



National
Native Title
Tribunal



Annual Report 2006–2007

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 (Cwlth), 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) or accessed online at www.nntt.gov.au.

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 Tribunal welcomes feedback on whether this information was useful. Email Public Affairs with your comments and suggestions to enquiries@nntt.gov.au or telephone 08 9268 7495.

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National
Native Title
Tribunal



3 October 2007

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The Hon. Philip Ruddock MP
Attorney-General
Parliament House
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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 2007.

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

Yours sincerely

Graeme Neate
President

Resolution of native title issues over land and waters.

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Contents

About this report	ii
Letter of transmission	iii
List of figures	vii
List of tables	vii
President's Overview	1
The year in review	1
Introduction	1
External factors affecting the Tribunal	4
Trends within the Tribunal	17
Conclusion	17
Tribunal Overview	29
Role and functions	29
Tribunal members	31
Organisational structure	33
Outcome and output structure	36
Report on Performance	39
Financial performance	39
Outcome and output performance	40
Overview of current applications	42
Output group 1—Stakeholder and community relations	44
Output group 2—Agreement-making	48
Output group 3—Decisions	60
Management	71
Corporate governance	71
Members' meetings	71
Strategic Planning Advisory Group	71
Agreement-Making Liaison Group	72
National Future Act Liaison Group	72
ILUA Strategy group	73
Research Strategy Group	74
External Relations Working Group	74
Tribunal Executive	75
Role and responsibilities	75
Senior management committees	76

SES remuneration	76
Corporate planning	77
Management of human resources	78
Learning and development.	78
Workforce planning	78
Indigenous employees.	79
Indigenous study awards, traineeships and cadetships	79
Indigenous Advisory Group.	80
Occupational health and safety performance.	81
Performance against disability strategy	81
Collective Agreement and Australian Workplace Agreements	82
Collective Agreement 2006–2009	82
Employee Survey	82
Australian Workplace Agreements	82
Risk Management.	82
Information Management.	83
Strategic information and technology management.	83
Accountability	85
Ethical standards and accountability	85
Code of Conduct.	85
External scrutiny	86
Judicial decisions	86
Freedom of information.	86
Other scrutiny	86
Accountability to clients	88
Client satisfaction	88
Client Service Charter	88
Social justice and equity in service delivery	88
Online services	89
Performance against purchasing policies.	90
Procurement	90
Information technology outsourcing.	90
Consultancies	90
Contracts	91
Asset management.	91
Environmental performance.	91

Appendices 93

Appendix I Human resources 93

Appendix II Significant decisions 96

Appendix III Consultants 129

Appendix IV Freedom of information 131

Appendix V Use of advertising and market research 136

Appendix VI Audit report and notes to the financial statements 137

Appendix VII Glossary 171

Index 174

List of figures

Figure 1	National Native Title Tribunal organisational structure 1 July 2006 to 27 May 2007	34
Figure 2	National Native Title Tribunal organisational structure 28 May to 30 June 2007	35
Figure 3	Outcome and output framework 2006–07	37
Figure 4	Map of native title determinations to 30 June 2007	41
Figure 5	Number of ILUA registrations per financial year	64
Figure 6	Map of indigenous land use agreements at 30 June 2007	65

List of tables

Table 1	Total resources for outcome	39
Table 2	Native title applications made and finalised since commencement of the <i>Native Title Act 1993</i> (Cwlth))	42
Table 3	Native title applications made and finalised 2006–07	43
Table 4	Quantity of ILUAs achieved by state or territory	49
Table 5	Number of agreements by state or territory	52
Table 6	Future act agreements by state or territory	58
Table 7	Number of registration test decisions by state/territory	61
Table 8	ILUAs lodged or registered by state and territory 2006–07	63
Table 9	Future act determination application outcomes (by tenement) 2006–07	66
Table 10	Objection application outcomes (by tenement) 2006–07	68
Table 11	Expenditure on consultancies by division 2006–07	90
Table 12	Employees by classification, location and gender at 30 June 2007	93
Table 13	Members of the National Native Title Tribunal at 30 June 2007	94
Table 14	Indigenous employees by division and location at 30 June 2007	95
Table 15	Consultancy services let under s. 131A of the Act 2006–07, of \$10,000 or more	129
Table 16	Consultancy services let under s. 132 of the Act 2006–07, of \$10,000 or more	129
Table 17	Expenditure on advertising (via a media advertising organisation) 2006–07	136

President's Overview



The year in review

Introduction

Almost 30 years ago, author Isaac Asimov wrote, 'It is change, continuing change, inevitable change, that is the dominant factor in society today.' Three decades later, his observation remains relevant to native title law and practice.

During the past year changes were made to the process and institutions created to resolve native title issues. If the spirit and the letter of those changes are given effect, the objective of a more effective and efficient native title scheme should be achieved.

This overview puts some of the changes in context.

Two significant anniversaries during the year provided opportunities to reflect on changes to the way in which native title is perceived.

On 27 May 2007 various events commemorated the 40th anniversary of the referendum that led to s. 51 (xxvi) of the Australian Constitution being amended. That section enables the Australian Parliament to make laws with respect to 'the people of any race' (including Aboriginal people) 'for whom it is deemed necessary to make special laws'.

It is worth noting that in 1967 there was no Aboriginal land rights legislation in Australia other than the *Aboriginal Lands Trust Act 1966* (SA). In subsequent years, primarily after the passage of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth), various types of land rights schemes were enacted in most jurisdictions in Australia. Those schemes enabled (and some still enable) Indigenous peoples to claim certain areas of land or for title to land to be transferred to them. In each case, the relevant government decided whether to grant an estate or interest in land.

3 June 2007 marked the 15th anniversary of the historic High Court decision in *Mabo v Queensland (No 2)*. The judgment went beyond the previous legislative framework for Indigenous land rights when the High Court decided that:

the common law of this country recognizes a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws and customs, to their traditional lands.
(1992) 175 CLR 1 at 15)

Relying on the amended s. 51 (xxvi) of the Constitution, the Australian Parliament enacted the *Native Title Act 1993* (Cwlth) (the Act). There was a challenge to the constitutional validity of the Act but, in 1995, the High Court rejected that challenge.

The judges held that the Act:

is 'special' in that it confers uniquely on the Aboriginal and Torres Strait Islander holders of native title (the 'people of any race') a benefit protective of their native title...Whether it was 'necessary' to enact the law was a matter for the Parliament to decide. (*Western Australia v The Commonwealth* (1994–1995) 183 CLR 373 at 362)

Much of the controversy surrounding the *Mabo (No 2)* judgment and the subsequent Act has subsided, and the resolution of native title issues by agreement (or less commonly by litigation) is part of the day-to-day business of Indigenous groups, governments, bodies and individuals around the country.

The resolution of the Noonkanbah native title claim on 27 April 2007 provides a dramatic illustration of how both attitudes and processes have changed in recent decades. In 1979 Noonkanbah station was the centre of a highly publicised dispute between Aboriginal people, the Western Australian government and a petroleum company, over proposed petroleum drilling in the area of a sacred site. There was no legislation to provide recognition of the Yungngora people's traditional ownership of the land and hence no specific legislative process for the dispute to be resolved. By contrast, some 28 years after that confrontation, a determination of exclusive native title was made by consent of the parties, including the Western Australian Government. (See case study page 57).

That change within a generation does not mean that native title issues are easy to resolve or that all native title outcomes are free of controversy. The judgment of the Federal Court of Australia (the Court) in September 2006 that native title exists over some areas of land in the Perth metropolitan area drew immediate and sustained critical responses. It came as a surprise to many that native title might continue in areas which had been closely settled by others for extensive periods. An appeal against the decision in that case was heard in April 2007 and judgment had not been delivered by the end of the reporting period.

Such controversies are, however, relatively rare. As this report illustrates, the native title system has delivered numerous outcomes for Aboriginal peoples, Torres Strait Islanders, and those who wish to carry out activities in areas where native title has been shown to exist or may exist. The focus is now on improving the effectiveness and efficiency of that system so that outcomes are reached, primarily by agreement, more quickly and at lower cost than in the past.

Legislative reforms have commenced or are imminent as a result of the amendments made to the Act in 2007. Administrative reforms have accompanied legislative change.

They affect the claims resolution process and the various institutions and parties involved in native title issues, including the National Native Title Tribunal (the Tribunal).

This annual report, as the amended Act prescribes, ‘relates to the Tribunal’s activities during the year’. The report deals with the range of registration, mediation, arbitration, assistance and other statutory functions performed by the Tribunal.

It provides a picture of how native title rights and interests are being recognised, often by agreement, alongside other rights and interests.

It also describes many of the changes being implemented to give effect 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 some of the outcomes of the reform agenda are discussed later in this overview.

This report identifies 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 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 (ILUAs))
- 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 overview discusses external factors affecting the Tribunal and trends within the Tribunal, outlining the context in which native title issues are and will be resolved.

The rest of the report includes information about various outputs and case studies that touch on some of the human aspects of negotiations and outcomes. The case studies give a broader picture of what native title delivers to particular groups and wider sectors and communities.

I gratefully acknowledge the contribution of each Tribunal member, the Native Title Registrar and the employees of the Tribunal during the year covered by this report.

External factors affecting the Tribunal

The ways in which the Tribunal meets its obligations are significantly influenced by numerous factors 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 and prescribed bodies corporate.

During the reporting period, wide-ranging legislative and administrative reforms were made to key aspects of the native title system. Some reforms have already affected the way in which the Tribunal operates. It is appropriate to summarise the broad thrust of those reforms and their possible impact before discussing other external factors.

a) Reforms of the native title system

The reforms, which were first announced in September 2005, are focussed 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 the native title representative bodies
- amendment of the guidelines of the native title respondents' financial assistance program administered by the Attorney-General and his Department to encourage agreement-making rather than litigation
- technical amendments to the Act to improve existing processes for native title litigation and negotiation
- reforms to the claims resolution processes following an independent review which considered how the Tribunal and the Federal Court can work more effectively in managing and resolving native title claims
- reforms to the structures and processes of prescribed bodies corporate
- 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 reforms is relevant to the Tribunal's work.

Of most direct significance to the Tribunal was the report of the independent review of the claims resolution process by Mr Graham Hiley RFD QC and Dr Ken Levy RFD. Their report was released by Attorney-General Ruddock on 21 August 2006. The consultants made 24 recommendations for legislative or administrative reform and the Australian Government accepted most of them.

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 measure 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 also assessed 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’.

In their report the consultants noted concerns expressed about the effectiveness of Tribunal mediation and the outcomes achieved through the mediation process. Having considered the respective powers and functions of the Tribunal and the Court in relation to the mediation of native title claimant applications, and the ways in which each institution operates, the consultants concluded:

[T]here appears to be no reason to assume that another body with the same constraints as those which presently exist in relation to Tribunal mediation could have been more effective than the Tribunal.

They considered the Tribunal’s ‘present powers are inadequate for it to effectively perform its mediation role’. Accordingly, they recommended that the Tribunal be given various specified powers in relation to matters referred to it by the Federal Court for mediation. The Australian Government accepted the recommendations, and the *Native Title Amendment Act 2007*, to give effect to those and other reforms, commenced on 15 April 2007.

Some of the additional and expanded powers and functions of the Tribunal are summarised in the next section of this overview.

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.

Legislation

On 7 December 2006, the Attorney-General introduced the Native Title Amendment Bill 2006 into the House of Representatives. The Bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report by 23 February 2007. The Bill passed through both Houses of Parliament with some amendments and, on 15 April 2007, most of the *Native Title Amendment Act 2007* commenced with the Royal Assent.

In his second reading speech on the Bill, Attorney-General Ruddock stated that, unlike previous native title legislation which was enacted in response to significant judicial decisions, the key catalyst for this legislation was the Australian Government’s ‘commitment to improve the performance of the native title system’. He continued:

While native title matters are complex, most stakeholders acknowledge the current framework for resolving native title applications remains too costly and time consuming. It is a matter of clear concern that many Indigenous Australians have not been able to see resolution of their claims within their lifetime, and have therefore been unable to enjoy due recognition of their rights under law. It is in the interests of all Australians, not just parties to claims, that claims are determined more expeditiously.

The legislation made changes to:

- processes for the recognition or re-recognition of native title representative bodies for fixed terms and aspects of their operations, and the functions of native title service providers in areas where there are no native title representative bodies
- the claims resolution process
- some aspects of the operations and the governance regime of prescribed bodies corporate
- the scope of assistance which the Attorney-General may grant to include meeting legal and other costs associated with the development of standard form agreements and the review of existing standard form agreements.

Among the many changes made, those which affect the resolution of claims include amendments that:

- ensure that only the Tribunal mediates native title claims that the Federal Court has referred to it for mediation
- empower the Tribunal to conduct a review 'on the papers' of whether a native title claim group holds native title rights and interests in relation to the application area
- empower the Tribunal to hold an inquiry in relation to a matter relevant to a determination of native title
- limit the range of persons who may become a party to claimant application proceedings
- empower the Tribunal to refer to the Federal Court the question of whether a party should cease to be a party to a proceeding
- make it easier to have consent determinations over part of an area covered by a claimant application
- empower the Tribunal to direct a party to attend a mediation conference or to produce a document for the purposes of a mediation conference
- focus on the regional management of claimant applications by empowering the Tribunal to prepare and provide the Federal Court with reports on the progress of all mediations conducted by the Tribunal in relation to regions (regional mediation progress reports) and work plans setting out the priority given to each mediation conducted by the Tribunal in an area (regional work plans)
- give the Tribunal the right to appear before the Federal Court at a hearing in relation to a matter that is with the Tribunal for mediation

- ensure that claimant applications which previously failed the registration test are re-tested and, if they fail the merit conditions, may be dismissed
- encourage the claimant applications made in response to future act notices to be progressed and, if not, provide for them to be dismissed once the future act has occurred.

