploration permits this financial year, it also reflects an increase in the number of parties lodging objections to instigate or secure the negotiation of agreements as an alternative to the Native Title Protection Conditions. During the reporting period, 131 of the 180 objections finalised were finalised by agreement.

In Western Australia, the Heritage Protection Working Group (which is facilitated by the Tribunal) has continued to develop regional heritage protection agreements. The focus of this group during the reporting period has been on developing a standard heritage agreement in the Ngaanyatjarra region, as well as continuing negotiations in the Kimberley region.

Capacity-building

During the reporting period, the future act units in Western Australia and Queensland saw a decrease in requests for assistance and capacity-building activities compared to the last reporting period. For further details see 'Output 1.4.1—Assistance to applicants and other persons', pp. 82–8.

An extensive capacity-building program was undertaken just prior to Queensland's reversion to the Commonwealth scheme. Capacity-building since that time has been limited to workshops for native title representative bodies experiencing a high turnover of staff. The Queensland Registry is currently considering a proposal from one Queensland representative body to engage on a ten-day tour aimed at building the capacity of both traditional owners and small miners.

In Western Australia, in response to the increased objection lodgement by native title claim groups who are not affiliated with the native title representative bodies, the Tribunal has actively engaged with them in capacity-building activities. These activities have been primarily directed toward increasing the skills of the claimants to manage their future act workload efficiently. In addition, the Tribunal has met with targeted groups to assist them to consider whether the relevant regional standard heritage agreement might be an acceptable alternative to continuing to lodge objections.

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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included under output group 1 (Stakeholder and community relations) and will be split between output 1.1—Capacity-building and strategic/sectoral initiatives, and output 1.2—Assistance and information.

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 as at 30 June 2005			
Measure	**Contacts**	**Events**	**Initiatives**
Quantity	Estimated: 14,510 Achieved: 9,223	Estimated: 316 Achieved: 278	Estimated: 17 Achieved: 10
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: $230 Achieved: $313	Estimated: $6,563 Achieved: $7,312	Estimated: $89,603 Achieved: $115,473
Resource usage — output cost	Estimated: $3,338,751 Achieved: $2,885,629	Estimated: $2,073,908 Achieved: $2,032,676	Estimated: $1,523,251 Achieved: $1,154,730

Comment on performance

Number of assistance contacts, events and initiatives

The number of people contacting the Tribunal for information and assistance was lower than anticipated during 2004–05, continuing the previous year's trend for this output. In part this was attributable to better practice across the Tribunal in only capturing assistance that properly met the output definition. The total number of recorded assistance contacts of 9,223 does not include Tribunal responses to media enquiries.

This trend reflects the fact that information about the various native title processes has reached most of its target audience. The Tribunal's client satisfaction research found that the contact frequency of people surveyed had declined while satisfaction with information and service had increased. Many of the Tribunal's clients and stakeholders are now experienced and do not need to contact the Tribunal to obtain information.

In addition, the increased access to the Tribunal website shows that is a major source of information for stakeholders and the wider public (see p. 84). Targeted information in plain English is also easily available from a growing range of sources other than the Tribunal. Various government, indigenous, peak body and research organisations' websites provide extensive native title information and links to the Tribunal's site.

The native title environment itself remained relatively unchanged compared to the previous years, with no legislative amendments or court decisions impacting significantly on processes and procedures (see 'President's Overview'). This further explains the relatively low number of requests for information about the various native title processes.

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 future act processes and mediation. The category 'other' covers general enquiries from external stakeholders. These relate mostly to topics such as services provided by the Tribunal, requests for publications and assistance in accessing online information.

Events and initiatives

The categories 'events' and 'initiatives' both include activities contributing to creating relationships between stakeholders and building parties' capacity to participate in the native title process.

Ten initiatives and 278 events were conducted during the reporting period. These numbers were lower than anticipated. The Tribunal made estimates about the expected 2004–05 investment of resources in capacity-building assistance in a context of uncertainty in relation to the outcomes from the 2004 Native Title System's Funding Review and the development of the Commonwealth Government's new approach to indigenous affairs (reflected in the establishment of the Office of Indigenous Policy Coordination). Over the course of the year it became clear that a high proportion of resources would need to be directed to agreement-making activities and that resources for capacity-building would be correspondingly less. In particular, employees and members who would otherwise have provided capacity-building assistance were substantially re-directed to agreement-making, most particularly in the area of claimant, non-claimant and compensation agreements (output 1.2.2). Direct expenditure on initiatives and events was less than expected and this is in part reflected in the Tribunal's operating surplus of $2.079m.

Assistance events and initiatives conducted during the reporting period ranged from the production of information materials to the provision of extensive library assistance and the organisation of seminars and workshop series.

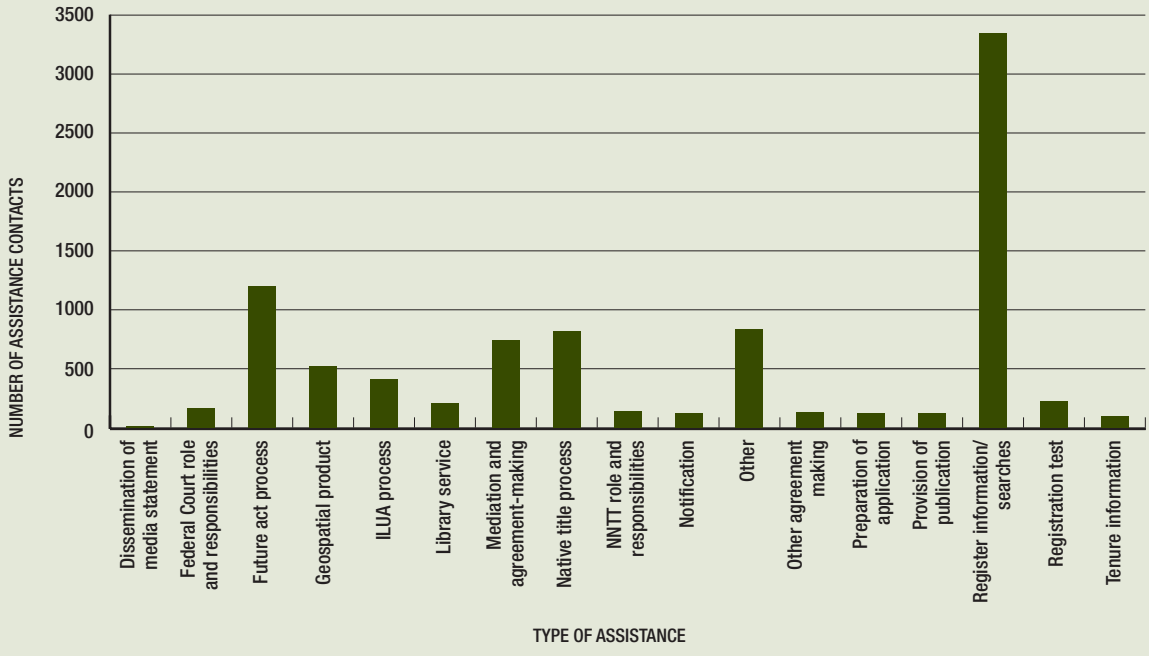


Figure 9 Assistance to applicants and other persons by type 2004–05

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 to ten 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 is delivered electronically to more than 700 people. Both publications are available on the Tribunal's website.

A major new product developed and distributed during the reporting year was *Steps to an ILUA*. This plain English series of information sheets explains how to make and register an ILUA for people who have entered, or may enter, into negotiations.

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 42,000 publications were distributed.

Website

The Tribunal's website attracts some 10,000 individual users a month. This is an increase from 2003–04 when the number of users was 6,500. Client research conducted during the reporting period found a high satisfaction level with the site and its information. The Tribunal's client satisfaction research found that 80 per cent of people who used the site were satisfied or very satisfied with it.

Media

The Tribunal's media program continues to be a significant source of information for media outlets. Our staff responded to hundreds of requests from mainstream and specialist journalists around the country. They assisted journalists to attend events in remote locations and provided background briefings on native title determinations and other agreements.

Contributing to building parties' capacities

The Tribunal engages in partnerships at multiple levels to contribute to the development of the capacities of parties where needed. It works with communities but also with organisations representing applicants and other parties to share its expertise in native title processes and encourage the establishment of links between native title stakeholders, as illustrated by the examples below.

The aim is to create a native title environment that is more conducive to agreement-making. This, in turn, places the Tribunal in a better position to reach its strategic objectives in a more cost-effective and efficient manner.

Fostering relationships between Indigenous organisations, industry groups and government agencies

In NSW, the State Government and NSW Native Title Services Ltd increased their

Tribunal member John Catlin with Lola Young (far left), Doreen James and other claimants discuss practical implications of Federal Court decisions on their native title application area, Pilbara Native Title Service's office in Tom Price WA, 23–24 September 2004.

requests for assistance during 2004–05, including in relation to the provision of information products, production of maps and assistance in facilitating information workshops for claimant groups. In February 2005 the Sydney Registry organised a one-day workshop for the Board of NSW Native Title Services Ltd to inform them about developments around the country and to give them information on native title processes.

The Victoria/Tasmania registry held monthly native title forums at which guest speakers spoke on topics related to native title or other topics of direct interest to Tribunal stakeholders. The presentations were well attended and provided an opportunity for debate and discussion amongst stakeholders.

Tailored assistance to specific client groups included a 'Demystifying the Right to Negotiate' workshop for miners and explorers, held in September 2004. It featured speakers from the Department of Primary Industries, the Minerals Council of Australia and Native Title Services Victoria Ltd.

The South Australia registry held regular regional mediation and assistance planning meetings with the state, the Aboriginal Legal Rights Movement and representatives from the Statewide ILUA strategy group. The agreed strategy was then presented to the Federal Court in an overview report, and to date has been adopted by the court at the callovers of South Australian claims.

The Darwin Registry conducted an Access and Awareness Program by taking information and products out to regional shows and having a presence at the Darwin Expo, the Geoscience Conference in Alice Springs and other events organised through peak bodies.

Following resolutions at the National Indigenous Fishing Conference in October 2003, the Tribunal convened the National Indigenous Fishing Technical Working Group (NIFTWG). Comprised of representatives from federal, state and territory governments as well as peak industry, recreational and Indigenous representative groups, the NIFTWG developed a set of principles 'to guide the future development of Indigenous fishing strategies within the sustainability limits that currently apply to all other stakeholders'.

At the representatives' request, the Tribunal chaired a process of negotiation that resulted in the *Principles Communiqué on Indigenous Fishing*. The seven principles and associated preamble were subsequently adopted by governments and peak sectoral groups nationally and are being integrated within policy development and planning processes. The guiding influence of the principles has been noted in several key government policy development documents and in presentations by government and sectoral representatives. At the end of the reporting period, the Natural Resource Management Ministerial Council of the Council of Australian Governments (COAG) was considering the principles and potential implementation methodologies.

To support awareness and understanding of the issues surrounding indigenous fishing, the Tribunal produced a bi-monthly indigenous fishing e-publication which was emailed to more than 400 subscribers.

Research and library assistance

In New South Wales, the Tribunal provided assistance to an unfunded claim group to resolve a dispute between Indigenous people to advance mediation of the application. After negotiating an agreement with the State Government, New South Wales Native Title Services Ltd, the applicants' legal representative, the Indigenous respondent parties and each applicant to proceed with the genealogy research, an expert anthropologist was engaged with Tribunal funding to produce genealogies for the applicants and Indigenous respondent parties.

Last year's annual report highlighted a collaborative project with the University of Melbourne in relation to the further development of the Agreements, Treaties and Negotiated Settlements Database. While the formal elements of this project concluded during the reporting period, the Tribunal continued to provide assistance in relation to the maintenance of the database in an informal capacity.

An important aspect of Tribunal assistance is access to the library collection provided to parties, consultants engaged by native title parties, organisations without their own library services, academics and advanced tertiary students, other libraries and members of the public who may make requests via their public library.

Library assistance to external clients continued to generate positive feedback for its professionalism and thoroughness. For example, as part of its new judgments alert service, the library sent more than 70 emails to the 400 external subscribers during the reporting period. The service alerts subscribers to unreported judgments and other information dealing with native title and related issues, providing relevant hyperlinks.

Another example of library assistance involved sourcing and providing a complete suite of information about the New Zealand model for Indigenous participation in the fishing industry. The Library obtained the new legislation, key documents, articles, background information and all online information about the model, on request from a representative body.

Working with claimants and Indigenous organisations

The Tribunal held workshops for members of claim groups focussing on the role of native title applicants and examining likely outcomes from native title proceedings. Usually organised at the request of representative bodies, the workshops guide claimants through the native title process, extinguishment issues, and connection requirements. In the reporting period, there were 28 workshops held throughout Queensland regional centres and four in Gippsland, Victoria.

In WA, as part of a Tribunal-funded project continued from last financial year, a consultant assisted by native title representative staff gave presentations to native title claimant groups outlining the benefits of using a standard regional heritage agreement. These presentations were made to claimants represented by the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation.

With assistance from the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation, the Tribunal, the Department of Industry and Resources, and the Chamber of Minerals and Energy, the consultant also developed a resources package for use by native title representative body field staff in advising claimants of their options in the area of mining exploration and heritage protection. This package will be trialed in the Geraldton and Pilbara regions in 2005–06.

Working on future acts: members of the Martu Prescribed Body Corporate are assisted by the Tribunal's future act case officer Nikkie Bell (standing), 15 February 2005.

An extensive capacity-building program about future act was undertaken in Queensland just prior to the state's return to the Commonwealth scheme in 2003. During the reporting period, the Tribunal followed-up with capacity-building workshops for native title representative bodies experiencing a high turnover of staff.

As outlined under 'Output 1.3.2—Objections to Expedited Procedure finalised', the Tribunal undertook capacity-building activities to assist claimants to increase their skills in managing their future act workload efficiently. In addition, the Tribunal met with groups to assist them to consider whether the relevant regional standard heritage agreement might be an acceptable alternative to continuing to lodge objections.

The Tribunal also conducted a number of sessions specifically on future act processes, including one for the Martu Prescribed Body Corporate. In a continuing focus on building capacity within native title representative bodies, the Tribunal also organised a native title information session for the Kimberley Land Council in June 2005.

Innovative approaches in geospatial assistance

During the reporting period, the Tribunal's geospatial services unit played a key role in educational forums and workshops for claimants, and developing tailored maps.

The Tribunal's geospatial assistance is tailor-made: Michael Ryan of Pilbara Native Title Service and claimants study a topographical map with an overlay showing extinguishment areas, historical tenures, tenements and other applications, Tom Price WA, 23–24 September 2004.

Three-dimensional visualisation of overlapping applications and agreements were provided for mediation in the field. 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, value-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.

In December 2004, the Tribunal provided the ability for external stakeholders to visualise and analyse spatial information on native title matters via the internet. This self-service system, known as Native Title Vision, significantly increased the amount and quality of spatial information available to stakeholders. By the end of the reporting period, there were in excess of 100 registered users.

The provision of native title geospatial datasets to stakeholders and interested parties was considerably improved in March 2005 through a partnership with Geoscience Australia (GA). GA agreed to host the Tribunal's custodial datasets on its website, to complement its current range of freely available geospatial datasets including administrative boundaries and topography.

Level of client satisfaction

The Tribunal commissioned research into the satisfaction of its clients and stakeholders which took place in April and May 2005 following baseline research completed in 2003. The Tribunal's overall satisfaction rating in assistance activities was 7.51 (out of a maximum of 10). For more information on client satisfaction, see 'Accountability to Clients,' p. 113.

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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included under output group 3 (Decisions) and will be split between output 3.1—Registration of native title claimant applications, and output 3.2—Registration of indigenous land use agreements.

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	111 applications advertised	124
Quality	Renotification (full or partial) necessary in less than 5% of applications	0% of applications renotified
Resource usage — unit cost per application	$15, 344	$12,766
Resource usage — output cost	$1,703,184	$1,582,992

Comment on performance

The Registrar initiated the notification of 124 applications in the reporting period: 24 claimant, 20 non-claimant and 80 applications to register ILUAs. The Tribunal has now notified 91 per cent of all active native title claimant applications.

Table 13 gives the distribution of different applications notified during the reporting period.

Table 13 Applications notified 2004–05

State or territory	Claimant	Non-claimant	Compensation	ILUA	Total
ACT	0	0	0	0	0
NSW	2	19	0	0	21
NT	6	0	0	33	39
Qld	7	0	0	39	46
SA	0	0	0	3	3
Tas.	0	0	0	0	0
Vic.	1	0	0	4	5
WA	8	1	0	1	10
Total	**24**	**20**	**0**	**80**	**124**

The workload in notification has continued in the current reporting period at a steady rate, and the number of applications notified is consistent with last year. However, the trend has changed over the last year, as for the first time ILUAs made up two thirds of the notification workload (80 applications) as opposed to only a third comprised of determination applications (44).

Another significant change was the make-up of determination applications: only 24 claimant applications were notified which was approximately the same number as non-claimant applications notified.

Notification activity was focused in three registries.

- In Queensland there were 46 applications notified, of which 39 were ILUAs and seven determination applications.
- In the Northern Territory, 39 applications were notified of which 33 were ILUAs and six were determination applications.

- In New South Wales, 21 determination applications were notified of which 19 were non-claimant and two were claimant applications. During the year there was an increase in the number of non-claimant applications being lodged, largely driven by the State Government becoming more commercially orientated in relation to its management of Crown land resources.

