



National
Native Title
Tribunal



Annual Report 2005–2006

Resolution of native title issues over land and waters.



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About this report

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

The Tribunal is a statutory authority and is therefore not compelled to observe the annual reporting requirements for government departments; however, it chooses to do so.

This annual report in book form is typeset in Palatino 10/13 point. Copies of it may be obtained from any registry of the National Native Title Tribunal (see back cover for contact details) in either book or CD-ROM format, or online at <www.nntt.gov.au> in html format that may be enlarged to suit the reader. The online and CD-ROM versions of the report also include a PDF version for downloading.

We draw attention to the online versions for those readers who prefer to enlarge the type and who may prefer to choose particular parts of the report for downloading. Upon request, the text of this report in whole or in part can be supplied free of charge in braille.

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

© Commonwealth of Australia 2006

ISSN 1324-9991

ISSN 1445-7776 (Online)

ISSN 1445-7784 (CD-ROM)

ISBN 0-642-48744-8

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National
Native Title
Tribunal



22 September 2006

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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 2006.

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

Yours sincerely

Graeme Neate
President

Resolution of native title issues over land and waters.

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President's Overview



The year in review

Introduction

Last year I noted that we have been through, and perhaps are near the end of, a ‘pioneering’ period when the law has been clarified on major native title issues and on numerous technical aspects of the *Native Title Act 1993* (Cwlth)(the Act). I also noted the introduction of the Tribunal’s new outcome and output structure against which we are reporting for the first time this year. The new outcome is: ‘the resolution of native title issues over land and waters’.

As in previous years, this report 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). But this year we have positioned ourselves for further change. We have a new output structure in place, we have developed a new Strategic Plan, we have implemented communication reform and we have contributed to the Australian Government’s reform agenda for key aspects of the native title system and the institutions that administer that system.

The focus and possible outcomes of the reform agenda are discussed later in this overview.

These reforms aside, the Tribunal faces significant challenges in its operating environment:

- At the rate that native title applications have been resolved to date, it will take many years to resolve outstanding native title applications and many older Indigenous Australians will not see their claims finalised.
- Clients and stakeholders can become frustrated at delays and the high cost of participating in the native title system.
- The negotiating positions of parties, especially government parties, remain pivotal to the timely achievement of quality outcomes.
- Native title determinations often deliver few direct benefits to Indigenous Australians and most determinations, in isolation, fall short of claimants’ aspirations.
- The Australian Government has initiated a whole-of-government strategy for the delivery of services to Indigenous people through regional structures, a strategy that will take some years to consolidate.
- There are finite resources available within the native title system.

These challenges are discussed later in this overview. Effective responses to these challenges require both innovation and leadership, and commitment to achieving results across the native title system. Some of those responses are likely to be found in the reform agenda.

The Tribunal's *Strategic Plan 2006–2008*, developed in the reporting period and discussed further in this overview (see p. 18) sets out how we will address these challenges and endeavour to influence the current environment in order to improve its efficiency and enhance client services.

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. The Tribunal is uniquely placed to participate in and make observations about the native title system from:

- a whole-of-process perspective—because the Tribunal is involved at each stage from providing pre-claim assistance through the registration, notification and mediation of claims to the registration of determinations of native title, and assistance with the negotiation of associated agreements (including indigenous land use agreements); and
- a national perspective—because the Tribunal operates in all areas where native title claims are made and other native title issues arise, and it deals with all parties and their representatives.

This report reflects some of the variations between states and territories in how native title issues are approached and resolved. It illustrates why 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 (the Court) 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.

I gratefully acknowledge the contribution of each member, the Native Title Registrar and the employees of the Tribunal during the year covered by this report. The work of the Registrar, Chris Doepel, was recognised in the 2006 Australia Day Honours list by the conferral of a Public Service Medal for outstanding public service in the development and implementation of legislation and policy relating to native title.

This overview discusses three broad topics: external factors affecting the Tribunal, trends within the Tribunal, and the context in which native title issues are and will be resolved.

The rest of the report includes not only information about various outputs but also some of the stories about negotiations and outcomes in human terms, giving a broader picture of what native title delivers to particular groups and wider sectors and communities. It provides a picture of how native title rights and interests are being recognised, often by agreement, alongside other rights and interests.

External factors affecting the Tribunal

The ways in which the Tribunal meets its obligations are significantly influenced by numerous factors which the Tribunal does not control, including developments in the law, policies and procedures of governments, procedures and orders of the Court, and the roles and capacity of native title representative bodies. During the reporting period, the Attorney-General announced potentially wide-ranging reforms of key aspects of the native title system which are likely to affect the way in which the Tribunal operates and the results that might be achieved. It is appropriate to note those potential reforms and their possible impact before discussing other external factors.

(a) Reforms of the native title system

Since the current native title system commenced to operate on 1 January 1994 it has been the subject of analysis and criticism. As the law and practice have developed, parties and parliamentarians, commentators and critics have focussed on various aspects of the system. Many reforms have been proposed. Some have been implemented.

The Tribunal has recognised that there are systemic issues that require attention and appropriate action, and that both legislative and procedural reform is required if the native title system generally (and the mediation process in particular) is to achieve the potential it offers.

In a speech delivered on behalf of Attorney-General Ruddock at a native title conference on 26 May 2006, Senator Scullion stated that the native title system 'is not achieving the outcomes which it should' and that 'resolution of native title issues within the current framework is too costly and time-consuming'. In the *Rubibi (No 7)* judgment delivered in April 2006, Justice Merkel went so far as to describe native title in Australia 'as being in a state of gridlock'.

Although this report demonstrates that the native title system is not in a state of gridlock, it is clear that some change is desirable.

On 7 September 2005, the Attorney-General had announced a plan for practical reform to improve the performance of the native title system. Although the increasing number of native title determinations and agreements demonstrated that the system was working, the Australian Government was concerned that the current framework was still too costly and too time-consuming.

The announced reforms will be focused largely on measures to promote resolution of native title issues through agreement-making wherever possible, in preference to litigation. The six interconnected aspects to the reforms include:

- measures to improve the effectiveness of native title representative bodies;
- amendment of the guidelines of the native title respondents' financial assistance program to encourage agreement-making rather than litigation;
- preparation of exposure draft legislation for consultation on possible technical amendments to the Act to improve existing processes for native title litigation and negotiation;
- an independent review of the claims resolution processes to consider how the Tribunal and the Federal Court can work more effectively in managing and resolving native title claims;
- an examination of current structures and processes of prescribed bodies corporate, including targeted consultation with relevant stakeholders;
- increased dialogue and consultation with the state and territory governments to promote and encourage more transparent practices in the resolution of native title issues.

Each aspect of the proposed reforms is relevant to the Tribunal's work. During the reporting period, however, the Tribunal's attention was focused primarily on the review of the claims resolution process which commenced formally with the appointment of two independent consultants, Mr Graham Hiley RFD QC and Dr Ken Levy RFD.

The expressed purpose of the review was to examine the respective roles of the Tribunal and the Court and inquire into and advise the Australian Government on measures for the more efficient management of native title claims within the existing framework of the Act. The review was to consider how native title claims can be 'most efficiently and effectively resolved'. It would also assess how the Tribunal and the Court 'can maximise the potential for native title claims to be resolved in a quicker and less resource-intensive manner, primarily through mediation and agreement-making, and where appropriate, with a greater degree of consistency in the manner in which claims are handled'.

The Tribunal participated actively in the review, making submissions and being represented by Member John Sosso on the Steering Committee overseeing the review. The consultants provided their report to the Attorney-General on 31 March 2006.

At the end of the reporting period, neither the consultants' report nor the detailed government response to it had been made public.

Some likely outcomes of the reform process were outlined in the speech delivered on behalf of the Attorney-General by Senator Scullion on 26 May 2006. Senator Scullion said that one challenge which must be addressed is to reduce the duplication of functions between the Federal Court and the Tribunal. In particular, the simultaneous mediation of a given claim by both institutions must be excluded. Another challenge is to ensure that the Tribunal can mediate more effectively. This will be achieved by conferring additional power upon the Tribunal, including powers to direct parties to participate in mediation and to produce documents.

Senator Scullion also said it is important that there be improved communication and co-ordination between the Court and the Tribunal in relation to individual claims and overall approaches to claims management. The Australian Government will also implement measures to reduce the existing backlog of those claims which have little prospect of success.

Whatever the outcomes of the review, and other changes to the native title system, the Tribunal has argued that any improvement to the processes and practices of the Tribunal and the Court will have a negligible effect on the resolution of native title claims by agreement if the parties to the proceedings are unwilling or unable to participate productively or in a timely manner. Important as the Tribunal and Court are to the operation of the system, it is the parties that determine whether, what and when any outcomes are agreed.

The process by which native title applications are resolved by agreement requires the active and positive involvement of governments. It also requires other respondent parties to have an incentive to consider and, where appropriate, negotiate options for settlement rather than proceed as if native title claims are necessarily headed for trial.

That much seems to be accepted by the Australian Government. The speech delivered in May 2006 stated that ‘changes to the system—and to the behaviour of key stakeholders—are needed’ to ensure that traditional rights are enjoyed by native title holders within their lifetimes.

Although it is possible for governments to adjust the statutory and institutional frameworks, ‘the key to securing efficient and enduring outcomes lies in the behaviour of the parties’. In finalising the package of reforms, the Australian Government will give priority to measures which ‘encourage stakeholders to focus on their direct interests in the outcome and their responsibilities within the system’.

One of the foreshadowed measures to reach that objective is amending the guidelines on the provision of financial assistance to respondents in native title claims to focus the

scheme more strongly on agreement-making in preference to litigation. The Australian Government's view is that third party respondents should only be involved in native title litigation so far as is necessary to protect their specific interests.

The Australian Government will also develop measures to encourage all parties participating in formal mediation to act in good faith. It will make changes directed to ensuring that both the Federal Court and the Tribunal can guide parties more effectively to facilitate agreement-making. Those cases in which agreement cannot be reached may be identified earlier and resolved more expeditiously by the Court.

The foreshadowed reforms should result in practical improvements to the system and, in particular, to more agreements reached in shorter periods and at lower average costs than often has been the experience to date. The implications of these various reforms on the work of the Tribunal will only become apparent once the changes are announced and implemented.

(b) Developments in the law

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

The legislative changes noted below had little impact on the operations of the Tribunal. Most of the judgments dealt primarily with technical aspects of the Act, while some finalised native title claims and gave additional insight into the challenges of native title litigation. Such judgments provide a context in which the Tribunal conducts its mediation practice and inform various decisions made by the Registrar and his delegates.

Legislation

Minor amendments were made to the Act by the *Financial Framework Legislation Amendment Act (No 1) 2006* and the *Statute Law Revision Act 2005* and through the *Statute Law Revision Act 2006* amendments to the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*.

The Native Title (Tribunal) Regulations 1993 were amended in July 2005 to remove the prescribed fees for inspecting the registers kept by the Native Title Registrar and for accessing records or information kept pursuant to s. 98A of the Act.

Amendments were also made to the Native Title (Indigenous Land Use Agreements) Regulations 1999 in March 2006 to prescribe the form for objecting to an alternative procedure agreement and inserting definitions of the different types of indigenous land use agreements (ILUAs) dealt with in those regulations.

The Native Title (National Aboriginal and Torres Strait Islander Land Fund) Repeal

Regulations 2005 were registered on 11 July 2005. They repealed the Native Title (National Aboriginal and Torres Strait Islander Land Fund) Regulations which were made redundant following the repeal in 1995 of s. 201 of the Act, which provided for the establishment of the Fund. The reason for repeal of that section was the establishment of the Indigenous Land Corporation.

The Native Title (Representative Bodies – Audit of Financial Statements) Regulations 2005 were registered on 8 December 2005. They prescribe qualifications of auditors of native title representative bodies.

Judgments and litigation

The Court delivered more than 40 written judgments on matters involving native title law during the year. Some of those were at the end of trials and contained determinations that native title does or does not exist. 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 continued the trend in recent years of the Federal Court delivering scores of written judgments each year on native title matters. Consequently, the legal environment in which some negotiations occur or cases are argued is increasingly certain.

The High Court refused to grant special leave to appeal from judgments of Full Courts of the Federal Court in relation to particular native title claims in South Australia and the Northern Territory. Consequently, those proceedings are finalised and the determinations made by the Full Court in each case stand.

Members of the Tribunal are also involved in the development of the law as they make future act determinations under the Act. None of those determinations were the subject of Federal Court review during the reporting period.

Summaries of the main points of significant judicial decisions and Tribunal determinations are set out in Appendix II p. 108.

The potentially most significant outstanding legal 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. A test case involving a claim for compensation for land in the Yulara townsite in central Australia was dismissed in May 2006. The Court decided, on the case presented, that the applicants had not shown that native title subsisted over the application area when the compensation acts occurred. Consequently, the compensation application was dismissed without the key legal issues about compensation being resolved. At the

end of the reporting period there were 12 current compensation applications; a small proportion of the 604 current native title applications.

Although some litigation is necessary to clarify legal issues or determine apparently intractable disputes, it is worth noting the length, cost and unpredictable outcomes of native title trials as other reasons for encouraging parties to attempt to negotiate outcomes.

During the reporting period, individual judges of the Federal Court delivered written reasons for judgment in relation to four claimant applications that had gone to trial. In each case the hearings extended over a substantial period (from nearly one year to five years) and there were numerous hearing days:

- *Gawirrin Gumana v Northern Territory*—approximately 19 hearing days
- *Sampi v Western Australia*—39 hearing days
- *Rubibi Community v Western Australia*—53 hearing days
- *Risk v Northern Territory*—70 hearing days.

Appeals have been lodged in respect of the judgments in all of those cases.

In his final judgment on the Rubibi litigation to areas in and around Broome, Justice Merkel stated that native title claims 'are not only complex but impose demands on the parties and the Court that are unprecedented in adversarial litigation'. His Honour explained that, although it is 'obviously unsatisfactory' for any litigious dispute to take over ten years to be finally resolved, 'there are special circumstances attending the resolution of native title disputes that make the delay in achieving resolution understandable, even if not acceptable'.

An indication of the amount of work involved in preparing and presenting cases for trial can be illustrated by examples in two of those matters. In the Yulara compensation claim Justice Sackville noted that one of the expert witnesses had spent almost 500 days working on the case. The expert's report was 364 pages long with 6,000 pages of appendices but much of it was rejected by the Court in light of objections made under the Evidence Act.

When discussing the evidence in the Larrakia people's claim to land in and around Darwin, Justice Mansfield noted that both the Northern Territory and Darwin City Council had presented 'very extensive evidence' on the issue of extinguishment. The territory's 'Tenure Materials' ultimately comprised 53 lever arch files of documents containing land tenure, mining tenure, petroleum tenure and fisheries tenure documents.

Soon after those two cases had been dismissed, Justice Merkel observed that Indigenous communities should appreciate the risk of failure in a native title claim.

Such failure, ‘which recent experience reveals is far from hypothetical, ... can have devastating consequences for the claimant community’. He urged parties to native title disputes to ‘increase their endeavours to reach compromises’.

Like other litigation, native title litigation need not be conducted on an ‘all or nothing’ basis, and resolution by agreement can be to the benefit of all the parties. For example, Justice Merkel indicated that the quest of state parties to ensure that Indigenous communities participate in the economic, social and educational benefits available in contemporary Australia can be advanced when a native title claim is resolved or succeeds. If claimant communities and state parties can achieve a mediated outcome, they can ensure that a broad spectrum of mutual benefits can follow the resolution of native title claims. Those benefits can include ILUAs, traineeship programs and various forms of financial and other support for the native title holding body.

In his Honour’s view, ‘if compromises are to be achieved, the cause of reconciliation between Australia’s past and present will be greatly advanced and the economic, social and educational benefits available to all Australians may be better able to be accessed by members of claimant communities’.

(c) Policies and procedures of governments

Role of governments in native title proceedings

It is apparent that most, if not all, parties want agreed outcomes rather than be engaged in native title litigation. Governments play a critical part in achieving those outcomes. The agreement-making processes administered by the Tribunal are more productive where the relevant government provides proposals for native title and other outcomes. Without the support of governments, consent determinations of native title cannot be made and many other options for settlement cannot be employed.

For the first time since the commencement of the Act almost 12 years earlier, federal, state and territory ministers with responsibility for native title met in Canberra on 16 September 2005. The meeting was convened by Attorney-General Ruddock and considered the promotion of effective communication and transparent processes, the role of agreement-making and native title-related outcomes in resolving native title issues, and meeting the future challenges in the system. Discussion between jurisdictions led to, among other things, a commitment to develop complimentary strategies to improve the way native title issues are addressed and resolved by all jurisdictions.

At the Attorney’s invitation, the Federal Court and Tribunal were represented at part of that meeting and Justice French and I addressed the ministers and their advisers.



At the September 2005 meeting of ministers responsible for native title were: Front (from left) Justice Robert French of the Federal Court, Attorney-General the Hon. Philip Ruddock, Attorney-General QLD the Hon. Linda Lavarch, Deputy Premier WA the Hon. Eric Ripper and Tribunal President Mr Graeme Neate. Back (from left) Attorney-General SA the Hon. Michael Atkinson, Deputy Director-General Department of Lands NSW Mr Des Mooney, A/g CEO Department of Justice and Community Safety ACT Ms Elizabeth Kelly, Minister for Planning and Lands NT the Hon. Dr Chris Burns, Attorney-General VIC the Hon. Rob Hulls.

I urged governments to consider, or continue, as appropriate:

- ensuring that their criteria for settling determinations of native title (such as connection guidelines) are no more stringent than the law requires and that those criteria are available to the parties;
- adopting a cooperative or consultative approach to the preparation of connection material, for example by providing relevant information from government records or by indicating to claim groups which matters have been covered by the government's own research to avoid unnecessary duplication of research effort;
- being willing to express a preliminary view, based on their own researches or the connection material provided by claim groups, about the prospects of a determination of native title;
- being willing to commence substantive negotiations toward an appropriate outcome before being ultimately satisfied that the native title claim group can establish connection to a level that might succeed in securing a litigated determination from a court.

Governments need to be transparent as to:

- the criteria by which they assess claimant applications for possible settlement;
- the options that they are (or are not) willing to put on the table for possible settlements; and
- the processes they follow to make decisions about settling claims.

Events since the meeting of ministers indicate that governments are moving in that direction. The communiqué issued after the meeting acknowledged that ‘transparent procedures can contribute to achieving successful and timely native title outcomes’ and that ‘early information exchange between governments, and other parties, can assist with more efficient resolution of native title issues’.

The meeting also acknowledged, among other things, that:

- a range of approaches may be adopted to resolving native title depending on the particular circumstances; and
- native title-related outcomes can deliver flexible and practical benefits to claimants, which may address the broader aspirations of native title claimants, in addition to resolving native title issues.

In the speech delivered on behalf of Attorney-General Ruddock on 26 May 2006, Senator Scullion stated ‘the behaviour of State and Territory governments is critical to the success of any reforms’. Furthermore, if third party respondents should only be involved in native title litigation so far as is necessary to protect their specific interests, the responsibilities of state and territory governments, as primary respondents, will assume greater importance.

In particular, those governments are best placed to assess matters regarding Indigenous peoples’ connection to land and waters in negotiations over native title, and to ensure that the system operates in a fashion which is more transparent to all parties. Senator Scullion said that state and territory governments should be giving priority to expediting assessments of connection. It is unacceptable to the Australian Government that such assessments may take several years to resolve. Once governments have made such assessments, they should be prepared to explain clearly their position to other interested parties.

In that vein, in April 2006, the Government of Western Australia published *Preparing Connection Material: A Practical Guide* as part of what the Deputy Premier described as its ‘commitment to resolve native title by agreement, wherever possible’. The booklet was compiled as a companion to the *Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title*, published in October 2004.

(d) 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 and regional basis, and supervises the mediation of native title determination applications and compensation applications. The case management practices of the Court can influence the practices of the Tribunal and the allocation of its resources. During the reporting period, as mentioned above, the review into the native title claims processes between the Court and the Tribunal was conducted. The

recommendations from the review and associated improvements to communication practice and procedures between the two institutions will be implemented in the next reporting period.

(e) Native title representative bodies

Functions, powers and capacity

Native title 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.

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.

In March 2006, the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account (the 'PJC') reported on the operation of representative bodies (for further information about this report, see p. 98). The PJC made recommendations in relation to such matters as the development of key performance indicators to assess the relative effectiveness of representative bodies in meeting their statutory obligations, processes for the re-recognition of representative bodies once their recognition period has expired, and the funding and staffing of representative bodies including means of improving the recruitment and training of staff.

One of the six interconnected aspects to the Australian Government's reforms of the native title system is a set of measures to improve the effectiveness of native title representative bodies. The Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs, has portfolio responsibility for representative bodies. He has been working on reforms to be included in the overall legislative package to be introduced in Parliament later in 2006.

The three key elements to the legislative reforms are that:

- eligibility for recognition as a representative body will be extended to bodies incorporated under the *Corporations Act 2001*;

- the provisions governing withdrawal of recognition for representative bodies will be simplified;
- a system of fixed term recognition of representative bodies will be introduced, for periods between one and six years.

The reforms will also include provision for multi-year funding of representative bodies to assist them in planning resources and make them more competitive in attracting skilled staff.

If those reforms result in outcomes such as more stable staffing of representative bodies and a capacity to plan confidently for longer terms, then the system will operate better because those bodies are better equipped to perform their statutory functions.

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.

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

(a) Changes to membership

The term of Professor Douglas Williamson RFD QC as a part-time member of the Tribunal concluded in December 2005. Professor Williamson had served for four consecutive terms over a total of nine years. In that period he conducted claimant mediations and was involved in a range of future act work in Western Australia, Victoria and other parts of Australia. He was present on 13 December 2005 for the determination by consent of the native title claim to land in the Wimmera region of Western Victoria, a matter involving more than 450 persons and organisations and which he had mediated.

Members Dan O'Dea and Ruth Wade were reappointed for terms of two years.

At the end of the reporting period there were 13 members—10 were full-time and three were part-time. Details of the Tribunal's membership are found on p. 36 and p. 106.

(b) Shifts in 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. Under the new output structure notification is not reported on as an output. Nevertheless, it is an indicator of the number of applications that will be referred to the Tribunal for mediation.

At 30 June 2006, there were 553 claimant applications at some stage between lodgement and resolution. The total was lower than the 584 current claimant applications at 30 June 2005. In the reporting period, 71 claimant applications were discontinued, dismissed, withdrawn, struck-out, combined with other applications or were the subject of approved native title determinations, and 40 new claimant applications were lodged.

In the period covered by this report 47 registration test decisions were made, 7 fewer than the 54 decisions made in the previous year. They included 12 registration tests made on applications for the second, third or fourth time. For further information about the registration testing carried out by the Tribunal see output 3.1, p. 69.

The registration test workload in claimant applications has plateaued 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 (for example, as a result of agreements) and to which the registration test has to be applied again. Those factors are likely to be influenced by any amendments to the Act in relation to the circumstances in which the registration test will or will not have to be applied to amended claimant applications.

The level of notifications dropped slightly in 2005–06, with 22 claimant applications being notified, compared with 24 in the previous year. Seventeen 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. Approximately 87 per cent of current claimant applications had been notified by 30 June 2006.

As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. At 30 June 2005, 346 current matters were with the Tribunal for mediation. At 30 June 2006, 328 current claimant applications had been referred to the Tribunal for mediation, including 16 matters that were referred to it during the past year.

Although 59 per cent of current applications have been referred to the Tribunal for mediation, many of them are not being substantively mediated. Much work remains to be done in 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 mediation with respondent parties will occur. It is to be hoped that various aspects of the reform of the native title system will lead to more applications being actively mediated.

(c) 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 on a case-by-case basis to prepare applications or help them at any stage in matters related to a native title proceeding, and help them to negotiate agreements such as ILUAs. The increased emphasis on assistance the Tribunal may give to parties on a case-by-case basis, and to stakeholders on a sectoral basis, is reflected in the new output structure at outputs 1.1 and 1.2 and in the *Strategic Plan 2006–2008*, explained elsewhere in this report. Of note are two factors: the communication reform and the increasing level of sophistication of information the Tribunal can provide. We are seeing the increased use of geospatial and research assistance in the resolution of overlapping claims and in assistance to non-native title parties. For more information about this type of assistance see the case study, p. 52.

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 52 during 2004–05, to 68 in 2005–2006, bringing a total of 250 ILUAs on the Register of ILUAs at 30 June 2006. That was the highest number of ILUAs registered in a reporting period to date and reflects the increasing amount of this type of agreement-making.

This report contains information about the level of ILUA activity and other agreements around the country. For further information, see output group 2, pp. 57–60.

(d) Increase in the number of determinations of native title

Although no longer counted as an output, in the reporting period the Native Title Registrar registered 21 determinations of native title—13 that native title exists and 8 that native title does not exist in relation to specific areas of land or waters. Details of some determinations are discussed in Appendix II, p. 108 and shown in Figure 3, p. 46.

These determinations are on the public record held by the Tribunal in the National Native Title Register and available to be viewed through the website at <www.nntt.gov.au/registers/Register.html>. 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 was more than the 16 determinations registered in 2004–05. Most of the determinations that native title exists were made by consent of the parties and in two cases the registration of the determination was conditional on the registration of an ILUA.

(e) 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.

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 68 of the 74 future act determinations were made by consent. That was a substantial increase on the numbers in 2004–05.

Fourteen of the 68 ILUAs registered in that period involved exploration or mining.

ILUAs are being used increasingly to grant 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) has provided the basis for various agreements. ILUAs between the Minerals Council of Australia's Victorian branch and the Dja Dja Wurrung people and the Wamba Wamba, Barapa Barapa and Wadi Wadi peoples set out standard terms and conditions that explorers seeking a tenement grant can choose to adopt, rather than enter into negotiations with traditional owners in those areas. The ILUAs were registered in May and were celebrated at a ceremony in Bendigo in June 2006.

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.

There has not been the expected decrease in the number of objections to the use of the expedited procedure under the Act. Rather, the number of objections rose from 761 in 2003–04 to 1,230 in 2004–05 and increased to 1,387 in 2005–06. However, as the number of s. 29 notices has increased significantly in Western Australia, the number of objections as a percentage of the number of s. 29 notices fell during the reporting period.

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 even where grantee parties have executed regional standard heritage agreements. Reviews of some standard agreements have been undertaken and other reviews will occur in 2006–07.

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 2005–06, 97 (54 per cent) were finalised by the withdrawal of the objection because of an agreement.

(f) 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'.

The Tribunal started 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 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 on the outcome and output structure see pp. 40–1. In its review of the Tribunal's *Annual*

Report 2004–2005, the PJC welcomed these developments. The positive responses to the effectiveness indicators provide high benchmarks for the years ahead.

(g) Strategic Plan 2006–2008

During the reporting period the Tribunal developed a new Strategic Plan to replace its *Strategic Plan 2003–2005*. The *Strategic Plan 2006–2008* describes the environment in which the Tribunal operates (set out earlier in this overview) and the role, purpose, values and behaviours of the Tribunal. Our primary purpose is ‘to work with people to resolve native title issues over land and waters’.

The Tribunal’s efforts are focussed on our clients and stakeholders, our services, our people and our business performance. Through the implementation of the strategies outlined in the plan, we seek to achieve the following improvements:

- an increase in the rate of resolution of native title issues;
- a reduction in overall transaction costs and time to resolve native title issues;
- greater innovation and efficiency in the operation of the native title system;
- more productive working relationships with stakeholders and other agencies;
- greater consideration by governments of alternative means of resolving native title and related issues;
- increased capacity for parties to more readily resolve their native title issues;
- flexible deployment of resources within the Tribunal;
- diversity in our approaches to challenges within the native title system.

The Strategic Plan is discussed further on p. 88. The full text of the Strategic Plan is available on the Tribunal’s website at <www.nntt.gov.au/about/strategic06.html>.

(h) Communication reform

Another factor to enable the Tribunal to respond readily to the changing environment this year has been the introduction of communication reform. Based on two sets of independent research conducted and reported on in the previous two financial years, the communication reform comprised the development of a new visual identity and ways to ensure that the Tribunal communicates clearly, effectively and efficiently with all its clients and stakeholders. For further information about the Tribunal’s communication initiatives, see output 1.2, p. 54.

(i) Budgetary outlook

In recent years, including the reporting period, the Tribunal has not used the entire amount appropriated to it. The Parliament appropriated \$32.013 million for the reporting period. Of that, \$30.460 million was spent.

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 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 current four year budget cycle. Rising costs will erode the value of that funding. If the Tribunal is given additional powers and functions there could be increasing pressure later in the current funding cycle.

The effect of the budgetary outlook on the Tribunal will become clearer in the years ahead. To meet the budgetary challenges there has been some restructuring of the organisational side of the Tribunal. That restructuring continues 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 its outcome.

At the first determinations that native title exists in Victoria, Tribunal President Graeme Neate (second from left) accompanies other dignitaries through the welcoming smoke ceremony of the Wimmera native title holders, Little Desert National Park, 13 December 2005.



Context of native title

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. In particular, I have discussed the following identified trends:

- the law in relation to native title will become clearer;
- the volume of native title work will increase;
- agreement-making will become the usual method of resolving native title issues;
- the form and content of agreements will vary from place to place;
- timeframes for negotiating agreements should, on average, be reduced;
- there will be an increased focus on 'second generation' native title issues;
- the level of resources available to parties will directly affect the pace and quality of agreement-making;
- the Federal Court will continue to affect, if not drive, native title processes;
- there will be an increased focus on who can have access to and use information generated in relation to native title matters;
- the resolution of native title issues will not, of itself, resolve other social issues;
- international legal developments will continue to be relevant to native title law and practice.

Rather than repeat the discussion of each of those trends, this part of the overview focuses on various aspects of the context or environment in which native title issues are resolved, and considers the place of native title in a broader policy framework.

Legal context, community attitudes and the projected workload

Indigenous Australians are seeking recognition as the people for their traditional country and a say in what happens on that country, and they will use whatever legal regime is available to obtain that recognition (be it native title laws, cultural heritage laws, land rights laws and so on).

In light of experience of negotiations and litigation under the Act, there is an increased acceptance of the following four propositions as the context in which native title claims are resolved:

- some groups of Aboriginal people will find it difficult, if not impossible, to prove their ongoing connection to their traditional country to meet the criteria in the definition of 'native title' in s. 223(1) of the Act as interpreted by the High Court in the Yorta Yorta case;
- some groups of Aboriginal people who *can* prove their connection to that standard will find that, because of past extinguishment, there are few areas of land or waters in their traditional country where native title could be recognised;
- in areas where non-exclusive native title rights could be recognised, the extent of

those rights and their exercise will be limited as a result of past dealings with land or current tenures and land use;

- in many areas, the resources spent on intensive connection research and tenure research will be inversely proportional to the native title outcome that might be achieved (whether by agreement or after trial). In other words, the more that is spent, the smaller the native title outcome. It should also be acknowledged that the costs of the process are not only monetary. There are significant emotional, cultural, social and other costs in the native title process.