The legislative changes reorient aspects of the relationship between the Court and the Tribunal, and confer additional and expanded functions on the Tribunal.

Significant as they are, the powers and functions alone will not expedite the resolution of native title claims by consent. The Tribunal has contended that any improvement to the processes and practices of the Tribunal and the Federal 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.

The native title scheme expressly favours resolution of claimant applications (and other native title issues) by agreement. 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.

Important as the Tribunal and the Court are to the operation of the system, it is the parties that determine whether, what and when any outcomes are agreed. As Justice French observed in a judgment delivered during the reporting period: ‘Mediation is necessarily consensual. No party can be directed to reach agreement about a pending application or any part of it’—*Franks v Western Australia* [2006] FCA 1811 at [37].

Although the Act and the structures created by it cannot compel agreement, they can create an environment in which agreement-making is encouraged. In his second reading speech on the Native Title Act Amendment Bill 2006, the Attorney-General said: ‘Reform of the institutional framework is only part of the solution to achieving more expeditious claims resolution. The Bill introduces measures directed at ensuring parties act responsibly’ and making it clear that ‘all parties and their representatives must mediate in good faith’.

Furthermore, although mediation is necessarily consensual, the Court and the Tribunal can take appropriate steps to ensure the timely progress of mediation under the Act, such as orders or directions calculated to assist mediation to proceed expeditiously. Both institutions are taking such steps.

The Native Title Amendment (Technical Amendments) Act 2007 was passed by the Australian Parliament on 20 June 2007 and received the Royal Assent on 20 July 2007.

A few of the amendments commenced on 15 April 2007. Most of them commenced in the next reporting period—on 1 July, or 21 July 2007, or 1 September 2007. Others will commence on 1 July 2008.

Among the many changes to be made by the Technical Amendments Act will be the capacity for applicants to request an internal reconsideration of a registration test decision by a member of the Tribunal if their application fails to meet the conditions of the test. The Act will also reduce the number of circumstances in which the registration test will be applied to amended claims. Such changes should lead to claims being amended more readily and in ways that enable quicker resolution of them.

The various amendments to the Act should create a more transparent claim resolution process and to ensure that a spotlight is directed towards the mediation performance of all concerned thereby providing some incentive to move matters forward.

Judgments and litigation

The Federal Court delivered more than 50 written judgments on matters involving native title law during the year. Some of those were at the end of trials about native title claims. Five were consent determinations of native title. Most judgments, however, involved other technical issues in relation to the interpretation of the Act and aspects of native title practice and procedure, including matters relevant to registration testing undertaken by the Native Title Registrar and his delegates.

The 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, cases are argued and administrative decisions are made, is increasingly certain.

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:

- *Bennell v Western Australia*—39 hearing days (other than hearings of pre-trial interlocutory matters)
- *Griffiths v Northern Territory*—14 hearing days
- *Harrington-Smith v Western Australia*—100 hearing days
- *King v Northern Territory*—eight hearing days.

Final orders were not made in *Bennell* (the Perth metropolitan claim) or *King* (Newcastle Waters in the Northern Territory).

The judgment in the longest trial dismissed a cluster of overlapping claimant applications in the Goldfields region of Western Australia but did not make a determination of native title.

In the same period, the Full Federal Court heard appeals in relation to 11 judgments on native title claims to areas of land and waters in the Northern Territory (in the areas of Darwin, Timber Creek and Blue Mud Bay in Arnhem land) and in Western Australia (in the areas of Perth, Broome and the Pilbara region), and the appeal against the judgment dismissing a compensation claim to land at Yulara in the Northern Territory. Judgments were delivered in relation to five of those appeals.

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

Members of the Tribunal are also involved in the development of the law as they make future act determinations under the Act. None of these 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 pages 96 to 128.

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.

On 15 December 2006, federal, state and territory ministers with responsibility for native title met in Canberra. The meeting followed the inaugural meeting of ministers in September 2005. It was convened by Attorney-General Ruddock and considered the Australian Government's package of reforms to the native title system. Ministers discussed how native title can meet broader Indigenous policy objectives.

In their communiqué, the Ministers acknowledged that good communication and transparent processes can contribute to the successful and timely resolution of native title claims. At the end of the meeting, Attorney-General Ruddock stated that the 'success of the native title system depends on cooperation, coordination and communication between all governments in Australia'.

The Ministers also noted the positive contribution that agreement-making and the use of native title-related outcomes can make to fulfil the broader aspirations of native title claimants. In particular, the ministers noted that native title processes are being, and can be, utilised to identify:

- measures that contribute to economic development for Indigenous Australians
- opportunities for capacity-building and other support for Indigenous communities
- assistance to secure long term and lasting benefits for Indigenous communities from land.

State and territory policies and laws

For some years, governments have been considering multifaceted settlements of native title claims. States and territories have explored ways to improve efficiency in the settlement of claims through a variety of related policy options (for example, management arrangements for national parks, strategies for economic development and cultural heritage management). Consideration of such options has the potential to assist in or otherwise affect the progress of negotiations occurring in specific applications which may form part of the settlement packages negotiated.

Policies on cultural heritage protection are increasingly reflected in state legislation that expressly links such protection to native title claims and determinations. For example, on 28 May 2007, the new *Aboriginal Heritage Act 2006* (Vic) commenced. Such legislation can affect the pace and possibility of resolving native title claims.

Governments' approaches to assessment of connection

There has been much debate about the best process to be adopted in (or outside) mediation for establishing a group's traditional connection to the claimed area. Practices vary around the country. Although Justice French has ruled that the Tribunal 'has the responsibility... to undertake mediation of all aspects of the application' and that the mediation process covers the exchange of information between parties, including connection information (rather than the provision of connection evidence being outside or antecedent to the mediation process), that approach is not taken universally.

The role of the state or territory governments in assessing connection material remains the subject of ongoing debate and at least one government is reviewing its guidelines for making such an assessment. As part of his reasons for the recent consent determination in relation to the Gunditjmara People's native title application, Justice North referred to 'the importance placed by the Act on mediation as the primary means of resolving native title applications'. He stated that, when considering the appropriateness of an agreement for a consent determination, the Court needs to be satisfied that the state party 'has taken steps to satisfy itself that there is a credible basis for the application'. His Honour continued:



Tribunal Member Gaye Sculthorpe addresses the crowd at the Gunditjmara consent determination, Victoria, 30 March 2007.

There is a question as to how far a State party is required to investigate in order to satisfy itself of a credible basis for an application. One reason for the often inordinate time taken to resolve some of these cases is the overly demanding nature of the investigation conducted by State parties. The scope of these investigations demanded by some States is reflected in the complex connection guidelines by some States... The Act does not intend to substitute a trial, in effect, conducted by State parties for trial before the Court. Thus, something significantly less than the material necessary to justify a judicial determination is sufficient to satisfy a State party of credible evidence for an application. The Act contemplates a more flexible process than is often undertaken in some cases. (*Lovett on behalf of the Gunditjmara People v Victoria* [2007] FCA 474 at [37], [38])

The Tribunal has taken various initiatives to address this issue because it is relevant to all parties to native title proceedings. At the end of the reporting period, planning was well advanced for a workshop, jointly sponsored by the Tribunal and the Australian Institute of Aboriginal and Torres Strait Islander Studies, to focus on the requirements for establishing claimants' connection to country and the way in which that connection is assessed in the context of mediation. The workshop was scheduled for July 2007 and

involved delegates from Commonwealth, state and territory government departments, native title representative bodies and various experts.

Attorney-General's guidelines on assistance

One of the potentially most significant reforms to the native title system, in terms of behaviour of respondent parties to claimant application proceedings, is the new set of *Guidelines on the provision of financial assistance by the Attorney-General under s183 of the Native Title Act 1993*. The Guidelines relate to financial assistance that the Attorney-General may provide to respondent parties in relation to native title inquiries, mediations or proceedings, or to persons entering into an ILUA or an agreement about rights under s. 44B(1) of the Act (rights of access for traditional activities) who are not members of the native title claim group concerned.

The Guidelines are administrative procedures which did not require amendment of the Act. They came into force on 1 January 2007 and replaced guidelines that had operated since 30 November 1998. The aim of revising the Guidelines was to encourage the resolution of native title matters through agreement-making, rather than litigation, wherever possible. The features designed to meet that objective include:

- authorising assistance in stages of six to 12 months, or shorter timeframes, to facilitate improved and more transparent planning by funded parties focused on achieving outcomes
- varying or terminating assistance if a grant recipient fails to act reasonably by not endeavouring to reach a reasonable agreement with a claimant
- limiting the circumstances in which financial assistance for court proceedings is provided
- strengthening reporting requirements imposed on grant recipients to include strategies to resolve issues in dispute
- assisting in the drafting and development of an agreement or ILUA through access to agreements and ILUAs funded under the scheme, in which the Commonwealth retains a licence to use, adapt and exploit.

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.

The legislative reforms made during the reporting period in relation to the native title claims processes (outlined earlier in this overview) have re-oriented aspects of the relationship between the Court and the Tribunal.

In their report on the Claims Resolution Review, Mr Hiley and Dr Levy also recommended that:

- the Court should convene regular user group meetings and regional call overs involving the Tribunal
- the Tribunal and the Court should actively seek new methods of improving institutional communication
- the Court be encouraged to adopt a practice note setting out the Court's preferred methods for managing native title claims to ensure all parties have a shared understanding of the process.

Since receiving the consultants' report, senior representatives of the Court and the Tribunal have worked closely on a range of initiatives that respond to those recommendations.

At the end of the reporting period, drafting was well advanced on a protocol as to the administrative relationship between the Court and the Tribunal. The Court was preparing additional Federal Court Rules to give effect to some of the legislative changes to the claims resolution process. Arrangements were in place for user groups to be convened jointly by the Court and the Tribunal so that representatives of both institutions could explain the reforms to the claims resolution process and how the Court and the Tribunal would implement them.

On 13 June 2007, Chief Justice Black issued a notice to practitioners and litigants about the revised arrangements for the conduct of native title cases in the Federal Court. Such cases are being managed regionally but within a national framework by Native Title List Judges. A Native Title List Judge has been nominated for each state, territory or region. Those judges will co-ordinate native title work and harmonise practice and procedure.

Building on models of regional management of the case load already in place in the Court, there will be greater emphasis on the regional management of native title cases, allowing the progress of cases to be coordinated and streamlined across a region or regions. Such regional management practices should be assisted by regional work plans and regional mediation progress reports prepared by the Tribunal.

The Native Title List Judges and the Court's Native Title Registrars may conduct case management conferences with the Tribunal to identify cases that should proceed to trial with priority. As a general rule, the Chief Justice will allocate a case to a trial judge once it is actively progressing to trial.

e) Native title representative bodies

Functions, power 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. 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.

The Australian Government's response to the PJC report was tabled in the House of Representatives on 15 February 2007 and the Senate on 1 March 2007. The Government accepted the majority of the recommendations either in full or part. For those that were not accepted, the Government identified that either existing resources were sufficient (operational funding to representative bodies) or existing resources together with the proposed reforms would achieve the desired outcome.

A set of measures to improve the effectiveness of native title representative bodies was one of the six interconnected aspects to the Australian Government's reforms of the native title system. The April 2007 amendments to the Act introduced a new regime for representative bodies under which:

- representative bodies will be recognised for fixed terms of between one and six years (rather than for an indefinite period as previously), with existing representative bodies being recognised during a transition period for an initial fixed term
- the criteria governing recognition and withdrawal of recognition from representative bodies, and extension, variation and reduction of representative body areas have been simplified, with the Commonwealth Minister having new powers to extend and vary representative body areas
- bodies incorporated under the *Corporations Act 2001* (Cwlth) are able to be recognised as representative bodies
- previous requirements for representative bodies to prepare strategic plans and

- prepare annual reports for tabling in Parliament have been removed
- native title service providers funded to perform representative body functions for an area for which there is no representative body are able to operate in the same way as representative bodies to the extent that this is appropriate.

It should be noted that these are structural reforms and do not provide any additional resources for representative bodies.

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.

As a consequence of amendments made to the Act in April 2007, those Native Title Services bodies are able to operate in the same way as representative bodies to the extent that it is appropriate.

Implementation of some of the amendments has resulted in representative bodies being offered recognition as representative bodies for various periods of one to six years from 1 July 2008.

There are proposals to amalgamate by 1 July 2008 some or all of the areas currently covered by three representative bodies in central and southern Queensland and the area covered by Queensland South Native Title Services Ltd. The process for that amalgamation has commenced.

There remain 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.

f) Prescribed bodies corporate

Where there is a determination that Indigenous people 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. Importantly for the native title holders and 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.

At the end of the reporting period there were 68 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 the use of those areas of land.

Even when such corporations are established, there are 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 that governments widely publicise the availability to PBCs of different funding sources, particularly in relation to the land management functions of PBCs.

During the reporting period the Tribunal published a *Guide to Sources of Assistance and Funding for Prescribed Bodies Corporate*.