The increase in ILUA notifications in Victoria is attributable to the modest increase in the number of ILUAs presented for registration. The number of notifications in South Australia was less than expected as a result of the reduction in the number of ILUAs actually completed within the financial year, as well as the delays with amended claims being lodged following the mediations at Spear Creek in 2004 and the absence of any new claims being registered this year.

Western Australia was the only registry to give notification on all three types of applications: ILUAs, claimant and non-claimant applications.

Nationally, no applications had to be re-notified in this reporting period.

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.

In the next reporting period, and according to the Tribunal's revised outputs structure (see 'Tribunal Overview', p. 35), this output will be included as an activity under output group 2 (Agreement-making) under output 2.2—Native title agreements and related agreements.

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	730	684
Quality	85% of reports provided within timeframe set by Federal Court	95% of reports provided within timeframe set by Federal Court
Resource usage — unit cost per report	$1,880	$1,252
Resource usage — output cost	$1,372,400	$856,473

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 684 mediation and status reports provided to the court. About 59 per cent of the mediation progress reports were volunteered by the Tribunal.

Table 14 Mediation and status reports by state and territory 2004–05

	Mediation reports		Status reports		Total
State or territory	**Ordered**	**Voluntary**	**Ordered**	**Voluntary**	
ACT	0	0	0	0	0
NSW	20	13	0	0	33
NT	11	0	0	0	11
Qld	89	147	0	0	236
SA	15	3	0	1	19
Tas.	0	0	0	0	0
Vic.	8	33	1	1	43
WA	134	57	0	151	342
Total	**277**	**253**	**1**	**153**	**684**

The number of reports has decreased from last year: 684 this year compared to 922 mediation and status reports in the last reporting period.

In Queensland this was due to a lack of mediation activity in the Queensland South region (due to the uncertainty of the representative body status) which resulted in fewer court listings and consequently fewer reports were prepared in the second half of this financial year. In the Northern Territory the number of reports was lower than anticipated due to the direction from the Federal Court that the Tribunal was to take no active steps to mediate the pastoral estate pending the decision on the appeal in relation to the Davenport Murchison application.

In South Australia the number of reports decreased due to less frequent scheduling of callovers (previously every three to four months and now every six months). The number of mediation reports required was reduced accordingly. The level of reporting for both Western Australia and Victoria remained consistent, although it is expected that the number of reports in Victoria may increase slightly in the next reporting period due to an increase in the number of matters in mediation and a potential increase in the frequency with which the Federal Court is holding directions hearings.

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 2004 and in Queensland during March 2005.

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;
- updates from various Tribunal strategy groups;
- training of members and employees and associated practice development;
- 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 seven times during the reporting period to advise on high-level budget priorities for 2004–05, monitor the Tribunal's performance and make recommendations to the President and Registrar to facilitate Tribunal projects.

Agreement-Making Strategy Group

The Agreement-Making Strategy Group was established in April 2002 to promote the implementation of key recommendations of the working group on workloads, specialisation and training, and in particular to advance Tribunal agreement-making processes. It is chaired by the President and includes three members, the Director of Service Delivery, the Western Australia State Manager and an executive officer. Other members and employees attend as required.

One of the outcomes of the AMSG was the development of the *Mediating Native Title Applications: A Guide to National Native Title Tribunal Practice* (the *Guide*) in 2003. The Guide was developed by the AMSG with input from other Tribunal members and employees. The group 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.

During the reporting period the first edition of the *Guide* was revised following significant internal consultation and in light of experience and the advanced training courses. The second edition of the *Guide* has been produced and will be available for internal use.

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 Agreement-Making Implementation Support Group (AMISG) was established in January 2004 and is responsible for taking the ideas generated by the AMSG and articulated in the *Guide*, and putting them into practice. These projects include agreement-making curricula and training delivery, a national case manager practice workshop, communications, agreement-making tools and procedures and a review of organisational structures to support agreement-making.

The National Case Manager Practice Workshop was held in Adelaide in September 2004. It was designed as a practice-focussed workshop targeted at Tribunal agreement-making practitioners. The workshop was successful in providing a forum for practice development, discussion regarding organisational, communication and training structures and providing options for enhanced information and knowledge sharing.

During the reporting period, additional training services were provided including advanced legal training and a third agreement-making practice workshop. In relation to agreement making tools, a suite of tools to support the Tribunal's agreement-making model have been identified. Further, a number of community-of-practice initiatives designed to promote the sharing of knowledge and experience have been scheduled during the next reporting period, including an online discussion forum, a further practitioner workshop, regular forums for discussion between practitioners and a practitioner mentoring program.

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 continued implementation of heritage protection arrangements in Western Australia and reviewed and consolidated the Future Act Operations Manual. The group also considered options for the production of national statistics and the establishment of standard reports for stakeholders, as well as means to improve future act information products to avoid confusion between Tribunal and State future act processes.

ILUA Strategy Group

The ILUA 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 the coordination of ILUA general information and seminars for legal practitioners, ongoing review of portfolio budget statement reporting criteria relating to ILUAs and consideration of the Tribunal's role in ILUA dispute resolution.

Research Strategy Group

The Research Strategy 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 five 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.

The Registrar's group: (left to right) Hugh Chevis (Director, Service Delivery), Michael Cook (Chief Information Officer, Information & Knowledge Management) Christopher Doepel (Registrar), and Peter Bowen (A/Director, Corporate Services & Public Affairs).

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 & Public Affairs and Information & Knowledge Management (see Figure 1, 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. 42 and 'Output 1.4.2—Notification', p. 90) .

Senior management committees

The Registrar and directors comprise the Executive Team (formerly the Registrar's group). During the reporting period, the team reviewed the format and structure of its meetings with a view to enhancing the discussions and the decision-making process. The Executive Team now meets fortnightly with one meeting per month focussed on strategic and governance issues and the other meeting focussed on finance, human resources and operational issues. The Executive Team remains as the main formal vehicle through which the directors assist the Registrar on a range of issues concerning the Tribunal, including matters of information and knowledge management strategy (previously considered by the Information and Knowledge Management Strategy Group).

An Audit and Risk Management 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 & 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.

Managers within the Information & Knowledge Management division meet fortnightly to establish governance, accountability and resources necessary for the effective delivery of information and communications services and to discuss the progress of ongoing projects.

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. For more information see 'Certified Agreement and AWAs', p. 107.

CORPORATE PLANNING

The *Strategic Plan 2003–2005* is the key governance and operational document for the Tribunal. It provides the framework for the continuing strategic management of the Tribunal and allows us to shape our organisational future and respond to the continually changing environment and to the needs of our clients.

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.

Section and registry operational plans are developed each year based on the key success areas above and take into account issues in the external and internal operating environment, external client and stakeholder feedback and the future direction of the Tribunal.

The *Strategic Plan 2003–2005* is due to conclude at the end of 2005 and a new strategic plan for 2006–08 will be developed in the next reporting period.

MANAGEMENT OF HUMAN RESOURCES

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

- improvements to the human resource management information system (the Complete Human Resource Information System — CHRIS21), including implementation of a facility to enable employees to access personal information online (an employee self-service kiosk);
- development and delivery of Health Month as part of the Tribunal's Occupational Health and Safety (OH&S) Strategy;
- enhancement of the Tribunal's online performance management program, in particular the end-of-cycle evaluations;

- implementation of the Tribunal's formal workforce planning framework; and,
- continued advancement of the learning and development leadership program.

Learning and development

The focus for the Tribunal this year has been on enhancing the leadership skills of senior managers. A third agreement-making practice workshop was also conducted this year. Further work has been undertaken during the reporting period to identify the preferred range of skills ('skill set') for case managers. Advanced legal and geospatial training was conducted, aimed at employees involved in agreement-making.

A review of the delivery of learning and development across the Tribunal was carried out which resulted in the development of more innovative material and the use of new technologies. The review was driven in part by a need for more flexible training delivery, given the limited availability of employees to attend face-to-face training.

Other learning and development activities continued in three key areas.

Corporate compliance, including:

- 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);
- diversity training in the workplace and in the field (for example, awareness of Indigenous cultures);
- code of conduct investigation training;
- revision of induction strategy, including the provision of flexible training materials, comprehensive checklists and a buddy system for new starters; and
- selection and recruitment practices for selection panels.

Skills development, including:

- leadership training;
- participation in the Australia and New Zealand School of Government (ANZSOG) Executive Fellows Program;
- leading organisations in a changing future (change management) training;
- case management training (for example, agreement-making, mediation, registration testing and ILUAs);
- videoconferencing training, 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) such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Native Title Conference held in Coffs Harbour in June 2005.

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 included, or was affected by:

- outcomes resulting from 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 in the context of 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.

When implementing its agreement-making processes, the Tribunal considers 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 Tribunal 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 2004–05 was $21,040,562 compared with $19,202,188 for the previous reporting period—an increase of 9.5 per cent.

At 30 June 2005, the Tribunal had 15 Holders of Public Office (President, Registrar and members) and 263 people employed under the *Public Service Act 1999* (Cwlth) (PSA), an overall decrease of 29 from the end of the previous reporting period. Of the 263 PSA employees, 258 were covered by the Tribunal's *Certified Agreement 2003–2006* and five were on Australian Workplace Agreements (see 'Certified Agreement and AWAs', p. 107).

During the reporting period 17.1 per cent or 50 PSA employees resigned (38 ongoing, 12 non-ongoing). In the previous reporting period 10 per cent or 29 PSA employees resigned. The number of resignations rose by approximately 7 per cent in the current reporting period. The data obtained from exit interviews shows that most employees leave the Tribunal because they have secured alternative employment. The second most compelling reason given for leaving the Tribunal is to undertake family/caring responsibilities.

Of the 263 people employed under the PSA, 180 were female and 83 were male, 226 were full-time and 37 part-time, 214 were ongoing staff and 49 non-ongoing (see 'Appendix I—Human Resources', p. 119). Thirty-four people identified themselves as being either Aboriginal or Torres Strait Islander, five people identified themselves as having a disability, and twelve people as coming from a linguistically diverse background.

Indigenous employees

In the State of Service report issued in November 2004, the Public Service Commissioner advised that, at 30 June 2004, the average number of ongoing Indigenous employees in Australian Public Service agencies was 2.4 per cent. In that same reporting period, ongoing Indigenous employees made up 14 per cent of the Tribunal's national ongoing workforce. Of the 75 agencies providing statistical information, the Tribunal ranked fifth in the number of Indigenous employees behind AIATSIS, Aboriginal and Torres Strait Islander Services, Torres Strait Regional Authority and Aboriginal Hostels Limited. At 30 June 2005, the Tribunal's percentage of Indigenous employees was 13.1 per cent of ongoing employees, a decrease of 0.9 per cent from the previous reporting period.

Of the 34 Indigenous employees, 31 are employed in the Service Delivery division, two in the Corporate Services & Public Affairs division and one in the Information & Knowledge Management division. For more information about levels and location of Indigenous employees within the Tribunal, see 'Appendix I—Human resources', p. 120.

Indigenous study awards, traineeships and cadetships

The Tribunal had one successful graduate 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. One award was offered this calendar year for a period of twelve months.

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

During the reporting period, the Indigenous Traineeship guidelines were developed and are now in place. The Tribunal employed three Indigenous trainees during the reporting period.

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.

During the reporting period, a national Indigenous employees workshop was held in Perth. The three-day program, held 8–10 March 2005, included guest speaker presentations on

Indigenous employees' workshop, Perth WA, 8–10 March 2005.

the national approach to indigenous service delivery, the directions for Indigenous staff in the Australian Public Service and the Tribunal, as well as presentations on Tribunal stakeholder relations, governance and related corporate issues. Participants discussed strategies to increase recruitment and retention of Indigenous employees in the Tribunal and opportunities to develop the role of Indigenous employees in stakeholder relations and agreement-making. Thirty-two Indigenous employees from most states attended this biennial event. The IAG provided a report to the Registrar outlining the outcomes of the workshop and providing recommendations and feedback on the future direction and operational effectiveness of the IAG. In the next reporting period, the Registrar and executive will meet with the steering committee to discuss the implications of the report.

One Indigenous employee is currently participating in the Indigenous Employees Exchange Scheme (IndEx). The program involving local federal government agencies is currently operating in Western Australia and is administered by the Australian Public Service Commission (APSC) WA office. This is a Western Australian initiative of the APS Indigenous Employment Network Steering Committee and the WA APSC Regional Office.

Occupational health and safety performance

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 notified under s. 68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (Cwlth). Preventative workplace assessments and early interventions in return to work were common place in this reporting period. No performance improvement 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. 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.

In this reporting period the Tribunal commenced a review of all medical examinations for new employees and existing employees required to travel. The Tribunal continued its program of preventative medical assistance 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, the return to work of ill or injured employees).

Performance against disability strategy

The Tribunal ensures that all employment policies and procedures comply with the *Disability Discrimination Act 1992* (Cwlth), and continued to update its disability strategies during the reporting period.

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 third certified agreement was approved by the Australian Industrial Relations Commission on 23 December 2003 and is now half way through its operation. Research and initial consultation for the 2007–09 certified agreement will commence during the next reporting period. Preliminary research has already begun into the viability of broad-banding for inclusion in the negotiations.

A number of features of the *Certified Agreement 2003–2006* have been successfully implemented including:

- the development and introduction of a substantive consultation framework;
- the introduction of a reward and recognition program; and
- provision and promotion of healthy lifestyle assistance.

Salary increases are payable from the Tribunal's budget under the annual appropriations and are based on achieving productivity improvements. The Tribunal has commenced implementation of a number of organisational improvements during the reporting period such as:

- projects flowing from the Strategic Information Management Plan (SIMP), including the development of a project management framework, the replacement of the

Tribunal's financial and human resource information management systems with new information systems, the development of the Operational Business Framework and the continued deployment of an Electronic Document and Records Management System (EDRMS)—see 'Information Management' below;
- 'skill set' identification to assist implementation of agreement-making processes;
- research into unscheduled absence and the development and implementation of an absence management strategy;
- improvements to the performance management program; and
- a review of email groups.

Australian Workplace Agreements

Five employees of the Tribunal are currently working within an Australian Workplace Agreement. Two of these employees are SES and the remaining three are non-SES. Of the three non-SES, two are Executive Level 2 and one is Executive Level 1 or equivalent.

RISK MANAGEMENT

The Tribunal continued to progress the implementation of a risk management regime within its practices and procedures. The Tribunal's *Strategic Plan 2003–2005* forms the basis of the Tribunal's risk management framework, which includes an updated environmental scan to help identify current risks. A business continuity plan is currently being developed and will be finalised in the next reporting period.

The Tribunal has an Audit and Risk Management Committee to oversee the operation and performance of audit and control functions of the Tribunal. A new charter for the audit and fraud control functions in the Tribunal was developed and will be issued with the updated Registrar's instructions in the next reporting period.

Physical security at reception facilities have been upgraded in several offices. The Commonwealth Law Courts are currently planning a significant security upgrade to building access and this will improve the level of security for the Principal Registry in Perth.

INFORMATION MANAGEMENT

Strategic Information and Technology 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.

In December 2003, the Tribunal completed a SIMP that provided an organisation-wide approach to information and knowledge management. The plan set out a detailed framework for identifying the Tribunal's present and future information needs, and a program of linked steps and projects to progressively meet those needs. Identification, research and execution of these projects commenced in the last reporting period and continued during the current reporting period. The 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.

A number of projects have been implemented, including:

- the development of a project management framework that enhances the process for initiating, recording and managing Tribunal projects; and
- the replacement of the Tribunal's financial and human resource information management systems with new information systems which offer integration opportunities in the longer term.

Substantial work has also been undertaken on other key projects flowing from the SIMP:

- the development of the Operational Business Framework. This major Tribunal initiative will deliver a new core business system to support the Tribunal's agreement and decision-making activities as well as its online statutory registers. Completion of the project is scheduled for March 2006. The Operational Business Framework utilises state of the art technologies to consolidate the Tribunal's disparate business systems into a single business environment. The new environment will allow authorised personnel to manage the Tribunal's agreement making and arbitration activities more efficiently and effectively through a combination of textual and geographic user interfaces;
- underpinning this framework is the continued deployment of the EDRMS which provides a centralised document repository that integrates with the Tribunal's record keeping system and enterprise business systems;
- a review of the Tribunal's telecommunications requirements has been completed and a request for tender prepared. The Tender will be issued in mid-July 2005 and the selection of the successful vendor(s) is targeted for late October 2005;
- a review of the Tribunal's information technology infrastructure has also been completed and the procurement and installation of new hardware and operating systems is scheduled for completion by the end of October 2005.

accountability

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, four complaints of alleged breaches of the APS Code of Conduct were finalised (relating to four employees). In relation to three employees, it was determined that there were no breaches of the Code of Conduct. In relation to the remaining employee, 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.

During the previous reporting period one complaint was made against a member under the voluntary code of conduct. That complaint was not capable of resolution under that code. The complainant, a Tribunal employee, referred the complaint to the Merit Protection Commissioner. After conducting a preliminary review, the Merit Protection Commissioner advised that he did not have jurisdiction to deal with it.

EXTERNAL SCRUTINY

Judicial decisions

There were no High Court decisions on native title during the reporting period but there were several Federal Court decisions. Significant decisions are summarised in 'Appendix II', pp. 121–133. The effect of some decisions on the Tribunal's operations is discussed in the President's overview, pp. 3–4.