It is clear however, that the operation of the native title system over the past decade has influenced thinking and attitudes at a community and sectoral level. There has been widespread adoption of positive attitudes toward native title negotiation rather than litigation, resulting in a steady increase in parties seeking to settle matters by agreement, and an increasing proportion of native title claims being resolved by consent. As the law has become clearer, legal uncertainty is no longer as much a barrier to parties entering native title negotiations and reaching agreements.

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 87 native title determinations made and registered between 1 January 1994 and 30 June 2006, 60 were determinations that native title exists in all or part of the determination area. Most of the determinations that native title exists (47, or 78 per cent) were made by consent of the parties. In the year covered by this report, 21 determinations of native title were made and registered. Of those, 13 were that native title exists and most of those determinations (11, or 85 per cent) were made by consent.

Benefits to Indigenous Australians often arise from negotiated agreements about native title and related matters. There is a general willingness to consider outcomes that do not necessarily involve a determination of native title.

There is also a willingness by industry sectors (especially the mining industry) and governments (especially some local governments) to engage local Aboriginal communities or groups in discussions about what happens on their traditional country, whether or not those communities or groups have statutory procedural rights to negotiate. In other words, such groups now have a seat at the negotiating table. This is evidence of a dramatic change in the attitude of many people to native title and to involving Indigenous Australians in decision-making.

It is in that context that the Tribunal will deal with the ongoing and increasing workload in relation to native title applications that are already in the system. As

at 30 June 2006 there were 604 current native title applications (553 claimant, 12 compensation and 39 non-claimant applications). That total is just over 35 per cent of the 1,708 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 foreshadowed reforms to the native title system should help to meet those challenges. Whatever changes are made, the Federal Court and the Tribunal will need to continue to work closely with each other and with the parties to encourage timely, just, and enduring outcomes.

Native title is not a panacea, but other outcomes can be negotiated

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

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

On that basis the Preamble recites that 'a special fund needs to be established to assist them to acquire land'. Subsequently, the Aboriginal and Torres Strait Islander Land Fund and the Indigenous Land Corporation were established to do, in part at least, what native title laws would not and could not achieve.

The third, and to date unrealised, element of the scheme that includes the Act was the 'social justice package'. The Preamble alludes to it when it recites:

The law, *together with initiatives announced at the time of its introduction and others agreed on by the Parliament from time to time*, is intended ... to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders, and is intended to further advance the process of reconciliation among all Australians (emphasis added).

The speech delivered on behalf of the Attorney-General to the native title conference in May 2006, highlighted the potential which native title offers to advance the position of Indigenous people. The speech expressly acknowledged, however, the limitations of native title. 'It is not a panacea for all or even most, of the complex issues which we currently confront in seeking to secure progress for Indigenous Australians.'

In his judgment at the end of the long-running Rubibi native title litigation, Justice Merkel drew to the attention of at least the state parties and the Indigenous parties ‘the desirability of seeing the resolution of native title claims as a means to an end, rather than an end in itself’. As his Honour stated:

Achieving native title to traditional country can lead to the enhancement of self respect, identity and pride for Indigenous communities. However, native title can also be seen as a means of Indigenous people participating in a more effective way in the economic, social and educational benefits that are available in contemporary Australia. Obtaining a final determination of native title, where that is achievable, can be a stepping stone to securing those outcomes but cannot, of itself, secure them. (*Rubibi Community v Western Australia (No 7)* [2006] FCA 459 at [166])

A similar message was contained in the Attorney-General’s speech which stated that ‘the “system” of native title is not an end in itself. It is there to facilitate, address and resolve the different interests of parties to native title claims’. He noted that the process of identifying interests and negotiating outcomes presents opportunities to address issues beyond the simple determination of rights over land, including measures to promote economic development for Indigenous Australians, opportunities for capacity-building and support to Indigenous communities, and assistance in securing long-term and lasting benefits from the land. He continued, ‘engagement between parties on native title processes can assist in building and sustaining meaningful and productive relationships, which should endure beyond the temporal confines of a mediation or a trial’.

Those statements reflect not only recognition of the limitations of the native title system but also an increasing trend to see native title within a broader social, economic and legal context.

Although compliance with the current state of the law is critical to achieving 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.

Respondent parties, especially state and territory governments, have the capacity to negotiate about a range of possible outcomes that satisfy the interests of the parties, bring finality to the native title proceedings, are in addition to or in place of determinations that native title exists, and can be delivered at lower cost than full blown court proceedings.

Such options might include grants of title or other interests in land, roles in managing what happens on land (such as joint management of conservation areas or reserves), symbolic recognition of traditional affiliations with the land (such as signage indicating that an area is the traditional country of a named group of people), employment and other economic opportunities in relation to land, and financial payments or grants to a group (such as assistance for capital works or the administration of a tribal council or to establish an effective decision-making framework). Results along these lines have already been achieved or are being negotiated.

They illustrate some of the innovative thinking that might be used to deal with the issues that prompted the lodgement of some native title claims, and to satisfy the interests of all the parties without necessarily having a determination that native title does or does not exist as a central component of the settlement.

The time may also 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. One aspect of alternative land schemes might be the extent to which other people would have entitlements, in areas where the resident community includes Indigenous people who are not native title holders or traditional owners.

The result might involve some new legislation, or a revision of current legislation (such as cultural heritage or land rights schemes), to provide harmony between the various regimes and allow each to inform the options available under others.

By-products of native title

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

Although native title itself may not be an economically valuable commodity, significant economic benefits as well as heritage protection and other outcomes are being secured by groups as a by-product of native title processes. One benefit from those procedural rights can be the capacity to negotiate training, employment and business opportunities in relation to enterprises on particular areas of land, engagement in cultural heritage programs, and employment in national parks and other conservation areas.

People are using their procedural rights under the Act and other legislation to negotiate agreements before, after, and independently of a determination of native title.

In a broader sense Aboriginal people and Torres Strait Islanders are involved in negotiations about matters, in ways and with people that could not have been imagined a decade ago. There has been a change in the mindset of many Australians, particularly in key industries, so that it is increasingly part of day-to-day business to engage in discussions or negotiations with Indigenous people about a range of land use matters.

Many of those negotiations proceed irrespective of whether the group has proved or can prove that it has native title. Indeed, many agreements (including ILUAs) are made long before native title is shown to exist and, potentially at least, with groups who could not prove that they have native title. Business can then proceed without the delay of waiting for claims to be resolved, Indigenous groups can benefit from the agreements, and relationships can be created or strengthened.

Some sectors have moved beyond strict compliance with the law to try to establish sustainable partnerships with local Indigenous communities.

The change in outlook is reflected in various statements on behalf of the mining industry. The Memorandum of Understanding signed by the Mineral Council of Australia and the Australian Government in June 2005 provides for a partnership between them ‘to work together with Indigenous people to build sustainable, prosperous communities in which individuals can create and take up social, employment and business opportunities in mining regions’. Among the outcomes that the activities under the MOU are meant to deliver are increased employability and jobs for Indigenous people, increased business enterprises for them, prosperous Indigenous individuals and families, and communities that endure beyond the life of mining in the relevant regions.

For some industries, particularly the resources sector, a resident community with strong traditional ties to an area may provide a stable source of employees or business contractors. That in turn depends on such factors as the size of the community, the age range of members of the community and whether the people have sufficient education and relevant skills for the purpose. In other words, there may be real opportunities for economic development in a community of native title holders so long as people have or can acquire the relevant knowledge and skills.

Australia, particularly the minerals and energy sector of the economy, is experiencing a substantial and growing demand for resources from trading partners. That demand creates the need for employees, including people who are educated and trained across a wide range of relevant professional and technical disciplines. The Chamber of Minerals and Energy Western Australia, for example, has estimated that the resources sector will require almost 20,000 new employees in 2015. Being able to attract the right

people at the right price to do work in the resources sector is vital to that state's (and any other state or territory's) continued competitiveness.

The resources boom also encourages the development of associated infrastructure. These and other works create potential employment and business opportunities for Indigenous groups, including those who live on or near the land where these activities occur. The challenge is to grasp the opportunities presented by the current global demand for Australia's natural resources and provide opportunities for real, and long term, economic advancement of Indigenous people.

The potential for such economic advancement was highlighted during the period covered by this report at the Inaugural Aboriginal Enterprises in Mining and Exploration Conference in Alice Springs on 4 November 2005. Among the points made at that conference were:

- Aboriginal communities need to be involved in decision-making about their traditional land;
- native title processes have given Aboriginal people more power to negotiate, but there are still power imbalances;
- communities need to be proactive and develop a community-minerals industry strategy;
- Aboriginal people can use their cultural knowledge to develop business enterprises such as tourism;
- communities need to think and plan long-term with a mix of investments to ensure that the value of their money is retained;
- Aboriginal communities who derive income from their lands may consider investing in Indigenous enterprises.

Employment and business opportunities for native title claimants or holders can arise in a range of other activities. For example, an ILUA registered in May 2006 in relation to a proposed golf course and resort development in Creswick in rural Victoria, provides employment and training opportunities for the Dja Dja Wurrung people, a commitment to display and sell local Indigenous art, and signage around the golf course and resort to explain Dja Dja Wurrung cultural heritage to resort guests. Cultural management plans have been developed under the ILUA which also delivers financial benefits to the Dja Dja Wurrung people.

Native title and whole-of-government service delivery

At a national level, the Australian Government's vision for the administration of Indigenous affairs following the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) is 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. 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. 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 Australian 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.

Native title claims and outcomes (particularly determinations that native title exists and ILUAs) are either directly or indirectly relevant to a range of matters of concern to Indigenous communities including land ownership and use, protection of cultural heritage, employment and training, community governance and service delivery and the provision of infrastructure.

There needs to be a collaborative approach to such issues by Australian Government departments and agencies such as the Indigenous Land Corporation, Indigenous Business Australia and the National Native Title Tribunal. Steps along that path are being taken at national and state levels. The Tribunal is represented on the Native Title Coordination Committee (NTCC), a committee chaired by the Native Title Unit of the Attorney-General's Department. The NTCC includes representatives from the Indigenous Justice and Legal Assistance Division of the Attorney-General's Department, the Federal Court, the Tribunal, and the Office of Indigenous Policy Coordination. The NTCC meets regularly to monitor the performance of the native title system and the achievement of the Australian Government's native title objectives. The Tribunal assisted the NTCC during the reporting period through its contribution to the collection of data.

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'.

At their first meeting in September 2005, Commonwealth, state and territory ministers with responsibility for native title agreed to build on the agreement reached by COAG in June 2004, and to a renewed commitment to work together to make the native title system more effective to achieve improved outcomes for all parties.

Governance issues before and after determinations of native title

Good governance is relevant to the conduct and resolution of native title claims. Native title claim groups need to organise themselves internally in order to negotiate an outcome with respondent parties (sometimes including neighbouring groups with disputed overlapping claims) or to argue the case in the Court. Where there is a determination that they have native title, the Act requires that a body corporate be established to hold the native title rights and interests in trust for the common law holders or to act as their agent or representative. The legal options need to be considered carefully.

Importantly for the group and for those who may wish to negotiate with them, clear governance structures need to be in place so that the procedural and other benefits conferred on native title holders can be enjoyed. Groups who leave internal governance issues to be resolved until after they have achieved a determination of native title risk not achieving appropriate governance structures and hence delaying or not gaining benefits for their communities.

At the end of the reporting period there were 60 registered determinations that native title exists. As more such determinations are made and large areas of the country are subject to those determinations, prescribed bodies corporate (PBCs) are assuming increasing importance as the bodies with whom other people should negotiate in relation to use of those areas of land.

Even when such corporations are established, there are real practical issues about how they will be resourced to function. This issue has arisen in the context of claim resolution and future act negotiations. 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.

In its March 2006 report on the operation of native title representative bodies, the PJC recommended that the Commonwealth examine appropriate means for resourcing the core responsibilities of PBCs and also recommended that governments widely

publicise the availability to PBCs of different funding sources, particularly in relation to the land management functions of PBCs.

The Australian Government is well aware of the situation. As noted earlier, one of the six aspects of the proposed reforms to the native title system is an examination of current structures and processes of PBCs. As the Australian Government recognises, the operation of the native title system over the longer term will depend on the ability of PBCs to effectively manage and protect determined native title in accordance with the wishes and interests of the native title holders. The Attorney-General has indicated his particular interest in measures to improve the capacity of PBCs and their flexibility in dealing with native title.

Other governance issues arise once native title has been determined to exist over an area of land. The native title holders assume specified procedural rights under the Act in relation to certain types of future acts, such as the right to negotiate about the proposed acquisition of land by the government for the benefit of third parties or the grant of mining interests. One governance issue for some communities is how to define the role of people who, although native title holders, live far away from their traditional land. What part should they have in decision-making about the land and how can they exercise their rights in a timely and effective way?

In most (perhaps all) communities, people with historical links to the land (sometimes from long periods of residence) live alongside the native title holders. One challenge facing governments, resources sector and Indigenous communities in the current minerals boom is how to deliver sustainable economic special benefits to Indigenous communities in a region, including native title holders, particularly where native title claims are unresolved and communities include people who are not native title holders.

There can be tension about the governance of land, where the balance of decision-making power has shifted to the native title holders, or may have shifted within the native title holding group. Arrangements may need to be negotiated within the community to reflect the new legal reality while accommodating the interests of others with longstanding links to the community and the area. People from outside the community may need to adjust how they deal with the community.

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 the speech given to the native title conference in May 2006 on behalf of the Attorney-General, Senator Scullion said that the Australian Government wishes to encourage a greater focus on post-determination interests at an early stage in the

process for resolution of claims. This includes working with stakeholders on matters such as the management of interests following the determination including through the negotiation of ILUAs and the establishment of PBCs.

Customary law and native title

In recent months, increasing attention has been given to the issue of whether Aboriginal customary law should be taken into account in the administration of various aspects of the Australian legal system. It may be appropriate to reiterate the central role of customary law in the continuation of native title.

The High Court's judgment in *Mabo v Queensland (No 2)* made it clear that native title has its origin in, and is given its content by, the traditional laws acknowledged and customs observed by the Indigenous people who possess the native title. In a later judgment, the High Court stated that the 'underlying existence of the traditional laws and customs is a necessary pre-requisite for native title'.

The definition of 'native title' in s. 223 of the Act adopts language from the *Mabo (No 2)* judgment. It states that native title rights and interests are 'possessed under the traditional laws acknowledged, and the traditional customs observed', by the relevant Aboriginal peoples or Torres Strait Islanders. Those people have a connection with the land or waters 'by those laws and customs'.

The scope of the statutory definition has been considered in numerous High Court and Federal Court judgments. Much information has been exchanged in the course of negotiations, and much evidence has been adduced in trials, to establish whether and to what extent traditional laws and customs survive and are observed in relation to particular areas of land and waters. Claimant and compensation applications have succeeded or foundered accordingly.

Importantly, perhaps, in the current debate about whether or when customary law should be considered, the statutory definition of 'native title' is confined to the rights and interests that are recognised by the common law of Australia.

Various judges have stated that native title cannot be recognised under s. 223 of the Act if it is 'antithetical to fundamental tenets of the common law', or it has 'incidents that are repugnant to the common law', or if the relevant traditional laws and customs 'clash with the general objective of the common law of the preservation and protection of society as a whole'. To date, however, there have been no examples of native title rights and interests that might come within those categories. Native title will also not be recognised if there is no appropriate legal or equitable remedy available to protect and enforce the rights and interests.

International law developments and native title

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* (Cwlth) and the International Convention on the Elimination of All Forms of Racial Discrimination. One emerging document that may become relevant to any international assessment of the native title regime is a proposed United Nations Declaration on the Rights of Indigenous Peoples (the 'Declaration'). Work on the draft Declaration has been undertaken for more than 20 years, first by the United Nations Working Group on Indigenous Populations and then by the Working Group established by the Commission on Human Rights in 1995. The eleventh session of the open-ended inter-sessional working group on the draft Declaration was held in December 2005 and in January and February 2006. Australia was one of the member states represented in this process.

On 29 June 2006, the Human Rights Council adopted a resolution on the draft Declaration, and recommended that the General Assembly of the United Nations adopt the non-binding Declaration.

The draft Declaration recites that there is an 'urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources'. It includes articles concerning Indigenous peoples' rights:

- not to be forcibly removed from their lands or territories, and for any relocation to be with their free, prior and informed consent and agreement on just and fair compensation (Article 10);
- to maintain, protect and have access in privacy to their religious and cultural sites (Article 13);
- to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard (Article 25);
- to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired (Article 26.2);
- to redress (by means of restitution or just, fair and equitable compensation) for the lands, territories and resources which they have traditionally owned or otherwise

occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (Article 27);

- to determine and develop priorities and strategies for the development or use of their lands or territories and other resources (Article 30).

If the Declaration is adopted in the terms currently proposed, states would, in consultation and co-operation with Indigenous peoples, take the appropriate measures, including legislative measures, to achieve the ends of the Declaration (Article 37). That would include providing effective mechanisms for prevention of, and redress for, any action which has the aim or effect of dispossessing Indigenous people of their lands, territories or resources (Article 7.2(b)).

Any such Declaration might provide another standard by which native title laws and practice in Australia are assessed.

Section 209 of the Act requires the Aboriginal and Torres Strait Islander Social Justice Commissioner to report 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. Those reports are wide-ranging documents which raise various policy issues. Sometimes they deal directly with aspects of the Tribunal's work. A Declaration would presumably be taken into account in future reports.

Conclusion

In his speech in May 2006 to the native title conference, Senator Scullion said on behalf of the Attorney-General that 'we should not forget that native title occupies a permanent place in Australia, and rightly so'. The ongoing acceptance of native title is apparent in many ways.

This annual report illustrates that acceptance and demonstrates that:

- there is a continuing and increasing trend to resolve native title issues (such as claimant applications and proposed future acts) by agreement;
- through its range of services the Tribunal can better assist parties to reach just and enduring outcomes;
- significant outcomes have been achieved for many groups of Indigenous Australians under the native title scheme;
- much remains to be done, and all parties need to think creatively about the options for resolving native title issues.

The Tribunal has long supported the goals of achieving more native title and related outcomes in quicker and less expensive ways, and of ensuring that processes facilitate rather than get in the way of securing tangible outcomes. The Tribunal remains willing and able to respond to improvements to the native title system and to assist parties to negotiate outcomes that are just and enduring.

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 resolve native title issues over land and waters. This is done primarily 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 (the Court) 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 (APS) 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 who was reappointed for two years from 1 January 2006.

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 2.2, p. 61).

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 outputs 2.3, 3.3 and 3.4 in the Report on Performance).

Members of the National Native Title Tribunal, Adelaide, March 2006: (back row from left) John Catlin, Dan O'Dea, Laurence Boulle, Ruth Wade, Robert Faulkner, Barty McFarlane, Graham Fletcher, Neville MacPherson, John Sosso; (front row from left) Registrar Chris Doepel, Chris Sumner, President Graeme Neate, Fred Chaney, Gaye Sculthorpe.



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 reporting period, there were 13 members, comprising three presidential members (all full-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:

- Professor Douglas Williamson RFD QC concluded his term as a part-time member of the Tribunal on 16 December 2005;
- Dan O'Dea was re-appointed as a full-time member of the Tribunal for a period of two years from December 2005;
- Ruth Wade was re-appointed as a part-time member of the Tribunal for a period of two years from February 2006.

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.

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).

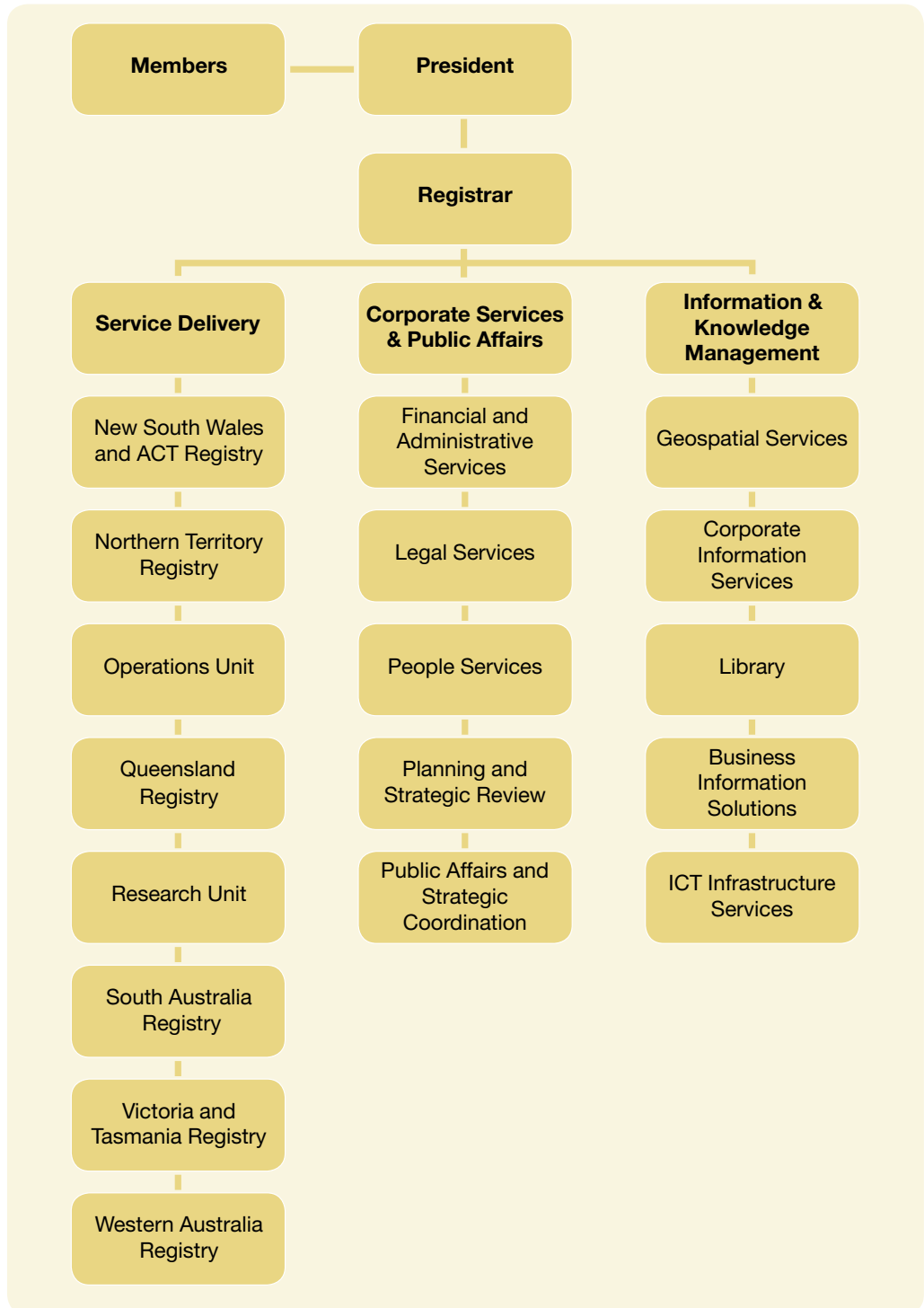
Organisational structure

The Tribunal currently has three divisions: Service Delivery, Corporate Services & Public Affairs, and Information & Knowledge Management (IKM).

The Director of Service Delivery is Hugh Chevis and the Director of Corporate Services & Public Affairs is Franklin Gaffney who was appointed in November 2005.

Following the departure of the Chief Information Officer in late March 2006, a review of the IKM division was undertaken to examine the division's structure and its staffing requirements to meet future operational requirements. A report of the review was delivered at the end of the reporting period and will be considered by the Executive Team during the next reporting period.

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.

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.

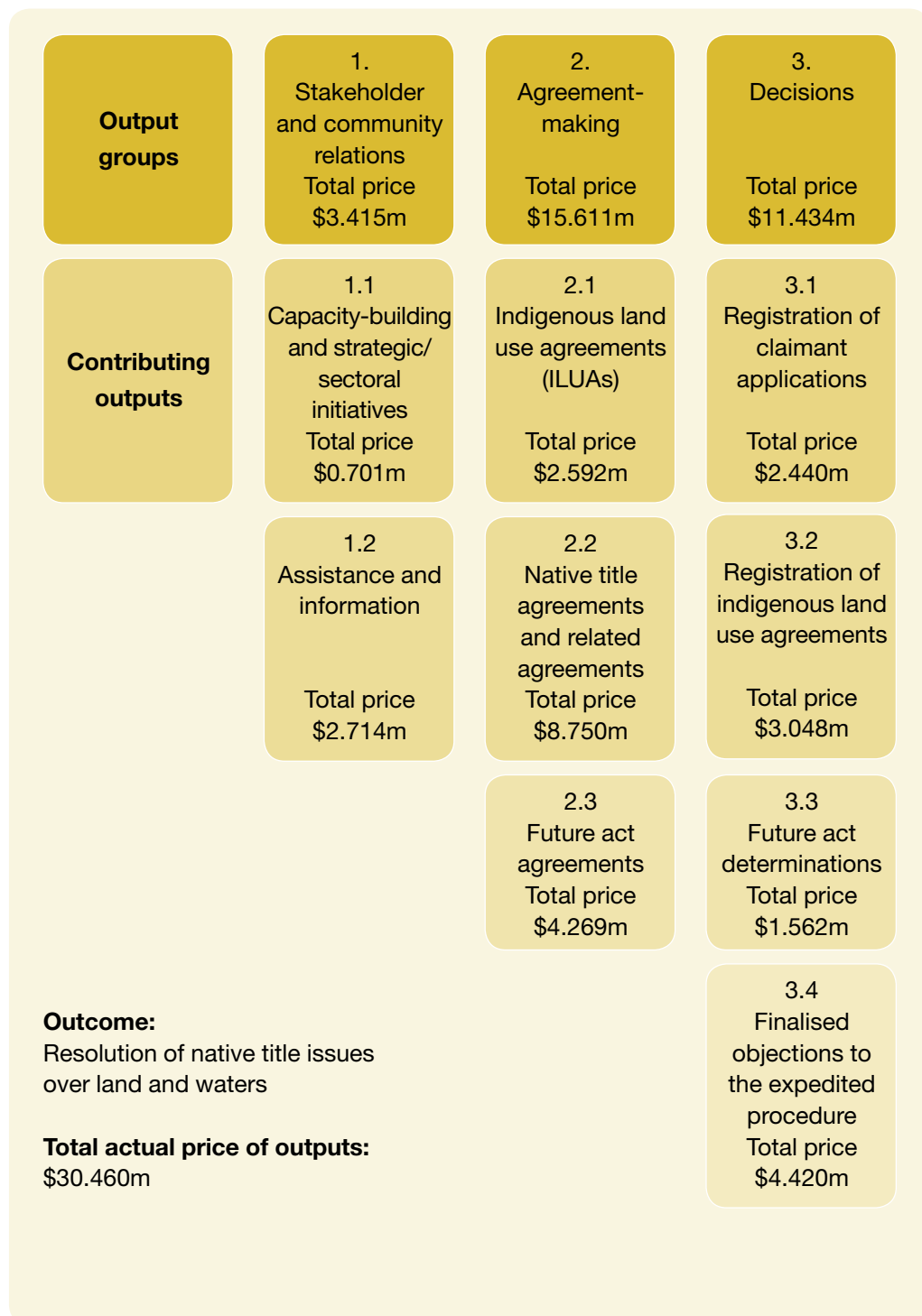
For the current reporting period, the Tribunal’s outcome ‘Resolution of native title issues over land and waters’ and three output groups are applicable. This outcome statement and outputs structure came into effect on 1 July 2005 to more clearly reflect the purpose of the Tribunal and its changed operating environment.

The output groups are:

- stakeholder and community relations;
- agreements; and
- decisions.

Details of the Tribunal’s performance and costs in accordance with this framework are provided in the Report on Performance, pp. 43–4.

Figure 2 Outcome and output framework 2005–06



Report on Performance



Financial performance

The Tribunal's expenditure for the 2005–06 financial year was \$30.460m. This was \$1.6m less than the departmental appropriation in the Attorney-General's Portfolio Budget Statements, although the Tribunal exceeded the output estimates in a number of areas.

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

Table 1 identifies the actual price of each output group and outputs during the reporting period against the full-year budget and quantifies any variation.

Table 1 Total resources for outcome

	(1) Full-year budget	(2) Actual	Variation (column 2 minus column 1)	Budget 2006–07
	2005–06 \$'000	2005–06 \$'000	2005–06 \$'000	\$'000
Departmental appropriations				
Output group 1				
Output 1.1	479	701	222	864
Output 1.2	2,425	2,714	289	2,457
Subtotal output group 1	2,904	3,415	511	3,321
Output group 2				
Output 2.1	3,427	2,592	-835	5,170
Output 2.2	13,504	8,750	-4,754	10,700
Output 2.3	2,358	4,269	1,911	3,142
Subtotal output group 2	19,289	15,611	-3,678	19,012
Output group 3				
Output 3.1	2,474	2,440	-34	2,290
Output 3.2	2,967	3,048	81	3,716
Output 3.3	927	1,526	599	995
Output 3.4	3,516	4,420	904	3,547
Subtotal output group 3	9,884	11,434	1,550	10,480
Total revenue from other sources	64	70	6	214
Total for outcome (total price of outputs and administered expenses)	32,077	30,505	-1,572	32,881

	2005–06	2006–07
Average staffing level (numbers)	250	240

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 year actual output figures for the first three financial quarters to inform the output pricing for the 2006–07 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 2005–06

The Tribunal followed the process outlined above during this reporting period.