In October 2006, the Attorney-General and the Minister for Families, Community Services and Indigenous Affairs released the *Report on the Structures and Process of Prescribed Bodies Corporate* (the PBC Report). The report included an examination of the appropriateness of the existing statutory governance model for PBCs.

The Australian Government accepted all of the PBC Report's recommendations, which include measure intended to achieve the following broad outcomes:

- improve the ability of PBCs to access and utilise existing sources of assistance, including from representative bodies
- improve the flexibility of the PBC governance regime to accommodate the specific interests and circumstances of the native title holders
- better align existing sources of potential assistance with PBC needs
- encourage the involvement of state and territory governments in addressing PBC needs.

Most recommendations will be implemented administratively or through regulations made under previously existing provisions of the Act. In April 2007 the Act was amended to implement two of the recommendations.

Although these reforms are primarily structural, there is a focus on identifying and providing access to various forms of assistance.

At their meeting in Canberra on 15 December 2006, ministers responsible for native title noted the important role of PBCs in the native title system. Ministers agreed to:

- consider PBC establishment and needs and bring these matters to the attention of all parties as a matter of practice when negotiating consent determinations or future act agreements
- encourage a better understanding of the functions, needs and responsibilities of PBCs among other stakeholders in the native title system.

Ministers also noted:

- the possibility of PBCs receiving assistance for broader functions via Shared Responsibility Agreements and Regional Partnership Agreements, or both
- that the Australian Government will consult state and territory governments on possible measures to enable state or territory land rights corporations to act as PBCs where the native title holders agree to this.

Trends within the Tribunal

a) Changes to membership

During the reporting period seven Tribunal members were reappointed for further terms of five years. Most were reappointed to the same office as previously. However, Mr John Sosso was made a full-time deputy president and Mr Neville MacPherson was appointed as a part-time member.

The terms of Professor Laurence Boulle as a part-time member and Hon Fred Chaney AO as a full-time deputy president concluded. Their services to the Tribunal were most appreciated.

At the end of the reporting period there were 11 members—eight were full time and three were part-time. Details of the Tribunal's membership are found on pages 31–32, 94.

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 Tribunal's output structure, notification is not reported as an output. Nevertheless, it is an indicator of the number of applications that will be referred to the Tribunal for mediation.



Tribunal Deputy President Fred Chaney speaking with The Hon. Ernie Bridge, representative of the Yungngora people, at the consent determination over the Noonkanbah pastoral lease west of Fitzroy Crossing, Western Australia, 27 April 2007.

At 30 June 2007, there were 532 claimant applications at some stage between lodgement and resolution. The total was lower than the 553 current claimant applications at 30 June 2006. In the reporting period, 50 claimant applications were discontinued, dismissed, withdrawn, struck-out, combined with other applications, or were the subject of native title determinations, with the result that 922 (or 63 per cent) of the claimant applications made since the Act commenced have been finalised. Thirty new claimant applications were lodged in the reporting period.

In the period covered by this report 56 registration test decisions were made, nine more than the 47 decisions made in the previous year. They included 25 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, pages 60–62.

The registration test workload in claimant applications had plateaued in recent years but rose in the reporting period due to the volume of new claimant applications as well as amendments being made to some claims. It will increase significantly in the year ahead as a result of amendments to the Act in April 2007 that require the Registrar, within one year after the amendments commenced, to use his best endeavours to apply the

registration test to categories of claimant applications that have been registration tested and are not on the Register of Native Title Claims, or that are on the Register but were not previously required to go through the registration test. Particular focus will be on whether each application satisfies all of the 'merit' conditions in section 190B of the Act.

These provisions are aimed at removing native title applications from the system where the claims made in the applications do not meet (and are not amended to meet) the merit requirement of the registration test, and, in the opinion of the Court, there is 'no other reason why the application in issue should not be dismissed'.

By the end of the reporting period, a program had been developed for the re-testing (or initial testing) of some 118 claimant applications. The result of this process could be that:

- some claimant applications will be amended to comply with the registration test and hence be in better shape for substantive mediation
- some claimant applications will be removed from the system, with potential for better prepared claims to be made in the future
- as limited experience of the program at 30 June 2007 indicates, some claimant applications will be discontinued.

The process will necessarily divert some of the resources of the native title claim groups whose claims are affected, their representatives, the Registrar and potentially the Federal Court. Where native title claim groups are represented or supported by a native title representative body, that body will presumably be using resources that would otherwise be directed to its other statutory functions, such as progressing claimant applications.

Looking further ahead, the level of registration testing may be reduced as a result of changes to the Act to be made by the *Native Title Amendment (Technical Amendments) Act 2007*. Those amendments will provide that the registration test will not be reapplied to registered claimant applications that are amended where the Registrar is satisfied that the only effect of the amendment is to:

- reduce the area of land or waters covered by the application and the information and map contained in the amended application are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters
- remove a right or interest from those claimed in the application
- alter the address for service of the person who is, or persons who are, the applicant
- change the name of a representative body recognised for the area or replace it with a body funded to perform representative body functions (or vice versa).

The level of notifications dropped in 2006–07, with 19 claimant applications being notified, compared with 22 in the previous year. Twelve non claimant and two

compensation applications were notified. The level of notification reflects a reduction in the backlog and the decline in the rate of new claimant applications. Approximately 91 per cent of current claimant applications had been notified by 30 June 2007.

As more claimant applications are notified, the Federal Court is referring them to the Tribunal for mediation. At 30 June 2006, 328 current matters were with the Tribunal for mediation. At 30 June 2007, 279 current claimant applications had been referred to the Tribunal for mediation, including 12 matters that were referred to it during the reporting period.

Although 52 per cent of current applications have been referred to the Tribunal for mediation, many of them are not being substantively mediated. Indeed it may be that only half of those applications could be described as 'active' because mediation is occurring, or because the Tribunal is involved in developing research reports or undertaking geospatial analysis to assist the parties.

Various facts delay active mediation of applications. A significant, though diminishing, percentage of land is covered by overlapping claims. Much work remains to be done in relation to numerous applications (including collating and presenting information about the native title claim groups' traditional connection to the relevant areas of land or waters, and resolving disputed overlaps between neighbouring groups) before 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 emphasis on assistance the Tribunal may give parties on a case-by-case basis, and to stakeholders on a sectoral basis, is reflected in the output structure at outputs 1.1 and 1.2 and in the Tribunal's *Strategic Plan 2006-2008*.

The nature and volume of the assistance provided by the Tribunal vary significantly over time, as well as between individual states and territories. Much of the work is in response to parties who request Tribunal assistance. Various factors, including the negotiating stances of parties, make it difficult to predict accurately the forms of assistance to be provided, the number of agreements and when they will be finalised.

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 recent years, from 52 during 2004–05, to 68 in 2005–06, bringing a total of 250 ILUAs on the Register of ILUAs as at 30 June 2006. During the reporting period another 31 ILUAs were registered. At 30 June 2007, approximately 30 other agreements were in other stages of the process toward possible registration.

This report contains information about the level of ILUA activity and other agreements around the country. More ILUA outputs were generated in relation to native title determination applications than through ‘stand alone’ ILUA negotiations. That continued a trend identified in last year’s annual report. For further information, see Output group 2, pages 48–59.

Analysis of the range of agreements reached in the past year (including agreements on specific issues and process or framework agreements) shows that many of the agreements were made in relation to a relatively small proportion of the applications referred to the Tribunal for mediation.

d) Increase in the number of determinations of native title

During the reporting period the Native Title Registrar registered 16 determinations of native title—eight that native title exists and eight that native title does not exist in relation to specific areas of land or waters. Details of some determinations are discussed in Appendix II.

On 30 May 2007 the Ngarla people were recognised as native title holders of about 4,655sq km of land east of Port Hedland. Pictured, Ngarla representative Charlie Coppin, Tribunal case manager Gerry Putland and Ngarla representative Stephen Stewart.



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 area 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 registered in the reporting period was lower than the 21 determinations registered in 2005–06, and lower than the Tribunal had estimated. However, seven of the eight determinations that native title exists were made by consent of the parties. That indicated the strong agreement-making environment that is also evident in the number of agreements that deal with issues or set out processes or frameworks for mediation: see Table 5 and pages 52–53.

At 30 June 2007 there were 103 registered determinations of native title including 68 determinations that native title exists.

e) National case flow management scheme

The Tribunal is implementing a new national case flow management scheme. The scheme is independent of the amendments to the Act but has been designed by reference to the amended legislation. The basis of this scheme was raised at the meeting of members and senior managers in September 2006, and was subsequently refined for introduction from April 2007.

The scheme has a strong regional focus. It introduces some new components to the administration of the Tribunal's mediation practice, namely:

- the creation of three separate lists of claimant applications (the Registrar's list, regional list and substantive list)
- a process which operates from a regional basis for a nationally consistent approach to the allocation (and reallocation) of each application to one (or sometimes two) of the lists.

The periodic allocation (or reallocation) of each application to a list (or lists) will be the responsibility of the President, assisted by advice and recommendations from the Registrar and Deputy President Sosso. They will draw on recommendations and information provided by members and state managers for each state and territory. The first comprehensive review of all applications for allocation or reallocation was undertaken toward the end of the reporting period for application later in 2007.

This scheme will enhance greatly the Tribunal's ability to:

- develop and record the mediation strategy for each claimant application (or cluster of applications)

- keep track of progress of each claimant application (or cluster of applications)
- strengthen the regional focus of the Tribunal's mediation planning and practice
- enable the Tribunal to report comprehensively to the Federal Court and the Australian Government about regional work plans and the progress (or the reason for lack of progress) in relation to applications across the country.

f) Procedural directions

The amendments to the Act that conferred additional powers and functions on the Tribunal created a need for procedural directions for Tribunal members and employees about the administration of facets of the claims resolution process.

At the end of the reporting period, I was preparing various directions to take effect later in 2007.

g) Future act work

Another important aspect of the Tribunal's work is the resolution by mediation or arbitration of issues involving proposed future acts (primarily the grant of exploration and mining tenements) on land where native title exists or may exist. Details of the future act work are set out later in this report, see pages 58, 66–69.

This area of work was not changed by the 2007 amendments to the Act. Accordingly it is possible to track some trends by comparison with workloads and outputs in previous years.

Future act consent determinations continue to be a common means of finalising negotiations: during the reporting period 174 of the 175 future act determinations were made by consent. That was a substantial increase on the 68 consent determinations made in 2005–06.

Six of the 31 ILUAs registered in that period involved exploration or mining.

Recent annual reports 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 been a decrease in the number of objections to the use of the expedited procedure under the Act. The number of objections dropped from 1387 in 2005–06 to 884 in 2006–07.

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. Consequently such agreements are no longer fully effective in some regions. Reviews of standard regional heritage agreements were undertaken in the reporting period, and the report is with the Western Australian Government.

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. By comparison, in the reporting period of the 125 objections finalised, 76 (61 per cent) were finalised by the withdrawal of the objection because of an agreement.

h) Budgetary outlook

In recent years, including the reporting period, the Tribunal has not used the entire amount appropriated to it. The Parliament appropriated \$32.667 million for the reporting period. Of that \$28.156 million was spent.

The underspend of \$4.5 million is a consequence of internal and external factors unique to the reporting period.

The internal factors include:

- accounting adjustments to give effect to prepaid rent and other expenses to be expensed during 2007-08 (\$1.077 million), for more information see Appendix VI-Audit report and notes to the financial statements' pages 137–139
- suspension of information technology projects due to a review of the Tribunal's information and knowledge management requirements (\$1.40 million), for more information see Information Management, at page 83.

The external factors (which account for \$2.04 million) include,

- the impact of the lead time for the introduction of legislative and other reforms on workloads resulting in a decline in administrative costs, for more information see Outcome and output performance, pages 40–41
- higher than usual staff turnover and recruitment delays due to strong competitive labour markets in some states, for more information see Workforce planning, pages 78–79.

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 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. Because the Tribunal has been given additional powers and functions under the Act, we will be assessing whether there will be increasing pressure on the Tribunal's resources later in the current funding cycle.

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.

Conclusion

Some 15 years after the High Court's historic *Mabo (No 2)* judgment, the native title system has delivered a range of positive outcomes for many Indigenous Australians. The judgments delivered and the agreements reached have provided a platform for future developments. But many have come at significant financial and emotional costs. As has often been observed, many people have died before seeing their native title claims resolved.