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

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

During the reporting year the PJC examined and reported on the Tribunal's *Annual Report 2003–2004*. The PJC's tabled report is available online at http://www.aph.gov.au/senate/committee/ntlf_ctte/annual03–04/report.pdf

The PJC also undertook an inquiry (continuing) into native title representative bodies. The Tribunal provided a submission to the inquiry in August 2004. The submission is available online at http://www.aph.gov.au/senate/committee/ntlf_ctte/rep_bodies/submissions/sub23.pdf

Freedom of information

During the reporting period, two formal requests were made under the *Freedom of Information Act 1982* (Cwlth) for internal review of a decision by the authorised decision-maker regarding access to documents (s. 31 agreement and ancillary agreement). Further information is provided in 'Appendix IV Freedom of Information', p. 145).

Other scrutiny

The Human Rights and Equal Opportunity Commission tabled the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Native Title Report 2004* in April 2005. None of the recommendations was 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

Client satisfaction

The Tribunal commissioned research into the satisfaction of its clients and stakeholders which took place in April and May 2005. This followed baseline research completed in 2003.

The Tribunal's overall satisfaction rating was 6.77 (out of a maximum of 10). Only six per cent of 149 clients surveyed were dissatisfied (rating below 5). In the 2002–03 research the dissatisfaction level was 16 per cent.

Other major findings included the following:

- Positive aspects of the Tribunal were consistent with the 2003 survey. Information, interested staff, professional or knowledgeable staff, responsiveness of staff, speed and staff friendliness were the most appreciated aspects.
- Staff knowledge or professionalism, more accurate information, a focus on outcomes, supportive personnel, and faster processes were noted as the main improvements.
- Dissatisfaction based on outcomes (11 per cent) and processes (13 per cent) was marginally higher than the overall rating, but still below the 2003 level.
- Overall, unrepresented claimants were the least satisfied (average of 4.83) followed by native title representative bodies (5.94).

Clients and stakeholders identified five key areas for potential improvement:

- speed, in relation to claims, notification, staff response, advice;
- interaction, in relation to engagement and having a say: 58 per cent said that stakeholders do not have enough say in the operation of the Tribunal or have enough involvement;
- practical help, including resources, better and fuller information, responsiveness to their needs, more advice and better relationships;
- simple, efficient processes, with emphasis here on understanding them;
- innovative and proactive approaches to resolution of claims.

The results of the research will be used as part of the Tribunal's continuous improvement program. It will also be used to develop qualitative measures for ongoing measurement as part of the Tribunal's new output and outcome framework that will be used in 2005–06. Details of the Tribunal's new output and outcome framework are provided in the section 'Tribunal Overview', pp. 34–5.

Client Service Charter

The Tribunal maintains a Client Service Charter to ensure that service standards meet client needs. 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. As set out in s. 109 of the Act, the Tribunal:

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

During the reporting period those expectations were realised in 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, (for further information, see 'Output 1.4.1—Assistance to applicants and other persons, pp. 81–9;
- the fair and transparent operation of the statutory functions it is required to perform under the Act, such as registrations and arbitration; and
- the assistance to parties, including building the capacity of people and organisations to participate in native title processes.

Online services

The Tribunal undertook a series of enhancements to its website during the period following a review in 2003–04. These included improvements to the subscription service, increased use of maps and visual identifiers of native title and reordering of pages to allow increased access to information. Further enhancements will be undertaken following a current upgrade in the information technology hardware.

The site continues to meet Australian Government online standards.

In November 2004 the Tribunal launched Native TitleVision, an online system to provide stakeholders with access to geospatial information. The system has been made available to more than 100 organisations representing a wide cross-section of users including native title representative bodies, the Federal Court judges and officers, individual lawyers, native title applicants, and interested parties.

Native TitleVision provides people with the ability to search and visualise native title claims and applications. Users can also create maps on screen for printing.

The Tribunal's intranet was reviewed in 2004–05 and planned improvements will be made in 2005–06.

PERFORMANCE AGAINST PURCHASING POLICIES

Procurement

The *Financial Management and Accountability Act 1997* (Cwlth) expenditure delegations were amended to require any proposed expenditure over $80,000 to be referred to the Tribunal's executive or Chief Financial Officer. This was to ensure compliance with the new Commonwealth procurement requirements relating to the Australia–United States Free Trade Agreement.

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. The contract expires in February 2006 and will be reviewed prior to that date.

Human resource and finance information systems

During the last reporting period, the Tribunal worked on the implementation of its new human resource and finance information systems. The new systems (CHRIS 21 and Finance One) went 'live' on 1 July 2004.

As outlined under 'Information Management' on p. 108, the Tribunal is undertaking substantial work on the development of its Operational Business Framework. This is a major initiative which is designed to deliver a new core business system for the Tribunal.

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. 144.

Actual expenditure on consultancies for the reporting period was $1,306,948 which was made up of the following:

Information technology	$1,242.763
Mediation (s.131A of the Act)	$nil
Corporate Services & Public Affairs	$25,454
Service Delivery	$38,731
Total	**$1,306,948**

There was a 15 per cent reduction in overall expenditure associated with the engagement of consultants compared to the previous reporting period.

Corporate Services & Public Affairs' expenditure was eight per cent of the previous reporting period and Service Delivery expenditure was 14 per cent of the previous reporting period. The previous reporting period expenditure was attributable to the implementation of the human resources and finance information systems. The increase in the information technology expenditure was due to development work on the Tribunal's Operational Business Framework. This work is expected to continue in 2005–06.

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

Information on all financial assets is now contained in the asset module in the Tribunal's new finance system, Finance One. A program of rolling physical stocktakes of the Tribunal's financial assets has been developed and is scheduled to commence in August 2005.

ENVIRONMENTAL PERFORMANCE

The Tribunal maintains an environmental management system in accordance with the requirements of Environment Australia. 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. A green transport committee was formed to investigate options to encourage more efficient use of transport by staff to and from work.

Energy management

In August 2004, an independent audit of energy use in the Western Australian Registry offices in Perth was conducted. The report included praise for the Tribunal's current energy management practices and the initiatives introduced in the Western Australian Registry to reduce energy use including:

- installing a number of motion detectors in the offices;
- advising people to switch off lights;
- removing lights in areas which are not fully occupied; and
- reducing the operating hours of the air conditioning in line with other office tenancies in the building.

The report also identified further scope for savings, including the improved control of lighting and the upgrading of computers to the new style flat screen. The Tribunal's Energy Management Group has considered the suggestions and to date the Tribunal has replaced most of its computer screens with energy efficient flat screen monitors. Other measures have been introduced 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.

appendices

APPENDIX I HUMAN RESOURCES

Employees

Table 15 Employees by classification, location and gender at 30 June 2005

Classification		Location															
		Male								Female							
Registry	Salary range	Principal	WA	NSW	Qld	Vic.	SA	NT	Total	Principal	WA	NSW	Qld	Vic.	SA	NT	Total
Cadet	11,512 – 35,341	-	-	-	-	-	-	-	**-**		1	-	-	-	-	-	**1**
APS level 1	19,186 – 35,341	-	-	-	-	-	-	-	**-**	-	-	-	-	-	-	-	**-**
APS level 2	36,187 – 40,128	1	4		2	1	-	-	**8**	14	10	-	10	1	-	-	**35**
APS level 3	41,218 – 44,487	2	-	-	-	-	-	-	**2**	16	7	1	1	-	-	1	**26**
APS level 4	45,940 – 49,879	4	-	1	2	1	-	1	**9**	9	8	1	11	2	4	1	**36**
APS level 5	51,240 – 54,332	7	1	-	-	-	-	-	**8**	3	-	-	1	-	-	-	**4**
APS level 6	55,342 – 63,572	10	4	3	4	2	1	-	**24**	13	11	4	10	3	1	3	**45**
Legal 1	42,469 – 84,864	1	-	-	1	-	-	-	**2**	4	-	-	-	-	-	-	**4**
Legal 2	94,238 – 98,320	1	-	-	-	-	-	-	**1**	-	-	-	-	-	-	-	**-**
Media 1	57,646 – 65,505	-	-	-	-	-	-	-	**-**	1	-	-	1	-	-	-	**2**
Media 2	74,629 – 84,864	-	-	-	-	-	-	-	**-**	1	-	-	-	-	-	-	**1**
Library 1	38,590 – 54,139	-	-	-	-	-	-	-	**-**	2	-	-	-	-	-	-	**2**
Library 2	55,342 – 61,847	-	-	-	-	-	-	-	**-**	-	-	1	-	-	-	-	**1**
Executive level 1	70,947 – 76,607	4	3	1	4	-	1	-	**13**	9	6	1	2	1	-	-	**19**
Executive level 2	81,826 – 95,869	7	2	1	1	1	-	1	**13**	2	1	-	-	-	1	-	**4**
Senior executive 1	110,919 – 128,667	3	-	-		-	-	-	**3**	-	-	-	-	-	-	-	**-**
Total employees		**40**	**14**	**6**	**14**	**5**	**2**	**2**	**83**	**74**	**44**	**8**	**36**	**7**	**6**	**5**	**180**

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 16 Tribunal members at 30 June 2005

Members	Appointment From	Term	Re-appointed	Expiry	Registry
President					
Mr Graeme Neate	01/03/99[1]	5 yrs + 3 yrs	01/03/04	29/02/07	Brisbane
Presidential Members – Full-time					
The Hon. Fred Chaney AO	18/04/00[2]	3 yrs + 4 yrs	18/04/03	17/04/07	Perth
The Hon. Chris Sumner AM	18/04/00[3]	3 yrs + 4 yrs	18/04/03	17/04/07	Adelaide
Non-Presidential Members – Full-time					
Dr Gaye Sculthorpe	02/02/00[4]	3 yrs + 4 yrs	02/02/04	01/02/08	Melbourne
Mr John Sosso	28/02/00	3 yrs + 4 yrs	28/02/03	27/02/07	Brisbane
Mr Bardy McFarlane	20/03/00	3 yrs + 4 yrs	20/03/03	19/03/07	Adelaide
Mr Graham Fletcher	20/03/00	3 yrs + 4 yrs	20/03/03	19/03/07	Cairns
Mr Dan O'Dea	09/12/02	3 yrs		08/12/05	Perth
Mr Neville MacPherson	09/09/03	3 yrs		08/09/06	Melbourne
Mr John Catlin	06/10/03	3 yrs		05/10/06	Perth
Non-Presidential Members – Part-time					
Prof. Douglas Williamson QC	04/12/96	2 yrs + 3 yrs + 3 yrs + 1 yr	17/12/04	16/12/05	Melbourne
Mrs Ruth Wade	02/02/00	3 yrs + 3 yrs	02/02/03	01/02/06	Perth
Prof. Laurence Boulle	01/03/04	3 yrs		28/02/07	Brisbane
Mr Robert (Bob) Faulkner PSM	02/08/04	5 yrs		01/08/09	Sydney

1 Reappointed from Part-time Member to President
2 Reappointed from Part-time to Full-time Member, then to Deputy President
3 Reappointed from Full-time Member to Deputy President
4 Reappointed from Part-time to Full-time Member

Indigenous employees

Table 17 Indigenous employees by division and location at 30 June 2005

Classification	Location							
Registry	**Principal**	**WA**	**NSW**	**Qld**	**Vic.**	**SA**	**NT**	**Total**
Cadet	-	1	-	-	-	-	-	**1**
APS level 1	-	-	-	-	-	-	-	**-**
APS level 2	3	4	-	6	1	-	-	**14**
APS level 3	1	2	-	-	-	-	1	**4**
APS level 4	1	-	-	4	-	-	-	**5**
APS level 5	-	-	-	-	-	-	-	**-**
APS level 6	-	3	-	2	-	-	1	**6**
Legal 1	-	-	-	-	-	-	-	**-**
Legal 2	-	-	-	-	-	-	-	**-**
Media 1	-	-	-	-	-	-	-	**-**
Media 2	-	-	-	-	-	-	-	**-**
Library 1	-	-	-	-	-	-	-	**-**
Library 2	-	-	-	-	-	-	-	**-**
Executive level 1	-	2	-	1	-	-	-	**3**
Executive level 2	-	-	-	1	-	-	-	**1**
Senior executive	-	-	-		-	-	-	**-**
Total employees	**5**	**12**	**-**	**14**	**1**	**-**	**2**	**34**

APPENDIX II SIGNIFICANT DECISIONS

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 were several contested native title determinations or proposed determinations during the reporting period, including a conditional determination. 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) 214 CLR 422.

Proposed native title determinations

Gumana v Northern Territory [2005] FCA 50

The claim area consists of 1,489 square kilometres of land and waters in the northern part of Blue Mud Bay in east Arnhem Land. The applicants were members of the Yolngu People, who had a long history of political and legal action asserting their claims to land. Although the area in dispute in *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141 did not involve Blue Mud Bay, some of those having traditional rights in the area of Blue Mud Bay had been involved in that case either as witnesses or as interpreters.

The key issue in this application for a determination of native title was whether the claimants had the right to exclude others from the intertidal zone and from the sea around certain sites of significance and temporary exclusion areas.

The applicants conceded that, following *Commonwealth v Yarmirr* (2001) 208 CLR 1 (Yarmirr) they could not succeed in their claim for exclusive possession of all of the area seaward of the low water mark, but this concession was qualified in relation to 'two or maybe three [types of] areas' of spiritual significance.

Justice Selway made some interesting observations concerning the admissibility of anthropological evidence. His Honour observed that the description of anthropological evidence as 'expert' evidence has the potential to mislead, because it may well be the direct evidence of the observations that the anthropologist has made. Similarly, evidence given by anthropologists which is derived from what that person has been told by others is evidence of a fact and is not hearsay. It is direct evidence of facts and is admissible as such. Orders made for a 'hot tub' involving each senior anthropologist for each party under the supervision of the Deputy District Registrar enabled the experts to identify the issues and principles about which they agreed or disagreed. This reduced areas of disagreement.

In general terms the native title rights of the native title holders were found to be:

- a right of exclusive possession to the 'land' other than the inter-tidal zone (including the area of rivers and estuaries affected by the ebb and flow of the tides); and
- rights 'similar to those identified in *Yarmirr* as further explained in *Lardil*' in the sea and the inter tidal zone (as extended above).

All parties were given the opportunity to make further submissions as to the form of the final orders, including any determination under the Act, after they had the opportunity to consider the reasons.

Sampi v State of Western Australia [2005] FCA 777

The application of the Bardi and Jawi people of the Dampier Peninsula and the islands of the Buccaneer Archipelago has been the subject of two trials. The first, held in 2001, could not be completed because of the illness of the trial judge.

The Bardi and Jawi people brought their application, which covered what they asserted was their traditional country, on the basis that although they were distinct but closely related groups they formed one society of native title holders for the purpose of a native title determination application.

Justice French was not able to be satisfied that they were one society at the time of the colonisation of Western Australia. However, his Honour was satisfied that the traditional Bardi society which existed at the time of colonization has maintained continuity, albeit increasingly Jawi people have come to form part of it.The probability is that they were two distinct although closely related societies which held their own traditional territories under very similar bodies of traditional Law and custom. With the passage of the years since colonisation and the numerical superiority of the Bardi, the movement of Bardi people into the island areas to the north of the mainland and a substantial degree of intermarriage between Bardi and Jawi people together with a sharing of cultural ceremonies, they have reached the point where today, at least as between Bardi and Jawi in the claim area, they regard themselves as one people. In reaching that conclusion his Honour was satisfied that the traditional Bardi society which existed at the time of colonisation has maintained the continuity of its existence, albeit increasingly Jawi people have come to form part of it. This has been aided by intermarriage.

The determination was that the applicants hold native title rights and interests in certain areas as a group. Therefore Justice French was prepared to make a native title determination in relation to the traditional territory of the Bardi which was held to be the mainland Dampier Peninsula. Because his Honour was of the view that all of the applicants form part of contemporary Bardi society he made a determination in favour of all of them as to the whole of that area, less the parts excluded because of extinguishment of native title rights and interests by the grant of other interests. Justice French was not satisfied that the islands to the immediate north of the mainland were part of traditional Bardi territory at sovereignty and he did not find native title to exist over them. Native title rights and interests were found to subsist in the intertidal zone and associated reefs and nearby reefs which are exposed and were referred to in the evidence. This did not include the rock feature known as Lalariny, Alarm Shoals or Brue Reef.

His Honour found that the benefit of ss. 47A and 47B of the Act attached to areas of Crown land in the mainland area which have been the subject of historic extinguishing events and the intertidal zone, and that at the time the first application was made both the mainland and the intertidal zone could properly be said to have been occupied by the applicants.

Native title rights and interests were not extinguished by the grant of expired pearl oyster farm leases which were found to fall into the category of 'leases for aquacultural purposes'. The applicants were able to invoke the provisions of s. 211 of the Act to continue to enjoy their rights to the use of pearl shell for purely ceremonial purposes and the taking of oysters for subsistence in accordance with their traditional laws and customs.

Directions were given to enable the applicants to submit a draft determination to give effect to the reasons. Justice French recommended that the Tribunal be asked to facilitate agreement about the terms so far as that is achievable.

Conditional native title determinations

Wik People v Queensland [2004] FCA 1306
Justice Cooper made orders consistent with the terms agreed by the parties in relation to part B of the Wik and Wik Way Peoples application for a determination of native title under the Act. This resulted in two determinations of native title recognising the existence of native title rights and interests. However, as noted below, the determinations did not take effect unless and until several ILUAs were registered.

The Wik and Wik Way Peoples' claimant application was lodged with the National Native Title Tribunal on 24 March 1994 and remained in mediation for some time. In June 2000, in an attempt to expedite the matter, Justice Drummond ordered that the claim be determined in two parts.