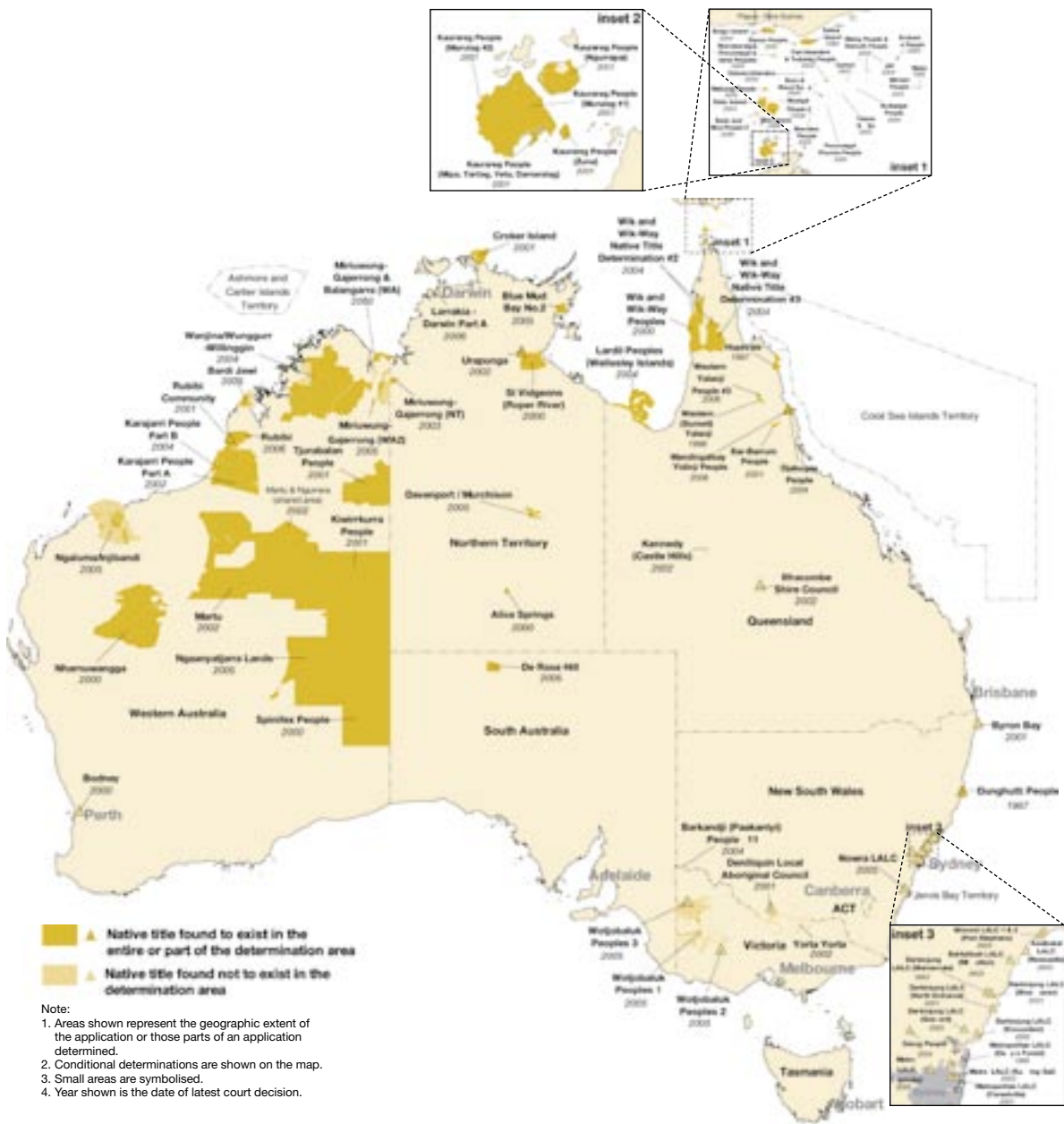
Performance against effectiveness indicators

The Tribunal's new outcome and outputs structure came into effect on 1 July 2005 and this reporting period is the first time that the Tribunal is recording its performance against the new structure. Included within the structure are three effectiveness indicators for the single outcome of 'resolution of native title issues over land and waters':

1. Improvement in the quality of native title and related agreement-making
2. Increase in the proportion of native title and related agreements by:
 - increase in agreement-making as an alternative to litigated outcomes
 - increase in indigenous land use and future act agreement-making as alternatives to arbitration
3. Less than 5% of decisions successfully appealed or reviewed.

The Tribunal has used this reporting period to move toward benchmarking against indicators 1 and 2 and will report on effectiveness in these areas in its Annual Report 2006–2007.

Figure 3 Map of native title determinations to 30 June 2006



Total area of determinations by state or territory

Category	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
▲	0	0.1	12,738.1	35,554.2	1,865.1	0	398.1	582,504.5	633,486.1
▲	0	874.2	310.8	248.2	0	0	10,519.5	29,473.9	41,426.6
	0	874.3	13,048.9	35,802.4	1,865.1	0	10,917.6	612,378.4	674,886.7

Data Statement

Spatial data sourced from and used with permission of:
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
© The State of Queensland (Qld) for that portion where their data has been used.

Overview of current applications

Between the commencement of the Act on 1 January 1994 and the end of the reporting period, a total of 1,708 native title applications were made, comprising claimant, non-claimant, compensation and revised native title determination applications, as shown in Table 2 below.

Table 2 Native title applications made and finalised since commencement of the *Native Title Act 1993* (Cwlth)

Type of application	Number of applications made	Number of applications finalised*
Claimant	1,424	871
Non-claimant	251	212
Compensation	32	20
Revised Native Title Determination	1	1
Total	1,708	1,104

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

At the end of the reporting period 604 native title applications were at some stage between filing and resolution, and consisted of 553 claimant applications; 39 non-claimant applications; and 12 compensation applications.

At the end of the reporting period the following number of matters were registered:

- 450 applications were on the Register of Native Title Claims:
 - 86 applications had not been accepted for registration
 - 34 applications remain to be tested for registration, and
 - 9 applications were not identified for registration testing.
- 87 determinations were on the National Native Title Register
 - 27 determinations where native title does not exist
 - 60 determinations where native title does exist.
- 250 agreements were on the Register of Indigenous Land Use Agreements

The total number of native title determinations registered during the reporting period was 21, compared to 16 in the last reporting period. Of these 21, 13 were consent determinations (including 11 that native title exists), four were litigated and four were unopposed (non-claimant).

Table 3 Native title applications made and finalised 2005–06

Type of application	Number of applications made	Number of applications finalised*
Claimant	40	71
Non-claimant	19	8
Compensation	0	4
Total	59	83

* 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, 59 new native title applications were made, the details of which are set out in Table 3. The number of non-claimant applications made is consistent with the last reporting period, in which 18 were made, and there was a slight increase in the number of claimant applications made compared to the 32 made in the last reporting period. The increase in numbers is also reflected in the number of applications finalised. Although this is not a large increase (83 compared with 78 in the last reporting period) it reflects the sustained effort to resolve native title matters. The national picture of other native title activity, that follows, illustrates this point.

National picture of other native title activity

During the reporting period the number of agreement-making activities across the country stood out against a background of increased exploration and mining in the current resources boom.

Various agreements were made as part of the resolution of native title determination and future act applications. In Queensland, the focus on ILUAs reflected the Queensland Government's policy to encourage parties to use ILUAs to resolve native title issues. The Tribunal provided negotiation assistance for 18 of the 20 ILUAs from Queensland registered in 2005–06. A highlight was the Coolgaree Bay Sponge Farm Agreement on Palm Island—the first step in the development of an Indigenous-owned and operated sea sponge farm (for further information, see the case study, p. 60).

During the previous reporting period in the Northern Territory, the largest simultaneous negotiation of ILUAs in Australia's history occurred between the Territory Government, the Northern Land Council (NLC) and the Central Land Council (CLC). These ILUAs settled native title issues over 27 national parks and reserves and paved the way for co-management of parks and reserves between the government and local Indigenous people. The Tribunal assisted extensively by checking the draft agreements and accompanying documents to ensure they were compliant with the Act and the regulations, and registration of the 27 agreements during the reporting period went smoothly with only one objection to the registration of one ILUA.

In Victoria, the determinations of native title in the Wimmera region in relation to a claimant application made by the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and

Jupagulk peoples were the highlight of 2005–06. For the first time in the state, all parties agreed that native title claimants had rights and interests over some of the areas they claimed. The consent determinations followed 12 months of intensive mediation. The Tribunal played a key role in managing the mediation process which involved more than 450 people and organisations with an interest in the claimed areas.

In Western Australia, the focus was on future act agreement-making in the resource-rich areas of the state such as the Pilbara, Kimberley and Goldfields. Representative bodies took advantage of opportunities for agreements with mining companies and regional partnerships which led to training and employment for Indigenous people. However, because of this intensive focus on future acts, the progress of native title claims slowed down.

Productive relationships and collaboration between the Tribunal and its stakeholders were also a significant trend across the country. They were the result of long-term work by the registries to build networks with, and between, native title stakeholder groups by providing information, assistance and mediation services.

In South Australia, for example, the Tribunal set up an informal meeting between key stakeholders in July 2005, which led to a more integrated approach to resolving native title issues by linking the making of ILUAs to the resolution of claims. The discussions resulted in a greater focus during regional planning on prioritising those claims that were more likely to be finalised because agreements could be made.

In the Northern Territory and New South Wales, the interaction between the Tribunal and the representative bodies or the body fulfilling equivalent functions (under s. 202 of the Act) was more positive than in previous years.

Overall, there was an increased sense of ‘getting on with business’. Some parties appeared to have more confidence in the native title processes and requested mediation and other assistance from the Tribunal more readily than in previous reporting periods.

Strategies to maintain the momentum of agreement-making

As stated in the Tribunal’s *Strategic Plan 2006–2008*, our primary purpose is to work with people to resolve native title issues over land and waters. This report illustrates how the Tribunal has done that in the current reporting period. Also during this period the Tribunal explored new strategies to not only maintain this momentum but to accelerate the achievement of outputs wherever possible.

Two key strategies were developed and will be applied in 2006–07:

- a more consistent national approach to case management, by the development and implementation of template case management plans; and
- the development and implementation of an improved prioritisation and categorisation framework for claimant mediation and agreement-making.

Output group 1 — Stakeholder and community relations

Output 1.1—Capacity-building and strategic/sectorial initiatives

Description

Initiatives in this output category include large-scale projects and activities contributing to strategic planning of native title activities with stakeholders and building the capacity of participants in native title processes.

These are part of the Tribunal’s key role in informing stakeholders about the native title processes and establishing relationships with, and between, stakeholders.

Performance

Performance indicators for capacity-building and strategic/sectorial initiatives are:

- Quantity—the number of initiatives completed within the reporting period
- Quality—80% of respondents are satisfied with the quality of the initiative*
- Resource usage— average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	5	8
Quality	See note below*	
Average price per unit	\$ 95,722	\$ 87,625
Total price of output	\$479,000	\$701,000

*Note: The qualitative measure was not assessed this reporting period as standards of measurement were not introduced until the third quarter after the majority of initiatives had been completed.

Comment on performance

Tribunal registries continued their work to establish productive environments for native title activities by maintaining links with stakeholders and creating networks between them. Initiatives in this area included setting up and coordinating strategic committees and regular forums for discussions, such as the Queensland Native Title Liaison Committee. A forum for stakeholders to solve problems and look for opportunities to align activities and allocate resources effectively, its members include the Queensland native title representative bodies; local, state and commonwealth governments; peak industry groups and the Federal Court. The committee held two meetings during the reporting period.

In July 2005, the South Australian registry of the Tribunal set up an informal meeting with representatives from the state and the Aboriginal Legal Rights Movement (the representative body for South Australia) and with the consultant who leads the Statewide ILUA Strategy. The objective was to explore ways to integrate the Federal Court program for the resolution of native title claims and the state's ILUA strategy. Subsequently, participants showed an increased focus on prioritising native title claims that were more likely to be finalised because agreements could be made.

In New South Wales, the Tribunal's registry initiated a program where, for the first time, representatives from the state and New South Wales Native Title Services Ltd (the body fulfilling the functions of the native title representative body for that state under s. 202 of the Act) discussed, within a Tribunal-mediated context, the application of the state's requirements for credible evidence to particular native title applications. Meetings helped strengthen relationships with the state and Native Title Services, and promoted a productive dialogue between these stakeholders.

Output 1.2—Assistance and information

Description

This output category covers a wide range of Tribunal services to assist native title claimants and other participants in native title processes.

Under the Act, the Tribunal provides various types of assistance—from help with the preparation of applications and information about native title, to the provision of maps, research reports, workshops, seminars and media information.

Performance

The performance indicators for assistance and information are:

- Quantity measure— number of assistance services or products
- Quality measure—80% of respondents are satisfied with the service or product
- Resource usage— average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	505	461
Quality	80% of stakeholders are satisfied	94% of stakeholders were satisfied
Price per unit	\$ 4,800	\$ 5,887
Price for output	\$2,425,000	\$2,714,000

Comment on performance

One of the most significant types of assistance the Tribunal provided as part of this output category was technical and geospatial assistance in relation to ILUA applications. On request from parties, the Tribunal checked draft ILUA applications and accompanying documents to ensure that they met the legal requirements for registration. The Registrar's delegates gave comments and the Tribunal's geospatial services also provided advice and maps to ILUA parties before the applications were lodged for registration. The majority of comments on ILUA drafts were given to parties in Queensland (21) and Victoria (18), with smaller numbers to parties in the Northern Territory (3), Western Australia (3) and South Australia (1).

The Tribunal also continued to conduct information sessions and workshops for various client groups. For example, in Queensland, case managers held 11 workshops with native title claimants to clarify the mediation processes and the role of applicants, and explore options to resolve their claims. The Western Australian registry organised three workshops with claimants in the central Goldfields. The Tribunal's legal services conducted five specialist workshops for representative body employees in Queensland, Western Australia and Victoria.

In Western Australia, the state's Office of Native Title requested a workshop to discuss the Tribunal's response to its discussion paper 'Agreement-making Strategy—Alternative Settlement of Native Title'. The Tribunal facilitated a high-level strategic workshop where Office of Native Title representatives and Tribunal members discussed a process to move claims towards settlement without litigation.

In Victoria, the Tribunal worked closely with local governments in the north-west of the state, organising meetings and providing information to help build their capacity to participate in forthcoming mediations. The Victoria/Tasmania registry also continued its 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.

Throughout the reporting period employees of the Northern Territory registry conducted an access and awareness program, going out to communities and agricultural shows to promote the services of the Tribunal and provide information on how to make use of those services.

Case study

Research assistance for overlapping claims

In May 2006 the Research Unit of the Tribunal was asked to produce a report to assist in the mediation of two overlapping native claims in South Australia.

Based on publicly available material, the research report revealed that the two groups have different systems governing the transmission of rights to sites in the area and there was a long history of migration in the region. The report also indicated that there are many histories or 'Dreaming' tracks crossing the area which is rich in mythology. Heritage survey reports prepared over the preceding 30 years showed that both groups had been willing to work together to protect their heritage in that area.

In June 2006 the Tribunal met with the claimants, their representatives and the native title representative body to try to resolve the disagreement over the overlap. Over the course of the meeting the claimants gained an increased understanding of the native title process and the key principles involved. The Tribunal member, Bardy McFarlane, also pointed out that the Tribunal's research showed that both groups did have an interest in the area, and emphasised that they had previously cooperated to protect their heritage.

The claimants suggested that a Deed of Cooperation might be a way to acknowledge each others' interests and resolve the disagreement. A Deed was drawn up and signed at the meeting. It provides that the groups will work cooperatively together in dealing with any developments in the area and in protecting their heritage.

Although the claim boundaries will remain as they are until a determination of native title is made, it is anticipated that the agreement will allow third parties to enter into negotiations over the area. In addition, with the overlap no longer contested, both groups are now in a stronger position to negotiate with the State Government in the resolution of their native title claims.

Tribunal Member Bardy McFarlane and Senior Research Officer Dr Rita Farrell provided research assistance which was instrumental in the resolution of a disputed overlap of two native title applications.



Tribunal geospatial specialists continued to play a key role in assisting claimants and other Tribunal clients. For example, geospatial experts assisted at the North West Goldfields Land Summit in Western Australia and the Central and Western Land Summits in Queensland. By visualising proposed boundary changes for the participants during the meetings, they helped improve the understanding of parties in relation to the spatial aspect of the native title process which assisted in making decisions.

Working closely with the Research Unit of the Tribunal, geospatial staff linked historical, family and clan information with location details in research reports related to areas in Western Australia and South Australia. This 'geo-enabling' allowed parties to visualise and research details in relation to other material such as claim boundaries; language and linguistic boundaries; cultural sites and land features, such as watercourses; property and tenure information. The Tribunal provided these 'geo-enabled' research products to parties as a CD package, together with training on their use.

The Tribunal also continued to provide custodial native title geospatial datasets to clients online in compliance with the Australian Government Spatial Data Access and Pricing Policy, through Geoscience Australia.

Native TitleVision, the Tribunal's online self-service system which gives clients and stakeholders the ability to visualise and analyse spatial information on native title matters, gained prestigious recognition during the reporting period. In September 2005 it won the Asia-Pacific Spatial Excellence Award in the category of Community, recognising products that make a difference to the community via 'grass roots' initiatives, educational programs, new services, extension programs and/or tools that permit the widespread use or access to spatially derived products or services. For further information, see p. 101.

Communication reform and information products

As explained in the President's Overview (see p. 18) the Tribunal commenced a reform of its external communication during the reporting period.

The features of the new visual design are reproduced in this annual report, and include:

- the addition of a third design element in the Tribunal's logo, i.e. a symbol representing people and their relationship to country;
- correct size reproduction of the Commonwealth Coat of Arms; and
- promotion of the Tribunal's outcome statement in communication products and electronic communication.

The Tribunal produces two national newsletters, both of which adopted the new visual identity during the reporting period. *Talking Native Title* provides general native title news each quarter and has a distribution of more than 4,000 copies (see over); and *Native*

Title Hot Spots contains information on legal developments such as judicial decisions and Tribunal determinations. It 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 delivered electronically to more than 700 people. Five issues were published during the reporting period. Both publications are available on the Tribunal's website at <www.nntt.gov.au/publications/newsletters_index.html>.

Additionally during the reporting period, readers were introduced to a new subscription opportunity for state-based updates on native title news issued in an e-newsletter direct to their in-box. The first editions of *Talking Victoria*, *Talking South Australia* and *Talking Western Australia* were made available in March 2006.

The *Short guide to native title and agreement-making* was updated and republished as *About Native Title* in the new corporate design, as was *Using the Registers of the National Native Title Tribunal*. Other publications, including the popular *Native Title Facts*, will be reissued under the new design as printed copies run out.

Other, targeted information products produced during the year included three brochures about the determinations of native title in the Western Yalanji, Mandigalbay Yidinji and Wimmera matters.

Client satisfaction for *Talking Native Title*

As part of the effectiveness measures for this output, client satisfaction of *Talking Native Title* was evaluated in June 2006. *Talking Native Title* is one of the Tribunal's primary stakeholder information sources. The evaluation was included in mailed copies of issue 19. This was the second edition of the newsletter to be printed in the Tribunal's new corporate style.

Results revealed a 94 per cent satisfaction rate with the newsletter, with 56 per cent being highly satisfied with the product, rating it 8 out of 10 or better.

More than 100 responses were received within the first eight days of the survey, indicating a real interest in the product, that it is read as soon as received and that clients are keen to be involved in the way the Tribunal presents information to them.

Responses were received from a range of stakeholders. Legal clients rated the product as highly as claimants, and pastoralists and miners were equally satisfied. Comments included that the product:

- is easy to read and well designed;
- is clearly recognisable;
- looks interesting and people wanted to pick it up;
- cuts through the jargon;
- shows that the Tribunal wants to provide information.

Training for the media

During the reporting period at the Western Australian Registry a workshop was given for media advisers and communications officers in Western Australia working with native title representative bodies and state departments with a role in native title. There were 14 participants in the workshop, which developed from discussions between the Tribunal, the Western Australian Office of Native Title, and the Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation.

The aim of the day was to provide an opportunity for public affairs professionals working in the areas of native title, indigenous land issues, heritage and culture to improve the broader community's understanding of these issues through media or other communication strategies.

When CEO of Public Sector Mapping Australia Dan Paull (left) presented the Asia-Pacific Spatial Excellence Award (community category) to Manager of Geospatial Services Peter Bowen, he acknowledged the quality of NativeTitle Vision and the strength of the Tribunal's submission, September 2005.



Output group 2 — Agreement-making

Output 2.1—Indigenous land use agreements

Description

This output category covers finalised ILUA negotiations and milestone agreements leading to the final agreement, where the Tribunal provided negotiation assistance.

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. There are three types of ILUAs: area agreements, body corporate agreements and alternative procedure agreements.

The ILUA scheme facilitates agreement-making by allowing a flexible and broad scope for negotiations about native title and related issues, including future acts. ILUAs are often negotiated to resolve issues during the mediation of native title determination applications.

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

Performance

The performance indicators for ILUAs are:

- Quantity— number of 2.1(a), 2.1(b) and 2.1(c) agreements
- Quality—clients’ perception of the quality of the agreement-making process*
- Resource usage—average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	67	185
Quality	Clients’ perception of the agreement-making process that their expectations were met	See Table 5
Average price per unit	\$ 51,135 (combined)	
2.1(a)		\$ 51,135
2.1(b)		\$ 17,045
2.1(c)		\$ 7,673
Total price for output	\$3,427,000	\$2,592,000

* Note: Clients’ perception of quality was measured for a number of criteria. As durability is assessed over time, durability measures are not available for this output as all of the agreements were completed during this financial year.

Comment on performance

Table 4 Quantity of ILUAs achieved by state or territory

Type of agreement	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2.1a Fully concluded ILUA and use and access agreement negotiations	0	1	0	16	0	0	1	1	19
2.1b Milestone agreements in ILUA negotiation outside NTDAs**	0	0	0	6	31	0	0	0	37
2.1c Milestone agreements in ILUA negotiation with NTDAs	0	1	2	30	90	0	1	5	129
Total	0	2	2	52	121	0	2	6	185

**native title determination applications

Table 4 shows a continuing trend during the reporting period for more ILUA negotiations generated from native title determination applications than ‘stand-alone’ ILUAs. A number of reasons explain the Tribunal’s diminishing role in providing negotiation assistance for stand-alone ILUAs. For example:

- Parties may be developing their second or third ILUA and no longer require the same level of assistance they have received previously.
- The Tribunal’s previous assistance in working with sectoral interests to develop a ‘template’ to meet their needs has resulted in a reduced number of requests to the Tribunal to provide negotiation assistance for some specific ILUAs. The mining template in Victoria is an example (for further information about the mining ILUAs see output 2.3(a) p. 67).

Table 5 Clients’ perception of the quality of the agreement-making process as indicated by their satisfaction

Criteria	Measure	Satisfaction rate
Process	Satisfaction with the Tribunal mediator’s conduct and their experience of the process and its fairness	77%
Efficiency	Cost and time effective, value from the outcome	77%
Empowerment	Education of parties about the processes, and problem solving, and if the agreement-making process equips them to deal with disputes in the future	94%
Effectiveness	Extent to which a settled outcome will be achieved	94%
Durability	Extent to which the outcome endures over time	N/A
Relationship	Extent to which the negotiation process increases understanding and improves the relationship between the parties	97%

In all cases the majority of people surveyed found the Tribunal had met or exceeded their expectations for each criterion, apart from the durability of the outcome, which was not measured. For more information, see 'Accountability to clients', p. 100.

2.1a Fully concluded ILUA negotiations

During the reporting period the Tribunal concluded negotiations for 19 ILUAs. This apparent increase over last year's performance (6) is a direct result of the introduction of the Tribunal's new output structure which came into effect in this reporting period. This output category includes concluded negotiations of stand-alone ILUAs as well as ILUAs generated from native title determination applications, which were previously included under the category 'claimant, non-claimant and compensation agreements'.

Eighteen of the 19 concluded ILUA negotiations flow from agreement negotiations generated from native title determinations, with nine having a direct relationship to one of four consent determinations mediated by the Tribunal.

The stand-alone ILUA negotiation was for the development of a sea sponge farm within 21 small sea areas around the Palm Islands, 56km north-west of Townsville in Queensland (see the case study on p. 60).

2.1b Milestone agreements in ILUA negotiations outside the mediation of native title determination applications

The milestone agreements achieved, under this limb of the output, reflect activity in Queensland and South Australia only. The larger proportion was in South Australia and reflects pastoral and fishing negotiations.

2.1c Milestone agreements in ILUA negotiations inside the mediation of native title determination applications

There was broad activity in the delivery of this output throughout the Tribunal's registries, with high areas of activity in Queensland and South Australia. In Queensland this is a reflection of the relationship between ILUAs and consent determinations of native title. In South Australia, the increased activity reflects the outcomes from two ongoing strategies:

- a more integrated approach to resolving native title issues by linking the making of ILUAs to the resolution of claims, as mentioned in the national picture of native title activity on page 48; and
- the Statewide ILUA Strategy, and the fact that the negotiation parties had resolved to increase the rate at which ILUAs were negotiated.

Case study

Coolgaree Bay Sponge Farm ILUA

On 22 December 2006, the Tribunal registered the Coolgaree Bay Sponge Farm agreement on the Register of Indigenous Land Use Agreements. Reached at Palm Island in north Queensland between the Manbarra people and the project's proponents Coolgaree CDEP, the ILUA was facilitated by Tribunal member Graham Fletcher. It paves the way for potential jobs and economic returns for the Palm Island community.

The Manbarra people agreed to the development of the sponge farm within 21 small sea areas around the Palm Islands, 56km north-west of Townsville. The agreement area also includes some land on Palm Island itself. With business advice from the State Development and Innovation Centre at Townsville, the project is based on research undertaken by the Australian Institute of Marine Science into sea sponges and aquaculture farming technology.

If the sponge farm goes ahead, it will be the first in the world to be owned and managed by Indigenous people. It is expected to produce 500,000 sponges each year. The sponges are to be used in the cosmetic or 'bath' sponge markets. The agreement also ensures that the sponge farm will respect the cultural heritage values of the traditional owners.

Among those celebrating the signing of the Palm Island sea sponge ILUA on 26 July 2005 were (from left): Walter Palm Island, Tribunal case manager Louise Casson, Annie Palm Island, Allan Palm Island, and Tribunal member Graham Fletcher.



Output 2.2—Native title agreements and related agreements

Description

This output category includes a range of agreements related to native title applications (claimant, non-claimant, compensation and revised applications) for which the Tribunal has provided mediation assistance to the parties.

These may be agreements to full consent determinations that provide for the recognition of native title or for alternative resolutions of claimant applications, as well as other agreements that fully resolve native title determination applications.

They also comprise agreements between parties that set the groundwork for more substantive outcomes in the future and may lead to the resolution of native title determination applications. These may be agreements on issues, process or frameworks.

This output category also 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.

Performance

The performance indicators for native title agreements and related agreements are:

- Quantity—number of 2.2a, 2.2b and 2.2c agreements
- Quality—clients' perception of the quality of the agreement-making process*
- Resource usage—average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	274	421
Quality*		See Table 7
Average price per unit	\$ 51,135 (combined)	
2.2a		\$ 51,135
2.2b		\$ 34,090
2.2c		\$ 9,703
Total price for the output	\$13,504,000	\$8,750,000

*Note: Clients' perception of quality was measured for a number of criteria. As durability is assessed over time, durability measures are not available for this output as all of the agreements were completed during this financial year.

Comment on performance

Table 6 Number of agreements by state or territory

Type of agreement	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2.2a Agreements that fully resolve native title determination applications	0	1	0	2	0	0	3	3	9
2.2b Agreements on issues, leading towards the resolution of native title determination applications	0	3	19	106	16	0	7	25	176
2.2c Process/framework agreements	0	5	11	100	43	0	6	71	236
Total	0	9	30	208	59	0	16	99	421

Table 7 Clients' perception of the quality of the agreement-making process as indicated by their satisfaction

Criteria	Measure	Satisfaction rate
Process	Satisfaction with mediator's conduct and their experience of the process and its fairness	100%
Efficiency	Cost and time effective, value from the outcome	80%
Empowerment	Education of parties about the processes, and problem solving, and equips them to deal with disputes in the future	81%
Effectiveness	Extent to which a settled outcome will be achieved	94%
Durability	Extent to which the outcome endures over time	N/A
Relationship	Extent to which the mediation process increases understanding and improves the relationship between the parties	91%

In all cases the majority of people surveyed found the Tribunal had met or exceeded their expectations for each criterion, apart from the durability of the outcome, which was not measured. For more information, see 'Accountability to clients', p. 100.

In the reporting period, there were fewer consent determinations than estimated but the strong agreement-making environment is evident in the number of agreements achieved that deal with issues, or which set out process or frameworks for mediation.



Young dancers entertain the crowd of new native title holders at the Wimmera determinations ceremony, Little Desert National Park, Victoria, 13 December 2005.

2.2a Consent determination and any other agreement which fully resolves the native title determination application

The forecast figure (21) was not achieved in this financial year as agreement-making activities took longer than planned.

However, while the output figure may be lower than forecast, a significant first was achieved in Victoria, with the Wimmera determinations of native title. The resolution of the three Wimmera applications also included the negotiation of an ILUA with the Victorian and Australian Governments. This approach shows an increasing reliance upon the combination of determination and ILUA to resolve an application.

2.2b Agreements on issues, leading towards the resolution of native title determination applications

Consistent with previous reporting periods, the Tribunal has been involved in a wide range of agreement-making, where the parties have reached agreement on a diverse range of issues. The high number achieved, particularly in Queensland, is an indicator that several applications are close to resolution through consent determinations.

In Western Australia, the Tribunal played a key role in the North West Goldfields Land Summit in October 2005. The three-day event was the culmination of many months of work by the Goldfields Land and Sea Council and the Tribunal. It led to claimants reaching agreements to resolve 29 overlaps.



Dignitaries at the Wimmera determinations at Little Desert National Park were (from left): Victorian Minister for Aboriginal Affairs, the Hon. Gavin Jennings MLC, Gavin Loughton from the Australian Government Solicitor and native title holder Uncle Lester Harradine. On the right is Victorian Attorney-General the Hon. Rob Hulls MP.

2.2c Process/framework agreements

Nationally there was a high number of process/framework agreements over issues encountered during the course of negotiations. These agreements were achieved either through agreed Tribunal initiatives or in response to Federal Court directions. The following are examples of Tribunal initiatives:

- In New South Wales the initiatives relating to the credible evidence mediation program and the categorisation of applications process (see p. 64).
- In Western Australia, as a result of the North West Goldfields Land Summit held in October 2005, parties to the trial proceedings settled a mediation protocol and program with the Tribunal's assistance. This contributed to Justice Sackville's decision to vacate the trial dates. By the end of the reporting period the parties had commenced substantive mediation in relation to areas that will be free of overlaps following the implementation of the land summit outcomes.
- In South Australia, the Federal Court, through its regular reviews of the progress of native title claims in mediation, introduced a process of milestones which parties must meet. The Tribunal took on the role of intermediary between the parties and the Court to help meet the Court's requirements and maintain productive relationships.

Output 2.3—Future act agreements

Description

This output category includes agreements that allow a future act to proceed where Tribunal members or staff have assisted with mediation, as well as milestones reached during the mediation of a future act application and leading to the final agreement.

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 an inquiry conducted by the Tribunal.

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

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

Performance

Performance indicators for future act agreements are:

- Quantity— number of 2.3(a) and 2.3(b) agreements
- Quality— clients' perception of the quality of the agreement-making process*
- Resource usage— average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	63	144
Quality*		See Table 9
Price per unit	\$ 37,424 (combined)	
2.3a		\$ 37,424
2.3b		\$ 19,062
Total price for the output	\$2,358,000	\$4,269,000

*Note: Clients' perception of quality was measured for a number of criteria. As durability is assessed over time, durability measures are not available for this output as all of the agreements were completed during this financial year.