Last year I noted that the Tribunal faces significant challenges in its operating environment:

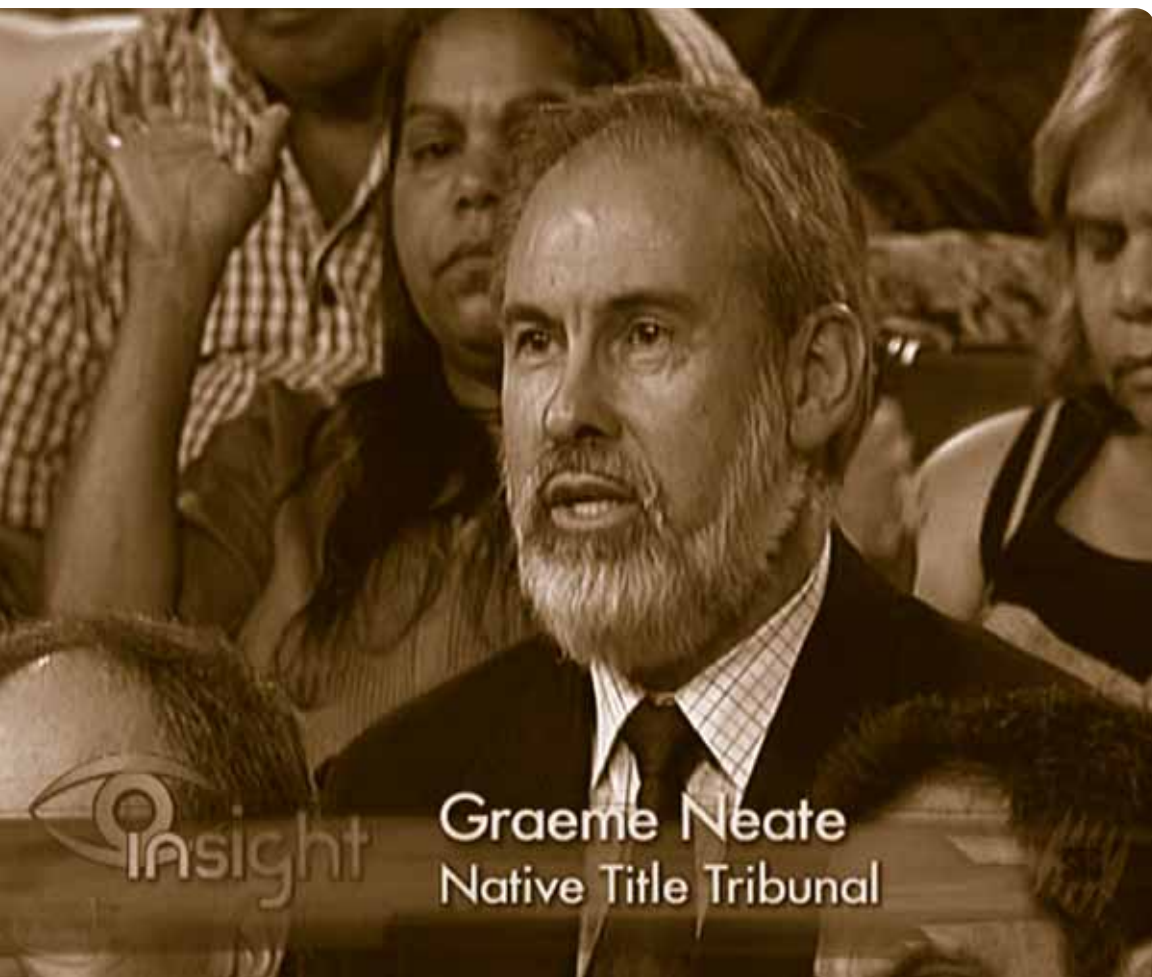
- At the rate that native title applications have been resolved to date, it will take many years to resolve outstanding applications and many older Indigenous Australians will not see their claims finalised
- Clients and stakeholders can become frustrated at delays and the high cost of participating 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 that will take some years to consolidate
- There are finite resources available within the native title system.

These challenges continue, and all participants in the native title system must work to find ways to reach outcomes in a timely and more efficient manner for the hundreds of current native title applications and those that are to come. The history of long and expensive litigation informs the need for a more rigorous agreement-making regime.

Effective responses to the challenges require innovation, leadership and commitment to achieving results across the native title system. Some of these responses will be found when implementing the reforms made in 2007. Those reforms should result in practical improvements to the system. In particular, the reforms should encourage agreements to be 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 implemented and revised or new ways of working are developed.

It is incumbent on all participants to use the reforms to reach the objectives of a more effective and efficient native title system, so that it cannot be said about these reforms in years to come 'Plus ça change, plus c'est la même chose'—the more things change, the more they are the same.

The Federal Court September 2006 judgment over parts of the Perth metropolitan area showed not all native title outcomes are free of controversy. Tribunal President Graeme Neate appears on SBS TV current affairs program *Insight* in response to the Court's decision.



Our focus should be on how the parties can work together to secure just and enduring outcomes in a timely way. The Tribunal's additional powers and functions are tools to assist parties to reach that objective. The Tribunal and the Court will work with each other and with the parties to promote outcomes by agreement where possible.

In looking to the future we can be encouraged by the information in this annual report which 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.

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. It 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 functions

The Native Title Act 1993 (Cwlth) (the Act) established the Tribunal and sets out its functions and powers. Following the commencement of the *Native Title Amendment Act 2007*, further functions and powers were conferred on the Tribunal to assist it to carry out its work.

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 where native title exists or may exist (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
- conducting reviews on whether there are native title rights and interests
- conducting native title application inquiries
- reporting to the Federal Court of Australia (the Court) on the progress of mediation
- preparing and providing to the Court regional mediation progress reports and regional work plans
- 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
- 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 President may delegate to a member (or members) all or any of the President's powers, and may engage consultants in relation to any assistance, mediation or review that the Tribunal provides. The President directs a member (or members) to act in relation to a particular mediation, negotiation or inquiry under the Act.

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
- 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 the Registrar's powers under the Act to Tribunal employees, and may also engage consultants. The Registrar is Christopher Doepel who was re-appointed 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 further information, see output 2.2 in the Report on Performance, pages 51–55.

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 further information, see outputs 2.3, 3.3 and 3.4 in the Report on Performance, pages 56–58, and 66–69.

The *Native Title Amendment Act 2007* commenced on 15 April 2007. For further information, about the amendments and their implications, see the President's Overview, pages 2–25 and External Scrutiny, pages 86–87. Further amendments to the Act will be made by the *Native Title Amendment (Technical Amendments) Act 2007* that was passed by Parliament on 20 June 2007, and received Royal Assent on 20 July 2007. A few of the amendments commenced on 15 April 2007. Most of them will commence in the next reporting period—on 1 or 21 July 2007, or 1 September 2007. Others will commence on 1 July 2008.

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. A biographical note on each member is available on the Tribunal's website.

At the end of the reporting period, there were 11 members, comprising three presidential members (all full-time) and eight other members (five full-time and three part-time). There were some changes to the composition of the Tribunal during the reporting period:

- Neville MacPherson was re-appointed from a full-time member to a part-time member of the Tribunal in September 2006
- John Catlin was re-appointed as a full-time member of the Tribunal for five years from October 2006
- John Sosso was re-appointed as a presidential full-time member of the Tribunal for five years from February 2007
- Professor Laurence Boule concluded his term as a part-time member of the Tribunal in February 2007
- Graeme Neate was re-appointed as the President of the Tribunal for five years from March 2007
- Graham Fletcher was re-appointed as a full-time member of the Tribunal for five years from March 2007
- Bardy McFarlane was re-appointed as a full-time member of the Tribunal for five years from March 2007
- the Honourable Fred Chaney AO concluded his term as a presidential full-time member of the Tribunal in April 2007
- the Honourable Chris Sumner AM was re-appointed as a presidential full-time member of the Tribunal for five years from April 2007.

The members are geographically widely dispersed. Usually members meet twice each year to consider a range of strategic, practice and administrative matters. During the reporting period an additional meeting was held to consider the outcomes of the Claims Resolution Review and amendments to the Act. Sub-committees of members, or members who work in the same state or territory, also meet as required. For further details see Table 13.



Members of the National Native Title Tribunal, Brisbane, 2007: (back row, from left) Ruth Wade, John Sosso, John Catlin, Graham Fletcher, Neville MacPherson, Bardy McFarlane, Dan O'Dea, (front row from left) Fred Chaney, President Graeme Neate, Chris Sumner, Gaye Sculthorpe and Robert Faulkner.

Roles and responsibilities

The role of members is defined in various sections of the Act. For further information, see Role and functions, pages 29–30.

Organisational structure

During 2006 and 2007, the Tribunal reviewed its capacity to carry out information management and to use information technology to support its business. Following a consideration of the review recommendations, the Tribunal in May 2007 implemented a return to a two divisional structure from the previous three divisions of Service Delivery, Corporate Services and Public Affairs, and Information and Knowledge Management (IKM) (see Figures 1 and 2, pages 34–35).

The two divisions are Service Delivery and Corporate Services and Public Affairs. The Director of Service Delivery is Hugh Chevis and the Director of Corporate Services and Public Affairs is Franklin Gaffney.

The intent of the structural changes is to achieve efficient and effective groupings of related units and to establish better lines of day-to-day management and communication.

Figure 1 National Native Title Tribunal organisational structure 1 July 2006 to 27 May 2007

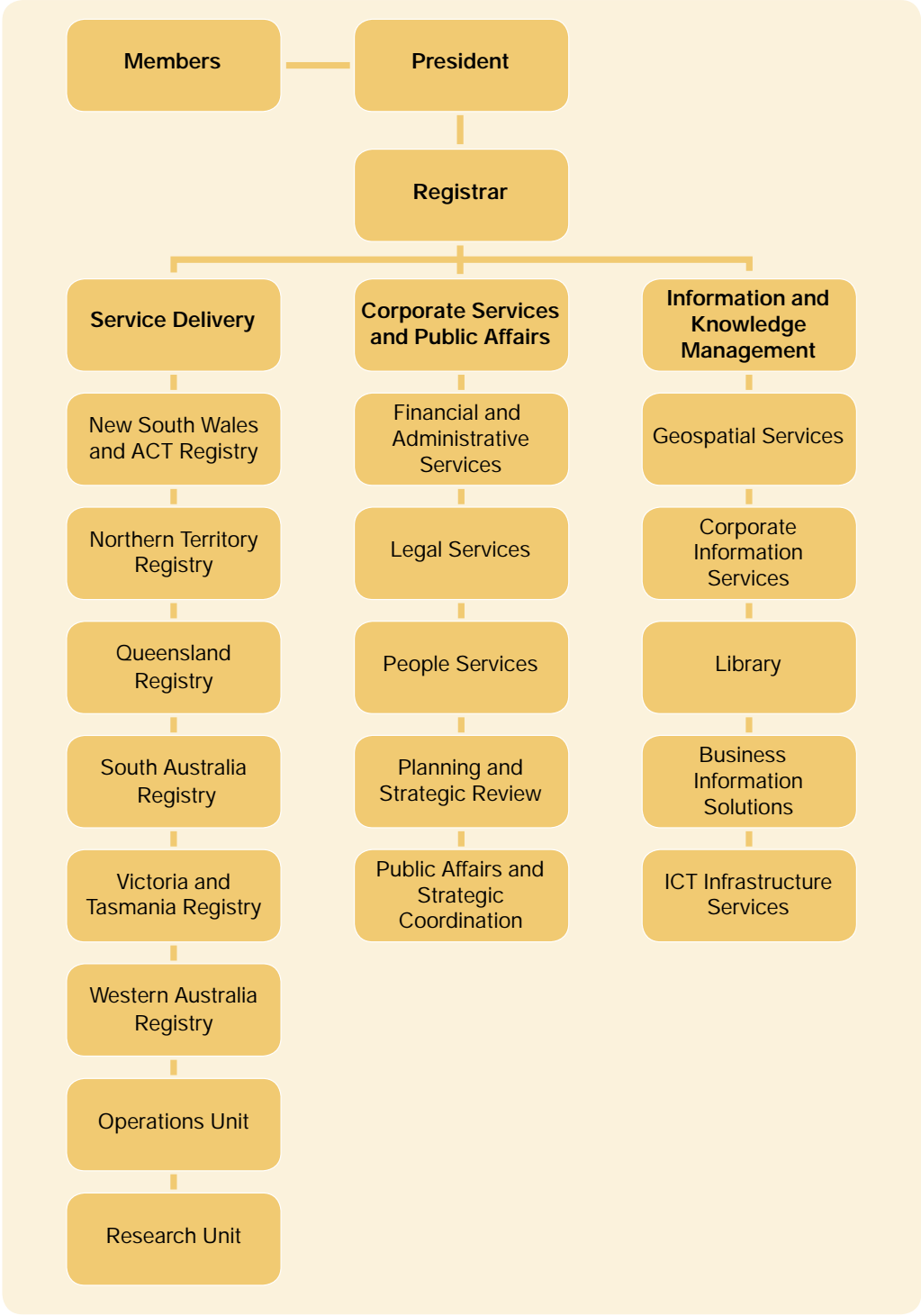
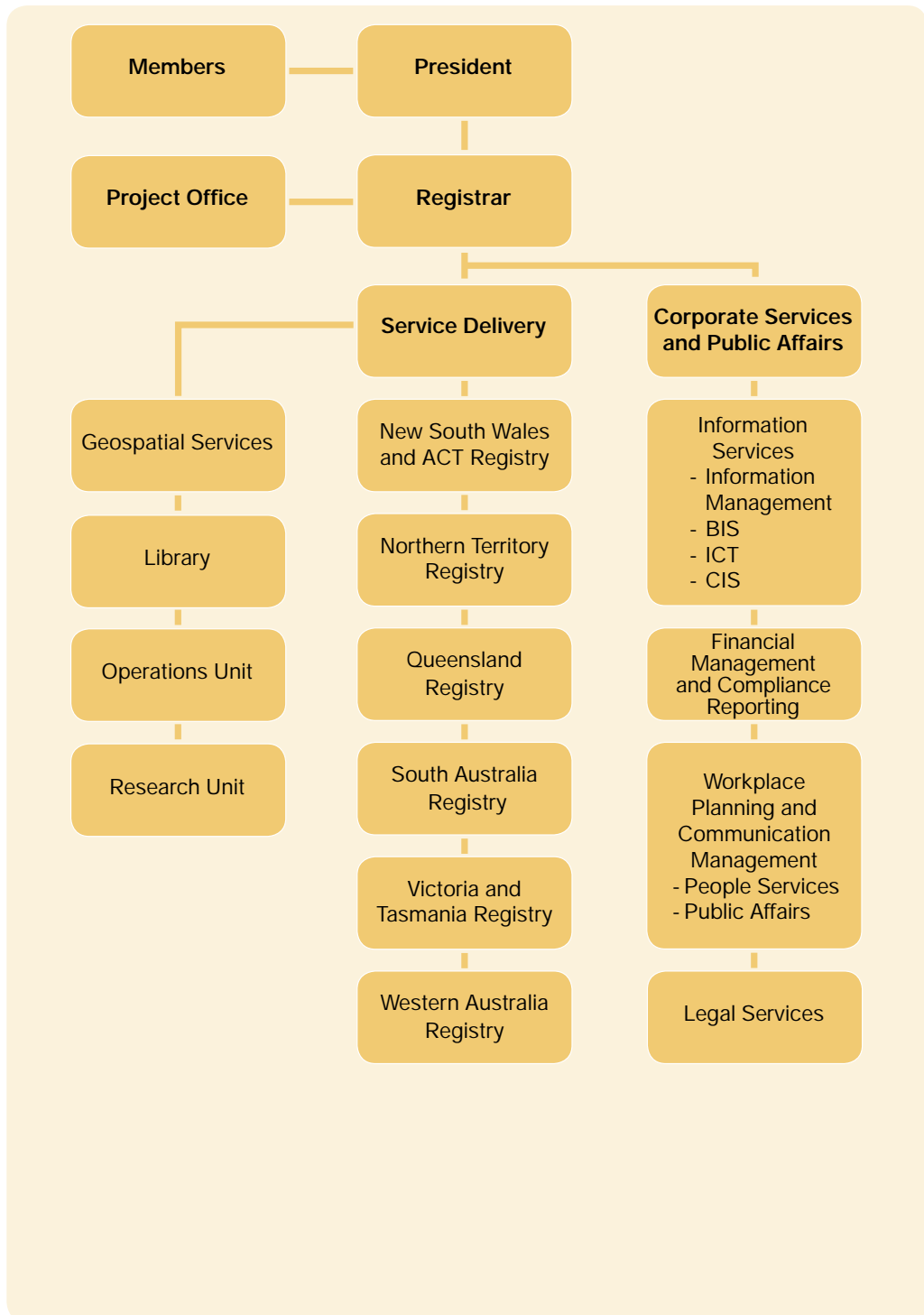