Part A was confined to areas that had always been unallocated Crown lands or lands that had only ever been subject to forms of title granted for the benefit of Aboriginal peoples (subject only to a small number of fishing permits in inland waters). Part B comprised the balance of the lands and waters, including lands held by pastoral and mining interests.

On 3 October 2000, Justice Drummond determined by consent that native title existed in the area within Part A (see *Wik People v State of Queensland* [2000] FCA 1443).

The 2004 decision determines Part B of the original application, which was further divided into two determinations.

Determination two related to areas of exclusive possession (other than in relation to flowing, tidal and underground waters and subject to the non-native title rights and interests recognised in the determination). It included land where prior extinguishment was to be disregarded because of the operation of s. 47A or s. 47B of the Act.

Determination three related to areas of non-exclusive possession and recognised non-exclusive rights to:

- be present on, use and enjoy the determination area;
- make use of the determination area;
- take, use and enjoy the natural resources found on or within the determination area;
- maintain and protect by lawful means those places of importance and areas of significance to the native title holders under their traditional laws and customs in the determination area;

- use and enjoy the determination area and its natural resources for the purposes of teaching, communicating and maintaining cultural, social, environmental, spiritual and other knowledge, traditions, customs and practices of the native title holders in relation to the determination area; and
- inherit and succeed to the native title rights and interests.

No right to control access to, or use of, the determination area was found in this area, and in relation to flowing, tidal and underground waters, non-exclusive rights were found to:

- hunt, gather and fish on, in and from the flowing, tidal and underground waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs;
- take, use and enjoy the flowing, tidal and underground waters and natural resources and fish in such waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs.

Determinations were conditional, to take effect if and when certain ILUAs were registered on the Register of Indigenous Land Use Agreements. The Tribunal provided assistance with the preparation of these ILUAs which have now been registered.

These two determinations finalise the majority of the Wik and Wik Way peoples' claimant application. However, there are still four pastoral leases amounting to about 5,200 square kilometres subject to claim that are not covered by any of the determinations to date. A second claimant application brought by the Wik Peoples in 2001 over bauxite mining leases south of the Embley River (about 1,600 square kilometres) is still in mediation.

Determination of native title varied on appeal by consent

Wandarang, Alawa, Marra and Ngalakan v Northern Territory [2004] FCAFC 187
This determination of native title made by consent settled appeal proceedings relating to a determination of native title made in 2000. The decision was made at the end of the last reporting period and was not included in the *Annual Report 2003–2004*. The determination relates to an area that includes most of the old St Vidgeons Homestead Station, a gazetted stock route, the banks of the Roper River and river beds of the Roper, Towns and Limmen Bight rivers, to the extent they are tidal. At first instance, Justice Olney proposed a draft determination: see *Wandarang Peoples v Northern Territory* (2000) 104 FCR 380; 177 ALR 512; [2000] FCA 923 which was finalised by orders on 14 November 2000. An appeal and a cross appeal were subsequently filed against aspects of both the judgment and the determination.

In this case, the Full Court of the Federal Court (by consent) upheld in part both the appeal and cross-appeal and varied the determination of native title made on 14 November 2000.

At first instance, Justice Olney had determined that there was no native title to waters of the rivers within the determination area that are affected by the tide. As varied, the determination recognised non-exclusive native title rights to those waters.

Determination of native title reversed on appeal

De Rose v State of South Australia (No 2) [2005] FCAFC 110
This arises from a claim for a native title determination over De Rose Hill Station located in the far

north west of South Australia, in the eastern part of a large area of Australia often described as the Western Desert, by a group of Yankunytatjara and Pitjantjatjara people.

On 1 November 2002 the trial Judge delivered a judgment dismissing the claim (see *De Rose v South Australia* [2002] FCA 1342 noted in *Annual Report 2002–2003*). Justice O'Loughlin found that the claimants, and the other persons on whose behalf they claimed native title, had failed to prove that they maintained a connection to the area, by the traditional laws and customs acknowledged and observed by them. The claimants appealed and the appeal was heard in May 2003. In a judgment delivered on 16 December 2003 the Full Court of the Federal Court (Justices Wilcox, Sackville and Merkel) allowed the appeal (see *De Rose v State of South Australia* [2003] FCAFC 286 noted in *Annual Report 2003–2004*), and since the trial judge had by then retired, the Full Court determined the remaining issues in dispute in June 2005.

In the ordinary course, the Full Court would have remitted the case to the trial judge to make any necessary additional factual findings. However, since the trial judge had by that time retired, the Full Court considered that the appropriate course was for the parties to identify the remaining issues in dispute and for the court to hold a further hearing to allow those issues to be fully argued.

Taking into account the factual findings and the evidence as a whole, the Full Court has now concluded that the claimant possesses rights and interests in relation to the claim area under the traditional laws and customs of the Western Desert Bloc acknowledged and observed by him. Their Honours also concluded that the effect of the traditional laws and customs is to constitute a 'connection' between the claimant (and any others who are traditional custodians or owners for the claim area) and the claim area itself. Accordingly, the court decided that, subject to questions of extinguishment, the requirements of s. 223(1) of the Act have been satisfied. In other words, the claimants have established that those who are traditional custodians or owners for the claim area have native title rights and interests over that land.

The judgment also addresses the questions of extinguishment of native title over parts of the claim area and the form of the determination that should be made. This involved a consideration of complex provisions in the Act and the corresponding state legislation (the *Native Title (South Australia) Act 1994* (SA)).

The court concluded that native title rights and interests have been extinguished over those parts of the claim area on which improvements have been constructed in accordance with rights conferred by the leases. The improvements covered by this ruling include any house, shed or other building, airstrip, constructed dam and any other constructed stock watering point on the claim area. The court made a determination that non-exclusive native title exists over the claim area, except for those particular locations on which the improvements have been constructed and in respect of which native title rights and interests have been extinguished.

Determinations of native title

Neowarra v Western Australia [2004] FCA 1092
This is the determination of native title reflecting the reasons for decision given in *Neowarra v Western Australia* [2003] FCA 1402 (noted in the *Annual Report 2003–2004*).

When handing down of the determination on Mt Barnett station in the Kimberley, Justice Sundberg noted that:

- while the case was 'hard fought on all sides…[O]nce the outcome was known, the parties co-operated splendidly in settling the Determination and the maps';
- the area covered by the determination 'may not seem much to those who live in Western Australia. But to those…from more modestly constructed States, it is a vast expanse. The size of the whole of Tasmania.'

Over areas where it was found that there had been no extinguishment of native title and areas where any extinguishment must be disregarded (because ss. 47A or 47B of the Act apply (essentially, these are areas already either held for the use and benefit of Aboriginal people and some areas of unallocated state land)), native title was found to consist of an entitlement against the whole world to possession, occupation, use and enjoyment of those areas.

In relation to current and historical pastoral lease areas (other than areas where any extinguishment must be disregarded), and unvested reserves, the native title holders were recognised as having the right to engage in the specified activities, namely to:

- camp;
- access painting sites in order to freshen or repaint images there and use land adjacent to those sites for the purpose of engaging in that activity;
- use traditional resources for the purpose of satisfying their personal, domestic or non-commercial communal needs;
- conduct and take part in ceremonies;
- visit places of importance and protect them from physical harm;
- manufacture traditional items (such as spears and boomerangs) from resources of the land and waters for the purpose of satisfying personal, domestic or non-commercial communal needs;
- access;
- hunt for the purpose of satisfying their personal, domestic or non-commercial communal needs;
- gather and fish for the purpose of satisfying their personal, domestic or non-commercial communal needs.

Similar rights, where appropriate were recognised seaward of the high water mark.

The right to pass on and inherit these native title rights was also recognised in the determination area.

The native title right to hunt on pastoral leases was limited, as was the right to access, hunt, gather and fish.

The right to access (insofar as it is exercised for the purpose of seeking sustenance in their traditional way), hunt, gather and fish can only be exercised over:

- unenclosed and unimproved parts of land that is or has previously been the subject of a pastoral lease granted after 1934; or
- unenclosed or enclosed but otherwise unimproved parts of land that is or has previously been the subject of a pastoral lease granted before 1934.

This finding appears to conflict with what was said in the joint judgment of the High Court in *Western Australia v Ward* (2002) 213 CLR 1 (noted in the *Annual Report 2002–2003*).

Nangkiriny v Western Australia [2004] FCA 1156

This is the second consent determination made by the Federal Court recognising the Karajarri People's native title. The first was made in February 2002, covered 30, 358 square kilometres in the Kimberley region of Western Australia and followed a full hearing of the claimants' evidence (and was noted in the *Annual Report 2001–2002*). The two- stage approach was adopted because, after settling the terms of the first determination over unallocated Crown land not subject to any prior non-native title interests, a pastoral lease owned by a Karajarri association and land reserved for the use and benefit of Aboriginal people, the parties agreed to wait until the High Court made its determination in *Western Australia v Ward* (2002) 213 CLR 1 (reported in the *Annual Report 2002–2003*) before dealing with the second, smaller other areas claimed.

After that decision, the matter was referred to the Tribunal for mediation, as a result of which this consent determination was negotiated. The 5,647 square kilometres covered by this determination includes several non-exclusive pastoral leases, along with the intertidal zone, any other tidal waters in the determination area, several reserves and some areas of unallocated Crown land that were previously reserves.

Over areas subject to non-exclusive pastoral leases, unvested reserves and unallocated Crown land that was previously reserved, it was determined that native title consisted of the non-exclusive right to use and enjoy those areas as follows:

- enter and remain on the land and waters;
- camp and erect temporary shelters;
- take flora and fauna from the land and waters;
- take other natural resources of the land such as ochre, stones, soils, wood and resin;
- take the waters (as defined in the determination), including flowing and subterranean waters;
- engage in ritual and ceremony;
- care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri People.

In the area in the intertidal zone and in any other tidal waters, the court recognised the non-exclusive right to use and enjoy those areas as follows:

- access the land and waters;
- take fauna, flora, fish and other traditional resources;
- take the waters, including flowing and subterranean waters;
- engage in ritual and ceremony;
- care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri People.

All the rights recognised in the determination must be exercised in accordance with the traditional laws and customs of the Karajarri Peoples for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) only. Further, the native title rights and interests are subject to, and exercisable in accordance with, the laws of the state and the Commonwealth, including the common law, and subject to any other third party rights.

Daniel v State of Western Australia [2005] FCA 536
The reasons for decision and a preliminary draft determination in the Ngarluma Yindjibarndi claim were handed down on 3 July 2003 and reported upon in last year's the *Annual Report 2003–2004*. The final step for the parties was to settle the draft determination to ensure that it gave effect to the court's reasons, and for experts to describe the claim area, the precise location of various tenements, tenures and features and record them on multicoloured maps. That process was completed. Justice Nicholson's reasoning and certain decisions in relation to these later refinements are noted elsewhere in this report below——see *Daniel v Western Australia* [2004] FCA 849 (2004) 138 FCR 254, 208 ALR 51, *Daniel v Western Australia* [2004] FCA 1388, (2004) 212 ALR 51and *Daniel v Western Australia* [2005] FCA 178.

Determinations of native title by consent in Torres Strait

Warria on behalf of Kulkalgal v Queensland [2004] FCA 1572; Mye on behalf of Erubam Le v Queensland [2004] FCA 1573; Stephen on behalf of the Ugar People v Queensland [2004] FCA 1574; Gibuma on behalf of the Boigu People v Queensland [2004] FCA 1575; David on behalf of the Iama People and Tudulaig v Queensland [2004] FCA 1576; Newie on behalf of the Gebaralgal v Queensland [2004] FCA 1577; Nona on behalf of the Badulgal v Queensland [2004] FCA 1578
All these cases dealt with determinations by consent handed down by Justice Cooper from 7 to 14 December 2004. The determinations made in *Warria* and *Newie* were effective immediately. The other five determinations were conditional upon if and when various ILUAs were registered. These ILUAs have now been registered.

The making of these consent determinations was delayed while the Full Court of the Federal Court considered two separate questions relating to whether extinguishment was to be disregarded through operation of s. 47A when certain public works on land presently held in fee simple pursuant to a Deed of Grant in Trust (DOGIT) were constructed or established. In *Erubam Le (Darnley Islanders) #1 v Queensland* (2003) 134 FCR 155, 202 ALR 312 (see *Annual Report 2003–2004*) it was held that public works constructed or established before 24 December 1996 extinguished all native title to the area affected and that s. 47A of the Act did not apply.

In all seven cases, Torres Strait Islanders who have been adopted in accordance with the traditional laws acknowledged and traditional customs observed by the people identified above are also common law holders of native title.

Subject to certain qualifications, and with the exception of non-exclusive native title rights to 'water', the nature and extent of the native title recognised in each determination area is a right to possession, occupation, use and enjoyment to the exclusion of all others.

The native title rights and interests recognised are subject to, and exercisable in accordance with the laws of the Commonwealth and the state, including the common law, those recognised under the Treaty between Australia and Papua New Guinea concerning sovereignty and maritime boundaries, those arising under a DOGIT or under various leases or agreements, including ILUAs, and the traditional laws acknowledged and traditional customs observed by the native title holders.

In all cases, the native title was to be held in trust by prescribed bodies corporate.

Determination of native title—preliminary issues

The following three cases concern various preliminary matters that were dealt with prior to the handing down of the Daniel native title determination referred to above.

Daniel v Western Australia [2004] FCA 849, (2004) 138 FCR 254, 208 ALR 51

There were a number of issues before the Federal Court relating to a case where two groups—the Ngarluma and the Yinjibarndi—were found to hold native title. This summary deals with the main issues, which relate to the court's powers in relation to both the form and content of a native title determination and the determination of prescribed bodies corporate.

Justice RD Nicholson held that:

- there should be a determination in relation to the determination area, which included within it a determination of who holds common or group native title rights and interests;
- two levels of determination were required—the principal determination as to whether native title exists in relation to a particular area and subsidiary determinations of the matters set out in ss. 225(a) to (e) of the Act;
- where, as in this case, different groups were found to hold different native titles, there was a requirement for more than one subsidiary determination;
- the fact that there was an overlap in a geographical area was relevant only to the extent of the rights of each group in that area and there was no need to make a separate determination in respect of any so-called overlap area.

It was held that there was nothing in the Act to inhibit nomination of more than one prescribed body corporate in respect of native title rights in the determination area where that:

- was supported by, and followed from, the findings of fact made with respect to the holding of such rights in that area by different groups; and
- accorded with the intention of each of them.

The court had to consider whether the determination area, as defined in s. 225, could include areas where native title had been extinguished. RD Nicholson J held the determination under s. 225 must address the totality of the extinguishment areas.

Daniel v Western Australia [2004] FCA 1388, (2004) 212 ALR 51

The main issue in this case was whether the grant of a lease in April 2002 made under the *Land Administration Act 1997* (WA), where the grant arose out of an agreement made in November 1979 which was ratified by the *North West Gas Development (Woodside) Agreement Act 1979* (WA) was either a past or valid future act. This was of significance because the answer to the question would decide whether or not that lease should be included in a determination of native title as an act that wholly extinguished native title. This is the first case to deal with these provisions in detail. Justice RD Nicholson found that the agreement created a legally enforceable right, but could not find on the evidence that the Woodside Agreement Act itself created any such legally enforceable right.

Justice RD Nicholson found the grant of the accommodation lease was either a past act wholly extinguishing native title rights and interests; or, if this was wrong a future act covered by s. 24IB (a pre-existing right-based act). His Honour also held the dedication of certain roads extinguished native title, consistent with his findings in *Daniel v WA* [2003] FCA 666.

Daniel v Western Australia [2005] FCA 178
The main issues of contention before the court in this case relate to the inclusion of a pastoral lease omitted from the previous judgement in this matter (*Daniel v Western Australia* [2003] FCA 666) and a notice of motion by the State of Western Australia (the state) to add to the definition of extinguished areas within the Minute of Proposed Determination.

Justice RD Nicholson had previously declined to re-hear argument on the issue of whether pastoral leases wholly extinguished native title, and did not alter his position. His Honour found that the lease was relevantly indistinguishable from pastoral leases found to have wholly extinguished native title and accepted the submission from the state that the omission of this lease from previous judgements was an oversight brought about by its omission from the relevant submissions to the court. The pastoral lease was included in the Total Extinguishment Area in the draft determination.

His Honour held that leave be granted to reopen and consider the matters raised by the State for inclusion. He held that the construction of a church did not satisfy the requirements to be a previous exclusive possession act which was 'attributable' to the state. His Honour also concluded that the same requirements which validated every past act attributable to the state was similarly not met. His Honour held that the creation of a church reserve was a category D past act to which the non-extinguishment principle applied and the reserve should be included in the Second Schedule as an 'other interest'.

Justice RD Nicholson followed *Wandarang Peoples v Northern Territory* (2000) 104 FCR 380 and held that it was appropriate to treat each of certain road areas as having been set aside to be used for roads and therefore extinguish native title over the whole of the dedicated areas.

Compulsory acquisition

South Australia v Honourable Peter Slipper MP [2004] FCAFC 164
This decision was published too late to be included in the *Annual Report 2003–2004*. It is of interest to the Tribunal for its consideration of the interpretation of 'infrastructure facility', and the implications as to whether certain future acts will come within the right to negotiate regime under subdivision P of Part 2 Division 3 of the Act.

The proceedings related to the purported compulsory acquisition by the Commonwealth of a radioactive waste repository site and access corridor near Woomera in South Australia (the site).