Comment on performance

Table 8 Future act agreements by state or territory

Type of agreement	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
2.3a Agreements that fully resolve future act applications	0	1	4	7	0	0	2	69	83
2.3b Milestones in future act mediations	0	0	12	16	0	0	0	33	61
Total	0	1	16	23	0	0	2	102	144

Table 9 Clients' perception of the quality of the agreement-making process as indicated by their satisfaction

Criteria	Measure	Satisfaction rate
Process	Satisfaction with mediator's conduct and their experience of the process and its fairness	100%
Efficiency	Cost and time effective, value from the outcome	71%
Empowerment	Education of parties about the processes, and problem solving, and equips them to deal with disputes in the future	92%
Effectiveness	Extent to which a settled outcome will be achieved	77%
Durability	Extent to which the outcome endures over time	N/A
Relationship	Extent to which the mediation process increases understanding and improves the relationship between the parties.	94%

For further information about this performance indicator see 'Accountability to clients', p. 100.

2.3(a) Agreements that fully resolve future acts

Table 8 shows that the Tribunal's performance has substantially exceeded its estimated performance outputs for this financial year, particularly in Western Australia. This is a reflection of the current agreement-making environment stimulated by the resources boom referred to in the overview of current applications on p. 48.

This reporting period saw the Regulations to the amended *Mining Act 1978* (WA) enacted which led to the Western Australian Government increasing its s. 29 notifications in order to alleviate the backlog of exploration and mining tenement applications. This in turn has resulted in an increase in the use of the Regional Standard Heritage Agreements to resolve issues relating to exploration titles, as well as increased referrals of matters to the Tribunal for mediation assistance.

The number of mining/exploration tenement applications made to the State of Victoria almost doubled those made during the last financial year, leading to a marked increase

in the number of tenements granted during this reporting period; however, only two agreements were finalised with the assistance of the Tribunal. Whilst an increasing number of tenement applications were the subject of successful ILUAs, the majority of tenements granted during this reporting period occurred as a result of agreements reached through the right to negotiate process and without the assistance of the Tribunal.

In New South Wales there was a decline in the number of future act applications notified under the right to negotiate provisions during the reporting period (14 compared to 22 last year) with parties leaning more to non-claimant applications to validate future acts under the protection of s. 24FA.

Like Western Australia, Queensland is experiencing a resources boom and notification of future act matters under the right to negotiate provisions increased dramatically during the reporting period, leading to seven agreements being lodged with the Tribunal, a significant increase on the previous year. Parties have recognised that involving the Tribunal early in the negotiation process results in quicker agreements being achieved.

In the Northern Territory there was a significant increase in the advertising of matters under the right to negotiate provisions, although applications for Tribunal assistance have declined. Again, a resources boom has been the driver of this increased activity. Another factor has been an increase in the number of mediation assistance requests in the Central Land Council area. This has led to a number of successful Tribunal mediations, and in particular of four matters culminating in agreements for exploration of uranium during the reporting period. For more information, see the following case study.

In South Australia negotiation of state-wide ILUAs continues to be the major focus of parties. Whilst there has been some right to negotiate activity in response to s.29 notices advertising petroleum-related applications, this has not led to any significant involvement of the Tribunal, as parties work towards developing conjunctive agreement templates rather than using the future act processes of the Tribunal.

2.3(b) Milestones in future act mediations

The Tribunal exceeded its estimates, specifically in the Northern Territory where the estimated figure was more than doubled.

As mentioned in the overview of active applications, there was a steady increase in mediation requests, which is reflected in the number of milestones recorded during this reporting period.

The increase in referral of matters to the Tribunal for mediation assistance and the parties' desire to reach agreement across a range of issues has been borne out by the number of milestones recorded.

Case study

Successful mediation under s.150 in the Territory

The Tribunal was asked to facilitate a mediation between the Walpiri People, represented by the Central Land Council (CLC), and uranium explorer Energy Metals Ltd in August 2005. The Walpiri People had lodged objections to the Northern Territory Government granting four exploration licences covering land near the Tanami track, between Alice Springs and Halls Creek. They were concerned about risks of contamination to their community and their environment, after a recent local debate about uranium mining and nuclear waste facilities in the area.

The mediation was successful, with the objections withdrawn within four months. Tribunal state manager Tony Shelley said that the fact that all parties understood and agreed to the set processes for the mediations was a key factor in this success. On-country meetings were held at Yuendumu and Tilmouth Well over two days and two nights in October 2005 facilitated by Tribunal member Dan O'Dea. Leading up to the meetings, the Tribunal liaised with the exploration company representatives and the Northern Territory Government Uranium Officer to prepare presentation materials and methods. It also worked closely with the CLC on logistical matters and cultural requirements. As a result, there was a high emphasis on visual images (photographs, maps using satellite imagery and graphs) and oral presentations during the meetings. With the help of interpreters made available by the CLC, experts answered the Walpiri People's questions and concerns.

As people worked together, they developed good working relationships. This enabled them to resolve outstanding issues in the weeks following the on-country meetings and to ultimately reach a comprehensive agreement in December 2005, when the objections were withdrawn.

In summary the mediation worked because there was:

- *a thoughtful negotiation/ mediation process designed and followed*
- *careful and thorough preparation*
- *allocation of the right expertise/resources*
- *willingness to build relationships*
- *desire to work to an agreed outcome.*

Member Dan O'Dea (background left) and state manager Tony Shelley listen to the Walpiri Elders, with David Young, CLC mining advisor (foreground), at Tilmouth Well near Napperby Station, north-west of Alice Springs, 5 October 2005.



Output group 3 — Decisions

Output 3.1—Registration of native title claimant applications

Description

This output category relates to the decisions made by the Native Title Registrar when considering claimant applications for registration on the Register of Native Title Claims.

Indigenous Australians who are seeking a determination that native title exists over a specified area of land or waters make a claimant application to the Federal Court. 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.

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

Performance

The performance indicators for registration of native title applications:

- Quantity— number of decisions
- Quality— 70% of decisions are completed within 6 months of receipt of the original or amended application submitted for registration
- Resource usage—average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	48	47
Quality	70% of decisions completed within 6 months of receipt of the original or amended application submitted for registration	77% of decisions completed within 6 months of receipt of the original or amended application submitted for registration
Average price per unit	\$ 51,517	\$ 51,915
Total price for the output	\$2,474,000	\$2,440,000

Comment on performance

The plateauing of registration test decisions continued into the current reporting period. Table 10, below, shows that the majority of decisions were made in relation to Queensland applications, followed by those in Western Australia. These applications were either newly filed, or existing ones that had been amended. In the reporting period 12 applications were undergoing the registration test for the second (10) or third (2) time.

Of the 47 decisions made:

- 26 satisfied all the conditions of the registration test; and
- 21 did not satisfy one or more of the conditions and so were not registered (or were removed from) the Register of Native Title Claims.

Table 10 Number of registration test decisions by state or territory 2005–06

State	Accepted	Not Accepted	Not Accepted – Abbreviated	Total
ACT	0	0	1	1
NSW	4	1	0	5
NT	4	1	0	5
QLD	9	7	4	20
SA	1	0	1	2
TAS	0	0	0	0
VIC	0	0	0	0
WA	8	4	2	14
Total	26	13	8	47

Parties may seek a review of the Registrar's registration test decisions under the Act or under the *Administrative Decisions (Judicial Review) Act 1997* (Cwlth). During the reporting period there was one application seeking review of a registration decision in *Wakaman People No 2 v Native Title Registrar and State of Queensland* QUD 115/ 2006 which was due to be heard by the Federal Court in the next reporting period.

Timeliness of decisions

The performance measure for this output was revised, as part of the Tribunal output framework, to more accurately reflect the time it can take to make a decision. The more accurate timeframe, together with the registration test being applied by a team dedicated to the task (National Registration Delegates), meant the performance target was exceeded (77%). Where statutory timeframes required the test to be applied within a shorter timeframe (i.e. in response to a s. 29 or equivalent notice) that shorter timeframe was met.

Output 3.2—Registration of indigenous land use agreements

Description

This output category covers the Native Title Registrar’s decisions whether to register ILUAs on the Register of Indigenous Land Use Agreements.

Parties to ILUAs apply to the Native Title Registrar to register their agreement on the Register of Indigenous Land Use Agreements. Under the Act, each registered ILUA has effect as if it were a contract among the parties (if it does not already have that effect) and binds all persons who hold native title for the area to the terms of the agreement whether or not they are parties to the agreement.

To process an ILUA application the Registrar must:

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

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

Performance

The performance indicators for registration of ILUAs are:

- Quantity—number of ILUA registration decisions (including those that the ILUA does not meet the requirements for registration)
- Quality—90% of decisions are completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration.
- Resource usage—average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	66	68
Quality*	90% of decisions completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration	94% of decisions completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration
Average price per unit	\$ 44,946	\$ 44,823
Total price for the output	\$2,967,000	\$3,048,000

*Four applications received an objection/bar to registration and were therefore not included in the performance assessment.

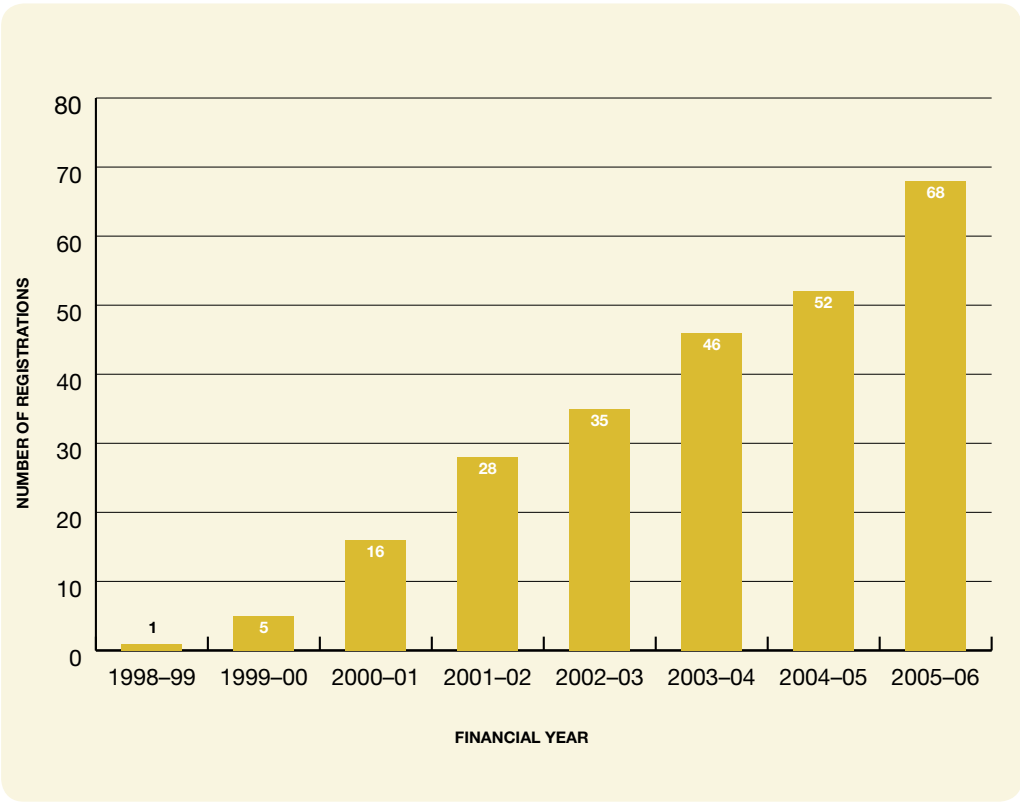
Comment on performance

Table 11 ILUAs lodged or registered by state and territory 2005–06									
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
ILUAs lodged	0	1	2	19	4	0	12	4	42
ILUAs registered	0	1	34	19	4	0	8	2	68

The high number of ILUAs registered this year and shown in Figure 5 reflects both the success of agreement-making and the possibilities that can be achieved. The 68 registrations are the highest ever registered in a reporting period, and the significant milestone of 200 registered ILUAs was both reached and passed with 250 ILUAs registered on the Register of Indigenous Land Use Agreements at the end of the reporting period.

One application for review of the Registrar’s decision was made over the Saltwater ILUA in *Kemp v Registrar of NNTT* NSD 35/2006 but the decision was reserved until the next reporting period.

Figure 4 Number of ILUA registrations per financial year



An overview of the ILUAs registered in this period indicates that:

- 27 ILUAs settled native title issues over 27 Northern Territory national parks (as noted in last reporting period as lodged);
- 9 were either the condition/s for the registration of a determination of native title or alternatively were identified in the determination of native title as settling party interests (Queensland, Victoria and Western Australia);
- 5 related to mining templates (Victoria).

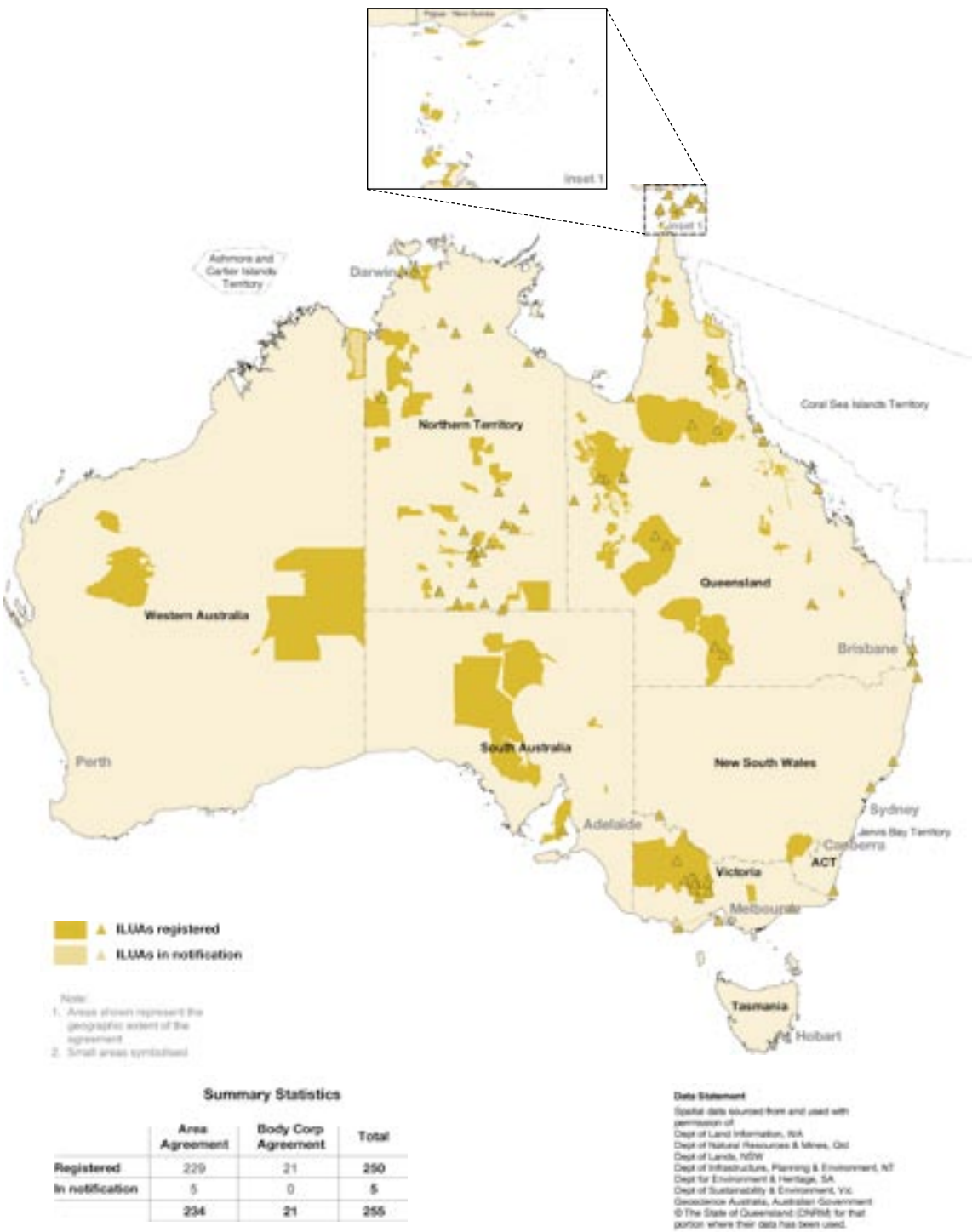
The balance of registered ILUAs provided for:

- local government interests
- development and employment opportunities
- community living areas
- mining, exploration, and pipeline construction.

Timeliness

The performance measure for this output was revised as part of the Tribunal output framework, to more accurately reflect the timeliness of the decisions made. The increased number was a reflection that this particular performance measure had been consistently exceeded in previous reporting periods. The more accurate timeframe, together with the registration decision being made by a team dedicated to the task (National Registration Delegates), meant the performance target was not only achieved but again exceeded (94%).

Figure 5 Map of indigenous land use agreements at 30 June 2006



Output 3.3—Future act determinations and decisions whether negotiations were undertaken in good faith

Description

This output category includes 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. It also includes decisions whether negotiations to reach agreement about future act determination applications have occurred in good faith.

Any party to the future act application may apply to the Tribunal for 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 the negotiations have happened in good faith, in which case it has jurisdiction to proceed with the substantive inquiry.

Performance

Performance indicators are future act determinations and decisions whether negotiations were undertaken in good faith are:

- Quantity—number of decisions
- Quality – 80% finalised within six months of the application being made
- Resource usage—average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	47	80
Quality*	80% of future act determination applications finalised within six months of the application being made	97% of future act determination applications finalised within six months of the application being made
Average price per unit	\$ 19,723	\$ 19,075
Total price for the output	\$ 927,000	\$ 1,526,000

*Six decisions related to whether negotiation in good faith requirements were satisfied and were therefore not included in the quality performance indicator.

Comment on performance

Table 12 Future act determination application outcomes (by tenement) 2005–06

Tenement outcome	Queensland	South Australia	Western Australia	Total 2005–06
Application withdrawn*	7	0	66	73
Consent determination—future act can be done	0	0	62	62
Consent determination—future act can be done subject to conditions	2	1	3	6
Determination—future act can be done	1	0	5	6
Dismissed—s. 148(a) no jurisdiction*	0	0	2	2
Total	10	1	138	149

* Not counted for output reporting purposes.

The strong performance here can be related directly to the productive working relationships being developed and maintained by parties during this reporting period. The majority of future act determinations (covering 68 tenements out of a total of 74) have been by consent. Table 12 shows that applications covering some 66 tenements in Western Australia were withdrawn (note that 65 tenements were covered by one application). All the applications were withdrawn because agreement was reached prior to the Tribunal making its determinations, again emphasising the strong agreement-making environment.

Following the trend nationally, South Australia also recorded a future act consent determination during the reporting period. The parties had reached agreement, but not all the signatures could be obtained to the deed, hence the application to the Tribunal for assistance.

In Western Australia the increase in lodgement of future act determination applications has been, in part, due to parties utilising Tribunal consent determinations especially where logistical problems prevent agreements being signed-off or where some named applicants refuse to sign a State Deed. In addition, consent determinations are also seen as a more efficient means of clearing the backlog of exploration and prospecting licences which were referred from the expedited process into the right to negotiate process once agreement had been reached, as compared to signing-off multi-party agreements.

Output 3.4—Finalised objections to the expedited procedure

This output category concerns the processing and finalisation by the Tribunal of these objections.

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.

The expedited procedure is used in Western Australia, the Northern Territory and Queensland. Other states either use their own alternate state provisions to process tenements considered to have minimal interference or impact, or opt not to use the expedited procedure provisions.

Performance

The performance indicators for objections to the expedited procedure are:

- Quantity— number of objections resolved
- Quality — 80% resolved other than by agreement finalised within nine months of the s.29 closing date, 70% resolved by agreements finalised within nine months of acceptance
- Resource usage— average price per unit and total price for the output.

Performance at a glance		
Measure	Estimate	Result
Quantity	1,096	1,387
Quality*	80% of objections resolved other than by agreement finalised within nine months of the s. 29 closing date	89% of objections resolved other than by agreement finalised within nine months of the s. 29 closing date
	70% of objections resolved by agreement finalised within nine months of acceptance	72% of objections resolved by agreement finalised within nine months of acceptance
Average price per unit	\$ 3,207	\$ 3,187
Total price for the output	\$3,516,000	\$4,420,000

*Sixty-nine objections were resolved by ‘other’ processes and were therefore not included in the performance assessment. ‘Other’ processes include non-acceptance of the objection application and withdrawal of the objection application prior to acceptance of it by the Tribunal.

Comment on performance

Whilst all states/territories use the right to negotiate provisions under the Commonwealth scheme where appropriate, only Western Australia, Queensland and the Northern Territory use the expedited procedure process. The anticipated reductions in this area in Western Australia again failed to materialise during this reporting period and had a major impact upon the Tribunal's output under this category. For the second year in a row, the recorded outputs considerably exceeded estimates.

Table 13 Objection application outcomes (by tenement) 2005–06

Tenement outcome	NT	QLD	WA	Total 2005–06
Consent determination— expedited procedure applies	0	0	5	5
Consent determination —expedited procedure does not apply	0	0	10	10
Determination —expedited procedure applies	0	0	10	10
Determination—expedited procedure does not apply	0	0	3	3
Dismissed—s.148(a) no jurisdiction*	0	6	14	20
Dismissed—s.148(a) tenement withdrawn*	0	11	108	119
Dismissed—s.148(b)	0	1	128	129
Expedited procedure statement withdrawn—s.31 agreement lodged	0	49	0	49
Objection not accepted	0	1	1	2
Objection withdrawn— agreement	5	48	931	984
Objection withdrawn—no agreement	0	50	78	128
Objection withdrawn prior to acceptance	0	3	64	67
Tenement withdrawn*	0	11	0	11
Tenement withdrawn prior to acceptance*	0	0	3	3
Total	5	180	1,355	1,540

* Not counted for output reporting purposes.

Activity in Queensland was slightly lower than in the previous financial year, due mainly to a decrease in the number of advertisements under s.29 by the State Government. It is anticipated that advertisements will increase during the next reporting period.

Due to the recent change in the policy with regard to uranium exploration by the Central Land Council, there was an increase in activity in the Northern Territory during this reporting period. For further information, see the case study, p. 68.

In Western Australia the expected performance level for this output was significantly exceeded this year. There are three main reasons for this increase:

- the continued practice by some representative bodies of lodging objection applications even though the grantee parties have executed the Regional Standard Heritage Agreements;
- the enactment of the Regulations to the amended *Mining Act 1978* (WA) which led to new tenement applications being lodged over old ground; and
- the State Government's program of increased notifications to clear its backlog.

In addition, the Tribunal moved to conclude the adjournment of objections in the Geraldton and Pilbara regions, which had been in abeyance since mid-2003 whilst awaiting development of the Regional Standard Heritage Agreements.

Management



Corporate governance

Members' meetings

The President and members held two members' meetings in the reporting period: in Perth during September 2005 and in Melbourne during April 2006.

A range of issues was discussed at the meetings with particular focus on the Tribunal's strategic direction and current operating environment. Other items included:

- relations with clients and stakeholders, including outcomes of client satisfaction research;
- the new Tribunal output structure;
- Federal Court practice and recent decisions;
- general practice issues, including prioritisation of claims and possible cost recovery for some services;
- the review of the claims resolution process;
- governance arrangements and budget management within the Tribunal;
- updates from various Tribunal strategy groups, 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 Dan O'Dea (formerly Professor Douglas Williamson), Agreement-Making Liaison Group Member Dr Gaye Sculthorpe, the Registrar and the divisional directors.

The group integrates management and administration with the strategic direction of the organisation as described in the Tribunal's *Strategic Plan 2006–2008*. It met nine times during the reporting period to advise on high-level budget priorities for 2005–06, monitor the Tribunal's performance and make recommendations to the President and Registrar to facilitate Tribunal projects.

Agreement-Making Liaison Group (formerly Agreement-Making Strategy Group)

The terms of reference of the Agreement-Making Strategy Group were revised at the September 2006 members' meeting to reconstitute the group as a key liaison group in relation to Tribunal-assisted agreement-making processes. The group was renamed the Agreement-Making Liaison Group (AMLG). It continues to be chaired by the President, supported by an executive officer, and includes members McFarlane, O'Dea and Sculthorpe, the Director of Service Delivery and the Western Australian state manager. The AMLG generally meets each six weeks.

During the reporting period the AMLG maintained a watching brief on agreement-making practice, issues and trends on a national and state-by-state basis. It instigated the regular production of a national agreement-making report addressing (among other things) emerging issues, agreement-making activity reports and analysis of Federal Court activity, as well as feedback on the Tribunal's agreement-making practice obtained from the Tribunal's client satisfaction survey.

The AMLG focused on the finalisation of outstanding implementation projects arising out of the development and publication of the Tribunal's internal guide to agreement-making—*Native Title Agreement-making in Australia: A Guide to National Native Title Tribunal Practice*. Work included:

- identification of knowledge and skills gaps, and exploration of the options in relation to the provision of further agreement-making training to Tribunal employees and members;
- development and publication of the *Pocket guide for agreement-making teams*;
- the national practitioner workshop held in Brisbane in February 2006, which provided a forum for various employees and members to exchange ideas regarding agreement-making practice and for the articulation of key recommendations relating to practice development, mentoring, community of practice and internal communication;
- development and implementation of a national case-management tool for mediation planning and project management;
- development and implementation of a Tribunal practitioner forum on the intranet to support community of practice and allow for national information sharing and practice discussion between practitioners.

National Future Act Liaison Group

The National Future Act Liaison Group (NFALG) was established in November 2000 to identify and address future act issues. It is chaired by Deputy President Chris Sumner and comprises members McFarlane, Sosso, Catlin, Chaney and O'Dea as well as the Registrar, the Director of Service Delivery, Manager Geospatial Services and other senior managers. In December 2005, NFALG changed its meeting schedule from bi-monthly to quarterly meetings. NFALG plays 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 future act issues;
- coordinating national future act practice, for example, considering 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.

Some of the issues considered by NFALG during this reporting period include:

- a review of client feedback obtained through the Tribunal's client satisfaction survey for the purposes of identifying any necessary changes to future act policy and/or practice;
- provision of feedback and endorsement of the Tribunal's new outcome and outputs structure;
- endorsement of the appointment of additional future act members in Western Australia to assist with increasing workload;
- consideration of a new mineral exploration information product for Western Australia;
- streamlining of acceptance processes in Western Australia; and
- progression towards electronic lodgement of objection applications.

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 & Public Affairs and other senior managers including a Registrar's delegate and representatives from Geospatial and Mapping Services and Legal Services.

During the reporting period the ILUA Strategy Group moved from a six-weekly to a 12-weekly meeting interval, and therefore met four times. Its major activities were to:

- monitor and coordinate ILUA activity with a national and strategic approach;
- monitor trends in the diverse use of ILUAs by native title groups and others to provide practical and flexible agreements for the use and management of land;
- develop best practice ILUA processes and practices; and
- oversee workload assessment and management of ILUA activity through regular review of statistical reports.

Other activities included:

- provision of technical advice to the Attorney General's Department on a number of matters, both legislative and operational;
- a review of the Australian Government responses to the reports of the PJC on Effectiveness of the National Native Title Tribunal (released in December 2003) and Inquiry into Indigenous Land Use Agreements (tabled in September 2001) for the purposes of identifying any necessary changes to policy and/or practice;
- a review of client feedback, with a focus on ILUAs, obtained through the Tribunal's client satisfaction survey for the purposes of identifying any necessary changes to policy and/or practice;

- ongoing review of the portfolio budget statement to criteria relating to ILUAs with consequent amendment to the portfolio statement to reflect an increased performance figure;
- co-ordination of ILUA general information and seminars;
- review and revision of the Area Agreement application form to reflect feedback from clients as well as operating and business practices.

Research Strategy Group

The Research Strategy Group is chaired by Member Dan O'Dea, who was appointed following the conclusion of the term of Professor Douglas Williamson RFD QC in December 2005. It comprises five members, the divisional directors, representatives of the Principal, state and territory registries, plus the managers of the Research Unit, Legal Services and Library.

It is responsible for developing and overseeing national policies and priorities for the Tribunal's research activities, reviewing and monitoring operational research proposals and 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 and provides Tribunal members and staff with timely notice of research findings in the wider native title system.

The Research Strategy Group met four times in the reporting period.

External Relations Working Group

The External Relations Working Group was established in August 2005 to help the Tribunal identify and respond to key external issues and to be proactive in developing relationships with stakeholders at a high level. It is chaired by the President and comprises members Catlin, Faulkner, MacPherson and Sumner, the Registrar and the Manager, Public Affairs.

The group met six times in the reporting period. Its terms of reference include the following broad responsibilities:

- proactively managing and maintaining an overview of national stakeholder communication issues, including government relations;
- identifying and developing responses to strategic issues relevant to the Tribunal;
- covering matters relevant to the coordination of public affairs within the Tribunal
- liaising with other Tribunal groups as appropriate; and
- referring appropriate issues to the Strategic Planning Advisory Group.

Current issues being considered by the group include the development of key messages about native title, identification of aspects of the whole-of-government approach to service delivery to Indigenous people that are relevant to the Tribunal, and identification and development of contacts of strategic relevance to the Tribunal.

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. 39). 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 outputs 3.1, 3.2, pp. 69–71).

The Executive Team (from left): Director of Service Delivery, Hugh Chevis, Native Title Registrar, Chris Doepel and Director, Corporate Services & Public Affairs, Franklin Gaffney.



Senior management committees

The Registrar and directors comprise the Executive Team. The Executive Team meets fortnightly to consider operational and strategic/governance issues and remains as the main formal vehicle through which the directors assist the Registrar on a range of issues affecting the Tribunal.

The Risk Management and Audit Committee comprising the Director of Corporate Services & Public Affairs, nominated senior managers from each division and an independent external representative (as required) reviews the assessment of internal control measures. The committee meets regularly and is currently undertaking a review of internal project management capabilities within the Tribunal, as well as the development and implementation of a new risk management plan. For further information, see p. 94.

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

- the national operations group met fortnightly to plan for and oversee 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 the Corporate Services & Public Affairs senior managers were held fortnightly with the director of the division to coordinate divisional projects, work plans and communication strategies;
- senior managers met four times by video- or tele-conference and twice a year in the Principal Registry for training, development and planning activities.

SES remuneration

Senior executive service (SES) employees are employed under Australian Workplace Agreements. The SES Band 1 salaries are set by the Registrar. For more information, see 'Certified Agreement and Australian Workplace Agreements', p. 93.

Corporate planning

The *Strategic Plan 2006–2008* is the key governance and operational document for the Tribunal. The plan was developed during the reporting period and provides the Tribunal with a new direction to respond to our environment, and importantly, guide how we are going to deliver outcomes to our clients.

The plan contains four key result areas:

- our clients and stakeholders
- our services
- our people, and
- our business performance.

Objectives, strategies and measures (including links to the Tribunal's Portfolio Budget Statement) are listed under each of those key result areas. Section and registry operational plans were initiated based on the key result 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 key result areas will also be reflected in staff performance management plans for 2006–07.