Figure 2 National Native Title Tribunal organisational structure 28 May to 30 June 2007



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 was ‘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.

The output groups are:

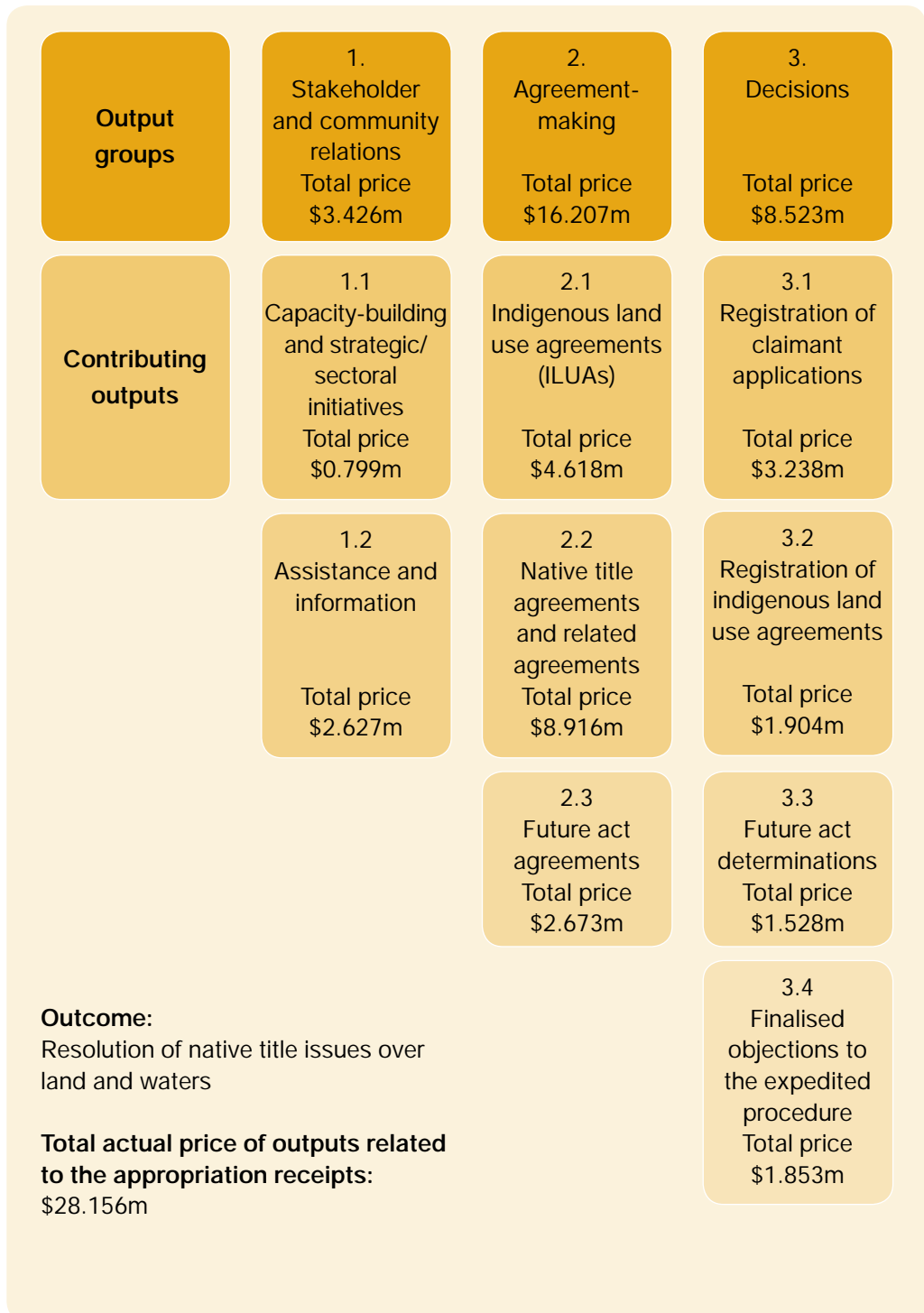
- stakeholder and community relations
- agreement-making
- decisions.

Details of the Tribunal’s performance and costs in accordance with this framework are provided in the Report on Performance, pages 38–69.

The Tribunal has commenced implementing those parts of the *Native Title Amendment Act 2007* which confer additional powers and functions on the Tribunal and the Registrar.

These additional powers and functions will translate into new services for the Tribunal to deliver. The nature and volume of these services will be reviewed and monitored during the next reporting period for any necessary changes to the Tribunal’s output structure.

Figure 3 Outcome and output framework 2006–07



Report on Performance



Financial performance

The Tribunal's expenditure for the 2006–07 financial year was \$28,156m. This was \$4.5m less than the departmental appropriation in the Attorney-General's Portfolio Budget Statements. For further information see the President's Overview–Budgetary outlook, page 24.

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

Figures are subject to variation from rounding and have not been adjusted.

Table 1 identifies the 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				
	Budget	Actual	Variation	Budget
	2006–07	2006–07	2006–07	2007–08
	\$'000	\$'000	\$'000	\$'000
Departmental appropriations				
Output group 1				
Output 1.1	862	799	-63	1,170
Output 1.2	2,437	2,627	190	3,247
Subtotal output group 1	3,299	3,426	127	4,417
Output group 2				
Output 2.1	5,148	4,618	-614	5,007
Output 2.2	10,653	8,916	-1,899	10,384
Output 2.3	3,087	2,673	-462	2,706
Subtotal output group 2	18,888	16,207	-2,681	18,097
Output group 3				
Output 3.1	2,267	3,238	971	5,228
Output 3.2	3,686	1,904	-1,782	2,408
Output 3.3	986	1,528	542	979
Output 3.4	3,541	1,853	-1,688	1,877
Subtotal output group 3	10,480	8,523	-1,957	10,492
Total revenue from other sources	214	65	-149	214
Total for outcome (total price of outputs and administered expenses)	32,881	28,221	-4,660	33,221
Average staffing level (numbers)	240	213	-27	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
- In October/November of each year, the PBS output data for the current financial year is reviewed. This process may include replacing the PBS prices with revised output prices calculated for the annual report and revising the estimated numbers of outputs. Any changes are reported to Parliament through the additional estimates process.

The Tribunal used actual output figures for the first three financial quarters to inform the output pricing for the 2007–08 PBS. The extent to which changes to the Act may affect workloads will be reviewed and monitored during the next reporting period, and any changes will be reported in line with statutory requirements.

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 2006–07

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

Performance against effectiveness indicators

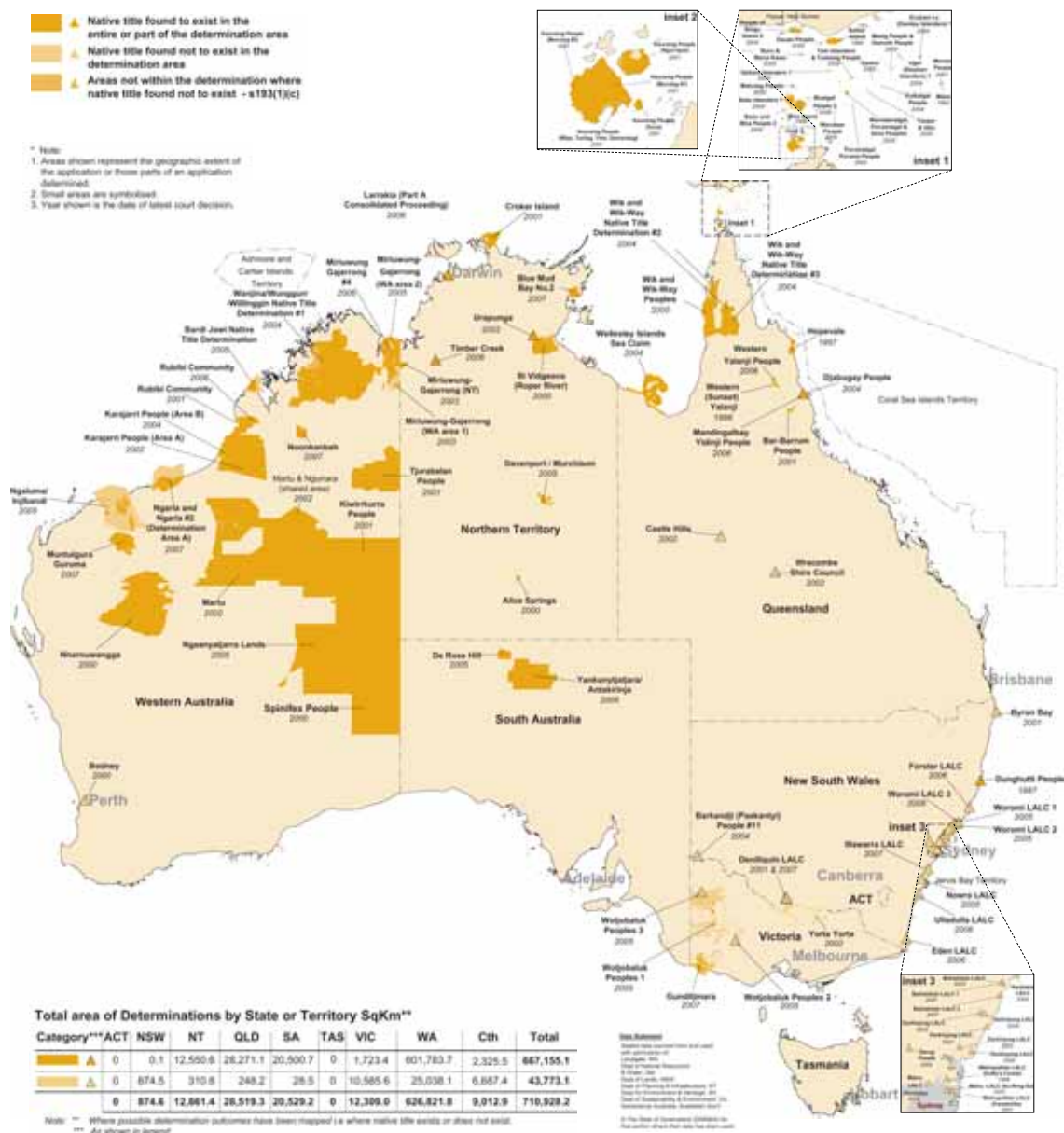
The Tribunal's outcome and outputs structure includes three effectiveness indicators for the single outcome of *'Resolution of native title issues over land and waters'*:

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 five per cent of decisions successfully appealed or reviewed.

During the previous reporting period the Tribunal took steps towards benchmarking against indicators 1 and 2 with the intent of reporting on effectiveness, in these areas, in the current reporting period. This intent was premised on commissioned research taking place in 2006–07. However the planned research was postponed due to the uncertainty following the review of

the resolution of native title claimant applications and then proposed changes to the Act. New research will be conducted in 2007–08. For further information see Client Satisfaction, page 88.