Section 26(1)(c)(iii)(A) of the Act has the effect of excluding from the operation of Subdivision P (the right to negoitiate regime) a compulsory acquisition of native title rights and interests in circumstances where the purpose of the acquisition is *to confer rights and interests* in relation to the land on the 'government party', defined in s. 26(1)(b) to be the Commonwealth, a state or a territory), and the government party 'makes a statement in writing to that effect *before* the acquisition takes place'.

The Full Court of the Federal Court unanimously found that the word 'statement' in s. 26(1)(c)(iii)(A) meant 'something stated' and did not imply communication 'in a compendious sense' and therefore, the right to negotiate did not apply to the acquisition in question because s.26(1)(c)(iii)(A) applied.

Although nothing turned on it in this case, the court went on to consider the Commonwealth's alternative contention that the primary judge should have found that the purpose of the acquisition of the site was to provide an 'infrastructure facility' within the meaning of s. 26(1)(c)(iii)(B) of the Act, which excludes from the operation of Subdivision P the compulsory acquisition of native title rights and interests where the purpose of the acquisition is to provide an 'infrastructure facility'.

Justice Branson, with whom Justices Finn and Finkelstein agreed, observed that s. 253 of the Act states that the term 'infrastructure facility includes any of the following' specific categories of things. The last category of things is: 'any other thing that is similar to any or all of the things mentioned in' the preceeding eight paragraphs, provided that the Commonwealth minister has determined in writing that the 'thing' in question is an infrastructure facility for the purposes of the definition found in s. 253.

After considering the 'ordinary meaning' of the word 'infrastructure' as defined in the Oxford English Dictionary and the Macquarie Dictionary, and noting that the issue was not 'free from doubt', Justice Branson concluded that the better view was that the definition of 'infrastructure facility' found in s. 253 had been drafted on the basis that the ordinary meaning of the term 'infrastructure facility' was relatively narrow, being a subordinate part of a particular undertaking or a facility intended to serve or support a particular undertaking. Therefore a national radioactive waste repository not designed as a subordinate part of any particular undertaking or facility would not be an 'infrastructure facility'.

In so finding, the court:

- presumed the purpose behind s. 26(1)(c)(iii)(B) to be to exclude the right to negotiate where the acquisition is to provide a facility for the economic benefit of the nation or a region of the nation; and
- noted that the ordinary meaning of the term 'infrastructure facility' was too narrow to achieve that purpose, which may explain why the specific non-exhaustive list of things it was to include was inserted into s. 253.

Therefore, according to the Full Court, had s. 26(1)(c)(iii)(A) not applied, the right to negotiate would have applied to the acquistion, since the nuclear waste repository did not constitue an 'infrastructure facility' as required by s. 26(1)(c)(iii)(B) and so would not have been excluded from Subdivision P.

Evidentiary issues

Jango v Northern Territory (No 2) [2004] FCA 1004

This case is important because it highlights perceived weaknesses in the preparation and presentation of expert reports which form a crucial component of native title proceedings.

Prior to the taking of the evidence of the authors of two experts' reports, both prepared by anthropologists, the Northern Territory and the Commonwealth had filed over 1,100 objections to the admissibility of various passages of the reports.

The court was critical of a process whereby a failure to comply with the rules of evidence produced lengthy reports of only limited forensic utility. Justice Sackville noted that each of the reports had

apparently been prepared with scant regard for the requirements of the *Evidence Act 1995* (Cwlth) and the basis on which the authors reached particular opinions was often either not stated or unclear. This was due in part to a failure to define the task with precision and a lack of due regard to the rules of evidence.

The court rejected the paragraphs of the reports that were subject to the objections.

Jango v Northern Territory (No 3) [2004] FCA 1029
As a result of the court's criticism of the preparation of expert reports in the case noted above, the applicants sought an adjournment to consider the preparation of supplementary reports. Justice Sackville granted leave to present supplementary reports, but only after strongly noting that preparation of expert evidence requires legal intervention to ensure that reports complied with the *Evidence Act 1995* (Cwlth).

Jango v Northern Territory (No 4) [2004] FCA 1539, (2004) 214 ALR 608
These proceedings resulted from the tendering of an expert report by the applicants that had been recast in an attempt to comply with the requirements of the *Evidence Act 1995* (Cwlth), as noted above in an earlier proceeding. Justice Sackville considered it was too early in the consideration of evidence to rule that disconformity between the expert report and evidence of the applicant's witnesses should result in the expert report being rejected as irrelevant to the issues in dispute. Justice Sackville also rejected some parts of the report based on the analysis of source data where the source data was not in evidence.

His Honour also ruled that an anthropologist with extensive experience in communicating with Aboriginal people on matters of traditional laws and customs can give evidence of language or communications difficulties that might have a bearing on the ability of Aboriginal witnesses to give reliable or complete evidence on important issues. However, while general observations by the applicant's expert on the difficulties of language and communication experienced by Aboriginal people when talking about traditional laws and customs was admissible, the evaluation of specific evidence given by particular witnesses was not.

Case management issues

Bennell v Western Australia [2004] FCAFC 338
This case deals with a special regional case management conference held for 13 native title determination applications in the south-west of Western Australia. One part of one of the areas subject to claim was part heard. Of particular interest are the court's comments about funding issues. The matter was heard by Justices Wilcox, French and Finn.

The court made the general point that the programming of native title matters cannot be determined by the decisions of funding agencies or the views of representative bodies, the state or any other parties about appropriate priorities. If it should happen that lack of funding means that some applicants will be unrepresented at trial, that is not a bar to proceeding with a trial although it will raise obvious difficulties in the management of the trial process.

Registration test

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

Evans v Native Title Registrar [2004] FCA 1070
This case relates to an application under s. 190D(2) of the Act seeking review of a decision under s. 190A not to accept for registration a claimant application made on behalf by the Koara people for registration. Justice RD Nicholson followed *Western Australia v Strickland* (2000) 99 FCR 33 in treating the review under s. 190D as not being restricted to consideration and determination of a question of law, but rather, it enlivens the court's jurisdiction in respect of the whole matter and all the issues of fact and law raised by the parties are before the court.

The key issue in this case was whether the Registrar gave proper consideration to the issue of authorisation under one or other of the limbs of s. 251B of the Act when deciding not to register a claimant application.

The applicant provided what the Registrar's delegate described as four versions of the claim to authority, contained in various affidavits and the application itself.

There was also an affidavit referring to a quite different process from that previously used to claim authority, although it was asserted that it was in accordance with the 'traditional laws and customs'. Because the material was vague as to what had actually happened and whether the 'usual procedures' had, in fact, been followed, the delegate sought further information from the applicant but the reply did not assist in providing the necessary explanation.

Justice RD Nicholson agreed with the delegate's conclusion that the application, although generally otherwise sound, was not properly authorised in accordance with the Act, noting that the effect of s. 251B was to provide alternative modes of authorisation. His Honour dismissed the application for review.

Federal Court review of future act decision

Little v Oriole Resources Pty Ltd [2005] FCA 506
The applicants in this matter appealed the decision in *Oriole Resources Ltd/Western Australia/Albert Little on behalf of Badimia* [2004] NNTT WO03/508, NNTTA 37 (3 June 2004), the Hon. E. M. Franklyn QC which held that the expedited procedure was attracted. The various grounds of appeal all related to s. 237(c) of the Act, which was the only part of s. 237 relied upon in the submissions.

Justice RD Nicholson reviewed the decision and the authorities and found the Tribunal had followed its own reasoning on the operation of s. 237(c) set out in *Western Australia v Smith* (2000) 163 FLR 32 consistent with the court's interpretation of s. 237(c) in *Smith on behalf of Gnaala Karla Booja People v Western Australia* (2001) 108 FCR 442 and *Little v Western Australia* [2001] FCA 1706.

The applicants have lodged an application for appeal to the Full Federal Court.

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.

Right to Negotiate—scope of ss. 32 and 38

Taylor/Queensland/Freehold Mining Ltd and Western Metals Copper Ltd (Receivers and Managers Appointed) [2004] NNTTA 80 (7 September 2004), Mr John Sosso.
The parties sought to resolve an objection to the application of expedited procedure by a determination of a type not contemplated by s. 32 of the Act.

The proposed tenement was land previously excluded from the Exploration Permit for Mineral 10313 (EPM) granted in 1994. The grantee party applied under s. 176A of the *Mineral Resources Act 1994* (Qld) (MRA) to have the excluded land included in the EPM. The s. 29 notice also stated that the holders of the EPM intended to apply under s. 151 of the MRA for approval to assign the interest of Western Metals Copper Ltd (Western) to Freehold Mining Ltd (Freehold). Western had receivers and managers appointed in 2003. The assignment was approved on 23 April 2004.

Freehold then concluded an agreement with the native title party. The government party and the receiver and manager of Western, for different reasons, were not prepared to enter a s. 31 agreement.

Each of the parties was prepared to consent to a determination that the expedited procedure applied. The Tribunal considered this was a determination of a type that is not contemplated by s. 32. A Member holding an inquiry into whether a future act attracts the expedited procedure has only a very limited jurisdiction, to determine whether the future act attracts or does not attract the expedited procedure after considering the criteria outlined in s. 237 of the Act. There is no power to make a conditional finding or to require parties to do certain things.

The government party then withdrew the statement under s. 29(7) that the expedited procedure applied and simultaneously made a s. 35 application for the Tribunal to make a determination under s. 38.

The Tribunal considered that the pre-conditions to the making of a s. 38 determination had been were met .with regard to:

- the requirements that more than six months had passed since notification day in the s. 29 notice; and
- a s.31 agreement had not been made.

In the absence of any negotiating parties formally raising the issue of good faith negotiation, the Tribunal noted that there is a presumption created by s. 36(2) that good faith negotiations have taken place. None of the parties raised the good faith issue and, therefore, the Tribunal found there was no impediment to making a determination.

The native title party, government party, Western and Freehold all consented to a determination that the future act could be done without imposing conditions. The Tribunal adopted the principles that apply to the making of consent determinations set out in *Monkey Mia Dolphin Resort v Western Australia* (2001) 164 FLR 361 at 368 to 371; [2001] NNTTA 50.

The Tribunal considered the requirement that, before making a determination, the Tribunal take into account the issues agreed upon by the parties, with the objective that (absent any compelling reason to the contrary) the agreement should form the basis of the determination.

There is no need for the Tribunal to weigh up the s. 39(1) criteria in the circumstances but two factors were taken the Tribunal took into account:

- the clear preference in the Act for negotiated outcomes; and
- the facilitation of agreements negotiated by the parties to allow for mineral exploration is in the interests of the public as well as the immediate parties.

By consent, the Tribunal determined the future act could be done pursuant to s. 38 of the Act.

Objection to the application of the expedited procedure—major disturbance

Oriole Resources/Western Australia/ Little [2004] NNTTA 37, (3 June 2004)
Deputy President Franklyn.
This case considered what evidence is required to make out the likelihood of a 'major disturbance' for the purposes of s. 237(c) in an objection to the application of the expedited procedure.

The State of Western Australia proposed to grant Miscellaneous Licence L59/53 (the proposed licence) for mine site accommodation under the expedited procedure. A notice under s. 29 of the Act was published and included a statement that the State considered that the grant of the proposed licence was an act attracting the expedited procedure. The native title party objected, to the inclusion of that statement, making submissions in relation to s 237(c) of the Act only.

The government party submitted that the proposed licence would not give rise to any issues under s. 237 of the Act and provided material identifying previous tenements applied for, or granted, over the licence area and evidence that there were two pending exploration licence applications which overlapped the whole of the licence area. There was no evidence of any Aboriginal communities in the vicinity and no sites were registered under the *Aboriginal Heritage Act 1972* (WA).

The grantee party stated that the sole purpose of the proposed licence was for mining camp infrastructure.

The native title party's evidence consisted of an affidavit by a geologist detailing his experience of mining camp structures and facilities, which contended that major disturbance to land was an inevitable consequence of the grant of the proposed licence.

After referring to the consideration of the meaning of 'major disturbance' by the Full Court of the Federal Court in *Dann v Western Australia* (1997) 144 ALR 1, the Tribunal noted the lack of any evidence from the native title party as to:

- the views or concerns of the Aboriginal community;
- the effect of any previous tenements;
- any areas or sites of particular significance; or
- any traditional use of, or customs relating to, the licence application area
- why any disturbance would be considered a major disturbance by the native title party.

The Tribunal found that:

- in the absence of any evidence of the concerns and views of the Aboriginal people in the locality, and given the prior mining and exploration in the area, the determination was to be made from the viewpoint of the Australian community as a whole;
- the licence, if granted, would increase the areas available for site accommodation and associated areas;
- consequently, the grant would create rights whose exercise may involve major disturbance but, in the absence of evidence of any concerns by the applicants, the matters asserted were not established;
- while exercise of the rights granted under the licence would result in, or involve a, 'disturbance' to the land, in all of the circumstances it was not likely to involve a 'major' disturbance or to create rights whose exercise was likely to involve a major disturbance in the ordinary meaning of that expression.

Therefore, the Tribunal found there was no evidence from which to draw an inference on reasonable grounds that any disturbance that may result from the grant and exercise of the licence rights is, or would be considered, a 'major' disturbance and the grant of the licence was determined to be an act attracting the expedited procedure.

This matter was appealed to the Federal Court (see *Little v Oriole Resources Pty Ltd* [2005] FCA 506 noted at p. 133).

Good faith

Down/Barnes /Western Australia [2004] NNTTA 91, (1 October 2004)
Deputy President Franklyn.

The question here was whether the grantee party had negotiated in good faith prior to lodging an application under s. 35 for a future act determination under s. 38 of the Act. Negotiations in good faith are one of the pre-conditions to Tribunal making a determination in relation to such an application.

The native title party alleged that the grantee had not negotiated in good faith because the grantee party did not own the proposed tenement that was the subject of the inquiry. The native title party eventually conceded that the grantee was the proper party as the sale was conditional on the grant being made and ministerial approval being given to the sale. Note that only some of the native title party's contentions are summarised here.

The grantee party contented the issue of good faith had been addressed and determined before the inquiry and the matters raised by the native title party were not now relevant.

The Tribunal confirmed that the issue of good faith goes to the 'jurisdiction' of the Tribunal and must be dealt with prior to determination of a s. 35 application. The Tribunal was satisfied the matter could be determined on the papers.

The native title party's contentions included that the grantee party had not complied with the Code and Guidelines for the Technical Assessment and/or Valuation of Mineral and Petroleum Assets and Mineral and Petroleum Securities for Independent Expert Reports (Valmin code).

The Tribunal found that:

- the facts did not support the contention that the grantee party had not negotiated in good faith, with the paucity of evidence in support being noted;
- the native title party's contentions were generally based on a misunderstanding of the application of some of the documents relied upon and a misunderstanding of the law, for example, as it relates to Aboriginal heritage surveys;
- a request for mediation assistance does not demonstrate good faith has occurred but, in the circumstances of other discussions, the grantee's evidence of meetings which was undisputed, and lack of specific evidence from the native title party, good faith negotiations were not refuted.

The Tribunal reaffirmed that it is not required to adopt strict rules on the burden of proof; there is a requirement for the party alleging a lack of good faith to provide evidence to support its contentions.

The facts did not support the contention that the grantee party had not negotiated in good faith and the Tribunal was therefore empowered to make a determination under s. 38 of the Act.

No submissions from native title party in future act determination application

In the two matters summarised below, the Tribunal considered whether it could proceed to make a determination under s. 38 where the native title parties had not made any submissions or contentions in relation to the matters listed in s. 39 which the Tribunal 'must take into account' when making such a determination. Both concerned the grant of petroleum exploration permits. In both cases, the Tribunal determined that the future act could be done.

Gulliver Productions Pty Ltd; Indigo Oil Pty Ltd; Maneroo Oil Company Ltd/Hunter; Sebastian; Nangkiriny/Western Australia [2004] NNTTA 105, (11 November 2004) Deputy President Franklyn

This application for a future act determination concerned land the subject of claimant applications by the Karajarri people, the Nyangumarta people and the Rubibi people. It also covered part of the area where the Karajarri people had been determined to hold exclusive native title rights and interests (the exclusive possession determination) but it made clear that rights to minerals and petroleum were not included (see *Nangkiriny v State of Western Australia* [(2002) 117 FCR 6).

On 8 September 2004, the Federal Court made a finding that the Karajarri people had non-exclusive native title rights and interests over the remaining area covered by their claimant application (see *Nangkiriny v Western Australia* [2004] FCA 1156, summarised on p. 127).

On 19 April 2002, the grantee party lodged an application for a future act determination pursuant to s. 35 of the Act, alleging inability to reach agreement with the native title parties, despite a lengthy period of negotiations. The Tribunal had earlier made a determination that the grantee party had negotiated in good faith.

Agreement was eventually reached between the negotiation parties over all but the area that was subject to the exclusive possession determination.

In November 2003, the Kimberley Land Council, representing the Karajarri people, informed the Tribunal that the Karajarri people would not lodge contentions as directed in respect to the exclusive

possession determination area. However, it expressed the view that the activities of the grantee party would necessarily impact on the Karajarri determined rights to possession, occupation, use and enjoyment of the land and waters to the exclusion of all others, particularly in relation to:

- the right to maintain and protect important places and areas of significance to the Karajarri people under their traditional laws and customs on the land and waters; and
- the right to control access to, and activities conducted by others on the land and waters including the right to give permission to other to enter and conduct activities on the land and waters on such conditions as the Karajarri people see fit; and
- the right to make decisions about the use and enjoyment of the land and waters.