Management of human resources

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

- development and implementation of absence management principles and strategies in line with the *Certified Agreement 2003–2006*
- delivery of employee health initiatives (previously known as ‘Health Month’) as part of the Tribunal’s Occupational Health and Safety Strategy
- consolidation of the Tribunal’s formal workforce planning framework
- continued advancement of the learning and development leadership program, and
- development and implementation of the new online Quarterly Settlement System .

Learning and development

The focus for the Tribunal during the reporting period continued to be on enhancing the leadership skills of senior managers. Preparatory development work was undertaken for middle managers, as part of the 2006–07 Tribunal leadership program. A preferred skill set for case managers was developed this year for inclusion in performance management plans in 2006–07. A suite of tools to assist managers to successfully manage absences in the workplace was created which was supported by face-to-face training.

Following the review of the delivery of learning and development across the Tribunal in the last reporting period, more flexible training methods were used this year. This included the use of video conferencing and digital recording of key sessions for future delivery.

Other learning and development activities continued in three key areas.

Corporate compliance included:

- 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)
- workplace harassment contact officer training
- diversity training in the workplace and in the field (for example, awareness of Indigenous cultures), and
- Code of Conduct investigation training.

Skills development training included:

- leadership for senior managers and middle managers
- leading organisations in a changing future (change management)
- project management
- governance
- video conferencing, and
- giving and receiving feedback.

Professional and career development, included:

- participation in the APS Commission Career Development Assessment Program.

Workforce planning

The workforce planning framework is used to consider what the 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:

- the development of absence management principles and strategies to assist with achieving the productivity improvements consistent with the *Certified Agreement 2003–2006*, 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 2005–06 was \$19.989 million compared with \$20.180 million for the previous reporting period—a decrease of 1.0 per cent.

At 30 June 2006, the Tribunal had 14 Holders of Public Office (President, Registrar and members) and 241 people employed under the *Public Service Act 1999* (Cwlth) (PSA), an overall decrease of 22 from the end of the previous reporting period. Of the 241 PSA employees, 234 were covered by the Tribunal's *Certified Agreement 2003–2006* and seven were on Australian Workplace Agreements (for further information, see 'Certified Agreement and Australian Workplace Agreements', p. 93).

During the reporting period 12.5 per cent or 33 PSA employees resigned (22 ongoing, 11 non-ongoing). In the previous reporting period 17.1 per cent or 50 PSA employees had resigned. The number of resignations decreased by 4.6 per cent in the current reporting period. The Tribunal recently undertook an employee survey (which included issues relating to turnover and retention) and is waiting on an analysis of the survey results due in the next reporting period.

Of the 241 people employed under the PSA, 164 were female and 77 were male, 201 were full-time and 40 part-time, 209 were ongoing staff and 32 non-ongoing (see Appendix I, p. 105). Twenty-six people identified themselves as being either Aboriginal or Torres Strait Islander, four people identified themselves as having a disability, and 11 people as coming from a linguistically diverse background.

Indigenous employees

In the State of Service report issued in November 2005, the Public Service Commissioner advised that, at 30 June 2005, the average proportion of ongoing Indigenous employees in APS agencies was 2.2 per cent. In that same reporting period, ongoing Indigenous employees made up 13.5 per cent of the Tribunal's national ongoing workforce. Of the 83 agencies providing statistical information, the Tribunal ranked fourth in the number of Indigenous employees behind AIATSIS, Torres Strait Regional Authority and Aboriginal Hostels Limited. At 30 June 2006, the Tribunal's percentage of Indigenous employees was 10.8 per cent of ongoing employees, a decrease of 2.3 per cent from the previous reporting period.

Of the 26 Indigenous employees, 25 are employed in the Service Delivery division, and one is in the Corporate Services & Public Affairs division. For more information about levels and location of Indigenous employees within the Tribunal, see Appendix I, p. 106.

Indigenous study awards, traineeships and cadetships

The Tribunal has offered one award 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.

The Tribunal employed one Indigenous trainee during the reporting period. The trainee has maintained employment on a non-ongoing basis.

The Tribunal's remaining cadet completed her studies in July 2005, and is employed on a full-time basis.

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 is open to all Indigenous employees. The group 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 Registrar regularly meets with the steering committee and full IAG.

During the reporting period, the Registrar, executive and IAG continued to work on implementing and addressing some of the outcomes from the national Indigenous employees' workshop held in March 2005. In particular, recruitment, retention and career development have been targeted in an Indigenous recruitment and development plan.

Indigenous employees have continued with their involvement in APS Indigenous Employment Network Steering Committee meetings and several have participated in APS Indigenous career development programs.

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 on a regular basis. During the reporting period no accidents 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 commonplace 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.

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).

As a result of reviewing medical examination for employment, in this reporting period the Tribunal replaced medical examinations for new employees with Employee Medical Statements.

Performance of 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 Australian Workplace Agreements

Certified Agreement 2003–2006

The Tribunal's third Certified Agreement was approved by the Australian Industrial Relations Commission on 23 December 2003 and its nominal expiry date is 22 December 2006.

During the reporting period preparations commenced for a replacement agreement.

Workplace agreement negotiations

Membership of the respective negotiation teams was finalised and negotiation training was held in June 2006.

Employee survey

With the assistance of the company ORIMA Research, the Tribunal developed an employee survey during the reporting period. The response rate was 76% and the Tribunal is waiting on an analysis of the survey results due in the next reporting period. The results will assist the Tribunal in determining its people management priorities in the forthcoming reporting periods. For further information, see 'Appendix III Consultants', p. 141.

Australian Workplace Agreements

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

Risk management

As part of the Tribunal's ongoing commitment to risk management, a review of risk management strategies was undertaken during the reporting period. In particular, the Tribunal obtained external assistance from Comcover in developing a risk management plan which will be implemented over the next reporting period.

The Tribunal's *Strategic Plan 2006–2008* forms the basis of the risk management framework, with the risk management plan to be incorporated within the planning framework.

The Tribunal also re-constituted its Risk Management and Audit Committee, with a new charter issued with the updated Chief Executive Instructions in January 2006.

Physical security at reception facilities have continued to be upgraded in several offices. A new level of airport-style security screening was introduced at the Commonwealth Law Courts building in Perth at the end of reporting period, which will improve the level of security for the Principal Registry.

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 certain 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;
- National Native Title Register, which contains information about determinations of native title; and
- Register of Indigenous Land Use Agreements, which contains information about all ILUAs that have been accepted for registration.

The Tribunal has continued its work on information and knowledge management projects based on present and future organisation-wide information needs commenced in the last reporting period.

Work continued during the reporting period on the development of the Operational Business Framework (OBF), an integrated business menu and the continued deployment of the Electronic Document Records Management System (EDRMS). A review of the OBF project was undertaken during the reporting period to better assess the Tribunal's changing business needs. The review confirmed the need for the OBF project. Work was suspended in March 2006 pending an examination of the systems architecture and the development of business system requirements to meet a broader range of information management needs. That examination was ongoing at the end of the reporting period (for further information, see 'Appendix III Consultants', p. 141).

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

External scrutiny

Judicial decisions

There were no High Court judgments on native title during the reporting period but there were more than 40 written Federal Court judgments. Significant decisions are summarised in Appendix II, p. 108. Some decisions are also discussed in the President's Overview, pp. 7–9.

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

Until March 2006, the Tribunal was subject to examination by the PJC under s. 206 of the Act. By reason of the operation of the sunset clause in s. 207 of the Act, the committee ceased operations on 23 March 2006.

During the reporting year the PJC examined and reported on the Tribunal's *Annual Report 2004–2005*. The PJC's tabled report is available online at <http://www.aph.gov.au/senate/committee/ntlf_ctte/annual04_05/index.htm>.

The PJC also completed an inquiry into native title representative bodies in March 2006. Tribunal President Graeme Neate gave evidence to the inquiry in a public hearing in Brisbane on 21 November 2005. The Tribunal also made one written submission to the inquiry in August 2004.

The PJC's Report on the operation of native title representative bodies is available online at <http://www.aph.gov.au/senate/committee/ntlf_ctte/rep_bodies/report/index.htm>.

At the end of the reporting period there was no indication of whether any other parliamentary committee would oversee the Tribunal's work.

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. 143).

Other scrutiny

In September 2005 the Attorney-General announced a review of the process to resolve native title claims. The review was undertaken by Mr Graham Hiley RFD QC and Dr Ken Levy RFD. It received 36 submissions.

At 30 June 2006 the review had been completed but its findings had not been released. For further information on the review, see the President's Overview, pp. 3–6.

The Human Rights and Equal Opportunity Commission tabled in Parliament the Aboriginal and Torres Strait Islander Social Justice Commissioner's Native Title Report 2005 in February 2006. None of the recommendations contained in that report 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 undertakes commissioned research into the satisfaction of its clients and stakeholders every two years. It was not undertaken in 2005–06.

During the previous reporting period research had 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 of respondents 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 stakeholders' needs, more advice and better relationships;
- simple, efficient processes, with emphasis on understanding them;
- innovative and proactive approaches to resolution of claims.

In the current reporting period the Tribunal used this information to develop qualitative measures for its output framework. These measures were tested by research conducted in April 2006 with clients who had been party to completed agreements in 2005–06.

The research was conducted on satisfaction with the processes for agreement-making (claims), ILUAs and future acts. Each was measured against criteria for process, efficiency, empowerment, effectiveness, durability and relationships.

In all cases the majority of people surveyed found the Tribunal had met or exceeded their expectations for each criteria. Mediations were seen in the main to be conducted fairly and to be effective in delivering an outcome.

From its research, the cost of process and effort required by parties to reach agreement were identified areas of concern and indicate a key area for improvement. Based on experience to date, qualitative measures will be applied progressively to other aspects of the Tribunal's output framework. For further information, see output group 2, pp. 57–68.

Client Service Charter

The Tribunal maintains a Client Service Charter to ensure that service standards meet client needs. One complaint was received during the reporting period. The complaint was investigated and dealt with to the satisfaction of the complainant and within the charter's timeframes.

Social justice and equity in service delivery

The work of this agency impacts significantly on matters of social justice. As explained in this annual report and in the *Strategic Plan 2006–2008*, the primary purpose of the Tribunal is to work with people to resolve native title issues over land and waters. The Tribunal must try to carry out its functions in a fair, just, economical, informal and prompt manner, and may take into account the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

It is critical for all parties to native title proceedings to understand the processes involved in reaching agreements and resolving native title issues under the Act. To promote understanding the Tribunal provides detailed information and assistance to clients and stakeholders on a day-to-day basis. For further information, see 'Output group 1—Stakeholder and community relations', pp. 50–6.

The Tribunal encourages parties to use mediation processes positively since results depend on their active engagement. The process can be time-consuming and complex. The Tribunal considers that outcomes by consent are preferable to litigation, and are likely to involve ongoing recognition and respect for co-existing rights, and better relationships between parties.

It also recognises that benefits to Indigenous Australians often arise from negotiated agreements about native title and related matters. For further information, see 'Output group 2—Agreement-making', pp. 57–68.

The *Strategic Plan 2006–2008* outlines in detail the current operating environment for the resolution of native title issues, areas for improvement in our service delivery and the key result areas. It is available online at <www.nntt.gov.au/about/strategic06.html> or from any office of the Tribunal.

Online services

The Tribunal continued to enhance its website during the period. This included a realignment of information to better meet stakeholder needs and redesigning the site in line with the new corporate style.

The site continues to meet Australian Government online standards.

Native TitleVision (NTV), the Tribunal's ExtraNet visualisation and enquiry product was recognised by industry, winning the Community category of the Asia-Pacific Spatial Excellence Awards.

In May 2006 NTV was also a finalist in the inaugural e-Award for Excellence in e-Government, hosted by the Australian Government Information Management Office. For further information about NTV, see output 1.2, p. 54.

Performance against purchasing policies

Procurement

The *Financial Management and Accountability Act 1997* (Cwlth) expenditure delegations require any proposed expenditure over \$80,000 to be referred to the Tribunal's executive or Chief Financial Officer.

Information technology outsourcing

As outlined under 'Information management' on p. 95, the Tribunal undertook substantial work on the development of its Operational Business Framework and related Business Menu during the reporting period.

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. 141.

For actual expenditure on consultancies during the reporting period, see Table 14 below.

Table 14 Expenditure on consultancies by division 2005–06

Information & Knowledge Management	\$ 1,793,539
Corporate Services & Public Affairs	\$ 69,718
Service Delivery	\$ 13,860
Total	\$ 1,877,117

There was an increase of \$570, 169 or 43.6% in overall expenditure associated with the engagement of consultants compared to the previous reporting period. The increase was due to employment contracts associated with the development of new information systems.

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 finance system, Finance One. A program of rolling physical stocktakes of the Tribunal's financial assets commenced during the reporting period.

Environmental performance

The Tribunal maintained its commitment to improved environmental performance during the reporting period in accordance with the requirements of Environment Australia. The promotion of ecologically sustainable principles regarding improved valuation, pricing and incentive mechanisms for employees had been incorporated into the existing Certified Agreement 2003–2006.

The Green Transport Committee met several times during the reporting period, surveyed staff on travel modes to work and presented their findings at the Consultative Forum in November 2005.

The Energy Management Group met once during the year and continued its work in monitoring opportunities for paper recycling, reducing the hours of air conditioning in some buildings, reducing power consumption in office environments and applying other energy-saving initiatives.

Appendices and Index



Appendix I Human resources

Employees

Table 15 Employees by classification, location and gender at 30 June 2006

Classification		Location															
		Male								Female							
Registry	Salary Range	Principal	WA	NSW	Qld	Vic	SA	NT	Total	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Cadet	11,971–36,755	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
APS 1	19,953–36,755	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
APS 2	37,634–41,733	0	5	0	3	1	0	0	9	6	13	0	10	1	1	1	32
APS 3	42,867–46,266	1	0	0	0	0	0	0	1	11	10	3	2	0	0	0	26
APS 4	47,778–51,874	4	1	1	1	1	0	0	8	8	6	3	12	1	3	1	34
APS 5	53,290–56,505	9	1	0	0	0	0	0	10	3	2	0	1	0	0	0	6
APS 6	57,556–66,115	8	8	4	4	1	1	0	26	5	15	6	7	1	1	2	37
Legal 1	44,168–88,259	1	0	0	1	0	0	0	2	4	0	0	0	0	0	0	4
Legal 2	98,008–102,253	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Media 1	59,952–68,125	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	2
Media 2	77,614–88,259	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Library 1	40,134–56,305	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
Library 2	57,556–64,321	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Executive level 1	73,785–79,671	3	3	0	3	0	0	0	9	4	8	0	2	0	1	0	15
Executive level 2	85,099–99,703	3	2	1	1	1	0	1	9	2	1	0	0	0	1	0	4
Senior executive	128,667–133,813	1	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0
Total employees		31	21	6	13	4	1	1	77	47	55	12	36	3	7	4	164

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 Members of the National Native Title Tribunal at 30 June 2006					
Members	Appointed	Term	Re-appointed	Expiry	Registry
President					
Mr Graeme Neate	01/03/99 ¹	5 yrs + 3 yrs	01/03/04	28/02/07	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 + 2 yrs	09/12/05	08/12/07	Perth
Mr Neville MacPherson	01/09/03	3 yrs		31/08/06	Melbourne
Mr John Catlin	06/10/03	3 yrs		05/10/06	Perth
Non-Presidential Members—Part-time					
Mrs Ruth Wade	02/02/00	3 yrs + 3 yrs + 2 yrs	02/02/06	01/02/08	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 classification and location at 30 June 2006								
Classification	Location							
Registry	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Cadet	0	0	0	0	0	0	0	0
APS level 1	0	0	0	0	0	0	0	0
APS level 2	0	3	0	4	1	0	1	9
APS level 3	1	3	1	0	0	0	0	5
APS level 4	0	1	0	4	0	0	0	5
APS level 5	0	1	0	0	0	0	0	1
APS level 6	0	3	0	1	0	0	0	4
Legal 1	0	0	0	0	0	0	0	0
Legal 2	0	0	0	0	0	0	0	0
Media 1	0	0	0	0	0	0	0	0
Media 2	0	0	0	0	0	0	0	0
Library 1	0	0	0	0	0	0	0	0
Library 2	0	0	0	0	0	0	0	0
Executive level 1	0	0	0	1	0	0	0	1
Executive level 2	0	0	0	1	0	0	0	1
Senior executive	0	0	0	0	0	0	0	0
Total	1	11	1	11	1	0	1	26

Appendix II Significant decisions

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

High Court decisions

There were no judgments of the High Court in relation to native title for the reporting period, however the refusal to grant leave to appeal from two judgments of the Full Federal Court has settled certain issues, so as to assist meaningful mediations in related cases.

Refusal to grant leave to appeal

Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Group [2006] HCATrans 251

The Northern Territory sought special leave to appeal to challenge certain aspects of the determination of native title:

- the provision in the determination of the trial judge that the native title holders have ‘the right to live on the land, to camp, erect shelters and other structures, and to travel over and visit any part of the land and waters’ which, it was submitted, should be modified by a word such as ‘temporarily’;
- the Full Court’s decision concerning the operation of s. 47B of the *Native Title Act 1993* (Cwlth)(the Act) and the effect of a proclamation defining the boundary of a town.

Special leave was refused with costs. The High Court considered that the issues were questions that would arise only in the context of particular facts and circumstances that may or may not happen in the future.

Fuller & Anor v De Rose & Ors[2006] HCA Trans 49

This decision arose out of the judgment of the Full Court of the Federal Court in *De Rose v South Australia* [2003] FCAFC 286; (2003) 133 FCR 325.

The second respondents disputed the finding of the Full Court of the Federal Court that it had demonstrated on the evidence before the trial judge that there was a system of Aboriginal law and custom held by the Western Desert Bloc, that was traditional in the sense that it had been in existence since sovereignty, and that under that traditional system as it had evolved, the claimants were the traditional owners or custodians of the land, and they had rights or interests in connection with land in the claim area.

Special leave was refused with costs. The High Court attached significance to the findings by the Full Court about the content and application of traditional laws and customs. Justice Gummow said it was important to recognise what was said in the Yorta Yorta judgment that some adaptation of traditional laws and customs is not necessarily fatal to a native title claim.

Federal Court decisions

There were several contested native title determinations or proposed determinations during the reporting period, including an interim determination, as well as determinations by consent of the parties. They are significant 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 (Yorta Yorta). The Federal Court also ruled on the first contested compensation application decision, which was dismissed.

Determination of native title—interim decision

Rubibi Community (No 5) v Western Australia [2005] FCA 1025

The main issue in this case, which dealt with three claimant applications in the West Kimberley region of Western Australia, was whether the native title claimed was ‘communal’ or ‘group’ native title i.e. ‘community’ or ‘clan’ based. It was found to be community-based.

This was what the Court called an ‘interim decision’. The reasons for His Honour Justice Merkel taking this step after the matter was heard were:

- the parties thought a ‘mediated compromise’ could be reached after the hearing finished;
- the Court was prepared to refer the matter to mediation but, to ‘resolve a significant number of issues relating to the existence and nature of any native title’ to the area concerned, an ‘interim decision’ would be delivered;
- the general consensus of the parties was that this would help limit, and perhaps resolve, the remaining issues by agreement in mediation, which relate to proof of the particular native title rights and interests claimed, including questions of extinguishment.

As events transpired, the matter was referred back to Justice Merkel.

The competing, overlapping claimant applications dealt with here were made by the Yawuru community (the Yawuru claim), on a community basis, and by the Walman Yawuru clan (the Walman Yawuru claims), who claimed on a clan basis.

Justice Merkel noted that, in this case, the evidence clearly established that the traditional laws and customs relied upon by the Walman Yawuru claimants were the traditional laws and customs of the Yawuru community and that the traditional laws and customs observed by any of the clans of that community were ‘entirely derivative and are indistinguishable from’ the traditional laws and customs of the Yawuru community.

His Honour found that the Yawuru community is a recognisable body of persons united in and by traditional laws and customs which, since sovereignty, have constituted the normative system under which the native title rights and interests in issue are being claimed. Further, under the traditional laws and customs acknowledged and observed by the Yawuru community, native title rights and interests in relation to the respective claim areas are possessed by the Yawuru community and that community, by those laws and customs, has a connection with the claim area.

As to ‘connection’, it was found that the members of the Yawuru community have the requisite spiritual, cultural and social connection to land and waters in the Yawuru claim area.

Based on the conclusions noted above, and without considering the other questions such as extinguishment, his Honour found on an ‘interim’ basis that the native title rights and interests possessed in the Yawuru claim area are:

- communal native title rights and interests possessed by members of the Yawuru community; and
- not the group native title rights and interest claimed to be possessed by members of the Walman Yawuru clan members.

See also the notes on *Rubibi Community v Western Australia* (Nos 6 and 7) below.

Proposed native title determinations

Sampi v Western Australia (No 2) [2005] FCA 1567; (2005) 224 ALR 358

This judgment dealt with matters arising from the Federal Court’s reasons in *Sampi v Western Australia* [2005] FCA 777 including whether a determination of native title should be made in relation to what the Court identified as traditional Jawi territory.

The application was made by the Bardi and Jawi people of the Dampier Peninsula and the islands of the Buccaneer Archipelago, in north-west Western Australia.

Justice French stated that the Court was prepared to make a determination in favour of the native title claim group as defined in the application, which would include those Jawi people found to form part of the contemporary Bardi society; however, the area

covered by that determination could not extend beyond the traditional territory of the Bardi since there were no rules of succession identified that would allow consideration of the incorporation of Jawi traditional territories into Bardi territory.

His Honour decided that a determination of native title in accordance with his reasons would be made on country but allowed a short time for the making of further submissions on technical or drafting issues.

The determination itself, made in *Sampi v Western Australia (No 3)* [2005] FCA 1716, is summarised below.

Rubibi Community v Western Australia (No. 6) [2006] FCA 82; (2006) 226 ALR 676

This is a further judgment following on from *Rubibi Community v Western Australia (No 5)* [2005] FCA 1025. The issues dealt with in this decision include:

- the identification of the native title determination area (around Broome, WA);
- the criteria for membership of the native title holding community;
- the nature and extent of the native title rights and interests possessed by the native title holding community.

Identification of the native title determination area was complicated by the difficulties involved in determining the identity and nature of the community occupying the Yawuru claim area at and since sovereignty. Therefore in an endeavour to determine the identity and nature of the Yawuru community, Justice Merkel gave particular weight to the views expressed by Aboriginal elders prior to the commencement of the present native title claims because those views were based primarily on the traditional laws and customs passed down to those elders from their elders and can be taken to reflect a traditional view of the matters being addressed. His Honour felt that, to some extent, views more recently expressed may have been influenced by the existence of the native title claims.

Justice Merkel was satisfied that it was necessary to consider the totality of the evidence concerning the Djungan and the Yawuru in order to determine whether, notwithstanding their cultural and other differences at and since sovereignty, the Djungan and the Yawuru were one native title holding community that had the necessary connection with Yawuru 'country' at a communal level.

His Honour considered that, viewed as a whole, the evidence supported a finding that the traditional laws and customs acknowledged and observed by the Yawuru community regard that community's 'country' as including the northern and southern areas. Therefore, his Honour did not accept that there were different native title holding communities and concluded that the community possessing communal native title at and since sovereignty is the Yawuru community, of which the Djungan is a subset or subgroup.

It was found that the extensive connections and commonalities between the Djugan and the Yawuru, which led to the finding they were one native title holding community, also led to finding that, over time, the Yawuru community succeeded to any discrete or specific connection or association the Djugan had with the northern area in accordance with the traditional laws and customs acknowledged and observed by the Yawuru community (including the Djugan subset of that community).

It was found that the Yawuru community used and occupied the Yawuru claim area at and since sovereignty and had maintained its religious and spiritual connection with that area.

On the question of whether there was a native title right to exclusive possession (excluding the intertidal zone and putting questions of extinguishment to one side), the evidence established that, under traditional laws acknowledged and traditional customs observed, the Yawuru community had:

- the right to use and occupy the claim area;
- the right to 'speak for' and 'look after' the claim area;
- the right to hunt and use 'bush foods' and 'bush medicine' throughout the claim area;
- the right to give permission to others to access the claim area; and
- the right to recognition of the above rights by elders from neighbouring 'country'.

The court decided to determine the extent of extinguishment, any remaining issues and the terms of the determination of native title in a further decision.

The determination, made in *Rubibi Community v Western Australia (No 7)* [2006] FCA 459, is summarised below.

Determination of native title varied on appeal

Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group [2005] FCAFC 135; (2005) 145 FCR 442; (2005) 220 ALR 431

This case deals with an appeal and cross-appeal against aspects of his Honour Justice Mansfield's determination of native title in *Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group v Northern Territory* [2004] FCA 472.; (2004) 207 ALR 539. His Honour determined that the common law holders were the Aboriginal persons who are:

- members of one or more of seven landholding or estate groups (landholding groups), each associated via descent with a particular part of the determination area;
- those people recognised by the landholding groups as members because of non-descent based connections, including adoption or birthplace affiliation; and
- spouses of persons referred to in the preceding categories who are recognised by the landholding groups as having native title rights and interests in the determination area.

The determination area included an area where a townsite was proclaimed in 1953 but never developed and an area subject to a perpetual lease to the Land Conservation Corporation of the Northern Territory to manage the area with the intention of creating the Davenport Ranges National Park. The entire determination area had, at some point in time, been subject to the grant of pastoral leases but none were current when the determination was made.

The main issues before the Full Court of the Federal Court in these appeal proceedings were:

- the nature and composition of the native title holding group;
- the recognition of particular native title rights and interests;
- the application of s. 47B of the Act; and
- other matters relating to the form of the determination.

The Court delivered a joint judgment. None of the arguments raised in the appeal by the Northern Territory Government on the first point succeeded.

Their Honours held that enforceability of native rights and interests may be a condition of common law recognition of them. Symbolic statements which are empty of content have no place in a determination of rights.

The Court said that the determination involved an acceptance that the community of native title holders is a living society and not ‘some kind of organism in amber whose microanatomy is available for convenient inspection by non-indigenous authorities’.

The Court held, among other things, that:

- Concerning ‘incidental’ activities, each native title right and interest recognised in the determination included a right to conduct activities necessary to give effect to it.
- The right to ‘live’ on the land can be interpreted as a right to live permanently on the land without any conflict with pastoral leaseholders’ rights. That right does not necessarily involve permanent settlement at a particular place. The issue therefore reduces to the question whether a native title right of permanent settlement is inconsistent with a pastoral leaseholder’s rights. Just as the right to live permanently on the land does not necessarily give rise to inconsistency with the pastoral leaseholder’s rights, neither does the right to erect a permanent structure. The existence of such a structure does not preclude a pastoralist’s right to require its removal in the event that it conflicts with a proposed exercise by the pastoralist of a right under the lease. It is not inevitable that such a conflict will arise.
- The right to teach is a right ‘in relation to land and waters’ if specified as a right to teach on the land that requires access to, and use of, the land for that purpose.
- The right to trade is a right relating to the resources of the land and it was difficult to see on what basis it would not be a right in relation to land, however, there was

no evidence to support the right to trade in this case.

- The right to protect sites of importance does not imply right to control.
- The right to control access cannot be sustained where there is no right to exclusive occupation against the whole world.
- The right to make decisions about the use and enjoyment of the determination area by Aboriginal people who are governed by the traditional laws and customs acknowledged and observed by the native title holders was ‘not without difficulty’ and is not a matter requiring determination as a distinct native title right.
- The right to control disclosure of spiritual beliefs and practices was held not to be ‘in relation to land or waters’.

Section 47B provides that all prior extinguishment is to be disregarded over certain vacant Crown land. However this does not apply if the area is covered by some interests, including a ‘reservation’ or ‘proclamation’. It was held that any extinguishment in a township proclaimed but never built must be disregarded for all purposes under the Act.

The appeal was allowed only in part by varying or deleting the native title rights and interests set out in paragraph [3] of the determination. As noted above, the High Court refused leave to appeal the judgment of the Full Federal Court.

Other determinations of native title

Gawirrin Gumana v Northern Territory (No 2) [2005] FCA 1425

This case was about the appropriate form of a determination of native title, with the essential issue being whether the native title holders of parts of Blue Mud Bay in Arnhem Land could exclude fishermen and others from the waters of the determination area. It follows from the decision of the late Justice Selway in *Gumana v Northern Territory* [2005] FCA 50; (2005) 218 ALR 292. The other issues were largely concerned with the draft determination of native title submitted on behalf of the native title holders and whether (among other things) it reflected Justice Selway’s reasons for decision.

As Justice Selway died before final orders were made, the parties consented to Justice Mansfield completing the hearing for the purposes of making a determination that reflected Justice Selway’s reasons for judgment.

There had been an issue whether the public right to fish extended into tidal waters that are not navigable. If that public right did not extend to those areas, it was arguable that ‘exclusive’ native title could be recognised because there would be no inconsistent common law public rights.

Having considered the reasons for judgment, Justice Mansfield concluded the reasons indicated that the public right to fish was exercisable in the inter-tidal zone, including tidal waters, whether those waters are navigable or not and the public right to navigate is necessarily confined to tidal waters which are navigable.

His Honour determined that the applicants have the exclusive right to control access to the inland water within certain parts of the claim area and to use and enjoy it. It did not mean that the native title holders have some additional or unique form of right in respect of subterranean or flowing water on that part of the claim area within the defined section of land and inland waters.

Justice Mansfield held that non-exclusive native title rights and interests extend to use of resources, which should not be confined to 'living and plant resources'.

A right to 'maintain' sites was recognised, but not a right to 'protect' sites, which seems to be at odds with the findings of the Full Court in *Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* [2005] FCAFC 135; (2005) 145 FCR 442; (2005) 220 ALR 431, summarised above.

A right to the commercial use of inter-tidal resources was rejected. Rather, it was held that the applicants have the right to hunt, fish, gather and use resources within the area (including the right to hunt and take turtle and dugong) for personal, domestic or non-commercial exchange or communal consumption for the purposes allowed under their traditional laws and customs.

His Honour said that any right to control access of Aboriginal people in non-exclusive areas should be permitted to remain only on the basis that it is expressed to refer to those Aboriginal people who recognise themselves as governed by those traditional laws and customs. It cannot operate more extensively.

This judgment is currently subject to appeal.

Sampi v Western Australia (No 3) [2005] FCA 1716

This judgment dealt with the making of a determination of native title recognising the existence of native title over part of the West Kimberley region in Western Australia. It followed a proposed determination summarised above. Native title was recognised in relation to parts of the determination area, which can be generally described as the northern part of the Dampier Peninsula and certain intertidal areas and adjacent reefs and islets, together with the waters in the immediate vicinity. Over the remainder of the determination area, a determination was made that native title did not exist. Where it was recognised to exist, the native title holders were determined to be the Bardi and

Jawi people, described as the descendants of certain named ancestors and persons adopted by those descendants in accordance with the traditional laws and customs of the native title holders.