Figure 4 Map of native title determinations to 30 June 2007



Overview of current applications

Between the commencement of the Act on 1 January 1994 and the end of the reporting period, a total of 1750 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 <i>Native Title Act 1993</i> (Cwlth)		
Type of application	Number of applications made	Number of applications finalised*
Claimant	1,454	922
Non-claimant	262	227
Compensation	33	22
Revised Native Title Determination	1	1
Total	1,750	1,172

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

At the end of the reporting period 532 claimant applications, 35 non-claimant applications, and 11 compensation applications were at some stage between filing and resolution.

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

- 425 applications were on the Register of Native Title Claims
- 103 determinations were on the National Native Title Register:
 - 35 determinations where native title does not exist
 - 68 determinations where native title does exist
- 280 agreements were on the Register of Indigenous Land Use Agreements.

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

Table 3 Native title applications made and finalised 2006–07		
Type of application	Number of applications made	Number of applications finalised*
Claimant	30	50
Non-claimant	11	15
Compensation	1	2
Total	42	67

* 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, 42 new native title applications were made, the details of which are set out in Table 3. During the reporting period there were decreases in the number of claimant and non-claimant applications made compared to the last reporting period. Claimant applications reduced from 40 in 2005–06 to 30 in 2006–07 and non-claimant applications reduced from 19 in 2005–06 to 11 in 2006–07. This period also saw the first compensation application referred to the Tribunal since August 1999.

National picture of other native title activity

The Tribunal's *Strategic Plan 2006–2008* states that the Tribunal's primary role is to assist in the resolution of native title issues over land and waters. The reporting period reflects a continued trend for agreement-making and assistance by the Tribunal in meeting this role. However the scope of native title activity differed in some significant respects to what had been estimated for the reporting period. A number of factors influencing actual achievement include:

- the strength of the exploration and mining in the continued resources boom
- state drivers, such as in South Australia, to achieve particular outcomes
- the impact of the outcomes of the Attorney General's review of the resolution of claimant applications.

In Western Australia, the impact of continuing high levels of exploration and mining activity has caused a re-direction of party resources to future act activity (whether including Tribunal engagement or otherwise). As a result, while there has been a substantive increase in future act agreements and milestone outputs there has been a flow on effect of decreased native title determination agreement outputs.

The influence of state drivers is evident in South Australia, where achievement reflects a 'state-wide strategy' to the resolution to native title, in particular, by the incremental progress to resolution through issue based agreement-making.

The Tribunal's overall workload was reduced as a consequence of the Tribunal and parties reconsidering their strategies and priorities in light of the legislative and other outcomes of the Attorney-General's review of the resolution of claimant applications.

Strategies to maintain the momentum of agreement-making

During this reporting period, the Tribunal consolidated its previous key strategies of:

- a more consistent national approach to case management, by the development and implementation of claim overview plans
- a regional focus to mediation planning and practice and the development and implementation of regional reporting
- the development and implementation of an improved prioritisation and categorisation framework for claimant mediation and agreement-making by means of a National Case Flow Management Scheme.

For further information see the President's Overview pages 1–27.

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 and projects completed in the reporting period
- Quality—89 per cent of respondents are satisfied with the initiative
- Price—average price per unit and total price of output.

Performance at a glance		
Measure	Estimate	Result
Quantity	9	9
Quality	80% of respondents are satisfied with the quality of the initiative	See Accountability to Clients–Client Satisfaction, page 88
Average price per unit	\$ 95,950	\$ 88,826
Total price for the output	\$ 862,000	\$ 799,000

Comment on performance

The Tribunal continued to create new, and build upon existing, links with stakeholders as a means of developing productive environments for native title activities.

Initiatives developed in the last reporting period continued, including in:

- Northern Territory—the Access and Awareness Program, presented at regional shows throughout the Northern Territory
- Queensland—the twice yearly Native Title Liaison Committee meetings with key stakeholders in the Queensland native title operating environment
- New South Wales—the New South Wales Credible Evidence Mediation Program, a program of mediation meetings held to discuss issues arising from the application of the New South Wales Government’s credible evidence requirements to native title claims in the state. The program involves discussion of the issues within the context of Tribunal mediation

- Victoria—a program of meetings between the Tribunal and the heads of the State’s Native Title Unit and Native Title Services Victoria to discuss strategies for resolving native title matters across the State.

Additional activities conducted by state registries included targeted technical training, such as the use and application of Native Title Vision facilitated by the South Australia Registry and the Tribunal’s Geospatial Services (for more information see Online Services page 89), and the holding of a number of joint workshops.

The South Australia and Western Australia Registries facilitated workshops relating to Prescribed Bodies Corporate. The Tribunal’s publication *Guide to Sources of Assistance and Funding for Prescribed Bodies Corporate* was developed in response to the South Australia workshop.

The Western Australia Registry conducted a workshop on indigenous land use agreements, in response to a request from the state government to improve its knowledge and understanding of alternative options to agreements other than within the future act regime.

In the Northern Territory, a high level strategic planning and stakeholder feedback meeting took place between the Tribunal and stakeholders from the Northern Land Council, Chief Ministers Department, Federal Court, Department of Primary Industry, Fisheries and Mines and the Solicitor for the Northern Territory.

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

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

- Quantity—the number of initiatives and projects completed in the reporting period
- Quality—80 per cent of respondents are satisfied with the initiative
- Price—average price per unit and total price of output.

Performance at a glance		
Measure	Estimate	Result
Quantity	525	632
Quality	80% of respondents are satisfied with the quality of the initiative	See Accountability to Clients– Client Satisfaction, page 88
Price per unit	\$ 4,680	\$ 4,157
Price per output	\$ 2,437,000	\$ 2,627,000

Comment on performance

The Tribunal experienced an increased demand for this service during the current reporting period, with strong ongoing demand for technical assistance, information sessions and forums.

In the Northern Territory there was a higher than anticipated level of assistance to applicants and their representatives where the applicants were not represented by the regional native title representative body (mostly in the Northern Land Council area). This is expected to remain high next year.

The Northern Territory Registry provided various information seminars throughout the reporting period. For example, a seminar was delivered to staff in the Minerals and Energy Titles section of the Department of Primary Industry, Fisheries and Mines regarding ILUAs, one to administrative staff at the Northern Land Council regarding the Tribunal's administrative and other processes, and another to an unrepresented claimant group wanting information and assistance to prepare a new claimant application in relation to Town of Batchelor.

The New South Wales/Australian Capital Territory Registry provided a high level of assistance in the form of mapping, reviewing draft agreements, draft amendments, draft proposed new claims and provision of process advice.

The New South Wales/Australian Capital Territory Registry also provided assistance at a number of information sessions to organisations and claim groups. These included seminars conducted for Aboriginal Heritage Officers at the Road Transport Authority, a joint education workshop organised with NSW Native Title Services at Tweed Heads for north coast claim groups, as well as information sessions where information was provided to a number of claim groups.

The increase in the number of requests was a result of the State Government and New South Wales Native Title Services concentrating efforts on the resolution of a number of agreements prior to February 2007.

The judgments in the Wongatha and Single Noongar claims resulted in the Western Australia Registry being called on to provide a range of assistance. For example, the Tribunal is providing extensive research and geospatial assistance to the South West Aboriginal Land and Sea Council and state government to help develop data which will serve as a foundation for future negotiations.

The Western Australia Registry also provided considerable assistance in the future act area, particularly with the review of several regional standard heritage agreements, conducted workshops for new staff at native title representative bodies, and other activities associated with the high number of referrals to negotiate future act agreements.

In Queensland, the range of workshops included a petroleum workshop in Roma focusing on the Tribunal's role in assisting with negotiating ILUAs and mediating future act (s. 31) agreements and pre-registration testing sessions. Also five workshops were conducted with claimant groups explaining the 'bundle of rights' concept. The particular focus of most of these workshops was the need for informed internal group decision-making in order to progress successfully through the native title process.

The Queensland Registry provided increased assistance in relation to ILUAs including procedural advice, comments on drafts or provision of products. The other main category of assistance was in relation to geospatial products and information.

The Victoria/Tasmania Registry regularly conducted native title information sessions for various audiences. One initiative developed during the reporting period was the delivery, in conjunction with the Victorian Department of Justice, of comprehensive native title information sessions to officers from across all Victorian Government departments and agencies. The sessions recognised native title as an issue that affects many Government agencies, not just those involved in land management or indigenous affairs.

A series of stakeholder forums were conducted in Victoria bringing many of the Tribunal's key clients and stakeholders together to discuss emerging issues and important strategic developments. A consistent theme during the year was an evaluation of the developments in native title law and a discussion about what changes to the native title system needed to occur in order to improve the rate of resolution of native title matters in Victoria.

In South Australia the main category of assistance was in relation to geospatial products and information.

Output group 2—Agreement-making

Output 2.1—Indigenous land use agreements (ILUAs)

Description

This output category covers finalised ILUA negotiations and milestone agreements leading to a 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

Performance indicators for ILUAs are:

- Quantity—the number of 2.1a), 2.1b) and 2.1c) agreements
- Quality—clients' perception of the quality of the agreement-making process
- Price—average price per unit and total price of output.

Performance at a glance		
Measure	Estimate	Result
Quantity	2.1a) 55	2.1a) 22
	2.1b) 40	2.1b) 25
	2.1c) 97	2.1c) 259
Total	192	306
Quality	Clients' perception of the agreement-making process that their expectations were met	See Accountability to Clients—Client Satisfaction, page 88
Average price per unit		
2.1a	\$ 51,360	\$ 53,826
2.1b	\$ 17,120	\$ 42,762
2.1c	\$ 17,120	\$ 9,131
Total price for the output	\$ 5,148,000	\$ 4,618,000

Comment on performance

The trend identified in last year's annual report for more ILUA outputs to be generated through native title determination applications than through 'stand alone' ILUA negotiations has continued in this reporting period.

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		3		12	6		1		22
2.1b Milestone agreements in ILUA negotiation outside NTDA's*				1	24				25
2.1c Milestone agreements in ILUA negotiation with NTDA's*		2	6	28	222		1		259
Total		5	6	41	252		2		306

*native title determination applications.

2.1a) Fully concluded ILUA and use and access agreement negotiations

During the reporting period the Tribunal concluded negotiations for 22 ILUAs, an increase over last year's performance (19). Nevertheless, the overall number of concluded ILUAs was lower than anticipated.

The bulk of activity was in Queensland, where nine of the 12 concluded ILUAs related to agreements signed between the Eastern Kuku Yalanji People, Queensland Government and other parties over 230,000 hectares of land between Mossman and Cooktown.

In New South Wales three ILUAs were signed in February 2007, relating to national parks and State forests. Two were signed between the Bundjalung People of Byron Bay and the New South Wales Government, and a third between the Githabul People and New South Wales Government which settled the New South Wales part of the group's native title claim involving 112,000 hectares of national parks and State forests in the Kyogle, Woodenbong and Tenterfield area.

In South Australia, ILUA negotiations have taken much longer than anticipated. This reflects the time it has taken to develop a proactive statewide policy approach to ILUA negotiation. The pace of negotiations is likely to improve now that 'template' agreements have been completed or are nearing completion for each of the sectoral areas.



Two indigenous land use agreements over Cape Byron in northern New South Wales on 8 February 2007 will deliver a range of practical benefits to the Bundjalung People. Pictured, elder Linda Vidler NSW Premier Morris Iemma and elder Dulcie Nichols, celebrating the agreements.

The expected number of ILUAs to be lodged in Western Australia and Victoria did not materialise. This is due in part to claimants focusing resources on substantive issues within their native title determination negotiations and to parties finalising agreements without the Tribunal's involvement.

Fourteen of the concluded ILUAs were generated from agreement negotiations in relation to native title determinations.

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

The 25 milestone agreements achieved outside native title determination applications reflect a focus of activity in South Australia. Twenty-four milestone agreements were the result of a range of ILUA negotiations in South Australia, including the Narungga fishing and aquaculture ILUA, which will provide the basis for a fishing and aquaculture template ILUA for consideration by other claimant groups.

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

There was a marked increase in the number of milestone agreements achieved in ILUA negotiation inside the mediation of native title determination applications this reporting period (259), compared with expected achievement (97). The majority of milestone agreements achieved this year were in South Australia (222) where, as part of the Statewide ILUA Strategy, ILUAs are being used as a mechanism for resolving a range of issues within native title determination negotiations, prior to the final resolution of claims by consent determination or withdrawal.

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) where the Tribunal has provided mediation assistance to the parties.

The range of agreements include:

- 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
- 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
- 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	2.2a) 27 2.2b) 192 2.2c) 160	2.2a) 17 2.2b) 147 2.2c) 202
Total	379	365
Quality	Clients' perception of the agreement-making process that their expectations were met	See Accountability to Clients—Client Satisfaction, page 88
Average price per unit		
2.2a)	\$ 51,360	\$ 66,408
2.2b)	\$ 34,220	\$ 35,535
2.2c)	\$ 17,120	\$ 12,690
Total price for the output	\$ 10,653,000	\$ 8,916,000

Table 5 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		3	6	2	1		1	5	17
2.2b) Agreements on issues, leading towards the resolution of native title determination applications		15	10	72	27		1	22	147
2.2c) Process/framework agreements		6	6	83	36		14	57	202
Total		24	22	157	64		16	84	366

Comment on performance

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

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

The forecast figure of 27 was not achieved as agreement-making activities took longer than anticipated. However the trend in moving to resolution of applications through reliance upon the combination of determination and ILUA continued nationally from the last financial year. One example is the Githabul People application in New South Wales which reached agreement for consent determination conditional on registration of an ILUA.