It proposed that certain conditions should be imposed on the grant of the permit, including the grantee party entering into a native title heritage protection agreement. The Tribunal advised the parties that it would not impose any such conditions as a result of the request. Whether any conditions could or should be imposed would depend on the evidence and submissions.

In the absence of consent in relation to the exclusive possession determination area, the Tribunal proposed that it was appropriate to deal with the s. 35 application as '…a non-consent application in respect of the whole of the Karajarri land over which the grant of the exploration permit was sought' and all of the parties' representatives agreed.

The state and the grantee both made submissions and the state also provided information as to the land tenure, mining and petroleum tenements and recorded Aboriginal sites within the area of the relevant area.

The Tribunal was satisfied that the issue could be determined by considering, without holding a hearing, the documents and other material lodged with, or provided to, it.

The Tribunal noted that, while some of the native title rights and interests over Karajarri land were exclusive, the determination recognised that persons holding rights, such as mining rights, are entitled to exercise their rights. In the non-exclusive determination area, there were pastoral leases. The effect of the determination was that the rights of those pastoral lease holders prevailed over the native title rights of the Karajarri people to the extent of any inconsistency.

The Tribunal concluded it had taken into account all of the matters referred to in s. 39, the submissions of the state and the grantee and the fact that the Karajarri native title party makes no claim for compensation. The fact that no submissions had been made by the Karajarri in response to the directions, together with those factors led the Tribunal to conclude that the Karajarri accepted that the grant of the permit will not have any significant adverse effect upon the matters referred to in s. 39(1)(a)(b) and (c).

Western Australia/Hughes; Crowe/Rough Oil Pty Ltd [2004] NNTTA 108, (1 December 2004) Hon. C.J. Sumner.

In this matter, an s. 35 application under s.35 for a future act determination was made by the grantee party. The two native title parties, the Gnulli and the Thalanyji, were both represented.

A heritage protection agreement in the form of a state deed had been made with the Gnulli native title party and lodged pursuant to s. 41A(1)(a). A s. 31(1)(b) agreement could not be executed

because there was no agreement with the Thalanyii native title party. The Thalanyji advised that they would not be making any submission, due to lack of resources.

The Tribunal advised that, in the absence of any submissions by the native title party, a decision under s. 38 would be made on the basis of the submissions made by the state and grantee parties and any other material before the Tribunal.

The Tribunal found that the State Deed signed by the Gnulli native title party was sufficient evidence of their consent to justify making a determination.

As to the Thalanyji, it was said that:

- the Tribunal must act on the basis of evidence which ordinarily will be provided by the parties;
- there is no onus of proof as such—rather, a 'common sense' approach to evidence, which means that parties will produce evidence to support their contentions, particularly where facts are peculiarly within their knowledge;
- the Tribunal will not normally conduct its own inquiries and obtain evidence, particularly where a party is represented;
- if a party fails to provide relevant evidence, the Tribunal is normally entitled to proceed to make a determination without it;
- the Thalanyji native title party was represented throughout by someone who, although not a legal practitioner, had experience in acting for native title parties, was fully aware of the consequences of non-participation and who said he had specific instructions from his clients not to participate;
- in these circumstances, the Tribunal fulfilled its statutory obligations under the Act by giving the native title party an opportunity to provide contentions and evidence and then proceeding to make a determination on the papers if that opportunity was not taken up;
- the task of the Tribunal in making a determination is a discretionary one which involves weighing the various factors in s. 39 based on evidence produced;
- there was no evidence from the Thalanyji native title party with respect to any matters to be considered pursuant to s. 39;
- it had been impossible to balance the various interests properly because the native title party had chosen not to use the process available under the Act;
- nevertheless, the Tribunal was satisfied, given the large area involved, the nature of the activities to be undertaken, the non-exclusive nature of any native title rights and interests and the requirement to protect Aboriginal sites, that the grant of the proposed permit could proceed.

The Tribunal left open the possibility that in future matters a different, more summary procedure might be considered to dispose of similar matters, particularly if non-participation by native title parties were to become commonplace.

When is an application 'lodged' with the Tribunal?

Neowarra/Western Australia/Thundelarra [2004] NNTTA 102, (5 November 2004)
Hon. C. J. Sumner.

In this case the Tribunal considered whether it can accept an objection to the application of the expedited procedure that was not lodged 'within the period of four months after the notification day' as provided for in s. 32(3) of the Act.

The native title party asserted that, in response to a s. 29 notice which included a statement that the government party considered that the act being notified was one that attracted the expedited procedure, they had posted an objection application within the four month period specified in s. 32(3). The period ended on 10 July 2004. The Tribunal records indicated the native title party's letter enclosing the objection application was not received until 22 July 2004.

The Tribunal considered the ordinary meaning of the word 'lodge' as discussed by the Full Court of the Federal Court in *Angus Fire Armour Australia Pty Ltd v Collector of Customs (NSW)* (1998) 19 FCR 447 at 488. The Tribunal concluded that an objection application is lodged when it is received by post and processed by officers of the Tribunal. The Tribunal found the date of posting could not be said to be the date of lodgment. Therefore, the objection application was not lodged within the prescribed time.

The Tribunal confirmed it is the native title party's responsibility to ensure an application is lodged with the Tribunal on time.

The application was not accepted.

When is an application 'lodged' with the Tribunal and other Form 4 acceptance issues

Norman Brown & Ors; Barada Barna Kabalbara and Yetimarla People#4/Queensland/ Midas Resources Ltd [2005] NNTTA 3, (4 February 2005) Mr John Sosso
In this case the Tribunal considered whether it can accept an expedited procedure objection application where on its face it is not apparent that the native title party as a whole had knowledge of the objection being lodged.

The expedited procedure objection application (Form 4) was made in the name of only one of the eleven persons who are collectively the Applicant, and lacked any statement that the others persons who comprised the Applicant had knowledge of or acquiesced in the lodging of the objection.

The Tribunal accepted the Form 4 lodged outside the four month period from the notification date specified in s. 32(3) of the Act. The Tribunal referred to authority on the interpretation of 'within' to exclude the day of the act in question. Further, the *Acts Interpretation Act 1901* (Cwlth) s. 36(2) provides for additional time when the four month period for lodging an objection application expires on a weekend, as it did in this matter.

The Tribunal convened a conference to determine if the objector was acting unilaterally or with authority.

The Tribunal considered the Form 4 requirements and noted that various Federal Court decisions have made it clear that the Act, where possible, is to be given a beneficial interpretation (*Kanak v NNTT* (1995) 61 FCR 103 at 124). The Tribunal confirmed the power implied by s. 109 to allow amendments to the Form 4 which are designed to cure technical or typographical error. Substantive amendment would not be allowed.

Leave of the Tribunal is required to amend the Form 4 after the closing date. The proposal to amend the objection to make it clear it was lodged collectively, was not granted. The Tribunal held that to allow an amendment after the closing date which is intended to grant to the Tribunal a jurisdiction which it otherwise lacks, is inappropriate and unsustainable.

Before deciding whether to accept a Form 4, the Tribunal may grant leave to any party to provide information or make submissions, the object being not to amend or supplement the Form 4, but to explain it. The Tribunal heard the objector's submissions that the objector was not acting unilaterally and had acted with the full knowledge and support of the persons who comprised the Applicant.

The Tribunal held that the Form 4 complied with the requirements of s. 76 of the Act and the Tribunal has jurisdiction to conduct an inquiry into the expedited procedure objection inquiry.

Allan Fisher and Ors (Birri People)/Queensland/Kitchener Mining NL, NNTT QO05/99, [2005] NNTTA 33 (18 May 2005), Mr John Sosso

The Tribunal considered whether it could accept the expedited procedure objection application (Form 4) where the Form 4 complied with the Act but the application was not accompanied by the prescribed fee as required by s. 76(d) or material in support of regulation 8.

The *Native Title (Tribunal) Regulations 1993* regulation 7 prescribes the relevant fee and regulation 8 provides for when fees are not payable. Regulation 8(b)(i) provides that a fee is not payable if the person liable to pay the fee is the holder one of various types of cards issued by the Department of Social Security. The legal representative of the native title party made an application for relief from fee payment pursuant to r. 8 in correspondence forwarding the Form 4. However by the closing date no material had been supplied to support the proposition that the native title party was not liable to pay the fee.

The Tribunal reviewed and noted the large number of expedited procedure objection applications being lodged and that any delays in acceptance would create an untenable situation. The objectives of the Act and the role of the expedited procedure process were taken into account by the Tribunal. The Tribunal also considered Federal Court decisions including *Braganza v Minister for Immigration and Multicultural Affairs* (2001) 109 FCR 364. The Tribunal distinguished this case on the facts as there was no application to waive the fee on regulation 8(d) grounds of financial hardship.

The Tribunal held:

- It is incumbent upon the native title party to provide proof that it comes within regulation 8.
- The threshold question is whether the state of affairs asserted, no requirement to pay the fee pursuant to regulation 8, exists or not. A mere assertion is not sufficient. A photocopy of a relevant category of card will satisfy the Tribunal that the regulation applies.
- The Form 4 was not accepted.

Extension of time to comply with Tribunal directions—confidential information

Leonne Velickovic; Widji People/Western Australia/International Goldfields Ltd [2005] NNTTA 7, (23 February 2005) Hon. C. J. Sumner
In this case the Tribunal considered whether the issue of confidentiality can be raised as a basis for an extension of time to comply with the Tribunal's directions.

In the course of an inquiry into an expedited procedure objection application, the native title party raised concerns regarding the confidentiality of material submitted to the Tribunal in particular affidavits.

The concern was raised as a reason for non-compliance with directions requiring the native title party to provide a statement of contentions, documentary evidence and witness statements because the native title party now wished to formulate its affidavits and contentions in a way to ensure confidentiality was maintained and this would be time consuming as additional consultation was required. The native title party's representative had instructions not to file the documents until the issue of protection of confidential information was sorted out.

The Tribunal did not accept the native title party's reasons for requesting a further extension of time to comply with the directions.

Both the Tribunal and the Federal Court have enunciated principles on the making of confidentiality orders. In this matter, no requests for confidentiality orders were sought nor any documents submitted using the confidential information procedure. The Tribunal found no basis in the native title party's correspondence on which a further extension of time to comply should be granted.

The Tribunal was satisfied that the native title party had failed to proceed within a reasonable time with its objection application and failed to comply with the directions of the Tribunal and dismissed the application under s. 148(b).

Heritage agreements—relevance to the expedited procedure

Linda Champion; Central West Goldfields People/Western Australia/Vosperton Resources Pty Ltd [2005] NNTTA 1, (1 February 2005) Hon. C. J. Sumner.
In this case the Tribunal considered what relevance a heritage agreement may have to an inquiry into the whether or not an act attracts the expedited procedure.

The Central West Goldfields People (the native title party) objected to the expedited procedure being applied to the grant of E26/108 which overlapped their registered native title claim area. The proposed tenement also overlapped the areas claimed by two registered and two unregistered native title parties. The grantee had entered into a Regional Standard Heritage Agreement (RSHA), which had been agreed between the government party, the Goldfields Land and Sea Council and peak bodies to provide appropriate protection of Aboriginal heritage. The RSHA related to only one registered native title party. The native title party had provided the grantee party with an alternative heritage agreement which the grantee party initially did not agree to execute. The grantee party stated it was, however, willing to enter an RSHA with the native title party.

In regard to the heritage agreements the Tribunal held as follows.

- The existence of an RSHA executed by a grantee does not form a basis for finding in every case that the expedited procedure is attracted even if s. 237(b) is the only matter in issue.
- The existence of a RSHA is not irrelevant to a s. 237 inquiry.
- The proposed government condition on the grant—that within 90 days of the grant, if NTP requests in writing that the grantee execute an RSHA, the grantee will do so within 30 days of the request—can be taken into account as one of the relevant factors in determining s. 237(b).
- The Tribunal's task in relation to s. 237(b) will be to assess the evidence regarding whether there are sites of significance in the area and whether the regulatory regime is sufficient to make interference with them unlikely.
- In making a predictive assessment in relation to s. 237(b), the Tribunal can have regard to a grantee's attitude to entering an RSHA and other evidence of the grantee party directed toward Aboriginal heritage.
- What weight will be given to the execution of an RSHA will depend on the circumstances in each case.
- It is not the role of the Tribunal to endorse one heritage agreement over another.
- There is no statutory or legal obligation on a grantee party to fund or facilitate an Aboriginal heritage survey and the fact that a grantee party refuses to sign a heritage agreement does not automatically mean that the expedited procedure is not attracted because interference with sites of significance would be likely.

The Tribunal findings in relation to s. 237(b) was that it prepared to infer on the evidence that the women's sites associated with the Milyura Dreaming are likely to be sites of particular significance.

The Tribunal determined that the grant was an act attracting the expedited procedure.

APPENDIX III CONSULTANTS

Table 18 Consultants engaged under section 131A of the Native Title Act (over $10,000)

Consultant	Purpose	Contract price	Period	Selection process[1]	Justification[2]
		NIL			

Table 19 Consultants engaged under section 132 of the Native Title Act (over $10,000)

Consultant	Purpose	Contract price	Period	Selection process[1]	Justification[2]
Step Two Designs	Intranet design services	$41,363	Jun 04 – Aug 05	Select tender	B
Hudson	Systems Programming & Development	$282,295	Dec 04 – Nov 05	Open tender	A/B
Robert Walters	Systems Programming & Development	$108,179	Dec 04 – Oct 05	Open tender	A/B
Gryphon	Systems Programming & Development	$161,569	Mar 05 – Sep 05	Open tender	A/B
Talent International	Business analysis & programming	$64,669	Jan 05 – May 05	Open tender	A/B
Dialog	Visual Basic Maintenance Services	$44,729	Mar 05 – Oct 05	Select tender	A/B
Marketforce	Corporate image design & style guide	$32,000	Jun 05 – Dec 05	Open tender	B
Mark Dingham & Assoc	Client survey	$31,000	Apr 05 – May 05	Select tender	C (also included under 'Advertising and market research', see p.149)
ADR Plus Pty Ltd	Agreement making training	$24,000	Nov 04	Select tender	B
OBF Quality Assurance	Operational Business Framework	$18,000	Mar 05 – Sep 05	Select tender	B
Candle Recruitment	Programming services	$ 48,141	Dec 04 – Sep 05	Open tender	A
KPT Consulting (Window Logic)	Technical architecture review (Hummingbird)	$12,000	Jan 05	Select tender	B
University of Sydney (Dr Gaynor MacDonald)	Genealogy research	$10,000	May 05 – Aug 05	Open tender	C
James Cook University	Research	$275,000	Jun 02 – Aug 07	Direct sourcing	C
GFM Communications Pty Ltd	Video conference training	$13,530	Aug 04 – Sept 04	Select tender	B

(1) Explanation of selection process terms drawn from the Commonwealth Procurement Guidelines (January 2005):

Open tender: *a procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders.*

Select tender: *a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders in accordance with the mandatory procurement procedures.*

Direct sourcing: *a procurement process, available only under certain defined circumstances, in which an agency may contact a single potential supplier or suppliers of its choice and for which conditions for direct sourcing apply under the mandatory procurement procedures.*

Panel: *an arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements.*

(2) Justification for decision to use consultancy:

A — skills currently unavailable within agency

B — need for specialised or professional skills

C — need for independent research or assessment

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 2005 is provided in Figure 1, p. 33. An outline of the responsibilities of its executive and senior management committees is provided under 'Tribunal executive', p. 101.

Functions and powers

A summary of the information related to the Tribunal's functions and powers is provided below, but for more detail see 'Tribunal overview', 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 two formal requests for internal review of a decision by the authorised decision-maker regarding access to documents under the Freedom of Information Act:

Date received	Nature of request	Conclusion
July 2004	Review of decision in relation to request seeking access to s. 31 agreement and ancillary agreement	Decision partly upheld
August 2004	Review of decision in relation to request seeking access to s. 31 agreement and ancillary agreement	Decision partly upheld

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, territory 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. 113).

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, and
- 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 employees. 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 employees 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. 108).

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 $31,000 for the conduct of research and evaluation into the following project: client satisfaction research.

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 $401.50 (Sundream Pty Ltd operating as Northside Distributors) plus $20,798.90 (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 $511,380
- staff recruitment $152,767
- other advertising (for example, tenders and consultants) $165

The total amount for market research, distribution and advertising was $716,512.

APPENDIX VI
AUDIT REPORT AND NOTES TO THE FINANCIAL STATEMENTS

INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope
The financial statements and Chief Executive Officer's responsibility

The financial statements comprise:

- Statement by the Chief Executive Officer and Chief Finance Officer;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedule of Commitments
- 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 2005.

The Chief Executive Officer is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the National Native Title Tribunal, and that comply with the Finance Minister's Orders made under the Financial Management and Accountability Act 1997, accounting standards and other mandatory financial reporting requirements in Australia. The Chief Executive Officer is also responsible 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 have 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 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 the ethical requirements of the Australian accounting profession.

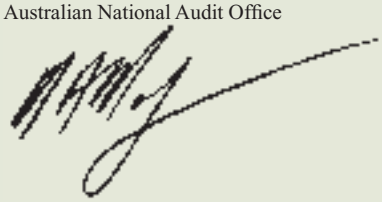
Audit Opinion

In my opinion, the financial statements of the National Native Title Tribunal:

(a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
(b) give a true and fair view of the National Native Title Tribunal's financial position as at 30 June 2005 and of its performance and cash flows for the year then ended, in accordance with:

  (i) the matters required by the Finance Minister's Orders; and
  (ii) applicable accounting standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



Mark Moloney
Senior Director

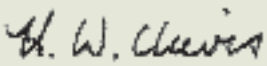
Delegate of the Auditor-General

Canberra
14 November 2005

NATIONAL NATIVE TITLE TRIBUNAL

Statement by the Chief Executive and Chief Finance Officer

In our opinion, the attached financial statements for the year ended 30 June 2005 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*.