Over what can be very generally described as that part of the determination area landward of mean high water mark on the mainland, native title was recognised as being the right to possession and occupation as against the whole world, including rights to:

- live on the land;
- access, move about on and use the land and waters;
- hunt and gather on the land and waters;
- engage in spiritual and cultural activities on the land and waters;
- access, use and take any of the resources of the land and waters (including ochre) for food, shelter, medicine, fishing and trapping fish, weapons for hunting, cultural, religious, spiritual, ceremonial, artistic and communal purposes;
- refuse, regulate and control the use and enjoyment by others of the land and its resources;
- access and use the water of the land for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal purposes.

Over the other parts of the determination area where native title rights and interests were recognised (generally described as certain intertidal areas, adjacent and offshore reefs and islets and the waters in the immediate vicinity), they consist of non-exclusive rights to:

- access, move about in and on and use and enjoy those areas;
- hunt and gather, including for dugong and turtle;
- access, use and take any of the resources thereof (including water and ochre) for food, trapping fish, religious, spiritual, ceremonial and communal purposes.

In areas seaward of the mean low water mark, the preceding native title rights and interests are limited to reefs and islets within that area when they are exposed or covered by not more than two metres of water.

Rubibi Community v Western Australia (No 7) [2006] FCA 459

This judgment, the seventh in the series of Rubibi cases, involved the making of a determination of native title over the town of Broome and its surrounds in the Kimberley region of Western Australia. It also dealt with (among other things) the question of the extent to which native title was extinguished.

The Yawuru claimants were largely successful. The claim succeeded in whole or in part over approximately 4900 square km of their traditional country in and around

Broome, and they established a communal native title entitlement to exclusive possession of their traditional country. However, as a result of ‘the criteria laid down under Australian law’ for recognition of native title, the native title rights and interests in respect of most of those areas were found to be ‘non-exclusive’.

While agreement was reached on many of the outstanding issues, several others were left to the Court to decide, including:

- It was accepted that the Court was bound by the decision of the Full Court in *Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442 that the native title right to live on a pastoral lease is not inconsistent with the rights of the lessee under the lease. Justice Merkel was of the view that this reasoning applied equally to mining leases.
- Concerning ss. 47A and 47B, the meaning of the relevant area, and ‘occupation’, evidence of these must relate to the whole area rather than a part. His Honour developed broad principles which he applied to each tenement concerned.
- Although certain freehold grants of questionable validity were not included in the application and were not subject to the determination, Justice Merkel considered the question of validity in any case. The freehold grants were future acts that were not validated by any provision of the Act, they were impermissible future acts under the ‘old’ Act (i.e. the Act before it was amended in 1998) and appeared to be invalid to the extent that they affected native title. This will have to be resolved between owners of the freeholds, the state and the native title holders through, for example, an indigenous land use agreement under which the native title holders may relinquish their native title rights and interests on appropriate terms.

His Honour concluded that the determination of native title made in this case brought to an end ‘an epic struggle by the Yawuru people to achieve recognition under Australian law of their traditional connection to, and ownership of, their country’. Native title claims ‘are not only complex’ but impose ‘unprecedented’ demands on the parties and the court and he said there may be a better, more efficient, more effective and fairer way of resolving native title disputes. He described native title in Australia as being in a ‘state of gridlock’ and suggested this could be resolved by more effective mediation and other reforms so as to avoid adversarial hearings.

At the time of writing this report, the State of Western Australia had lodged an appeal against this judgment with the Full Court of the Federal Court.

Native title found not to exist

Risk v Northern Territory [2006] FCA 404

The proceedings were a consolidation of 19 applications filed by three different groups of applicants. The applications were filed between 1994 and 2001 by the Larrakia

applicants (the first applicants), the Danggalaba Clan (Quall applicants—the second applicants) and the Roman applicants (the third applicants).

The case dealt with a number of claimant applications made over Darwin and its surrounds. Justice Mansfield noted that the three broad issues for consideration were:

- whether the Larrakia people established that they had native title rights and interests in the claim area as defined in s. 223(1) of the Act;
- if such rights existed, the detailed nature of those rights; and
- whether such rights have been extinguished, either at common law or by operation of the Act.

His Honour relied on the majority judgment of the High Court in the *Yorta Yorta* judgment, which stated that the relevant rights and interests for the purposes of s. 223(1) are those which derive from traditional laws and traditional customs forming a body of norms that existed before sovereignty. His Honour noted that this principle affects the construction of the definition of native title in s. 223(1), particularly the meaning of ‘traditional’. There is a requirement of continuity on both the Aboriginal society and the acknowledgement and observance of traditional laws and traditional customs. The requirement for continuity is not absolute but acknowledgement and observance of traditional laws and customs must have continued ‘substantially uninterrupted’ since sovereignty.

His Honour looked at the evidence for each of three periods of history: 1825 to c 1910; 1910 to World War II and World War II to 1970.

In Justice Mansfield’s judgment, the evidence:

- showed that current Larrakia society had not carried forward the traditional laws and customs of the Larrakia people so as to support the conclusion that those traditional laws and customs have had a continued existence and vitality since sovereignty;
- revealed inconsistencies between members of the present applicants in some respects about what their laws and customs are;
- revealed inconsistencies in the extent to which those laws and customs are practised;
- revealed in many instances the adoption of knowledge of traditional laws and customs from other research;
- disclosed that certain beliefs now regarded as fundamental were derived only from the Kenbi Aboriginal land claim hearings;
- disclosed a level of generality of knowledge—including the absence of knowledge of particular Dreamings or stories for sites, of site specific ceremonies, and of body adornment—which was not consistent with the acquisition of knowledge in accordance with the traditional laws and customs of the Larrakia people;

- did not reveal the passing on of knowledge of the traditional laws and customs from generation to generation in accordance with those laws and customs during much of the twentieth century.

In his Honour's opinion, a combination of circumstances had, in various ways, interrupted or disturbed the presence of the Larrakia people in the Darwin area during several decades of the twentieth century in a way that has affected their continued observance of, and enjoyment of, the traditional laws and customs of the Larrakia people that existed at sovereignty. One 'significant' circumstance was the development of Darwin into a substantial community following European settlement because that process involved many other Aboriginal people who were not Larrakia moving into the Darwin area. Other circumstances related to natural or external events and some were the consequence of government policy.

The Court concluded that the present society comprising Larrakia people does not now have rights and interests possessed under the traditional laws acknowledged, and the traditional customs observed, by the Larrakia people at sovereignty. That is because their current laws and customs are not 'traditional' in the sense explained in the *Yorta Yorta* judgment. Accordingly, the application was dismissed. The judgment is currently subject to appeal.

Determinations of native title by consent

Mundrabby v State of Queensland [2006] FCA 436

This is a determination by consent that native title exists over certain land and waters near Yarrabah and around Trinity Inlet and the Mulgrave River near Cairns in Queensland. The area comprised six lots. In relation to three of the lots, the agreement recognised the traditional rights of the Mandingalbay Yidinji People in relation to the determination area (except in relation to water) to possession, occupation, use and enjoyment of all land and waters to the exclusion of all others.

In relation to all land and waters in the other three lots, the non-exclusive right to use and enjoy the land and waters was recognised, being the right to:

- access and be physically present in accordance with traditional laws and customs;
- camp in accordance with traditional laws and customs, not including the right to reside permanently or to build permanent structures or fixtures;
- hunt, fish and gather for the purpose of satisfying personal domestic, social, cultural, religious, spiritual, ceremonial and non-commercial communal needs in accordance with traditional laws and customs;
- take, use and enjoy the natural resources for the purpose of satisfying personal domestic, social, cultural, religious, spiritual, ceremonial and non-commercial communal needs in accordance with traditional laws and customs;

- maintain and protect from physical harm, by lawful means, places which are of importance to the native title holders in accordance with traditional laws and customs;
- perform social, cultural, religious, spiritual and ceremonial activities and invite others to participate in those activities in accordance with traditional laws and customs.

Other rights recognised in the latter areas were the right to:

- pass on native title in accordance with traditional laws and customs;
- make decisions in accordance with traditional laws and customs concerning access to and use of and enjoyment by Aboriginal people who are governed by the traditional laws acknowledged, and traditional customs observed by, the native title holders;
- determine membership and filiation to the native title holders in accordance with traditional laws and customs.

Mervyn v Western Australia [2005] FCA 831

This was a consent determination recognising the existence of native title in relation to some 187,000 sq km in Western Australia (the Ngaanyatjarra Lands determination). Chief Justice Black considered s. 87 of the Act and decided it was appropriate to make the determination in the terms agreed by the parties.

The claim group was defined as the men and women named in a schedule to the determination (some 2,700) and their descendants—the Peoples of the Ngaanyatjarra Lands.

As the parties agreed there had been partial extinguishment of native title over an unvested reserve, in respect of that area, the native title rights and interests recognised were non-exclusive rights to:

- enter and remain on the reserved land;
- take flora and fauna;
- take water for personal, domestic, or non-commercial communal purposes;
- take other natural resources such as ochre, stones, soils, wood and resin; and
- care for, maintain and protect from physical harm, particular sites and areas of significance to the native title holders.

Over the remainder of the determination area, there had either been no extinguishment by the ‘creation of any prior interest’ or any such extinguishment must be disregarded for all purposes under the Act (see ss. 47A and 47B). Therefore, with exception of rights to flowing and subterranean waters, native title is comprised of the right of possession, occupation, use and enjoyment to the exclusion of all others.

Riley v Queensland [2006] FCA 72

This was a consent determination recognising native title over an area of land and inland waters on Cape York Peninsula in Queensland. The determination was to be subject to the registration of ILUAs within six months of the date of the order or such later time as the Court may order.

The application had been referred to the Tribunal for mediation and Justice Allsop recognised the success of the mediation process brought about by the 'skill of the Tribunal and the goodwill and the skilled and constructive efforts of the parties and their advisers'. His Honour congratulated all concerned.

The Court considered anthropological and genealogical material, and found that:

- native title exists in relation to the determination area as agreed to by the parties; and
- the Western Yalanji People have a long-standing connection to the determination area under traditional laws acknowledged and traditional customs observed by them.

Subject to certain qualifications and the other interests, the native title rights and interests recognised in relation to the determination area are non-exclusive rights to:

- be present on, use and enjoy the determination area by: hunting, fishing and gathering for personal, domestic or non-commercial communal purposes; conducting ceremonies; being buried on, and burying native title holders; maintaining springs and wells where underground water rises naturally for the sole purpose of ensuring the free flow of water; taking, using and enjoying the natural resources for personal, domestic or non-commercial communal purposes; maintaining and protecting from physical harm, by lawful means, those places of importance and areas of significance to the native title holders under their traditional laws and customs; and
- inherit and succeed to the native title rights and interests.

The native title rights and interests recognised in relation to water are non-exclusive rights to:

- hunt, fish and gather on, in and from water for personal, domestic or non-commercial communal purposes; and
- take, use and enjoy water and natural resources therein for personal, domestic or non-commercial communal purposes.

Clarke v Victoria [2005] FCA 1795

The significance of this consent determination is that it constitutes the first determination, whether by consent or otherwise, that recognises the existence of native title in Victoria.

Justice Merkel ‘strongly commended’ the parties for resolving issues by mediation and consensus, rather than by an adversarial process involving ‘great expense and conflict’. The Tribunal was also commended for its role in resolving the dispute between the parties.

Justice Merkel noted that the outcome of the present claim is testimony to the fact that the ‘tide of history’ has not ‘washed away’ any real acknowledgement of traditional laws and any real observance of traditional customs by the applicants (the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples) and has not, as a consequence, resulted in the foundation of their native title disappearing. The outcome ‘is a living example of the principle that is now recognised in native title jurisprudence that traditional laws and customs...evolve over time in response to new or changing social and economic exigencies to which all societies adapt as their social and historical contexts change’.

That said, Justice Merkel was careful to note that ‘the continued existence, and the nature and extent, of that native title can only be resolved on a case by case basis’.

The Court determined that:

- non-exclusive native title rights to hunt, fish, gather and camp for personal, domestic and non-commercial communal needs, and interests exist in Crown reserves totalling 269 sq km along the banks of the Wimmera River;
- native title does not exist in the remaining areas but the claimants will have other rights and receive certain benefits in relation to those areas.

Billy v Queensland [2005] FCA 1115; *Thaiday v Queensland* [2005] FCA 1116; *Warria v Queensland* [2005] FCA 1117, (2005) 223 ALR 62; *Nona v Queensland* [2005] FCA 1118

All these cases deal with determinations under the Act recognising native title to various islands in the Torres Strait.

In all cases, the claimants were settled on nearby islands. However, the evidence indicated they had maintained a continuous ‘physical, cultural and spiritual connection’ with the determination area which was proof of a normative system which has force on the peoples’ lives, regulates their access to, and use of, the islands, and has been in existence since before the assertion of sovereignty.

Subject both to certain qualifications and the other rights and interests in the area, native title was recognised as a right to possession, occupation, use and enjoyment of the determination areas to the exclusion of all others. The native title in relation to ‘water’ was found to be a non-exclusive right to hunt and fish in, or on, and gather from, the ‘water’ for the purpose of satisfying personal, domestic or non-commercial communal

needs; and take, use and enjoy the ‘water’ for the purpose of satisfying personal, domestic or non-commercial communal needs. Chief Justice Black emphasised that ‘the order does not grant native title...it recognises what they have long held’.

Nona and Manas v Queensland [2006] FCA 412; *Manas v Queensland* [2006] FCA 413

In *Nona*, Victor Nona and John Manas applied on behalf of the Badualgal and Mualgal peoples for a determination of native title over numerous uninhabited small islands, islets and rocks located south of Badu Island and south-west of Mua Island in the Torres Strait in the State of Queensland.

In *Manas*, Father John Manas, on behalf of the Mualgal People, applied for a determination recognising the existence of native title in relation to numerous small uninhabited islands, islets and rocks in the vicinity of Mua Island in the Torres Strait.

In both cases, Justice Dowsett was satisfied that the evidence showed that the people resident in the claim areas and their ancestors, were seafarers who were able to travel to, and visit on a regular basis, the various islands, islets and rocks searching for food.

Subject to both certain qualifications and the other rights and interests in the area, the native title recognised is a right to possession, occupation, use and enjoyment to the exclusion of all others. In relation to water, the native title right recognised is non-exclusive and limited to the right to:

- hunt and fish in or on, and gather from, the water for the purpose of satisfying personal, domestic or non-commercial communal needs; and
- take, use and enjoy the water for the purpose of satisfying personal, domestic or non-commercial communal needs.

Compensation application dismissed

Jango v Northern Territory of Australia [2006] FCA 318

This was a compensation application made under s. 61(1) of the Act. The threshold issue was whether the compensation claim group could satisfy the Court that, at the time the ‘compensation acts’ were done, the group held native title rights and interests over the area.

The area covered by the compensation application, which was constituted as the Town of Yulara, included the Yulara Tourist Village, Connellan airport and various other public works. It is in the eastern part of the Western Desert in the Northern Territory near Uluru.

The ‘compensation acts’ said to have extinguished native title included the grant of

leasehold and freehold estates and the construction of public works between 1979 and 1992.

There is no entitlement to compensation under the Act unless the group claiming that compensation can show that they held native title rights and interests at the time the compensable act was done.

The native title holders at the time of the ‘compensation acts’ were said to be the people of the eastern Western Desert who were living at the time when all native title rights and interests were extinguished in relation to parts of the application area. The pleadings did not assert that the compensation claim group was descended from the eastern Western Desert people but, rather, that the present people of the eastern Western Desert are descended, biologically and socially, from people of Western Desert at sovereignty. The laws and customs of the native title holders were said to be the same as those acknowledged by the eastern Western Desert people at sovereignty, subject to ‘adaptive’ change.

His Honour held that:

- the Western Desert bloc had existed as society at all times since sovereignty;
- some members of that society have acknowledged and observed its laws and customs in the eastern Western Desert, including the area around Uluru and Kata Tjuta.

His Honour emphasised that this finding did not address a number of critical issues in relation to the application, namely:

- whether the members of the compensation claim group acknowledged and observed the laws and customs identified in the pleadings;
- if so, could those laws and customs be described as normative in the sense required by s. 223 of the Act; and
- whether those laws and customs were traditional laws and customs of the people of the Western Desert bloc within the meaning of s. 223.

His Honour found it unnecessary to determine the second point.

Justice Sackville noted the lack of congruence between the pleaded case and the way in which the applicants presented their evidence and submissions. Therefore, his Honour concluded that even if a reasonably flexible interpretation of the pleadings were adopted, the evidence fell short of establishing the existence of a body of laws and customs relating to rights and interests in land that was acknowledged and recognised by members of the Western Desert bloc at the relevant time or times. Also, the evidence of virtually none of the senior Aboriginal witnesses supported key elements of the applicants’ pleaded case.

The compensation application was dismissed. The judgment is currently subject to appeal.

Splitting proceedings under s. 67

Turrbal People v State of Queensland [2005] FCA 1796

The State of Queensland sought orders separating the Turrbal People's claimant application into two separate proceedings. It was proposed that the proceeding in relation to Turrbal Part A would deal with that part of the area covered by the application where there was no overlapping claimant application. That would be set down for trial. The proceeding dealing with Turrbal Part B, the balance of the area where there were overlapping claimant applications, would be adjourned to a later date. The State argued convenience and cost as the main factors supporting this. Most of the other respondents and the applicants in the overlapping claims supported the state's submissions and none of the respondents opposed them. The Turrbal people opposed the making of the orders, arguing dealing with their application in two separate proceeding was unjust because they had built their case for trial over the whole of the area and the notion of separating their traditional homelands into two parts was at odds with the principles of their laws and customs.

The Turrbal People's application covered an area of approximately 1,485 sq km comprised of 330 specific parcels of unallocated state land, state forests and parklands in and around Brisbane, i.e. it was 'lot specific'. The area the state proposed as Turrbal Part A comprised 96 lots covering 522 sq km. Both the Jinibara People's claim and Jagera People's No. 2 claim, neither of which was programmed to trial and both of which were 'country claims' (i.e. not lot specific), overlapped parts of the area covered by the Turrbal People's claim.

Justice Spender found that the Court was empowered to make the orders the state sought and, on the evidence, it was 'just and convenient' to do so. There were 'overwhelming reasons' why the Court should make the orders sought, particularly since hearing the whole of the Turrbal People's claim, together with the overlapping claims, faced very considerable delay.

There have been unsuccessful attempts in the past to split a claimant application for the purposes of limiting the parties whose consent must be obtained for the purposes of s. 87 or to allow for parts of the area covered by overlapping claimant applications to be combined with parts of the area covered by other claimant applications: see *Champion v Western Australia* [1999] FCA 581. It should be noted that this case does not affect what was found in those cases. In this case, there will be two proceedings that deal with one claimant application, i.e. the Turrbal People's claimant application.

Costs order against the applicant

Davidson v Fesl (No 2) [2005] FCAFC 274

In this case the Court exercised its discretion under s. 85A of the Act to make a costs order against the applicants. The ‘ordinary rule’ is that, where the Court has a discretion to award costs unfettered by any legislative presumption, costs ordinarily ‘follow the event’, i.e. a successful litigant gets costs in the absence of circumstances justifying some other order. However the language of s. 85A of the Act lies against the application of the ordinary rule, i.e. the starting point is that each party bears their own costs. One basis upon which the Court may order a party to bear costs is that the party has engaged in ‘unreasonable conduct’. The matter was an application to the Full Court for leave to appeal against a judgment of Justice Spender—see *Davidson v Fesl* [2005] FCAFC 183. Their Honours Justices French and Finn observed that ‘this is a case in which the motion was not only without merit. It seemed to serve little, if any, practical purpose’.

The applicants were required to pay the costs of the first and second respondents.

Full Federal Court review of future act decision

Little v Oriole Resources Pty Ltd (2005) 146 FCR 576; (2005) 225 ALR 202; [2005] FCAFC 243

This appeal to the Full Federal Court concerned the interpretation and proper application of s. 237(c) of the Act, which provides one of the criteria for the application of the expedited procedure in a future act application.

The native title party lodged an objection to the application of the expedited procedure to the grant of a miscellaneous licence for purposes of mining camp infrastructure for an existing mining camp. The Tribunal held the expedited procedure was attracted—see *Oriole Resources Ltd/Western Australia/Albert Little on behalf of Badimia NNTT* WO03/508, [2004] NNTTA 37 (3 June 2004). An appeal under s. 169 of the Act to the Federal Court on questions of law was dismissed—see *Little v Oriole Resources Pty Ltd* [2005] FCA 506. The native title party then appealed to the Full Federal Court.

Justices French, Stone and Siopis held the Tribunal was required only to consider one point under s. 237(c) ‘...the act is not likely to involve a major disturbance to any lands or waters. This required a “predictive assessment”.’

The Full Court also considered the assessment of ‘major disturbance’ and said that it was hard to see that the establishment of a significant mining camp and accommodation facilities in an area already the subject of extensive mining activity could be anything other than a ‘major disturbance’. However, in the present case, had the Tribunal undertaken a predictive assessment as required, it could not have come to

any conclusion on the evidence other than that the proposed works would be limited in the way asserted by the grantee party.

The Full Court dismissed the appeal, although finding fault with some of the Tribunal's reasoning.

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

Kemp v Registrar, Native Title Tribunal [2006] FCA 568

The applicant in effect sought an order setting aside the decision of the Registrar to register an ILUA in the Khappinghat Nature Reserve and Saltwater National Park in northern New South Wales and interlocutory relief prohibiting further works in the area.

Mr Kemp claimed to have a native title interest in the area and that persons on behalf of the Saltwater People were not authorised to enter into the agreement.

Among other things, in the agreement the parties agreed that certain acts were valid and were taken always to have been valid including reservation of Saltwater National Park under the National Parks and Wildlife Act, an amenities block, viewing platform, steps to the beach, fencing, signage, parking and water mains. The parties also consented to the doing of future acts:

- the amendment, repeal or the re-making of the National Parks and Wildlife Act;
- the making of a plan of management and any subsequent amendments;
- construction of a camping ground area and toilet/shower, vehicle access, picnic tables and barbecue facilities, parking and signage for the camping ground area;
- erection of a plaque recording the use of the land by the Indigenous People of the Manning River Valley.

The Court had no evidence of the basis upon which Mr Kemp asserted native title rights as would entitle him to restrain the public works mentioned in the agreement and the applicant's motion seeking prohibition of works was stood over for later hearing.

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 reflecting significant aspects of the workings of the Tribunal.

Enmic Pty Ltd/Borinelli/Western Australia [2006] NNTTA 29, Deputy President Sumner, 31 March 2006

In this case the Tribunal considered whether it has power to impose conditions on the doing of a future act when making a determination by consent that the future act in question may be done.

The negotiation parties consented to a determination under s. 38 of the Act that the future act (the grant of a mining lease) may be done subject to undertakings made by the grantee party and native title party to be bound by the terms of an ancillary agreement between them.

Only seven of the nine people constituting the native title party had executed:

- the ancillary agreement;
- a related a heritage protection agreement between the grantee party, the native title party and their representative body, the South West Land and Sea Council;
- a state deed.

In these circumstances, the government party was not prepared to execute and lodge the state deed with the Tribunal. As there was no properly executed document which constituted an agreement as in s. 31(1)(b) of the Act, the Tribunal considered whether it could resolve the matter by making a consent determination as proposed by the parties.

Deputy President Sumner noted that:

- the Tribunal has a broad power to impose conditions with some limitations;
- ancillary agreements in Western Australia between native title parties and grantee parties sometimes contain terms which could not be made conditions of future act determination by the Tribunal;
- in other matters, the Tribunal has made determination by consent that the future act may be done ‘subject to’ or ‘pursuant to’ an agreement;
- a consent determination subject to terms of another agreement raises the question of whether the terms of the agreement become conditions of the Tribunal’s determination;
- the Tribunal has only made a determination of this kind after seeing the relevant agreement and satisfying itself that it does not contain terms in breach of s. 38(2).

The Tribunal was concerned that a determination of the type proposed, ‘subject to the undertakings of the grantee party and native title party to be bound by the terms of the Ancillary Agreement’, would, despite the parties’ intentions, make the terms of the ancillary agreement conditions of the determination, beyond the Tribunal’s power.

Normally, heritage protection agreements referred to in Tribunal determinations are relatively simple agreements not containing compensation or other payments prohibited by s. 38(2). The Tribunal was satisfied the agreement in this case

contained no terms which the Tribunal could not impose as conditions of a future act determination under s. 38 of the Act.

The Tribunal accepted an alternatively worded minute of consent determination that the future act may be done subject to an 'acknowledgement' by the grantee and native title party that the ancillary agreement stand as a properly executed agreement between the parties which avoided raising doubt about the imposition of conditions. A consent determination was made that the grant of the mining lease may be done.

Bradley Foster & Ors (Waanyi Peoples)/Copper Strike Ltd/Queensland [2006] NNTTA 61, Member Sosso, 19 May 2006

In this case the Tribunal considered whether it could make a consent determination when not all the named applicants had signed.

Twenty-eight named persons collectively constitute the applicant for the Waanyi native title determination application. The government party, grantee party and native title party had reached an agreement in principle in the course of negotiations over the doing of two future acts, the grant of Exploration licences. All the negotiation parties consented to the making of a s. 38 determination.

The native title party gave evidence on affidavit that 21 people comprising the applicant had signed the two 'in principle' agreements, three were deceased, three could not be located and one refused to sign the agreements, not because he objected to the agreements but due to disagreements with others who constitute the applicant.

The Tribunal considered the role played by representative bodies in future act agreement-making and the potential importance of representative body officers in relation to native title decision-making and the specific endorsement of native title holders to agreements that are the subject of s. 38 determination. The Tribunal noted that where a native title party has the benefit of legal representation or services of a representative body, it assists to assure the Tribunal the native title party's consent is informed. Further the Act vests the representative body with functions and powers, clearly envisioning that representative bodies, in relation to future act functions, will provide independent advice and endeavour to ensure native title party decisions are made in accordance with proper decision-making processes.

The Tribunal said that in deciding whether a native title party is actually consenting to a determination under s. 38 of the Act, two matters are of central importance:

- has the agreement been endorsed by the wider claim group or is it of a type that the claim group has previously given its general consent to; and
- whether the persons comprising the applicant who have not executed the

agreement are either not able to be located, have passed away, suffer from a medical condition preventing or impeding them from executing an agreement or are refusing to execute the agreement for reasons not related to the terms of the agreement or the process of the claim group that was adopted in endorsing the agreement.

The determination was made by consent that the future acts be done subject to compliance with the 'Native Title and Heritage Agreement'.

Conjunctive determination and split in the applicant group

Charlie Moore; Mungeranie/Eagle Bay Resources NL/South Australia [2005] NNTTA 53, Member Sosso, 28 July 2005

This determination by the Tribunal in a right to negotiate proceeding covers a conjunctive determination and split in the applicant group, viz:

- the scope of the powers of an administrator appointed under s. 71 of the *Aboriginal Councils and Associations Act 1976* (Cwlth) to enter into agreements relating to a native title party's right to negotiate;
- whether the native title party has consented when some of the people named as 'the applicant' did not oppose the making of an agreement but refused to execute it;
- what the Tribunal should take into account when considering making a conjunctive determination pursuant to s. 26D(2) of the Act.

The South Australian Government issued a s. 29 notice of its intention to grant under the *Petroleum Act 2000* (SA) an exploration licence to the grantee party. The notice also stated that the Petroleum Act provides the holder of an exploration licence the right to apply for a petroleum production licence where a discovery warrants production.

The area covered by the proposed exploration licence overlapped the area covered by the Dieri Native Title Claim and the Yandruwandha/Yawarrawarrka Native Title Claim.

The grantee party made an application under s. 35 for a future act determination under s. 38. A minute of consent determination, signed by the legal representatives for the negotiation parties, was lodged with the Tribunal. It sought to have included in the determination a statement that the right to negotiate provisions of the Act would not apply to grants of 'any retention, production, associated facilities or pipeline licences subsequent to the grant' of the licence in question, 'subject to the Grantee Party complying with the terms of the Aboriginal Heritage Protection Protocol contained in the Schedule to this determination', i.e. a conjunctive determination as contemplated by s. 26D(2). This was the first time the Tribunal had been asked to make a conjunctive determination in South Australia.

The s. 35 application stated that the negotiation parties had reached agreement. However agreement had not been finalised with one of the native title parties. Therefore, a determination made by consent was sought.

Nine people were named as 'the applicant' in the relevant claimant application and, therefore, 'the registered native title claimant' and the 'native title party'.

The evidence before the Tribunal was that, of the nine:

- one was deceased;
- three others would not sign any documents (although the solicitor acting deposed that one would do so if paid \$20,000); and
- a fourth refused to say whether or not he would sign but had earlier indicated he wouldn't sign the agreement unless he was included in a survey team in relation to another petroleum exploration agreement.

A meeting of the native title claim group had resolved to remove the deceased person and two of those who refused to sign but no application under s. 66B(1) had been made to the Federal Court to replace the applicant.

A corporation known as the Yandruwandha/Yawarrawarrka Traditional Land Owners (Aboriginal Corporation) represented the native title party in future act negotiations. The corporation was under administration.

The Tribunal noted that, while there is no express provision in the Act for a s. 38 determination to be made by consent, it is open for the Tribunal to do so but the Tribunal must independently assess the material before it and determine if it would also be appropriate to do so.

The Tribunal decided that the administrator could give consents and agree to any course of action as could the governing committee.

The Tribunal was not persuaded that the three of the seven persons who refused or failed to execute the land access deed were a small minority of the wider claim group and to contend that the Tribunal should look beyond the applicant and consider the views of the wider claim group is to ignore the clear legislative intent underlined by s. 62A.

The Tribunal said the 'key issue' in determining whether or not to make a s. 38 determination by consent is that the agreement reached has been made with the full knowledge and full authority of the negotiation parties.

Where (as in this case) some of the persons who jointly constitute the applicant decline, or fail to, sign relevant documents, the Tribunal will act on the consent given by the

native title party collectively unless there is some credible suggestion that this is not appropriate. The Tribunal looked at the ‘numerous occasions’ when the Tribunal has made a s. 38 determination by consent even though not all of the persons comprising the applicant had consented.

The Tribunal was satisfied that the native title party had, with full knowledge, given its consent to making of a determination along the lines submitted by the legal representatives of the negotiation parties; and the Tribunal was empowered to make the consent determination sought, subject to consideration of s. 26D.

The issues taken into account were (among others):

- the Yandruwandha/Yawarrawarrka native title party was, at all times, legally represented;
- the Yandruwandha/Yawarrawarrka native title party has previously entered into similar agreements;
- there was no material suggesting that there is any opposition based on the substance of the proposed agreement;
- granting the proposed tenement would assist the Yandruwandha/Yawarrawarrka native title party by developing their economic structures;
- it was not likely that the grant of the proposed tenement would affect the way of life, culture or traditions of the Yandruwandha/Yawarrawarrka native title party or the enjoyment of their registered native title rights and interests and the material before the Tribunal did not suggest that the subject area contained any sites or areas of particular significance;
- the broader public interest in the granting of the petroleum tenement; and
- the specific economic significance of the doing of the future act for South Australia and the wider Australian economy.