Of the 17 agreements achieved, five were consent determinations resolving that native title exists in whole or part of the determination area, six were agreements to proceed to consent determination and the remaining six agreements fully resolved the applications.

South Australia realised a significant outcome in its first consent determination, Yankunytjatjara/Antakirinja (see case study page 55).

In the Northern Territory, three Tennant Creek agreements for consent determination, expected to be finalised early in the next reporting period, revolve around comprehensive agreements that address all issues:

- the areas where native title is extinguished and where native title will be recognised
- the areas where native title will be surrendered, so as to secure the future development (residential and industrial) needs of the town into the future

- funding to establish the prescribed body corporate
- the transfer of some land to traditional owners as freehold
- the establishment of a scholarship scheme for children's education
- the use of best endeavours to create a national park
- the recommendation that certain lands outside town which is under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) land claim is granted as Aboriginal land
- the above measures are the compensation for the land surrendered or extinguished.

There was considerable progress in Western Australia with four consent determinations which resolved five native title applications—three for the Pilbara region and two for the Kimberley. The expected target of nine was not achieved, partly because of the impact of (litigated) Wongatha and Single Noongar Claim decisions across the state. The capacity of some parties to progress matters was also affected by the high level of activity in the resources sector.

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

The Tribunal has been involved in a wide range of agreement-making, where the parties have reached agreement on a diverse range of issues.

Even though some states performed particularly well, the national achievement of 147 agreements did not reach the estimated quantity (192).

In Western Australia the resumption of the Commonwealth's non-claimant application in the Wongatha case has also meant that the claimant groups and native title representative body have had to concentrate their resources on developing submissions to the Federal Court. These submissions are due with the court at the end of October 2007 and the final hearing is anticipated in early December.

In the Geraldton region, there were some cases of parties not meeting the timeframes set out in formalised mediation protocols, which meant slightly fewer agreements against this output.

South Australia recorded a higher number of agreements than forecast. The overall resolution of claims was broken into issue agreements for each sectoral ILUA (e.g. pastoral, mineral exploration, local government) within the statewide ILUA process. The main focus is a whole-of-claim resolution strategy underpinned by a series of sectoral ILUAs followed by consent determinations or withdrawal of the applications. The increase in agreements is also attributable to the incremental success in resolving overlap issues.

New South Wales recorded more agreements than anticipated due to outcomes flowing from mediation activity in relation to the Githabul application. Ten agreements were reached mostly with individual parties whose issues were resolved through the mediation process and who subsequently withdrew. The agreements were reached in the lead-up to the proposed consent determination. There was also greater activity to settle agreements in anticipation of a state election.

The majority of agreements related to resolution of issues associated with overlaps, connection and tenure, with a considerable number also related to party reduction and party interests.

Significantly, Australia's 100th native title determination was achieved in Victoria with the Gunditjmara Peoples determination. (See case study page 59).

2.2c) Process/framework agreements

Nationally there were more process/framework agreements (202) than estimated (160).

Queensland exceeded projections, due in part to the significant work in facilitating agreement for work plans and timeframes for example in the Cape York region, and stage one of a case management program in Queensland South region.

Achievement in South Australia also exceeded projections, as a consequence of the whole-of-claim resolution which was introduced by the Federal Court for the statewide ILUA process.

Western Australian outputs were lower than the projected figure. This was primarily due to activity in the Pilbara region not progressing as anticipated. High level of activity in the mining sector was a contributing factor as parties found it necessary to re-direct their resources to other processes.

Agreement numbers in the Kimberley, Geraldton and Goldfields regions were as expected, but were lower in the Central Desert and South West.

Intensive mediation in several Victorian matters resulted in a higher than anticipated number of process and framework agreements. Mediation programs were developed with parties and several research projects were undertaken in an effort to secure agreement on key issues.

Case study

Spirit of negotiation points to harmonious future

In 2006 South Australia had its first consent determination—a native title agreement of all parties. Native title was officially recognised by a determination by the Federal Court on 28 August 2006 in the remote town of Marla, 1000km north of Adelaide, and was the 88th determination to be registered by the National Native Title Tribunal. The Yankunytjatjara/Antakirinja people now have non-exclusive rights over about 18,665sq km of mostly pastoral land to continue their traditional activities.

Pastoralists and the Yankunytjatjara/Antakirinja People showed how persistence and a negotiating spirit can produce positive results in native title negotiations. Attending the on-country court sitting were representatives from the seven pastoral stations involved in the determination, the South Australian Government and about 300 new native title holders led by applicants Mr Cullinan, Sadie Singer and Lallie Lennon.

Along with the determination six indigenous land use agreements (ILUAs), which deal with specific issues about the use of land over the seven pastoral leases, were signed. The Lambina, Welbourn Hill, Todmorden, Wintinna, Evelyn Downs and Allandale leases have separate ILUAs and the Arckaringa and Coorikiana leases are covered by one. Tribunal member Bardy McFarlane facilitated negotiations and said that so often the 'talk' around native title is about negotiated agreements and these ILUAs are a practical example of how to get to those agreements.

South Australian Attorney-General Michael Atkinson estimated the determination had saved taxpayers \$6 million by avoiding costly litigation relied on to resolve the state's only other determination of native title—the neighbouring De Rose Hill claim. Importantly, the Yankunytjatjara/Antakirinja determination brought a group of pastoralists together with a group of traditional owners and devised a resolution all parties were satisfied with.

Signing the agreements: the Yankunytjatjara/Antakirinja people reached South Australia's first consent determination. [Seen here](#), Sadie Singer and Lallie Lennon at the signing.



Output 2.3—Future act agreements

Description

This output category includes agreements that allow a future act (such as the grant of an exploration or mining tenement) to proceed where Tribunal members or staff have assisted with mediation, as well as milestones reached during the mediation of a future act application 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
- 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 2.3a) and 2.3b) 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	2.3a) 55	2.3a) 114
	2.3b) 55	2.3b) 64
Total	110	178
Quality	Clients’ perception of the agreement-making process that their expectations were met	See Accountability to Clients–Client Satisfaction, page 88
Price per unit		
2.3a)	\$ 38,080	\$ 15,232
2.3b)	\$ 19,040	\$ 14,641
Total price for the output	\$ 3,087,000	\$ 2,673,000

Case study

Noonkanbah traditional owners recognised

On 27 April 2007 the Yungngora people celebrated a consent determination of native title over the Noonkanbah pastoral lease west of Fitzroy Crossing in the Kimberley region of Western Australia. The determination showed how far native title and recognition of Indigenous rights to land had progressed in Australia. In 1979, Noonkanbah station made front-page news when Aboriginal and Torres Strait Islander people rallied to prevent a petroleum company drilling in the area of a sacred site. Despite the rally, drilling went ahead. The protest, that pre-dated native title legislation, called for recognition of Indigenous rights to land.

In 1999, a native title claimant application over the Noonkanbah pastoral lease was registered with the National Native Title Tribunal. During the six-year mediation period the Tribunal conducted 40 mediation meetings, four of which were held at Noonkanbah. On 16 December 2004, the claim group instructed their solicitors to agree to a proposed consent determination. This was soon followed by a Western Australia State Cabinet announcement made by Deputy Premier Eric Ripper, which endorsed the consent determination agreement.

Today the Yungngora people have exclusive native title rights over 728sq km of the Noonkanbah pastoral lease and non-exclusive native title rights over 76.7sq km, which includes a stock route, an aerodrome and two areas of crown land. As exclusive native title holders the Yungngora people are able to communally possess, occupy, use and enjoy the land and waters (water can be used for non-commercial purposes). As non-exclusive native title holders they can visit, camp, erect shelters, take fauna, flora and other natural resources such as ochre, stones, soils, wood and resin for non-commercial purposes and protect significant sites.

On the day: The Yungngora people were officially recognised as native title holders, on 27 April 2007. Pictured, native title holder Dicky Cox addressing the media at the consent determination ceremony.



Table 6 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			7	1				106	114
2.3b Milestones in future act mediations			11					53	64
Total			18	1				159	178

Comment on performance

2.3a) Agreements that fully resolve future acts

Table 6 shows that the Tribunal's performance in the Northern Territory and Western Australia has substantially exceeded its estimated performance outputs.

In Western Australia there was an increased level of matters referred by the State Government for mediation. Within its own 'Right to negotiate' process, the State requests parties to commence negotiations towards an agreement on the grant of the particular tenement type. Where parties fail to commence negotiations within a period determined by the Department of Industry and Resources or where negotiations stall, requests are made to the Tribunal to provide mediation assistance under s. 31 (3). Negotiating parties can also request assistance of the Tribunal at any time. This increase can be attributed to a number of reasons, including:

- a large number of tenement applications having not reverted under the reversion provision of the *Mining Amendment Act 2005 (WA)*
- the Western Australian Government attempting to clear those tenements which had not progressed under its right to negotiate process
- an increased willingness by some parties to participate in s. 150 conferences to agree issues over heritage rather than seek an arbitral outcome.

2.3b) Milestones in future act mediations

The Tribunal exceeded its estimates, particularly the Northern Territory where the estimated figure was more than doubled. All of the successful mediations involved the Central Land Council.

Similarly in Western Australia, the Tribunal significantly surpassed its estimated output. As mentioned above, the increased number of referrals for mediation assistance and the willingness of parties to seek agreement are primarily responsible for the increased number of milestones recorded.

Case study

Gunditjmara achieve Australia's 100th native title determination

Australia's 100th registered native title determination was made on 30 March 2007 when the Federal Court of Australia made two consent determinations over almost 140,000 hectares north-west of Warrnambool in Victoria, recognising the Gunditjmara People's native title rights over the majority of the area.

The determination finalised the majority of the Gunditjmara People's two native title claims to which over 400 individuals and groups became parties. These included the State of Victoria, the Australian Government, miners, farmers, fishing licence holders, beekeepers and recreational land users. Through negotiations with the Gunditjmara People they reached agreement on the terms of the determinations and the inter-relationship of their respective rights and interests.

The Gunditjmara People's non-exclusive native title rights were recognised over Crown land, national parks, reserves, rivers, creeks and sea north-west of Warrnambool. The determination area is bounded by the Glenelg River to the west and the Wannon River to the north.

The native title holders have the right to access and remain in the area which they can use and enjoy and where they can camp. They can also protect places and areas of importance and take resources of the land and waters.

During negotiations the State of Victoria and the Gunditjmara People reached an indigenous land use agreement that establishes how they will exercise their rights and interests in the determination area. Other agreements involving the cooperative management of Mt Eccles National Park to be overseen by a joint body, the Budj Bim Council; and the transfer of title of Lake Condah Reserve to the Gunditj Mirring Traditional Owners Aboriginal Corporation were also reached.

Having resolved this successful outcome through agreement, the parties are continuing mediation with the Federal Court to resolve the remainder of the claimed area—Part B, an area of the land on the eastern edge of the application area.

Celebrating the event: Gunditjmara dancers with Justice Tony North, at the consent determination.



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 native title 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 all 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 satisfy 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.

The *Native Title Amendment Act 2007* conferred a new obligation on the Registrar, who is to report to the Federal Court on the status of certain applications filed after a future act notice and where the notice has been finalised. The Registrar made his first report to the Federal Court before the end of the reporting period.

Performance

Performance indicators for registration of native title claimant applications are:

- Quantity—the number of decisions completed in the reporting period
- Quality—70 per cent of decisions are completed within 6 months of receipt of the original or amended application submitted for registration
- Price—average price per unit and total price of output.

Performance at a glance		
Measure	Estimate	Result
Quantity	44	56
Quality	70% of decisions completed within 6 months of receipt of the original or amended application submitted for registration	59% of decisions completed within 6 months of receipt of the original or amended application submitted for registration
Average price per unit	\$ 52,060	\$ 57,815
Total price for the output	\$ 2,267,000	\$ 3,238,000

Comment on performance

A greater number of claimant applications were registration tested during the reporting period than anticipated. This was due to more new claimant applications being filed (30) than predicted, as well as amended applications triggering the registration test. As Table 7 shows the majority of these decisions were made in relation to applications in Queensland.

Of the 56 decisions made, 30 applications satisfied all the conditions of the registration test and 26 did not satisfy one or more conditions and were not registered, or were removed from the Register of Native Title Claims.

Table 7 Number of registration test decisions by state/territory				
State	Accepted	Not Accepted	Not Accepted – Abbreviated	Total
ACT				
NSW	5	3	4	12
NT	2	1		3
QLD	15	8	2	25
SA	1			1
TAS				
VIC		2	3	5
WA	7	2	1	10
Total	30	16	10	56

In April 2007 significant changes were made to the registration test provisions in the Act as a result of the *Native Title Amendment Act 2007*.

Importantly, if an application fails to meet the merit conditions of the registration test the Registrar must report this to the Federal Court. The Court may then dismiss the application if:

- the application has not been amended since the registration test was applied, and is not likely to be amended in a way that would lead to it being accepted for registration

- in the Court's opinion there is no other reason why the application should not be dismissed.