HUGH CHEVIS
A/Chief Executive

1 November 2005

ERWIN WINKLER
Chief Finance Officer

1 November 2005

STATEMENT OF FINANCIAL PERFORMANCE for the year ended 30 June 2005

	Note	**2005**	2004
		$'000	$'000
Revenues from ordinary activities			
Revenues from Government	3A	**33,930**	32,008
Sale of goods and services	3B	**67**	249
Revenues from ordinary activities		**33,997**	32,257
Expenses from ordinary activities			
Employees	4A	**20,180**	20,483
Supplier expenses from external & related entities			
Operating lease rentals	4B	**3,028**	2,990
Other suppliers expenses	4B	**8,093**	8,050
Depreciation and amortisation	4C	**617**	703
Write-down of assets	4D	**0**	–
Expenses from ordinary activities		**31,918**	32,226
Net operating surplus from ordinary activities		**2,079**	31
Net surplus		**2,079**	31
Total changes in equity other than those resulting from transactions with owners as owners		**2,079**	31

STATEMENT OF FINANCIAL POSITION for the year ended 30 June 2005

	Note	**2005** **$'000**	2004 $'000
ASSETS			
Financial assets			
Cash	5A	**3,222**	102
Receivables	5B	**5,886**	5,712
Total financial assets		**9,108**	5,814
Non-financial assets			
Land and buildings	6A,C	**281**	253
Infrastructure, plant and equipment	6B,C	**944**	999
Intangibles	6D	**297**	363
Other	6E	**17**	910
Total non-financial assets		**1,539**	2,525
TOTAL ASSETS		**10,647**	8,339
LIABILITIES			
Provisions			
Employees	7	**3,728**	3,620
Total provisions		**3,728**	3,620
Payables			
Suppliers	8	**542**	421
Total payables		**542**	421
TOTAL LIABILITIES		**4,270**	4,041
NET ASSETS		**6,377**	4,298
EQUITY			
Contributed equity	9	**2,415**	2,415
Retained surplus	9	**3,962**	1,883
TOTAL EQUITY		**6,377**	4,298
Current assets		**9,125**	6,724
Non-current assets		**1,522**	1,615
Current liabilities		**2,474**	2,289
Non-current liabilities		**1,796**	1,752

STATEMENT OF CASH FLOWS for the year ended 30 June 2005

	Note	**2005**	2004
		$'000	$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		**49**	278
Appropriations		**33,695**	32,008
GST received from ATO		**1,294**	1,054
Total cash received		**35,038**	33,340
Cash used			
Employees		**19,882**	20,497
Suppliers		**11,512**	12,157
Cash transferred to OPA		**–**	5,500
Total cash used		**31,394**	38,154
Net cash from operating activities	10	**3,644**	(4,814)
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		**494**	655
Purchase of intangibles		**30**	324
Total cash used		**524**	979
Net cash from investing activities		**(524)**	(979)
Net increase/(decrease) in cash held		**3,120**	(5,793)
Cash at the beginning of the reporting period		**102**	5,895
Cash at end of reporting period	5A	**3,222**	102

SCHEDULE OF COMMITMENTS as at 30 June 2005

	Note	2005 $'000	2004 $'000
BY TYPE			
Capital commitments			
Infrastructure, plant and equipment		**–**	–
Total Capital Commitments		**–**	–
Other Commitments			
Operating leases [1]		**5,654**	4,174
Other [2]		**410**	308
Total Other Commitments		**6,064**	4,482
Commitments Receivable		**(551)**	(407)
Net Commitments by type		**5,513**	4,075
BY MATURITY			
Operating Lease Commitments			
One year or less		**3,615**	1,935
From one to five years		**2,449**	2,239
Total Operating Lease Commitments by maturity		**6,064**	4,174
Commitments Receivable		**(551)**	(407)
Net Commitments by Maturity		**5,513**	4,075

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

	Notes	2005 $'000	2004 $'000
Revenues Administered on Behalf of Government			
for the year ended 30 June 2005			
Non-taxation Revenue			
Fees		**8**	10
Total Revenues Administered on Behalf of Government		**8**	10
Expenses Administered on Behalf of Government			
for the year ended 30 June 2005			
Write-down of assets		**–**	–
Total Expenses Administered on Behalf of Government		**–**	–
Assets Administered on behalf of Government			
as at 30 June 2005	16	**Nil**	Nil
Liabilities Administered on behalf of Government			
as at 30 June 2005		**Nil**	Nil
Administered Cash Flows			
As at 30 June 2005			
Cash Received			
Fees		**8**	10
Cash Used			
Refund of Fee		**5**	1
Net increase in cash held		**3**	9
Cash at beginning of reporting period		**–**	–
Cash from Official Public Account		**5**	1
		8	10
Cash transfer to Official Public Account		**8**	10
Cash at end of reporting period		**–**	–
Administered Commitments			
as at 30 June 2005		**Nil**	Nil
Administered Contingencies			
as at 30 June 2005		**Nil**	Nil

Statement of Activities Administered on Behalf of Government

The administered activities of the 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 2005

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.

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 2005))*;
- 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 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.

Appropriations receivable are recognised at their nominal amounts.

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.

1.4 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.

1.5 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.

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 2005. 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.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the unused annual leave provision total.

1.6 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 2005.

1.7 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.

1.8 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.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

1.9 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.

1.10 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
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. Valuations undertaken in any year are as at 30 June.

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 2005 (30 June 2003, 2004: 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 onwards from 30 June 2005.

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:

	2005	2004
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 6C.

1.11 Impairment of Non-Current Assets

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

1.12 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.

1.13 Taxation / Competitive Neutrality

The Tribunal is exempt from all forms of taxation except fringe benefits tax and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:
- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

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 Abstracts.

Administered cash transfers to and from 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 appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Agency 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 lodgment of an application with the Tribunal.

Indemnities
The maximum amounts payable under the indemnities given is disclosed in the Schedule of Administered Items—Contingencies. At the time of completion of the financial statements, there was no reason to believe that the indemnities would be called upon, and no recognition of any liability was therefore required.

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

The Australian Accounting Standards Board has issued replacement Australian Accounting Standards to apply from 2005–06. The new standards are the Australian Equivalents to International Financial Reporting Standards (AEIFRS). The International Financial Reporting Standards 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, including reporting periods ending on 30 June 2005.

The purpose of issuing AEIFRS is to enable Australian reporting 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 with AEIFRS will be able to make an explicit and unreserved statement of compliance with International Financial Reporting Standards (IFRS) as well as a statement that the financial report has been prepared in accordance with Australian Accounting Standards.

AEIFRS contain certain additional provisions that will apply to not-for-profit entities, including Australian Government agencies. Some of these provisions are in conflict with IFRS, and therefore the Tribunal will only be able to assert that the financial report has been prepared in accordance with Australian Accounting Standards.

Accounting Standard AASB 1047 Disclosing the Impacts of Adopting Australian Equivalents to International Financial Reporting Standards requires that the financial statements for 2004–05 disclose:

- an explanation of how the transition to AEIFRS is being managed;
- narrative explanations of the key policy differences arising from the adoption of AEIFRS;
- any known or reliably estimable information about the impacts on the financial report had it been prepared using AEIFRS; and

- if the impacts of the above are not known or reliably estimable, a statement to that effect.
- Where an entity is not able to make a reliable estimate, or where quantitative information is not known, the entity should update the narrative disclosures of the key differences in accounting policies that are expected to arise from the adoption of AEIFRS.

The purpose of this Note is to make these disclosures.

Management of the transition to AEIFRS
The Tribunal has taken the following steps for the preparation towards the implementation of AEIFRS:

- During the reporting period the Tribunal's Chief Finance Officer (CFO) and Financial Controller developed a formal plan to manage the transition to and implementation of AEIFRS.

- This plan has:
  - > Identified all major accounting policy differences between current AASB standards and the AASB Equivalents to IFRSs.
  - > Identified 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.
  - > Identified any risks associated with the transition.
  - > The Financial Controller is formally responsible for implementing the plan.
  - > The Tribunal has also prepared an AEIFRS compliant balance sheet as at 30 June 2005.
  - > The plan also addresses the risks to successful achievement of the above objectives and includes strategies to keep implementation on track to meet deadlines.
  - > The review of the impact of AEIFRS on financial statement items is still in progress and the Tribunal will ensure that reporting deadlines set by the Department of Finance and Administration for 2005–06 are met. This may affect items including property, plant and equipment.

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.

Management's review of the quantitative impacts of AEIFRS represents the best estimates of the impacts of the changes as at reporting date. The actual effects of the impacts of AEIFRS may differ from these estimates due to:

- continuing review of the impacts of AEIFRS on Tribunal operations;
- potential amendments to the AEIFRS and AEIFRS Interpretations; and
- emerging interpretation as to the accepted practice in the application of AEIFRS and the AEIFRS Interpretations.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

Property plant and equipment
The Finance Minister's Orders 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 is not expected to vary significantly from current values, which are based on historic cost less depreciation. The Tribunal has very few long-lived assets.

Impairment of property, plant and equipment
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. The effect cannot be quantified at this time.

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.

Reconciliation of Impacts—AGAAP to AEIFRS

	30 June 2005*	30 June 2004
	$'000	$'000
Reconciliation of Departmental Equity		
Total Departmental Equity under AGAAP	**6,413**	4,299
Adjustments to accumulated results: Provisions for Leave Liability	**156**	180
Total Equity under AEIFRS	**6,569**	4,479
Reconciliation of Departmental Accumulated Results		
Total Departmental Accumulated Results under AGAAP	**3,998**	1,883
Adjustments: Provisions for Leave Liability	**156**	180
Total Accumulated Results under AEIFRS	**4,154**	2,063
Reconciliation of Departmental Contributed Equity		
Total Departmental Contributed Equity under AGAAP	**2,415**	2,415
Total Contributed Equity under AEIFRS	**2,415**	2,415

** 30 June 2005 total represents the accumulated impacts of AEIFRS from the date of transition.*

	2005 $'000	2004 $'000
Note 3: Operating Revenues		
Note 3A–Revenues from Government		
Appropriations for outputs	**33,930**	32,008
Total revenues from government	**33,930**	32,008
Note 3B–Goods and Services		
Services	**48**	235
Resources received free of charge	**19**	14
Total sales of goods and services	**67**	249

All services were rendered to external entities.

Note 4: Operating Expenses

Note 4A–Employee Expenses		
Wages and Salary	**16,658**	16,867
Superannuation	**2,322**	2,430
Leave and other entitlements	**174**	495
Separation and redundancies	**358**	158
Other employee expenses	**497**	343
Total employee benefits expense	**20,009**	20,293
Worker compensation premiums	**171**	190
Total employee expenses	**20,180**	20,483
Note 4B–Supplier Expenses		
Goods from external entities	**1,112**	
Services received Free of Charge (Audit Service)	**19**	14
Services from related entities	**1,292**	
Services from external entities	**5,670**	8,036
Operating lease rentals from related entities*	**1,756**	
Operating lease rentals from external entities*	**1,272**	2,990
Total supplier expenses	**11,121**	11,040

* These comprise minimum lease payments only.

Note 4C–Depreciation and Amortisation		
(i) Depreciation		
Other infrastructure, plant and equipment	**397**	311
Buildings	**125**	366
Total Depreciation	**522**	677
(ii) Amortisation		
Intangibles—Computer Software	**95**	26
Total depreciation and amortisation	**617**	703

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

	2005	2004
	$'000	$'000
Note 4D–Write Down of Assets		
Financial assets		
Bad and doubtful debts expense	**–**	–
Total write-down of assets	**–**	–

Note 5: Financial Assets

Note 5A–Cash		
Departmental (other than special accounts)	**3,222**	102
Total cash	**3,222**	102
Note 5B–Receivables		
Goods and services	**12**	16
Less: provision for doubtful debts	**(3)**	(3)
	9	13
GST receivable from the Australian Taxation Office	**142**	199
Appropriations receivable:		
- for additional outputs	**5,464**	5,500
- undrawn	**271**	–
Total receivables (net)	**5,886**	5,712

All receivables are current assets.

Appropriations receivable undrawn are appropriations controlled by the Agency but held in the Official Public Account under the Tribunal's just-in-time drawdown arrangements.

Receivables ***(gross)*** are aged as follows:		
Current	**5,883**	5,704
Overdue by:		
Less than 30 days	**3**	2
30 to 60 days	**–**	8
61 to 90 days	**–**	1
More than 90 days	**3**	–
	6	11
Total receivables (gross)	**5,889**	5,715

	2005 $'000	2004 $'000
Note 6: Non-Financial Assets		
Note 6A–Land and Buildings		
Leasehold improvements		
At fair value	**4,081**	3,928
Accumulated amortisation	**(3,800)**	(3,675)
Total leasehold improvements	**281**	253
Total Land and Buildings (non-current)	**281**	253
Note 6B–Infrastructure, Plant and Equipment		
At fair value	**2,589**	2,247
Accumulated depreciation	**(1,645)**	(1,248)
Total Infrastructure, Plant and Equipment (non-current)	**944**	999

Note 6C–Analysis of Property, Plant and Equipment

TABLE A—Reconciliation of the opening and closing balances of property, plant and equipment

Item	Buildings – Leasehold Improvements $'000	Other IP&E $'000	Total $'000
As at 1 July 2004			
Gross book value	**3,929**	**2,247**	**6,176**
Accumulated depreciation/amortisation	**(3,675)**	**(1,248)**	**(4,923)**
Opening Net Book Value	**254**	**999**	**1,253**
Additions:			
by purchase	**152**	**342**	**494**
Depreciation/amortisation expense	**(125)**	**(397)**	**(522)**
Disposals:			
from disposal of operations	**–**	**–**	**–**
other disposals	**–**	**–**	**–**
As at 30 June 2005			
Gross book value	**4,081**	**2,589**	**6,670**
Accumulated depreciation/amortisation	**(3,800)**	**(1,645)**	**(5,445)**
Closing Net book value	**281**	**944**	**1,225**

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

	2005	2004
	$'000	$'000
Note 6D–Intangible Assets		
Software—in use (non-current)	**1,321**	1,292
Accumulated amortisation	**(1,024)**	(929)
Total intangibles	**297**	363

TABLE A—Reconciliation of opening and closing balances of intangibles

Item	**Computer Software $'000**
As at 1 July 2004	
Gross book value	**1,292**
Accumulated depreciation/amortisation	**(929)**
Net book value	**363**
By Purchase	**29**
Depreciation/amortisation expense	**(95)**
As at 30 June 2005	
Gross book value	**1,321**
Accumulated depreciation/amortisation	**(1,024)**
Net book value	**297**

	2005	2004
	$'000	$'000
Note 6E–Other Financial Assets		
Prepayments	**17**	910

All other non-financial assets are current assets.

Note 7: Provisions

Employee Provisions		
Salary Sacrifice	**18**	
Leave	**3,503**	3,408
Superannuation	**207**	212
Aggregate employee benefit liability and related on-costs	**3,728**	3,620
Current	**1,796**	1,868
Non-current	**1,932**	1,752

Note 8: Payables

Suppliers Payable		
Trade creditors	542	421
Total supplier payables	542	421

All payables are current liabilities.

Note 9: Equity

Analysis of Equity

Item	Accumulated Results		Contributed Equity		TOTAL EQUITY	
	2005	2004	**2005**	2004	**2005**	2004
	$'000	$'000	**$'000**	$'000	**$'000**	$'000
Opening balance as at 1 July	**1,883**	1,852	**2,415**	2,415	**4,298**	4,267
Net surplus	**2,079**	31	**–**	–	**2,079**	31
Closing balance as at 30 June	**3,962**	1,883	**2,415**	2,415	**6,377**	4,298

Note 10: Cash Flow Reconciliation

	2005	2004
	$'000	$'000
Reconciliation of cash per Statement of Financial Position to Statement of Cash Flows		
Cash at year end per Statement of Cash Flows	**3,222**	102
Statement of Financial Position items comprising above cash:		
'Financial Asset—Cash'	**3,222**	102
Reconciliation of net surplus to net cash from operating activities:		
Net surplus	**2,079**	31
Depreciation/amortisation	**618**	703
(Increase)/decrease in net receivables	**(174)**	(5,547)
(Increase)/decrease in prepayments	**892**	78
Increase/(decrease) in employee provisions	**108**	(33)
Increase/(decrease) in supplier payables	**121**	(46)
Net cash from / (used by) operating activities	**3,644**	(4,814)

Note 11: Contingent Liabilities and Assets

Quantifiable and unquantifiable contingencies

The Tribunal had no quantifiable or unquantifiable contingencies at 30 June 2005.

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.

The Tribunal has indemnified the owners of the buildings in which the Brisbane and Sydney registry offices are located against any action brought against them which results from actions of Tribunal staff. These indemnities are unlimited.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

Note 12: Executive Remuneration

The number of executives who received or were due to receive total remuneration of $100,000 or more:

	2005	2004
$160,001 to $170,000	**–**	1
$170,001 to $180,000	**–**	1
$180,001 to $190,000	**1**	–
$190,001 to $200,000	**1**	1
$200,001 to $210,000	**–**	–
$210,001 to $220,000	**–**	–
$220,001 to $230,000	**–**	–
$230,001 to $240,000	**–**	–
$240,001 to $250,000	**1**	–
The aggregate amount of total remuneration of executives shown above.	**$723,788**	$536,368
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.	**$12,294**	Nil

Note 13: Remuneration of Auditors

	2005	2004
	$	$
Audit services are provided free of charge to the Tribunal.		
The fair value of the services provided was:		
Financial Statement Audit Services	**14,900**	14,250
Interim AEIFRS Statement Assessment	**4,000**	–
	18,900	14,250

No other services were provided by the Auditor-General.