Regarding the conjunctive determination, the Tribunal noted that s. 26D(2) was inserted into the Act to facilitate exploration and mining activities where one right to negotiate could be applied to the whole process and was particularly suited to petroleum and gas exploration and production.

The Tribunal was satisfied that it was appropriate to make the conjunctive determination sought.

Consent determination when all the named applicants are deceased

James Dimer on behalf of the Esperance Nyungar people/Paul Winston Askins, James Ian Stewart/Western Australia, [2006] NNTA 70, Member O’Dea, 8 June 2006

In this matter the Tribunal considered whether a representative body can make a valid expedited procedure objection application pursuant to s. 75 of the Act in circumstances

where all the persons jointly comprising the registered native title claimant are deceased.

The Goldfields Land and Sea Council (GLSC) lodged an expedited procedure objection application on behalf of the Esperance Nyungar people to the proposed grant of two exploration licences. More than six months after the s. 29 notice the GLSC made s. 35 application for a future act determination by the Tribunal under s. 38. The future act determination application stated the grantee and native title parties had reached agreement and consented to a future act determination. The GLSC asserted in the application that there were logistical difficulties in arranging for the native title party to execute a state deed and an ancillary agreement as both named applicants, the registered native title claimant, were deceased.

The Tribunal raised the question of the capacity of the native title party to have consented to the doing of the future act or the bringing of the s. 35 application. The Tribunal directed that evidence been given by the GLSC as to how consent had been given, and for all the parties to file submissions on how it was said to be possible for the Tribunal to make a determination in the absence of any living applicants.

The government party proposed the situation could be remedied by substituting the applicant with a competent party.

The submissions did not satisfy the Tribunal that a determination by consent could be made, and at the same hearing the Tribunal questioned the competency of the s. 35 application. The Tribunal set out the statutory framework of the future act applications and reached the conclusion that if there is no living applicant there is no party empowered to act on behalf of the native title claim group.

The application was dismissed pursuant to s. 148(a) of the Act. The Tribunal noted it was open to another party to bring a s. 35 application but the problem of the consent of the native title party would arise again. Alternatively, the grants could be made pursuant to s. 28(1)(b), on the basis that immediately before the future act is done there is no native title party. In such circumstances it was open to the parties to honour the agreement reached between them despite the lack of jurisdiction of the Tribunal.

Expedited procedure

Cheinnmora/Heron Resources Ltd/Western Australia [2005] NNTTA 99, Member O'Dea, 22 December 2005

The issue arising in this matter was whether the expedited procedure applied to the grant of an exploration licence under the *Mining Act 1978* (WA) (Mining Act) over reserve land vested in the Aboriginal Lands Trust .

The Tribunal determined that:

- it was likely that exploration on the reserve would be permitted only if an appropriate agreement with the native title party is in place;
- permission to enter the reserve would not be granted by the native title party unless the issues of concern have been satisfactorily dealt with and appropriate conditions imposed;
- the Minister for State Development was unlikely to consent to mining until the Minister for Indigenous Affairs had authorised access to the exploration licence area;
- due to the existence of this regulatory regime, it was not likely that any of the three limbs of s. 237 governing the criteria for applying the expedited procedure, would be offended in relation to the grant of the tenements in so far as they affected the reserve;
- therefore, the expedited procedure applied.

Negotiation in good faith—relevance of prior dealings

Cameron/Hoolihan, Illin, Thompson/Queensland [2005] NNTTA 84, Member Sosso, 16 November 2005

Among other things, this Tribunal determination dealt with :

- where certain agreements were made prior to a s. 35 application being lodged under the Act, s. 37 prohibits the making of a future act determination by the Tribunal;
- whether past conduct of the grantee party was a relevant consideration in determining whether there had been good faith negotiations as required by s. 31(1) prior to the s. 35 application being made.

The grantee party had applied for the grant of a mining lease. The native title party was the applicant in a claimant application brought on behalf of the Gugu Badhun People.

In 2000–02, the grantee party had acted in previous negotiations with the Gugu Badhun People in relation to the proposed grant of a different mining lease over the same area of land. These negotiations were ultimately unsuccessful and the application for that lease was abandoned. In this matter, the native title party alleged that the Gugu Badhun People had provided financial support to the grantee during the previous negotiations and that money was still owed to them as a result. These previous negotiations were seen by the native title party as a key issue in the determination of whether the grantee party had negotiated in good faith in relation to the present lease.

A s. 31(1)(b) state deed and an ancillary agreement/ILUA had been signed by the native title party and the grantee. The state deed had been lodged by that date but had not yet been executed by the State of Queensland. The native title party's legal

representative contacted the state and confirmed that the ancillary agreement was 'withdrawn' because it was entered into with 'a partnership' that was now in dispute and 'therefore the parties are no longer in agreement'. The Tribunal took this to be repudiation or the unilateral termination of the agreement by the native title party.

Subsection 37(a) of the Act provides that the arbitral body (in this case, the Tribunal) must not make a determination if 'an agreement of the kind mentioned in paragraph 31(1)(b) has been made'.

The question was whether the deed and/or the agreement operated to prohibit the Tribunal from making a future act determination in this case. As both agreements provided for consent to the doing of the future act in question, the Tribunal found that both were potentially within the scope of s. 31(1)(b) however the state deed had not been executed by the government party and so was not relevant. As to the ancillary agreement, it had been 'executed by the relevant negotiation parties' but 'abandoned by the native title party' before the application for the s. 35 application was made to the Tribunal.

It was determined that if there is no s. 31 agreement in force at the time the s. 35 application is made, the Tribunal has jurisdiction to make a s. 38 determination. However, if at any time after the s. 35 application is made, agreement is reached, the jurisdiction of the Tribunal lapses. The fact that an agreement was reached but then terminated prior to the s. 35 application being made, does not prevent the Tribunal reaching a determination. The focus of s. 37 is on the existence of an extant agreement, not on a state of affairs which no longer exists.

Negotiation in good faith—obligations regarding funding and compensation

Gulliver Productions Pty Ltd/Western Desert Lands Aboriginal Corporation/Western Australia [2005] NNTTA 88, Deputy President Sumner, 30 November 2005

This matter concerned a future act notice issued under s. 29 of the Act by the State of Western Australia in relation to the proposed grant of a petroleum exploration permit. Negotiations as required by s. 31(1)(a) of the Act commenced and during the course of those negotiations a determination recognising native title was made in relation to one of the native title parties. The Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalikunu) was determined to be the prescribed body corporate (WDLAC) in relation to that determination of native title.

Subsequently, WDLAC's details were entered in the National Native Title Register, making it a 'registered native title body corporate'. Therefore, pursuant to s. 30(1)(c), WDLAC was now the native title party in these proceedings before the Tribunal.

The grantee party applied for a future act determination under s. 35 of the Act. The WDLAC alleged the government party had not negotiated in good faith prior to making the s. 35 application. Negotiations in good faith are one of the pre-conditions to the Tribunal making a determination in relation to such an application.

WDLAC did not allege any subjective lack of honesty or sincerity on the part of the government party but, rather, alleged failure to negotiate in a reasonable manner in the circumstances.

The Tribunal was satisfied that the government party had generally acted reasonably and in accordance with the good faith indicia set out in *Western Australia v Taylor* (1996) 134 FLR 211.

The Tribunal considered the issue of whether the government party and the grantee party should provide funding for negotiations to a native title party where that party is a prescribed body corporate. The Tribunal's comments, in relation to the problems the lack of funding for prescribed bodies corporate causes in the native title process, are of particular note:

The evidence tendered in this matter has drawn attention to what is now a longstanding policy dispute between the Commonwealth and state and territory Governments about how PBCs should be funded. I am aware that the Tribunal...has...pointed out its concerns for the operation of native title processes if PBCs cannot properly carry out their statutory functions. It does seem anomalous that government funding is available...to support native title parties at the claimant stage but once native title is determined government funding in practice is no longer available...It is not the Tribunal's role to enter into the policy dispute but I am obliged to point out that how PBCs are to be funded needs to be given urgent attention by governments... One of the six practical reforms to deliver better outcomes in native title announced by Attorney-General Ruddock...was an examination of current structures and processes of PBCs which was to include consultation with relevant stakeholders....It is not clear whether [the source of funding for prescribed bodies corporate]...is an issue being considered...but matters raised in this inquiry suggest that some resolution of the funding issue will be necessary to ensure the on-going effectiveness of PBCs and workability of the native title system.

Expedited procedure—extent of sites of significance, and whether a ministerial authorisation that an exploration licence may include exploration for iron ore is a separate future act

Maitland Parker and Others on behalf of Martu Idja Banyjima/Western Australia/Derek Noel Ammon [2006] NNTTA 65 Deputy President Sumner, 2 June 2006

The application of the expedited procedure to the grant of an exploration licence was opposed by the Martu Idja Banyjima people on all three limbs of s. 237 of the Act. The grantee party raised the existence of a Regional Standard Heritage Agreement (RSHA) executed by the Pilbara Native Title Service on behalf of the native title party in 2005. The proposed licence was in an area of the Hamersley Range surrounded by tenements including iron ore mines and infrastructure and adjacent to an existing exploration licence in which the grantee party had an interest. There were 20 sites registered on the Register of Aboriginal Sites (under the *Aboriginal Heritage Act 1972* (WA) (AHA)), some with closed access or partially closed access records, that were partially or entirely within the area of the proposed licence.

The Tribunal considered the following issues:

- Can the Tribunal proceed to an inquiry if the native title party has executed a RSHA agreeing not to lodge any expedited procedure objection applications? The Tribunal ruled that even if the RSHA was a valid agreement the Tribunal had no power to recognise the RSHA by dismissing the application or making a summary determination that the expedited procedure is attracted on the basis of the RSHA. In the circumstances where the validity of the RSHA is disputed, the Tribunal held it was obliged to conduct an inquiry and make a determination based on s. 237 factors. The fact that the grantee entered into a RSHA was a relevant factor when considering the grantee's attitude to the protection of sites of significance and whether they are likely to be interfered with.
- The native title party raised the issue that s. 111 of the *Mining Act 1978* (WA) provides that an exploration licence does not authorise exploration for iron ore unless the minister authorises it and endorses the licence accordingly. It was contended the authorisation is a separate future act. The grantee party, after initially not specifying the exploration intentions, indicated that iron ore would be explored for. Regarding s. 111 the Tribunal commented that the issue is whether the ministerial authority and its associated activities is in addition to any effect on native title arising from the grant. The Tribunal held that s.111 authorisation is not a separate future act from the grant of the licence.
- The major issue in the inquiry was whether there was likely to be interference with any sites of significance. The native title party contended the Barimunya was an

important site that was unlikely to be adequately protected under the AHA. The native title party gave evidence to refute the presumption of regularity usually relied upon by the Tribunal that a grantee party will comply with all applicable law and regulation. The Tribunal was satisfied the grantee party would comply with its legal obligations and there is unlikely to be interference.

- The native title party made assertions and allegations, citing historical examples of the grantee's lack of proper commitment to Aboriginal heritage, which were refuted on affidavit by the grantee party. The Tribunal found, on the evidence before it, that it was not possible to decide if the grantee had acted in breach of a 2003 heritage agreement with the native title party. Overall, the Tribunal found the evidence did not support a finding the grantee party was contemptuous of its obligations under the AHA or existing agreements so as to call into question the regularity of its future actions.

How should the extent of an Aboriginal site area be interpreted? The native title party contended the grantee's proposed drilling program would interfere with the Barimunya site and provided Department of Indigenous Affairs (DIA) maps showing the proposed drill holes on the Barimunya site buffer zone. The grantee party disagreed with the native title party's depiction of the extent of the Barimunya site. To resolve this issue the Tribunal considered s. 5 of the AHA in relation to the Barimunya site and held that:

- the boundaries designated on the DIA map do not necessarily and, probably in most cases, do not reflect the true boundaries of the site and allow for a substantial buffer zone around the site;
- the area proposed for drilling is located within the buffer zone, and so whether it is part of an Aboriginal site will have to be ascertained as part of an agreed survey process.

The Tribunal was satisfied that the grantee party would comply with the AHA in this respect and it was not likely that interference with the Barimunya site would occur.

The Tribunal held that none of the limbs of s. 237 were made out and that the grant of the proposed exploration licence is an act attracting the expedited procedure.

Springing order where a native title party repeatedly fails to comply with Tribunal directions

[2006] NNTTA 76 , Deputy President Sumner, 15 June 2006

A s. 29 notice was given notifying the government party's intention to grant prospecting licences and invoking the expedited procedure process. The native title party lodged a motion of objection. The standard Tribunal directions require the native

title party to provide statement of contentions, documentary evidence and witness statements by a certain date. The standard directions include a statement that an objection may be dismissed pursuant to s. 148(b) of the Act if the objector fails within a reasonable time to proceed with the application or to comply with a direction in relation to the application.

None of the parties was able to comply with directions. The Tribunal proposed new dates and raised the possibility of a 'springing order' such that if the native title party did not comply by the due date, their objection application would be dismissed automatically. The Tribunal wrote to the parties seeking submissions on whether a springing order should be used. Only the government party made submissions.

The Tribunal referred to its approach of encouraging parties to reach agreement by allowing a period of negotiation, and if an inquiry is inevitable, and appropriate directions are made, non-compliance with Tribunal directions potentially warrants, as a matter of principle, the imposition of the sanction set out in s. 148. Whether the discretion vested in the Tribunal should be exercised, though, is dependent on a range of factors and circumstances that are not able to be wholly outlined. However, one important factor, is that the right to negotiate is a valuable right that should not be lightly dispensed with, and that the Act should be interpreted in a beneficial manner for native title holders. That aside, the discretion in s. 148 is unfettered and the exercise or non-exercise of the discretion depends on all the circumstances of each case. The Tribunal could consider:

- whether the failure to comply was as a result of the actions of the objectors or their representative, or due to some other cause;
- whether there has been some reasonable explanation proffered for non-compliance, or rather that no explanation is given to the Tribunal;
- whether the failure of the applicant to comply with Tribunal directions has resulted in prejudice to other parties, and if so, the nature of that prejudice;
- the history of the proceedings;
- the previous conduct of the applicant, such as previous failures by the applicant to comply with directions of the Tribunal;
- whether the expedited procedure inquiry itself raises novel issues, or whether the inquiry is part of a series of inquiries involving the same native title party such that failure to meet direction timelines is explicable and not unreasonable;
- the consequences of dismissal, particularly if the failure to comply has occurred by oversight or factors outside the control of the applicant.

The Tribunal was satisfied that a springing order, a self-executing dismissal of the objection pursuant to s. 148(b) was justified, because:

- the native title party has persistently failed to comply with Tribunal directions;
- the failure to comply is not due to the action of someone else;
- the failure is now a deliberate policy of lodging objections to see if an agreement about heritage acceptable to the Widji People can be negotiated;
- there is no evidence of actual prejudice to the other parties apart from the right to negotiate provisions are intended to be a timely process and delays slow down the process;
- the pattern of non-compliance supports the imposing of the springing order.

All parties were specifically informed the order was self-executing and would result in an automatic dismissal if there was failure to comply. The motion objecting to the expedited procedure was dismissed by operation of the springing order when the directions had not been complied with by the stated date.

Appendix III Consultants

Table 18 Consultancy services let under s. 131A of the Act 2005–06, of \$10,000 or more

Consultant	Description	Contract price	Selection process	Justification
Nil				

Table 19 Consultancy services let under s. 132 of the Act 2005–06, of \$10,000 or more

Consultant	Description	Contract price \$		Selection process ⁽¹⁾	Justification ⁽²⁾
Step Two Designs Pty Ltd	Development of a new intranet architecture	16,362	27/06/05 to 12/08/05	Select tender	B
Location Equipment P/L	Edit and produce digital master copies for Induction and Diversity 2 programs	18,299	30/11/05 to 30/06/06	Select tender	B
The Consultancy Bureau QLD	Specific people management work on behalf of Registrar	11,000	19/09/05 to 30/09/05	Select tender	A
Ambit Group P/L	Data modeller	72,322	13/02/05 to 30/06/06	Panel	A
Orima Research	Staff satisfaction survey	15,290	12/05/06 to 28/06/06	Select tender	C
Mark Dignam and Associates	Client research	15,000	03/04/06 to 30/06/06	Select tender	C (see also Appendix V 'Advertising and market research')
Data Analysis Australia	Consultancy services involving the statistical analysis of native title application data	17,820	17/05/06 to 09/06/06	Direct sourcing	C
Kinetic IT	Database administrator	36,590	22/02/06 to 31/05/06	Deed of extension	A
Robert Walters	Systems developer/web publishing	93,567	11/07/05 to 02/12/05	Deed of extension	A
Doll Martin	IKM review	38,016	29/05/06 to 30/06/06	Select tender	C
Hudson	Data modelling, system developer, systems analysis	451,018	09/07/05 to 02/06/06	Deed of extension	A
Candle	Systems development, programming and support services	122,243	18/07/05 to 28/04/06	Deed of extension	A

Gryphon	Systems development, PL/SQL programming	146,944	30/07/05 to 17/03/06	Deed of extension	A
Hays Information Technology	UAT Technical Lead, business analyst services	161,977	31/08/05 to 30/06/06	Deed of extension	B
Quadrant Group	EDRM Project Manager	33,000	28/11/05 to 31/05/06	Select tender	B
Quadrant Group	Quality assurance, systems analysis	51,240	01/10/05 to 30/04/06	Deed of extension	B
Dialog	Systems development, Visual Basic services	145,431	10/10/05 to 28/04/06	Deed of extension	A
Fujitsu	OBF Review	16,190	09/12/05 to 21/12/05	Select tender	C
Fujitsu	Project management	69,000	28/02/06 to 30/06/06	Select tender	B

1. Selection process terms drawn from the *Commonwealth Procurement Guidelines*, 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. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.

Select tender: A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

Direct sourcing: A form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

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. Tenders are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the consultant offers to supply goods and services for a pre-determined length of time, usually at a pre-arranged price.

Deed of extension: a consultancy service extended beyond the original contract.

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 2006 is provided in Figure 1, p. xx. An outline of the responsibilities of its executive and senior management committees is provided under 'Tribunal executive', p. xx.

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. xx.

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) (the Act) 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. 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 one formal request for internal review of a decision by the authorised decision-maker regarding access to documents under the Freedom of Information Act:

- Date received: December 2005.
- Nature of request: Request seeking access to documents concerning appeal to Federal Court from future act decision.
- Conclusion: 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 it could improve its operations.

The Tribunal holds regular meetings with clients and stakeholders, 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. 100).

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.

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 Act);
- 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 Act); 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 Act)

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
- *Strategic Plan 2006–2008*
- ILUA information
- *Guide to future act decisions made under the Commonwealth right to negotiate scheme*
- Occasional Papers Series
- *Talking Native Title* quarterly national newsletter and electronic e-newsletters for the states of Western Australia, South Australia and Victoria
- *Native Title Hot Spots* regular electronic publication detailing latest cases and law
- *About Native Title*
- *Using the Registers of the National Native Title Tribunal*
- *Ten Years of Native Title*
- guide and application forms to instituting a future act determination and objections to 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 (see 'Research Strategy Group', p. 84).

Databases: A number of databases are maintained to support the information and processing needs of the Tribunal (see 'Information management', p. 95).

Files: Paper and computer files are maintained on all Tribunal activities. A list of files created by the Tribunal relating to the policy advising functions, development of legislation, and other matters of public administration, is available on the Tribunal's 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 list: 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 native title 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 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 1982* 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 two market research organisations during the reporting period. The Tribunal paid \$33,990 for the conduct of research and evaluation into client satisfaction by Mark Dignam and Associates (\$18,700) and staff satisfaction by Orima Research (\$15,290). For more information see the quality performance indicators in 'Output group 2—Agreement-making', pp. 57–68 and 'Workforce planning', p. 90.

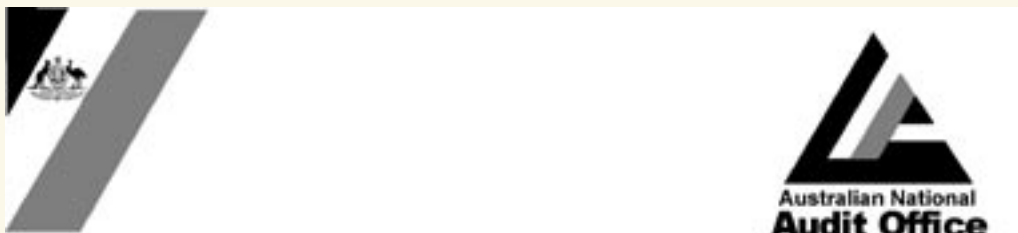
The Tribunal paid \$17,791 to two external distribution agencies for labour costs associated with sorting, packaging, mailing and storage of information products: Sundream Pty Ltd operating as Northside Distributors (\$519) and Lasermail Pty Ltd (\$17,272).

The costs for advertising via a media advertising organisation are in Table 20 below.

Table 20 Expenditure on advertising (via a media advertising organisation) 2005–06	
Notification of applications as required under the Act	\$ 425,664
Staff recruitment	\$ 52,874
Other advertising (for example, tenders and consultants)	\$ 4,718
Total expenditure on advertising	\$ 483, 256

The total amount for market research, distribution and advertising was \$535, 037.

Appendix VI Audit report and notes to the financial statements



INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope

The financial statements and Chief Executive's responsibility

The financial statements comprise:

- Statement by the Chief Executive and Chief Finance Officer;
- Income Statement, Balance Sheet and Statement of Cash Flows ;
- Statement of Changes in Equity;
- Schedules of Commitments and Contingencies;
- Schedule of Administered Items; and
- Notes to and forming part of the Financial Statements

of the National Native Title Tribunal (NNTT) for the year ended 30 June 2006.

The Chief Executive is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of NNTT, 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 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 NNTT's financial position, and of its 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's financial position as at 30 June 2006 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

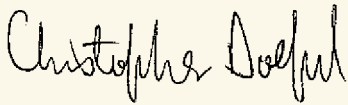


Mark Moloney
Senior Director
Delegate of the Auditor-General
Canberra
18 September 2006

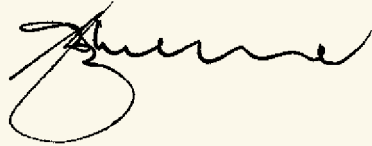
National Native Title Tribunal

Statement by the Chief Executive and Chief Finance Officer

In our opinion, the attached financial statements for the year ended 30 June 2006 have been prepared 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*, as amended.



Christopher Doepel PSM
Chief Executive Officer



Max Szmekura
Chief Finance Officer

Income statement for the year ended 30 June 2006

	Note	2006 \$'000	2005 \$'000
Revenue			
Revenues from Government	3A	32,013	33,930
Goods and services	3B	70	67
Total revenue		32,083	33,997
Gains			
Net gains from disposal of assets	3C	2	–
Total gains		2	–
Total income		32,085	33,997
Expenses			
Employees	4A	19,989	20,180
Suppliers	4B	9,873	11,121
Depreciation and amortisation	4C	763	617
Write-down of assets	4D	6	–
Total expenses		30,631	31,918
Operating result before income tax		1,454	2,079
Income tax equivalent expense		–	–
Operating result		1,454	2,079

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

Balance sheet as at 30 June 2006

	Note	2006 \$'000	2005 \$'000
ASSETS			
Financial assets			
Cash and cash equivalents	5A	1,450	3,222
Receivables	5B	8,872	5,886
Total Financial Assets		10,322	9,108
Non-Financial assets			
Land and buildings	6A,C	259	281
Infrastructure, plant and equipment	6B,C	1,006	944
Intangibles	6D	210	297
Other non-financial assets	6E	63	17
Total Non-Financial Assets		1,538	1,539
TOTAL ASSETS		11,860	10,647
LIABILITIES			
Payables			
Suppliers	7	340	542
Total Payables		340	542
Provisions			
Employee provisions	8A	3,543	3,728
Other provisions	8B	442	–
Total provisions		3,985	3,728
TOTAL LIABILITIES		4,325	4,270
NET ASSETS		7,535	6,377
EQUITY			
Contributed equity		2,415	2,415
Retained surplus		5,120	3,962
Total equity		7,535	6,377
Current assets		10,385	9,125
Non-current assets		1,475	1,522
Current liabilities		763	2,474
Non-current liabilities		3,562	1,796

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

Statement of cash flows for the year ended 30 June 2006

	Note	2006 \$'000	2005 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		47	49
Appropriations		32,013	33,695
Net GST received from ATO		1,033	1,294
Total cash received		33,093	35,038
Cash used			
Employees		20,099	19,882
Suppliers		11,260	11,512
Cash transferred to OPA		3,000	–
Total cash used		34,359	31,394
Net cash from or (used by) operating activities	9	(1,266)	3,644
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		506	494
Purchase of intangibles		–	30
Total cash used		506	524
Net cash from or (used by) investing activities		(506)	(524)
Net increase or (decrease) in cash held		(1,772)	3,120
Cash at the beginning of the reporting period		3,222	102
Cash at the end of the reporting period	5A	1,450	3,222

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

Statement of changes in equity for the year ended 30 June 2006

	Accumulated Results		Contributed Equity/Capital		Total Equity	
	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000
Opening Balance	3,666	1,883	2,415	2,415	6,081	4,298
Adjustment for errors	-	-	-	-	-	-
Adjustment for changes in Accounting policies	-	(296)	-	-	-	(296)
Adjusted Opening Balance	3,666	1,587	2,415	2,415	6,081	4,002
Income and Expense						
Revaluation adjustment	-	-	-	-	-	-
Subtotal income and expenses recognised directly in equity	-	-	-	-	-	-
Net Operating Result	1,454	2,079	-	-	1,454	2,079
Total income and expenses	1,454	2,079	-	-	1,454	2,079
Transactions with Owners						
<i>Distributions to owners</i>						
Returns on Capital						
– Dividends	-	-	-	-	-	-
<i>Contributions by Owners</i>						
Appropriation (equity injection)	-	-	-	-	-	-
Restructuring (Note 12)	-	-	-	-	-	-
Sub-total Transactions with Owners	-	-	-	-	-	-
Transfers between equity components	-	-	-	-	-	-
Closing balance at 30 June	5,120	3,666	2,415	2,415	7,535	6,081

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

Schedule of commitments as at 30 June 2006

	2006 \$'000	2005 \$'000
BY TYPE		
<i>Capital commitments</i>		
Infrastructure, plant and equipment	–	–
a) Total Capital Commitments	–	–
<i>Other Commitments</i>		
Operating leases ¹	6,240	5,654
Other ²	327	410
b) Total Other Commitments	6,566	6,064
<i>Commitments Receivable</i>	(597)	(551)
Net Commitments by type	5,969	5,513
BY MATURITY		
<i>Operating Lease Commitments</i>		
One year or less	3,890	3,615
From one to five years	2,676	2,449
c) Total Operating Lease Commitments by maturity	6,566	6,064
<i>Commitments Receivable</i>	(597)	(551)
Net Commitments by Maturity	5,969	5,513

NB: Commitments are GST inclusive where relevant.

- 1 Operating leases included are effectively non-cancelable and comprise leases for office accommodation.
- 2 Other comprises orders placed for consumable goods and services.

Schedule of administered items

	Notes	2006 \$'000	2005 \$'000
Revenues Administered on Behalf of Government			
<i>for the year ended 30 June 2006</i>			
Non-taxation Revenue			
Fees		13	
Total Revenues Administered on Behalf of Government		13	
Expenses Administered on Behalf of Government			
<i>for the year ended 30 June 2006</i>			
Write-down of assets		–	
Total Expenses Administered on Behalf of Government		–	
Assets Administered on behalf of Government			
<i>as at 30 June 2006</i>	16	Nil	
Liabilities Administered on behalf of Government			
<i>as at 30 June 2006</i>		Nil	
Administered Cash Flows			
<i>as at 30 June 2006</i>			
Cash Received			
– Fees		13	8
Cash Used			
– Refund of Fee		2	5
Net increase in cash held		11	3
– Cash at beginning of reporting period		–	–
– Cash from Official Public Account		2	5
		13	8
– Cash transfer to Official Public Account		13	8
Cash at end of reporting period		–	–
Administered Commitments			
<i>as at 30 June 2006</i>		Nil	Nil
Administered Contingencies			
<i>as at 30 June 2006</i>		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 2006

Note 1	Summary of significant accounting policies
Note 2	The impact of the transition to AEIFRS from previous AGAAP
Note 3	Income
Note 4	Operating expenses
Note 5	Financial Assets
Note 6	Non-financial assets
Note 7	Payables
Note 8	Provisions
Note 9	Cash flow reconciliation
Note 10	Contingent liabilities and assets
Note 11	Executive remuneration
Note 12	Remuneration of Auditors
Note 13	Average staffing levels
Note 14	Financial instruments
Note 15	Income administered on behalf of Government
Note 16	Administered reconciliation table
Note 17	Appropriations
Note 18	Special accounts
Note 19	Reporting of outcomes

Note 1 Summary of significant accounting policies

1.1 Objectives of the National Native Title Tribunal

The National Native Title Tribunal ('the Tribunal') is an Australian Public Service organisation. The objectives of 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 resolution of native title issues over land and waters.

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.

Departmental activities are identified under three Outputs:

Output 1 - *Stakeholder and Community Relations*;

Output 2 - *Agreement-Making*; and

Output 3 - *Decisions*.

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 preparation of the financial statements

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 1 July 2005);
- Australian Accounting Standards issued by the Australian Accounting Standards Board that apply for the reporting period; and
- Interpretations issued by the AASB and UIG that apply for the reporting period.

This is the first financial report to be prepared under Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in Note 2.

The Income Statement and Balance Sheet have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets and liabilities which, as noted, are at fair value or amortised cost. No allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest thousand dollars unless disclosure of the full amount is specifically required.

Unless alternative treatment is specifically required by an accounting standard, assets and liabilities are recognised in the Balance Sheet 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 10.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement 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 Tribunal items, except where otherwise stated at Note 1.5

1.3 Significant accounting judgments and estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

Notes to and forming part of the financial statements for the year ended 30 June 2006

1.4 Statement of compliance

The financial report complies with Australian Accounting Standards, which include Australian Equivalents to International Financial Reporting Standards (AEIFRS).

Australian Accounting Standards require the Tribunal to disclose Australian Accounting Standards that have not been applied, for standards that have been issued but are not yet effective.

The AASB has issued amendments to existing standards, these amendments are denoted by year and then number, for example 2005–1 indicates amendment 1 issued in 2005.

The table below illustrates standards and amendments that will become effective for the Tribunal in the future. The nature of the impending change within the table has been out of necessity abbreviated and users should consult the full version available on the AASB's website to identify the full impact of the change. The expected impact on the financial report of adoption of these standards is based on the Tribunal's initial assessment at this date, but may change. The Tribunal intends to adopt all of standards upon their application date.