Note 14: Average Staffing Levels

	2005	2004
The average staffing levels for the Tribunal during the year were:	**262**	275

Note 15: Financial Instruments

Note 15A–Interest Rate Risk

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate Maturing In						Non-nterest Bearing		Total		Weighted Average Effective Interest Rate	
				1 Year or Less		1 to 5 Years		> 5 Years							
		2005	2004	**2005**	2004	**2005**	2004	**2005**	2004	**2005**	2004	**2005**	2004	**2005**	2004
		$'000	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000	**%,**	%,
Financial Assets															
Cash at bank	5A	**–**	–	**–**	–	**–**	–	**–**	–	**3,222**	102	**3,222**	102	**n/a**	n/a
Receivables for goods and services (gross)	5B	**–**	–	**–**	–	**–**	–	**–**	–	**12**	16	**12**	16	**n/a**	n/a
GST Recievable from ATO	5B	**–**	–	**–**	–	**–**	–	**–**	–	**142**	–	**142**	–	**n/a**	n/a
Appropriations Receivable	5B	**–**	–	**–**	–	**–**	–	**–**	–	**5,735**	5,699	**5,735**	5,699	**n/a**	n/a
Total (Gross)		**–**	–	**–**	–	**–**	–	**–**	–	**9,111**	5,817	**9,111**	5,817		
Total Assets												**10,647**	8,339		
Financial Liabilities															
Trade creditors	8A	**–**	–	**–**	–	**–**	–	**–**	–	**542**	421	**542**	421	**n/a**	n/a
Total		**–**	–	**–**	–	**–**	–	**–**	–	**542**	421	**542**	421		
Total Liabilities												**4,270**	4,041		

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

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

	Notes	2005 Total Carrying Amount	2005 Aggregate Net Fair Value	2004 Total Carrying Amount	2004 Aggregate Net Fair Value
		$'000	**$'000**	$'000	$'000
Departmental					
Financial Assets					
Cash at bank	5A	**3,222**	**3,222**	102	102
Receivables for goods and services (net)	5B	**9**	**9**	13	13
Appropriations receivable	5B	**5,735**	**5,735**	5,699	5,699
GST Recievable from ATO	5B	**142**	**142**	–	–
Total Financial Assets		**9,108**	**9,108**	5,814	5,814
Financial Liabilities (Recognised)					
Trade creditors	8A	**542**	**542**	421	421
Total Financial Liabilities (Recognised)		**542**	**542**	421	421

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

The net fair values for trade creditors are approximated by their carrying amounts.

Note 15C–Credit Risk Exposures

The Tribunal's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Position.

The Tribunal has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 16: Administered Reconciliation Table

	2005	2004
	$'000	$'000
Opening administered assets less administered liabilities as at 1 July		
Plus: administered revenues	**8**	10
Less: administered expenses	**(5)**	(1)
Administered transfers to/from Australian Government:		
Appropriation transfers from OPA:		
Annual appropriations administered expenses		
Administered assets and liabilities appropriations		
Special appropriations (limited)		
Special appropriations (unlimited)	**5**	1
Transfers to OPA	**(8)**	(10)
Closing administered assets less administered liabilities as at 30 June	**–**	–

Note 17: Appropriations

Note 17A–Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund (CRF) for Ordinary Annual Services Appropriations

Particulars	Administered Expenses	Departmental Outputs	Total
Year ended 30 June 2005	**$**	**$**	**$**
Balance carried from previous year	–	9,588,173	9,588,173
Adjustment to prior years	–	(66,805)	(66,805)
Reductions of appropriations (prior years)	–	–	–
Unspent receipts from 1999–00 where no s31 agreement was in place1		(244,843)	(244,843)
Adjusted Balance carried for previous period	–	9,276,525	9,276,525
Appropriation Act (No.1) 2004–05	–	33,583,000	33,583,000
Appropriation Act (No.3) 2004–05	–	271,000	271,000
Departmental Adjustments by the Finance Minister (Appropriation Acts)	–	–	–
Comcare receipts (Appropriation Act s13)	–	111,789	111,789
Advance to the Finance Minister	–	–	–
Adjustment of appropriations on change of entity function (FMAA s32)	–	–	–
Refunds credited (FMAA s30)	4,583	–	4,583
Appropriation reduced by section 9 determinations (current year)2	–	–	–
Sub-total 2004–05 Annual Appropriation	4,583	43,242,314	43,246,897
Appropriations to take account of recoverable GST (FMAA s30A)	–	1,237,050	1,237,050
Annotations to 'net appropriations' (FMAA s31)	–	48,700	48,700
Total appropriations available for payments	4,583	44,528,064	44,532,647
Cash payments made during the year (GST inclusive)	(4,583)	(31,917,836)	(31,922,419)
Appropriations credited to Special Accounts (excluding GST)	–	–	–
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropriations	–	12,610,228	12,610,228
Represented by:			
Cash at bank and on hand	–	3,178,728	3,178,728
Less cash held not appropriated	–	(21,181)	(21,181)
Receivable—departmental appropriations	–	5,735,000	5,735,000
Receivables—GST receivable from the ATO	–	141,524	141,524
Savings identified in the Budget process (carried forward)	–	3,821,000	3,821,000
Formal reductions of appropriations	–	–	–
Receivables—departmental appropriations (appropriation for additional outputs)	–	–	–
Payables—GST payable	–	–	–
Undrawn, unlapsed administered appropriations	–	–	–
Receipts from periods of no s31 agreement in years 1999–00 not currently available	–	(244,843)	(244,843)
Total	–	12,610,228	12,610,228

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

Note 17B–Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund (CRF) for other than Ordinary Annual Services Appropriations

Particulars	Administered Expenses	Departmental Outputs	Total
Year ended 30 June 2005	**$**	**$**	**$**
Balance carried from previous year	–	–	–
Adjustment to prior years	–	**43,000**	**43,000**
Reductions of appropriations (prior years)	–	–	–
Unspent receipts from 1999–00 where no s31 agreement was in place1		–	–
Adjusted Balance carried for previous period	–	**43,000**	**43,000**
Appropriation Act (No.2) 2004–05	–	–	–
Appropriation Act (No.4) 2004–05	–	–	–
Departmental Adjustments by the Finance Minister (Appropriation Acts)	–	–	–
Advance to the Finance Minister	–	–	–
Adjustment of appropriations on change of entity function (FMAA s32)	–	–	–
Refunds credited (FMAA s30)	–	–	–
Appropriation reduced by section 9 determinations (current year)2	–	–	–
Sub-total 2004–05 Annual Appropriation	–	**43,000**	**43,000**
Appropriations to take account of recoverable GST (FMAA s30A)	–	–	–
Annotations to 'net appropriations' (FMAA s31)	–	–	–
Total appropriations available for payments	–	**43,000**	**43,000**
Cash payments made during the year (GST inclusive)	–	–	–
Appropriations credited to Special Accounts (excluding GST)	–	–	–
Balance of Authority to Draw Cash from the CRF for other than Ordinary Annual Services Appropriations	–	**43,000**	**43,000**
Represented by:			
Cash at bank and on hand	–	**43,000**	**43,000**
Less cash held not appropriated	–	–	–
Receivable—departmental appropriations	–	–	–
Receivables—GST receivable from the ATO	–	–	–
Savings identified in the Budget process (carried forward)	–	–	–
Formal reductions of appropriations	–	–	–
Receivables—departmental appropriations (appropriation for additional outputs)	–	–	–
Payables—GST payable	–	–	–
Undrawn, unlapsed administered appropriations	–	–	–
Total	–	**43,000**	**43,000**

Footnote:
Under Section 31 of the *Financial Management and Accountability Act 1997* (the FMA Act), the Minister for Finance may enter into a net appropriation agreement with an agency Minister. Appropriation Acts nos. 1 and 3 (for the ordinary annual services of government) authorise the supplementation of an agency's annual net appropriation by amounts received in accordance with its Section 31 Agreement eg, receipts from charging for goods and services.

Although the Tribunal have operated and recorded receipts as though section 31 agreements were in place, receipts amounting to $244,844 collected in the period 01/07/1999 to 30/04/2000 have not been captured by a section 31 agreement.

As a result:

- Receipts collected from 1 July 1999 up to 30 April 2000 under the departmental outputs appropriations regime that were not captured by a section 31 agreement amounted to $244,844;
- As this amount remained unspent as at 30 June 2005, there has not been a contravention of section 83 of the Constitution nor section 48 of the FMA Act.

A year-by-year analysis of overstatement of the departmental output appropriations is given below.

	1997 –98	1998 –99	Total Pre-accrual Budgeting	1999 –2000	2000 –01	2001 –02	2002 –03	2003 –04	Sub-total	2004 –05	Total 1/7/99 to 30/6/05
Receipts affected	0	0	0	244,844	0	0	0	0	244,844	0	244,844
Unspent	0	0	0	244,844	0	0	0	0	244,844	0	244,844
Amount spent in accordance with appropriation	0	0	0	0	0	0	0	0	0	0	0
Amount spent without appropriation	0	0	0	0	0	0	0	0	0	0	0

Our current Section 31 Agreement was made on 2 December 2004 between our Native Title Registrar and the First Assistant Secretary (Division Manager), Government and Defence Division. It is understood that options are being examined for making available for spending any unspent receipts not previously captured by an agreement, to enable them to be spent in accordance with section 83 of the Constitution.

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

Particulars	Administered Expenses	Departmental Outputs	Total
Year ended 30 June 2004 (comparative period)	**$**	**$**	**$**
Balance carried from previous year	**–**	**5,487,260**	**5,487,260**
Correction to previous year	**–**	**2,415,000**	**2,415,000**
Appropriation Act (No.1) 2003–04	**–**	**33,929,000**	**33,929,000**
Appropriation Act (No.3) 2003–04	**–**	**–**	**–**
Departmental adjustments by the Finance Minister (Appropriation Acts)	**1,148**	**–**	**1,148**
Advance to the Finance Minister	**–**	**–**	**–**
Refunds credited (FMAA s30)	**–**	**–**	**–**
Appropriations to take account of recoverable GST (FMA s30A)	**–**	**1,147,832**	**1,147,832**
Annotations to 'net appropriations' (FMAA s31)	**–**	**239,927**	**239,927**
Other cash adjustments (please describe)	**–**	**–**	**–**
Adjustment of appropriations on change of entity function (FMAA s32)	**–**	**–**	**–**
Appropriation lapsed	**–**	**–**	**–**
Total appropriations available for payments	**1,148**	**43,219,019**	**43,220,167**
Payments made during the year (GST inclusive)	**(1,148)**	**(33,630,846)**	**(33,631,994)**
Appropriations credited to Special Accounts	**–**	**–**	**–**
Balance carried to the next period	**–**	**9,588,173**	**9,588,173**

Note 18: Assets Held in Trust

Other Trust Monies

This account holds monies 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 monies in the account.

	2005	2004
	$'000	$'000
Balance carried forward from previous year	**–**	–
Receipts during the year	**112**	19
Available for payments	**112**	19
Payments made	**(87)**	(19)
Balance carried forward to next year	**25**	–

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

1.1.1 Claimant application decisions
1.1.2 Claimant and non-claimant determination registrations
1.1.3 Indigenous land use agreement registrations

Output Group 2

1.2.1 Indigenous land use and access agreements
1.2.2 Claimant, non-claimant and compensation agreements
1.2.3 Future act agreements

Output Group 3

1.3.1 Future act determinations
1.3.2 Objections to the expedited procedure finalised

Output Group 4

1.4.1 Assistance to applicants and other persons
1.4.2 Notification
1.4.3 Reports to the Federal Court

Note 19A–Net Cost of Outcome Delivery

	Outcome	
	2005	2004
	$'000	$'000
Administered	**–**	–
Departmental	**31,918**	32,226
Total expenses	**31,918**	32,226
Costs recovered from provision of goods and services to the non-government sector		
Administered	**–**	–
Departmental	**(67)**	(249)
Total costs recovered	**(67)**	(249)
Other external revenues		
Administered	**–**	–
Departmental - Interest on cash deposits	**–**	–
Total other external revenues	**–**	–
Net cost/(contribution) of outcome	**31,851**	31,977

NOTES to and forming part of the Financial Statements for the year ended 30 June 2005

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

Output Group 1	**Output 1.1.1**		**Output 1.1.2**		**Output 1.1.3**		**Total Output 1**	
	2005	2004	**2005**	2004	**2005**	2004	**2005**	2004
	$'000	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000
Departmental expenses								
Employees	**1,471**	1,658	**287**	54	**948**	675	**2,706**	2,387
Suppliers	**811**	898	**158**	29	**522**	352	**1,491**	1,279
Depreciation and amortisation	**46**	57	**8**	2	**29**	23	**83**	82
Total departmental expenses	**2,328**	2,613	**453**	85	**1,499**	1,050	**4,280**	3,748
Funded by:								
Revenues from government	**2,475**	2,593	**482**	85	**1,593**	1,051	**4,550**	3,729
Sale of goods and services	**6**	23	**1**	1	**3**	-	**10**	24
Other non-taxation revenues	**-**	-	**-**	-	**-**	-	**-**	-
Total departmental revenues	**2,481**	2,616	**483**	86	**1,596**	1,051	**4,560**	3,753

Output Group 2	**Output 1.2.1**		**Output 1.2.2**		**Output 1.2.3**		**Total Output 2**	
	2005	2004	**2005**	2004	**2005**	2004	**2005**	2004
	$'000	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000
Departmental expenses								
Employees	**757**	1,714	**8,455**	5,793	**897**	1,245	**10,109**	8,752
Suppliers	**418**	894	**4,660**	3,021	**493**	650	**5,571**	4,565
Depreciation and amortisation	**23**	58	**259**	196	**28**	42	**310**	296
Total departmental expenses	**1,198**	2,666	**13,374**	9,010	**1,418**	1,937	**15,990**	13,613
Funded by:								
Revenues from government	**1,274**	2,667	**14,216**	9,017	**1,507**	1,939	**16,997**	13,623
Sale of goods and services	**3**	-	**28**	-	**3**	-	**34**	-
Other non-taxation revenues	**-**	-	**-**	-	**-**	-	**-**	-
Total departmental revenues	**1,277**	2,667	**14,244**	9,017	**1,510**	1,939	**17,031**	13,623

Output Group 3	**Output 1.3.1**		**Output 1.3.2**		**Total Output 3**	
	2005	2004	**2005**	2004	**2005**	2004
	$'000	$'000	**$'000**	$'000	**$'000**	$'000
Departmental expenses						
Employees	**546**	524	**1,437**	1,504	**1,983**	2,028
Suppliers	**301**	273	**792**	785	**1,093**	1,058
Depreciation and amortisation	**17**	18	**44**	51	**61**	69
Total departmental expenses	**864**	815	**2,273**	2,340	**3,137**	3,155
Funded by:						
Revenues from government	**918**	816	**2,417**	2,341	**3,335**	3,157
Sale of goods and services	**1**	-	**4**	-	**5**	-
Other non-taxation revenues	**-**	-	**-**	-	**-**	-
Total departmental revenues	**919**	816	**2,421**	2,341	**3,340**	3,157

Output Group 4	Output 1.4.1		Output 1.4.2		Output 1.4.3		Total Output 4	
	2005	2004	**2005**	2004	**2005**	2004	**2005**	2004
	$'000	$'000	**$'000**	$'000	**$'000**	$'000	**$'000**	$'000
Departmental expenses								
Employees	**3,840**	5,467	**1,001**	989	**541**	860	**5,382**	7,316
Suppliers	**2,116**	3,173	**551**	516	**299**	449	**2,966**	4,138
Depreciation and amortisation	**117**	193	**31**	34	**16**	29	**164**	256
Other	**-**	-	**-**	-	**-**	-	**-**	-
Total departmental expenses	**6,073**	8,833	**1,583**	1,539	**856**	1,338	**8,512**	11,710
Funded by:								
Revenues from government	**6,455**	8,620	**1,682**	1,540	**911**	1,339	**9,048**	11,499
Sale of goods and services	**12**	225	**4**	-	**2**	-	**18**	225
Other non-taxation revenues	**-**	-	**-**	-	**-**	-	**-**	-
Total departmental revenues	**6,467**	8,845	**1,686**	1,540	**913**	1,339	**9,066**	11,724

Note 19C–Major Classes of Administered Revenues and Expenses by Outcomes

	Outcome		Total	
	2005	2004	**2005**	2004
	$'000	$'000	**$'000**	$'000
Administered Revenues				
Sale of goods and services - Fees	**8**	10	**8**	10
Total Administered Revenues	**8**	10	**8**	10
Administered Expenses				
Refund of Fees	**5**	1	**5**	1
Total Administered Expenses	**5**	1	**5**	1

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.
Davenport Murchison application: this matter is before the Full Federal Court on appeal from a decision of Justice Mansfield (*Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory* [2004] FCA 472). His Honour made a determination of native title in relation to an area of land and waters south-east of Tennant Creek in the Northern Territory.
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.

Milestone agreement: an agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.

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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