Title	Standard affected	Application date *	Nature of impending change	Impact expected on financial report
2005-10	AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 and AASB 1038	1 Jan 2007	Amended requirements subsequent to the issuing of AASB 7.	No expected impact.
2006-1	AASB 121	31 Dec 2006	Changes in requirements for net investments in foreign subsidiaries depending on denominated currency.	No expected impact.
	AASB7 Financial Instruments: Disclosures	1 Jan 2007	Revise the disclosure requirements for financial instruments from AASB132 requirements.	No expected impact.

* Application date is for annual reporting periods beginning on or after the date shown

1.5 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 No3 of 2004–05.

Appropriations receivable are recognised at their nominal amounts.

Other revenue

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the entity.

1.6 Gains

Resources received free of charge

Services received free of charge are recognised as gains 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.

1.7 Transactions with the Government as owner

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In the 2005–2006 financial year, by agreement with the Department of Finance, \$3M was transferred to OPA. These amounts are disclosed as receivables in accordance with note 5B.

On 28 June 2006, a request was issued to the Finance Minister to make a determination to reduce Departmental Output Appropriations, relative to 2003–2004, by \$1,921,000. This determination was not made at the 30 June 2006.

1.8 Employee benefits

As required by the Finance Minister's Orders, the tribunal has early adopted AASB 119 Employee Benefits as issued in December 2004.

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

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

Notes to and forming part of the financial statements for the year ended 30 June 2006

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

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 2006. 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

The majority of staff of the Tribunal are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap). A small number of staff are members of AGEST and SunSuper.

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme.

The liability for defined 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.

Contributions to the AGEST and Sun Super comply with the requirements of Superannuation Guarantee legislation.

From 1 July 2005, new employees are eligible to join the PSSap scheme.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight at financial year end and the unused annual leave provision total.

1.9 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 rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

The Tribunal had no finance leases in existence at 30 June 2006.

1.10 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.

1.11 Financial Risk Management

The Tribunal's activities expose it to normal commercial financial risk. As a result of the nature of the Tribunal's business and internal and Australian Government policies, dealing with the management of financial risk, the Tribunal's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

1.12 Recognition of financial assets and liabilities

As prescribed in the Finance Minister's Orders, the Tribunal has applied the option available under AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged or cancelled or expires.

For the comparative year, financial assets were derecognised when the contractual right to receive cash no longer existed. Financial liabilities were derecognised when the contractual obligation to pay cash no longer existed.

1.13 Impairment of financial assets

As prescribed in the Finance Minister's Orders, the Tribunal has applied the option available under AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are assessed for impairment at each balance date.

Financial assets held at amortised cost

If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash

Notes to and forming part of the financial statements for the year ended 30 June 2006

flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in profit and loss.

Financial assets held at cost

If there is objective evidence that an impairment loss has been incurred on an unquoted equity instrument that is not carried at fair value because it cannot be reliably measured, or a derivative asset that is linked to and must be settled by delivery of such an unquoted equity instrument, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

Available for sale financial assets

If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in profit and loss, is transferred from equity to the profit and loss

Comparative year

The above policies were not applied for the comparative year. For receivables, amounts were recognised and carried at original invoice amount less a provision for doubtful debts based on an estimate made when collection of the full amount was no longer probable. Bad debts were written off as incurred.

Other financial assets carried at cost which were not held to generate net cash inflows, were assessed for indicators of impairment. Where such indicators were found to exist, the recoverable amount of the assets was estimated and compared to the assets carrying amount and, if less, reduced to the carrying amount. The reduction was shown as an impairment loss.

1.14 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).

1.15 Contingent liabilities and contingent assets

Contingent Liabilities and Assets are not recognised in the Balance Sheet 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 (virtually certain for assets) or reliable measurement becomes possible.

1.16 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. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

1.17 Property, plant and equipment (PP&E)

Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, 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).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Tribunal where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Tribunal's leasehold improvements with a corresponding provision for the 'makegood' taken up.

Revaluations

Land, buildings, plant and equipment are carried at fair value, being revalued with sufficient frequency such that the carrying amount of each asset is not materially different, at reporting date, from its fair value. Valuations undertaken in each year are as at 30 June. The tribunal did not undertake any asset revaluations during the financial year.

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

Asset Class	Fair value measured at:
Leasehold improvements	Depreciated replacement cost
Plant & equipment	Market selling price

Following initial recognition at cost, valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not materially vary with the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through profit and loss. Revaluation decrements for a class of assets are recognised directly through profit and loss except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

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) residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Notes to and forming part of the financial statements for the year ended 30 June 2006

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2006	2005
Leasehold improvements	Lease term	Lease term
Plant and equipment	4 to 9 years	3 to 7 years

Heritage and cultural assets are assessed as having an infinite useful life and are not depreciated. The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 6C.

Impairment

All assets were assessed for impairment at 30 June 2006. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Tribunal were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

No indicators of impairment were found for assets at fair value.

1.18 Intangibles

The Tribunal's intangibles comprise internally developed software for internal use. These assets are carried at cost.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the Tribunal's software is 5 years (2004–05: 5 years).

All software assets were assessed for indications of impairment as at 30 June 2006.

1.19 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
- for receivables and payables.

1.20 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 Tribunal items, including the application of Australian Accounting Standards.

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 and Administration. 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 Tribunal on behalf of the Government and reported as such in the Cash Flow Statement 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 course of ordinary activities performed by the Tribunal on behalf of the Australian Government.

Fees are charged for lodgement 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 The impact of the transition to AEIFRS from previous AGAAP

	2006 \$'000	2005 \$'000
Reconciliation of total equity as presented under previous AGAAP to that under AEIFRS		
Total equity under previous AGAAP	7,831	6,377
Adjustments to retained earnings:		
Provision for Makegood	(296)	–
Total equity translated to AEIFRS	7,535	6,377
Reconciliation of profit or loss as presented under previous AGAAP to AEIFRS		
Prior year profit as previously reported	5,416	3,962
Adjustments:		
Provision for Makegood	(296)	–
Prior year profit translated to AEIFRS	5,120	3,962

The cash flow statement presented under previous AGAAP is equivalent to that prepared under AEIFRS

¹Borrowing costs relating to qualifying assets have been capitalised under AGAAP, while this treatment is consistent with AEIFRS the FMOs have prescribed all borrowing costs to be expensed under AEIFRS, these amounts therefore have been derecognised.

Notes to and forming part of the financial statements for the year ended 30 June 2006

²AEIFRS allow intangible assets to be revalued only where an active market exists. The Tribunal has previously revalued intangible assets under AGAAP that are highly specialised and for which no active market exist. The current carrying value of the revalued component of these assets therefore has been derecognised.

³AEIFRS requires the recording of assets reflecting future estimated restoration costs. Amounts for 'makegood' provisions in existing accommodation leases (operating) have been taken up accordingly.

⁴The operating result has been adjusted due to the de-recognition of revalued amounts of intangibles, for which under AGAAP amortisation of these values occurred in 2005–06. This has been partly offset by additional depreciation on 'makegood' assets.

The Tribunal has not restated comparatives for financial instruments.

The adjustments between AEIFRS and the previous GAAP have been taken up at 1 July 2005.

The only adjustment necessary was Provision for Makegood of \$296,000 reflecting a change in the method of determining impairment.

Note 3 Income

	2006 \$'000	2005 \$'000
3A Revenues from Government		
Appropriations for outputs	32,013	33,930
Total revenues from government	32,013	33,930
3B Goods and services		
Services	47	48
Resources received free of charge	23	19
Total sales of goods and services	70	67
3C Gains		
Net gains from disposal of assets	2	–
Total gains	2	–

All services were rendered to external entities

Note 4 Operating expenses

4A Employee expenses

Wages and salaries	16,066	16,658
Superannuation	2,370	2,322
Leave and other entitlements	204	174
Separation and redundancies	753	358
Other employee expenses	350	497
Total employee benefits expenses	19,743	20,009
Worker compensation premiums	246	171
Total employee expenses	19,989	20,180

	2006 \$'000	2005 \$'000
4B Suppliers		
Provision of goods - external entities	772	1,112
Services received free of charge (audit service)	23	19
Rendering of services - related entities	1,950	1,292
Rendering of services - external entities	4,271	5,670
Operating lease rentals - related entities*	1,798	1,756
Operating lease rentals - external entities*	1,059	1,272
Total supplier expenses	9,873	11,121

* These comprise minimum lease payments only.

4C Depreciation and amortisation

Depreciation		
Other infrastructure, plant and equipment	470	397
Buildings	205	125
Total depreciation	675	522
Amortisation		
Intangibles – computer software	88	95
Total depreciation and amortisation	763	617

4D Write down and impairment of assets

Write-down assets	6	–
Total write-down of assets	6	–

Note 5 Financial Assets

5A Cash and cash equivalents

Departmental (other than special accounts)	1,450	3,222
Total cash and cash equivalents	1,450	3,222

5B Receivables

Goods and services	18	12
Less allowance for doubtful debts	(3)	(3)
	15	9
GST receivable from the Australian Taxation Office	122	142
Appropriations receivable:		
– for existing outputs	–	–
– for additional outputs	8,735	5,464
– undrawn	–	271
Total receivables (net)	8,872	5,886

All receivables are current assets.

All receivables are with entities external to the entity. Credit terms are net 30 days (2005: 30 days).

Appropriations receivable for additional outputs are accrued revenues for services provided in the current year under a purchasing agreement with the Government. Funding for these services will be provided by appropriations in 2006–07.

Notes to and forming part of the financial statements for the year ended 30 June 2006

Note 5 Financial Assets (continued)

Receivables (gross) are aged as follows:

	2006 \$'000	2005 \$'000
Current	8,872	5,883
Overdue by:	–	–
– Less than 30 days	–	3
– 30 to 60 days	–	–
– 61 to 90 days	–	–
– More than 90 days	–	3
	–	6
Total receivables (gross)	8,872	5,889

Note 6 Non-financial assets**6A Land and buildings**

Leasehold improvements

– fair value	4,537	4,487
– accumulated amortisation	(4,278)	(4,073)
– impairment losses	–	–

Total leasehold improvements**259** 414**Total land and buildings (non-current)****259** 414**6B Infrastructure, plant and equipment**

Infrastructure, plant and equipment

– fair value	3,034	2,589
– accumulated depreciation	(2,028)	(1,645)

Total infrastructure, plant and equipment (non-current)**1,006** 944**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
As at 1 July 2005		
Gross book value	4,487	2,589
Accumulated depreciation/amortisation	(4,073)	(1,645)
Opening Net Book Value	414	944
Additions:		
– by purchase	50	456
– Depreciation/amortisation expense	(205)	(383)
Disposals:		
– From disposal of operations	–	–
– Other disposals	–	(11)
As at 30 June 2006		
Gross book value	4,537	3,034
Accumulated depreciation/amortisation	(4,278)	(2,028)
Closing Net book Value	259	1,006

	2006 \$'000	2005 \$'000
6D Intangible Assets		
Computer software:		
Internally developed – in use	1,321	1,321
Accumulated amortisation	(1,111)	(1,024)
Accumulated impairment write-down	–	–
Total intangibles (non-current)	210	297

TABLE A – Reconciliation of opening and closing balances of intangibles

Item	Computer/Software \$'000
As at 1 July 2005	
Gross book value	1,321
Accumulated depreciation	(1,024)
Opening net book value	297
By Purchase	–
Depreciation/amortisation	(87)
As at 30 June 2006	
Gross book value	1,321
Accumulated depreciation	(1,111)
Closing net book value	210

	2006 \$'000	2005 \$'000
--	----------------	----------------

6E Other non-financial assets

Prepayments	63	17
-------------	----	----

All other non-financial assets are current assets.

Note 7 Payables

Suppliers

Trade creditors	340	542
Total supplier payables	340	542

All payables are current liabilities.

Note 8 Provisions

8A Employee provisions

Salary sacrifice	55	18
Salaries and wages	–	–
Leave	3,303	3,503
Superannuation	185	207
Separations and redundancies	–	–
Other	–	–
Total employee provisions	3,543	3,728
Current	1,801	1,796
Non-current	1,742	1,932
Total employee provisions	3,543	3,728

Notes to and forming part of the financial statements for the year ended 30 June 2006

Note 8 Provisions (continued)

	2006 \$'000	2005 \$'000
8B Other Provisions		
Provision for 'Makegood'	442	–
Carrying amount at beginning of period	429	–
Additional provisions made	13	–
Unwinding of discounted amount arising from the passage of time	–	–
Amount owing at end of period	442	–

The Tribunal currently has agreements for the leasing of premises which have provisions requiring the Tribunal to restore the premises to their original condition at the conclusion of the lease. The Tribunal has made a provision to reflect the present value of this obligation.

Note 9 Cash flow reconciliation

	2006 \$'000	2005 \$'000
9A Reconciliation of cash per income statement to cash flow statement		
Cash at year end per cash flow statement	1,450	3,222
Balance Sheet items comprising above cash: 'Financial assets – Cash'	1,450	3,222

9B Reconciliation of operating result to net cash from operating activities:

Operating result	1,454	2,079
Depreciation/amortisation	763	618
Net write down of non-financial assets	6	–
Gain on disposal of assets	(2)	–
Resources received free of charge	(23)	–
(Increase)/decrease in net receivables	(2986)	(174)
(Increase)/decrease in prepayments	(47)	892
Increase/(decrease) in employee provisions	(185)	108
Increase/(decrease) in supplier payables	(202)	121
Increase/(decrease) in other provisions	13	–
Appropriation adjustment for prior years	(57)	–
Net cash from/(used by) operating activities	(1,266)	3,644

Note 10 Contingent liabilities and assets

10A Quantifiable and unquantifiable contingencies

The Tribunal had no quantifiable or unquantifiable contingencies at 30 June 2006.

10B 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.

Note 11 Executive remuneration

	2006	2005
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
\$130,000 to \$144,999		
\$145,000 to \$159,999	1	
\$160,000 to \$174,999		
\$175,000 to \$189,999	1	1
\$190,000 to \$204,999		1
\$205,000 to \$219,999		
\$220,000 to \$234,999		
\$235,000 to \$249,999		1
\$250,000 to \$264,999		
The aggregate amount of total remuneration of executives shown above.	\$333,170	\$723,788
The aggregate amount of separation and redundancy/ termination benefit payments during the year to executives shown above.	\$21,681	\$12,294

Note 12 Remuneration of Auditors

	2006 \$'000	2005 \$'000
Audit services are provided free of charge to the Tribunal.		
The fair value of the services provided was:		
Financial Statement Audit Services	23,000	14,900
Interim AEIFRS Statement Assessment	–	4,000
	23,000	18,900

No other services were provided by the Auditor-General.

Note 13 Average staffing levels

	2006	2005
The average staffing levels for the Tribunal during the year were:	263	262

Notes to and forming part of the financial statements for the year ended 30 June 2006

Note 14 Financial instruments

14A Interest rate risk

Financial Instrument	Note	Floating Interest Rate	Fixed Interest Rate						Non- Interest Bearing	Total	Weighted Average Effective Interest Rate			
			Maturing In											
			1 Year or Less		1 to 5 Years		> 5 Years							
		2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 %	2005 %	
Financial assets														
Cash at bank	5A	-	-	-	-	-	-	-	1,450	3,222	1,450	3,222	n/a	n/a
Receivables for goods and services (gross)	5B	-	-	-	-	-	-	-	18	12	18	12	n/a	n/a
GST receivable from ATO	5B	-	-	-	-	-	-	-	122	142	122	142	n/a	n/a
Appropriations receivable	5B	-	-	-	-	-	-	-	8,735	5,735	8,735	5,735	n/a	n/a
Total		-	-	-	-	-	-	-	10,325	9,111	10,325	9,111		
Total assets									11,819	10,647				
Financial Liabilities														
Trade creditors	7	-	-	-	-	-	-	-	340	542	340	542	n/a	n/a
Total		-	-	-	-	-	-	-	340	542	340	542		
Total liabilities									3,727	4,270				

14B Fair values of financial assets and liabilities

	Notes	2006		2005	
		Total Carrying Amount	Aggregate Fair Value	Total Carrying Amount	Aggregate Fair Value
		\$'000	\$'000	\$'000	\$'000
Departmental					
Financial assets					
Cash at bank	5A	1,450	1,450	3,222	3,222
Receivables for goods and services (net)	5B	15	15	9	9
Appropriations receivable	5B	8,735	8,735	5,735	5,735
GST Receivable from ATO	5B	122	122	142	142
Total financial assets		10,322	10,322	9,108	9,108
Financial liabilities (recognised)					
Trade creditors	7	340	340	542	542
Total financial liabilities (recognised)		340	340	542	542

14C Credit risk exposures

The Tribunal's maximum exposures to credit risk at the reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

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 15 Income administered on behalf of Government

	2006 \$'000	2005 \$'000
Revenue		
Non-taxation		
15A Goods and services		
External entities (access fees)	–	–
15B Interest		
Loans - state and territory governments	–	–
15C Dividends		
Commonwealth entities	–	–
Total revenues administered on behalf of Government	–	–
Gains	–	–
15D Other gains		
Resources received free of charge	–	–
Total gains administered on behalf of Government	–	–
Total income administered on behalf of Government	–	–

Note 16 Administered reconciliation table

	2006 \$'000	2005 \$'000
Opening administered assets less administered liabilities as at 1 July		
Opening balance fair value adjustment – administered investments	–	–
Plus: Administered revenues	13	8
Less: Administered expenses	(2)	(5)
Administered transfers to/from Australian Government:		
Appropriation transfers from OPA:	2	5
– Annual appropriations administered expenses		
– Administered assets and liabilities appropriations		
– Special appropriations (limited)		
– Special appropriations (unlimited)		
Transfers to OPA	(13)	(8)
Closing administered assets less administered liabilities as at 30 June	–	–

Notes to and forming part of the financial statements for the year ended 30 June 2006

Note 17 Appropriations

17A Acquittal of authority to draw cash from the consolidated revenue fund for ordinary annual services appropriations

Particulars	Administered Expenses		Departmental Outputs		Total	
	2006	2005	2006	2005	2006	2005
	\$	\$	\$	\$	\$	\$
Balance carried from previous period	–	–	12,610,228	9,588,173	12,610,228	9,588,173
Adjustment to prior years	–	–	(35,981)	(66,805)	(35,981)	(66,805)
Reductions of appropriations (prior years)	–	–	12,819,090	–	12,819,090	–
Unspent receipts from 1999–2000 where no s31 agreement was in place	–	–	244,843	(244,843)	244,843	(244,843)
Adjusted Balance carried for previous period	–	–	12,819,090	9,276,525	12,819,090	9,276,525
Appropriation Act (No.1)	–	–	32,013,000	33,583,000	32,013,000	33,583,000
Appropriation Act (No.3)	–	–	–	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)	1,818	4,583	–	–	1,818	4,583
Appropriation reduced by section 9 determinations (current year) ¹	–	–	–	–	–	–
Sub-total Annual Appropriation	1,818	4,583	44,832,090	43,242,314	44,833,908	43,246,897
Appropriations to take account of recoverable GST (FMAA s30A)	–	–	1,016,120	1,237,050	1,016,120	1,237,050
Annotations to 'net appropriations' (FMAA s31)	–	–	47,000	48,700	47,000	48,700
Total appropriations available for payments	1,818	4,583	45,895,210	44,528,064	45,897,028	44,532,647
Cash payments made during the year (GST inclusive)	(1,818)	(4,583)	(31,586,000)	(31,917,836)	(31,587,818)	(31,922,419)
Appropriations credited to Special Accounts (excluding GST)	–	–	–	–	–	–
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropriations	–	–	14,309,210	12,610,228	14,309,210	12,610,228

Particulars	Administered Expenses		Departmental Outputs		Total	
	2006 \$	2005 \$	2006 \$	2005 \$	2006 \$	2005 \$
Represented by:						
Cash at bank and on hand	–	–	1,407,010	3,178,728	1,407,010	3,178,728
Less cash held not appropriated (\$21k relates to 02/03, \$36k relates to CAMs change over)	–	–	(21,181)	(21,181)	(21,181)	(21,181)
Receivable - departmental appropriations	–	–	8,979,843	5,735,000	8,979,843	5,735,000
Receivables – GST receivable from the ATO	–	–	122,538	141,524	122,538	141,524
Savings identified in the Budget process (carried forward)	–	–	3,821,000	3,821,000	3,821,000	3,821,000
Formal reductions of appropriations	–	–	–	–	–	–
Receivables - departmental appropriations (appropriation for additional outputs)	–	–	–	–	–	–
Undrawn, unexpired administered appropriations	–	–	–	–	–	–
Receipts in periods with no s31 agreement (years 1999 – 2000), not currently available	–	–	–	(244,843)	–	(244,843)
Total	–	–	14,309,210	12,610,228	14,309,210	12,610,228

¹ The Finance Minister may determine amounts of appropriations to be lapsed, having regard to expenses incurred. In prior years, the Tribunal has estimated the amount of current year appropriations to be lapsed based on expenses incurred.

Notes to and forming part of the financial statements for the year ended 30 June 2006

17B Acquittal of authority to draw cash from the consolidated revenue fund for other than ordinary annual services appropriations

Particulars	Administered Expenses		Departmental Outputs		Total	
	2006	2005	2006	2005	2006	2005
	\$	\$	\$	\$	\$	\$
Balance carried from previous period	-	-	43,000	-	-	-
Adjustment to prior years	-	-	-	43,000	-	43,000
Reduction of appropriations (prior years)	-	-	-	-	-	-
Adjusted balance carried for previous period	-	-	43,000	43,000	-	43,000
Appropriation Act (No.2)	-	-	-	-	-	-
Appropriation Act (No.4)	-	-	-	-	-	-
Departmental Adjustments and Borrowings	-	-	-	-	-	-
Advance to the Finance Minister	-	-	-	-	-	-
Adjustment of appropriations on change of entity function (FMAA s32)	-	-	-	-	-	-
Refunds credited (FMAA s30)	-	-	-	-	-	-
Appropriation reduced by a section 11 determination (current year)	-	-	-	-	-	-
Sub-total Annual Appropriation	-	-	43,000	43,000	-	43,000
Appropriations to take account of recoverable GST (FMAA s30A)	-	-	-	-	-	-
Total appropriations available for payments	-	-	43,000	43,000	-	43,000
Cash payments made during the year (GST inclusive)	-	-	-	-	-	-
Appropriations credited to Special Accounts (GST exclusive)	-	-	-	-	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for other than Ordinary Annual Services Appropriations	-	-	43,000	43,000	-	43,000
Represented by:						
Cash at bank and on hand	-	-	43,000	43,000	-	43,000
Appropriation receivable	-	-	-	-	-	-
GST receivable from the ATO	-	-	-	-	-	-
Departmental appropriation receivable – Drawing rights withheld by the Finance Minister (FMA s27(4))	-	-	-	-	-	-
Formal reductions of appropriation revenue	-	-	-	-	-	-
Departmental appropriation receivable (appropriation for additional outputs) ¹	-	-	-	-	-	-
Undrawn, unexpired administered appropriations	-	-	-	-	-	-
Total	-	-	43,000	43,000	-	43,000

¹Appropriation receivable for additional outputs are accrued revenues for services provided in the current year under a purchasing agreement with the Government. Funding for these services is provided in the next year. The timing difference between the receivable and appropriation leads to a discrepancy being recognised for prior year outputs

Note 18 Special accounts

Other Trust Monies Special Account

Legal Authority: Financial Management and Accountability Act 1997, S20

Purpose: To hold 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 monies from this account.

	2006 \$'000	2005 \$'000
Balance carried forward from previous period	25	–
Receipts during the year	92	112
Available for payments	117	112
Payments made	(102)	(87)
Balance carried to the next period	15	25
Represented by:		
Cash – transferred to the Official Public Account	–	–
Cash – held by the entity	15	25
Total balance carried to the next period	15	25

Note 19 Reporting of outcomes

The Tribunal has one outcome, the resolution of native title issues over land and waters. The level of achievement against this outcome is constituted by activities that are grouped into the three output groups of Stakeholder and Community Relations (Group 1), Agreement-making (Group 2) and Decisions (Group 3). The basis of cost allocation in the below table is consistent with the basis used for the 2005–2006 Budget.

Output Group 1

- 1.1 Capacity-building and strategic/sectoral initiatives
- 1.2 Assistance and information

Output Group 2

- 2.1 Indigenous land use agreements
- 2.2 Native title agreements and related agreements
- 2.3 Future act agreements

Output Group 3

- 3.1 Registration of native title claimant applications
- 3.2 Registrations of indigenous land use agreements
- 3.3 Future act determinations
- 3.4 Finalise objections to the expedited procedure

Notes to and forming part of the financial statements for the year ended 30 June 2006

19A Net cost of outcome delivery

	Outcome	
	2006	2005
	\$'000	\$'000
Administered	–	–
Departmental	30,505	31,918
Total expenses	30,505	31,918
<i>Costs recovered from provision of goods and services to the non-government sector</i>		
Administered	–	–
Departmental	(70)	(67)
Total costs recovered	(70)	(67)
<i>Other external revenues</i>		
Administered	–	–
Departmental	–	–
Total other external revenues	–	–
Net cost/(contribution) of outcome	30,435	31,851

19B Major classes of departmental revenues and expenses by output groups and outputs

Output Group 1	Output 1.1		Output 1.2		Total Output 1	
	2006	2005	2006	2005	2006	2005
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Departmental expenses						
Employees	460	1,920	1,779	1,920	2,239	3,840
Suppliers	226	1,058	875	1,058	1,101	2,116
Depreciation and amortisation	15	58	60	58	75	117
Total departmental expenses	701	3,036	2,714	3,036	3,415	6,073
Funded by:						
Revenues from government	700	3,227	2,711	3,227	3,411	6,455
Sale of goods and services	1	6	3	6	4	12
Other non-taxation revenues	–	–	–	–	–	–
Total departmental revenues	701	3,233	2,714	3,233	3,415	6,467

Output Group 2	Output 2.1		Output 2.2		Output 2.3		Total Output 2	
	2006	2005	2006	2005	2006	2005	2006	2005
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Departmental expenses								
Employees	1,699	757	5,597	9,283	2,798	897	10,094	10,937
Suppliers	836	418	2,951	5,117	1,377	493	5,164	6,028
Depreciation and amortisation	57	23	202	283	94	28	353	334
Total departmental expenses	2,592	1,198	8,750	14,683	4,269	1,418	15,611	17,299
Funded by:								
Revenues from government	2,589	1,274	8,737	15,609	4,264	1,507	15,590	18,390
Sale of goods and services	3	3	13	31	5	3	21	37
Other non-taxation revenues	–	–	–	–	–	–	–	–
Total departmental revenues	2,592	–	8,750	–	4,269	–	15,611	18,427

Output Group 3	Output 3.1		Output 3.2		Output 3.3		Output 3.4		Total Output 3	
	2006	2005	2006	2005	2006	2005	2006	2005	2006	2005
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Departmental expenses										
Employees	1,599	1,971	1,998	1,448	1,001	546	2,898	1,437	7,496	5,402
Suppliers	787	1,086	983	797	491	301	1,426	792	3,687	2,976
Depreciation and amortisation	54	62	67	45	34	17	96	44	251	168
Total departmental expenses	2,440	3,119	3,048	2,290	1,526	864	4,420	2,273	11,434	8,546
Funded by:										
Revenues from government	2,437	3,316	3,046	2,434	1,523	918	4,416	2,417	11,422	9,085
Sale of goods and services	3	8	2	5	3	1	4	4	12	18
Other non-taxation revenues	-	-	-	-	-	-	-	-	-	-
Total departmental revenues	2,440	3,324	3,048	2,439	1,526	919	4,420	2,421	11,434	9,103

19C Major classes of administered revenues and expenses by outcomes

	Outcome		Total	
	2006	2005	2006	2005
	\$'000	\$'000	\$'000	\$'000
Administered Revenues				
Sale of goods and services - Fees	13	8	13	8
Total Administered Revenues	13	8	13	8
Administered Expenses				
Refund of Fees	2	5	2	5
Total Administered Expenses	2	5	2	5

Appendix VII Glossary

For ease of reading, the use of abbreviations and acronyms has been minimised.

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. Specific legislation provided for appropriations—notably, but not exclusively, the Appropriation Acts.

APS: Australian Public Service.

Arbitration: the hearing or determining of a dispute between parties.

Claimant application/claim: see native title claimant application/claim.

Competitive tendering and contracting: the process of contracting out the delivery of government activities to another organisation. The activity is submitted to competitive tender, and the preferred provider of the activity is selected from the range of bidders by evaluating offers against predetermined selection criteria.

Compensation application: an application made by Indigenous Australians seeking compensation for loss or impairment of their native title.

Consolidated Revenue Fund; Reserved Money Fund; Loan Fund; Commercial Activities Fund: these funds comprise the Commonwealth Public Account.

Consultancy: one particular type of service delivered under a contract for services. A consultant is an entity — whether an individual, a partnership or a corporation — engaged to provide professional, independent and expert advice or services.

Corporate governance: the process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.

CPA: (Commonwealth Public Account) the Commonwealth's official bank account kept at the Reserve Bank. It reflects the operations of the Consolidated Revenue Fund, the Loan Funds, the Reserved Money Fund and the Commercial Activities Fund.

Current assets: cash or other assets that would, in the ordinary course of operations, be readily consumed or convertible to cash within 12 months after the end of the financial year being reported.

Current liabilities: liabilities that would, in the ordinary course of operations, be due and payable within 12 months after the end of the financial year under review.

Determination: a decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

Expenditure: the total or gross amount of money spent by the Australian 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.

Financial results: the results shown in the financial statements.

Future act: a proposed activity 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).

IAG: Indigenous Advisory Group comprised of Indigenous employees of the Tribunal.

ILUA: indigenous land use agreement — a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).

Liability: the future sacrifice of service potential or economic benefits that the Tribunal is presently obliged to make as a result of past transactions or past events.

Mediation: the process of bringing together all people with an interest in an area covered by an application to help them reach agreement.

Member: a person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

National Native Title Register: the 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 native title rights and interests held by Indigenous Australians.

Native Title Registrar: see Registrar

Native title representative body: Native title representative bodies are recognised under the *Native Title Act 1993*. Their functions and powers involve support to native title claimants and holders to make various applications under the Act (including claimant and compensation applications) and to respond to proposed future acts.

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

Non-current assets: assets other than current assets.

Non-current liabilities: liabilities other than current liabilities.

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

'On country': when activities, such as meetings, take place on an area of land relevant to 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 Account, which finished operation in March 2006.

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: a person whose claim has met the conditions of the registration test.

Register of Native Title Claims: the 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: the 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 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: salaries and administrative expenses (including legal services and property operating expenses). For the purposes of this report the term 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 (known as 'section 31 receipts') raised through the sale of assets or interdepartmental charging and permitted to be received via annotated running costs appropriations.

Sections of the Native Title Act: parts of the Act available online from 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 of the Native Title Act: describes how a government must give notice of a proposal to do a future act (usually the grant of a mining tenement or a compulsory acquisition of land).

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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