In addition, the transitional provisions of the *Native Title Amendment Act 2007* require the Registrar to use best endeavours to registration test, within 12 months, certain applications which were not on the Register of Native Title Claims at 15 April 2007 and others which were on the register of claims, but were not previously required to go through the registration test.

There are 118 applications that have been identified for testing or re-testing for registration by 15 April 2008 or as soon as reasonably practicable thereafter.

All applicants affected by the amendments have been contacted, and the registration testing of applications is in process. At the end of the reporting period, eight of the 118 applications had been tested with six applications discontinued.

Parties may seek a review of a Registrar's registration test decisions under the Act or under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth). During the reporting period, the Federal Court reviewed two registration test decisions in *Wakaman People #2 v Native Title Registrar* and *Doolan v Native Title Registrar*. In both instances the Court set aside the delegate's decision and the claims were accepted for registration. For more information, see Appendix II—Significant decisions pages 96–128.

Timeliness of decisions

Of the 56 decisions made in the reporting period, 33 (59 per cent) were finalised within the six month timeframe and 23 were finalised after the six month timeframe. The lower than expected performance against this measure was due to an increase in the workload of the registration test team and extensions of time granted to allow applicants to amend their applications or provide further information to support their claims.

During the reporting period additional staff were seconded to the registration test team to enable them to respond in a timely manner to the additional testing requirements associated with the 2007 amendments to the Act.

Output 3.2—Registration of indigenous land use agreements (ILUAs)

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
- 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

Performance indicators for registration of indigenous land use agreements are:

- Quantity—the number of decisions completed in the reporting period
- Quality—90 per cent of decisions are completed within 6 months of receipt of the application submitted for registration, where there is no objection or other bar to registration
- Price—average price per unit and total price of output.

Performance at a glance		
Measure	Estimate	Result
Quantity	82	31
Quality	90% of decisions completed within 6 months of receipt of the application submitted for registration, where there is no objection or other bar to registration	63% of decisions completed within 6 months of receipt of the application submitted for registration, where there is no objection or other bar to registration
Average price per unit	\$ 45,320	\$ 61,432
Total price for the output	\$ 3,686,000	\$ 1,904,000

Note: Seven applications received an objection/bar to registration and were therefore not included in the performance assessment.

Table 8 ILUAs lodged or registered by state and territory 2006-07									
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
ILUAs lodged		3	3	28	6		4	1	45
ILUAs registered			1	14	7		7	2	31

Comment on performance

During the reporting period fewer ILUAs were compliance tested (31) than anticipated (82). This is related to ILUA negotiations in South Australia taking longer than anticipated and to lower than expected output performance in Queensland, where most of the ILUA projections were based on ILUAs negotiated as part of the settlement of claimant applications.

Timeliness of decisions

During the reporting period, 31 ILUAs were compliance tested of which seven received objections or bars to registration. Of the remaining 24 decisions, 63 per cent (15) were registered within the 6 month timeframe. A key factor regarding underperformance in the area of quality was insufficient material being lodged with applications. This required delegates to request further information to determine whether the application met the necessary requirements so that it could be notified. Timelines are being monitored, with a view to improving internal processes, and ensuring that parties understand the information they are required to provide and the deadlines for providing this information.

As detailed in last year’s report an application for review of the Registrar’s decision was made in relation to the Saltwater ILUA in *Kemp v Registrar of the NNTT* and a decision was handed down during this reporting period. For more information, see Appendix II—Significant decisions pages 96–128.

Figure 5 Number of ILUA registrations per financial year

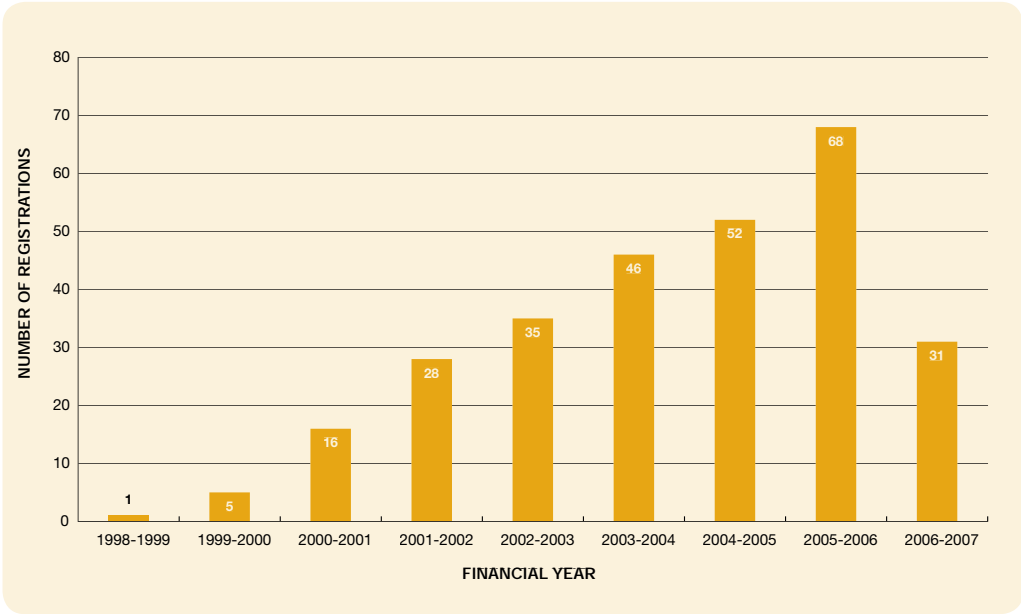
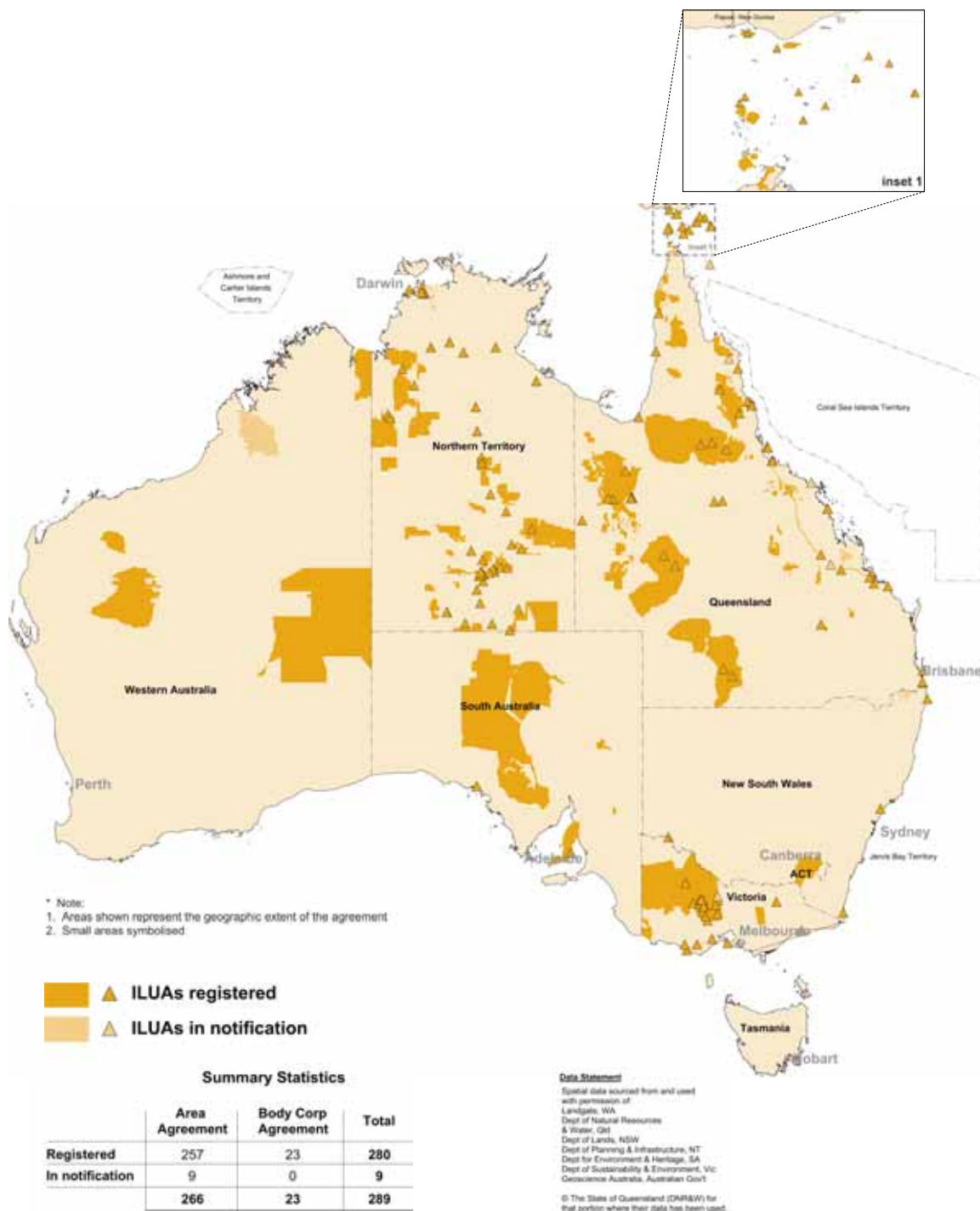


Figure 6 Map of indigenous land use agreements at 30 June 2007



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 per cent 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	50	176
Quality	80% of future act determination applications finalised within 6 months of the application being made	95% of future act determination applications finalised within 6 months of the application being made
Average price per unit	\$ 19,000	\$ 8,685
Total price for the output	\$ 986,000	\$ 1,528,000

Note: One decision related to whether negotiation in good faith requirements were satisfied and was therefore not included in the performance assessment

Comment on performance

Table 9 Future act determination application outcomes (by tenement) 2006–07			
Tenement outcome	QLD	WA	Total 2006–07
Application not accepted*	0	1	1
Application withdrawn*	0	6	6
Consent determination—future act can be done	0	169	169
Consent determination—future act can be done subject to conditions	5	0	5
Determination—future act can be done	0	1	1
Dismissed—s. 148(a) no jurisdiction*	0	6	6
Total	5	183	188

* Not counted for output reporting purposes.

The strong performance in Queensland and Western Australia can be related directly to the productive working relationships being developed and maintained by parties during the reporting period. The majority of future act determinations in Western Australia (and all in Queensland) have been by consent.

In Western Australia the increase in lodgement of future act determination applications has been due to parties utilising Tribunal consent determinations to finalise agreements where logistical problems prevent agreements being signed-off, or where some named applicants refuse to sign a State Deed.

Output 3.4—Finalised objections to expedited procedure

This output category concerns the processing, and finalisation, by the Tribunal of objections to the inclusion of the expedited procedure statement.

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—88 per cent resolved other than by agreement finalised within nine months of the s. 29 closing date, 70 per cent 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	1,105	884
Quality	80% of objections resolved other than by agreement finalised within 9 months of the section 29 closing date	79% of objections resolved other than by agreement finalised within 9 months of the section 29 closing date
	70% of objections resolved by agreement finalised within 9 months of acceptance	77% of objections resolved by agreement finalised within 9 months of acceptance
Price per unit	\$ 3,210	\$ 2,096
Total price for the output	\$ 3,541,000	\$ 1,853,000

Note: Sixty four 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.

Table 10 Objection application outcomes (by tenement) 2006–07				
Tenement outcome	NT	QLD	WA	Total 2006–07
Consent determination—expedited procedure does not apply	0	0	6	6
Determination—expedited procedure applies	0	0	7	7
Determination—expedited procedure does not apply	0	0	7	7
Dismissed—s.148(a) no jurisdiction*	0	5	47	52
Dismissed—s.148(a) tenement withdrawn*	0	2	67	69
Dismissed—s.148(b)	0	0	126	126
Expedited procedure statement withdrawn	0	6	19	25
Expedited procedure statement withdrawn—s.31 agreement lodged	0	48	0	48
Objection not accepted	0	0	2	2
Objection withdrawn—agreement	6	28	507	541
Objection withdrawn—external factors	0	0	1	1
Objection withdrawn—no agreement	0	24	36	60
Objection withdrawn prior to acceptance	0	1	60	61
Tenement withdrawn*	0	11	0	11
Total	6	125	885	1,016

* Not counted for output reporting purposes.

Comment on performance

In Queensland and Western Australia, the recorded outputs did not meet expected figures as a consequence of a decrease in the number of objections made. In Queensland this decrease was a result of a reduction in the number of s. 29 notices notified.

However in Western Australia, while there was no reduction in the notification of s. 29 notices, fewer objections were made. Whilst very few objections have been lodged by the Goldfields and Southwest Land and Sea Councils over the past year, lodgements by the Yamatji Land and Sea Council, Pilbara Native Title Service and Kimberley Land Council have increased significantly. In the case of Yamatji Land and Sea Council and Pilbara Native Title Service, this appears to result from changes in the attitude of native title parties to the Regional Standard Heritage Agreement over the last six months of the reporting period. This contrasts to the first half of the year, in which there was a decrease in the number of objections from this source. In the case of the Kimberley Land Council, the increase relates directly to an increase in the number of s.29 notices being issued within that region.

The Northern Territory was the only region where recorded outputs exceeded the estimated figure. All objection applications finalised in the Northern Territory related to matters within the Central Land Council area.

The slight underperformance (79 per cent of objections resolved other than by agreement finalised within nine months of the s. 29 closing date) reflects a number of circumstances beyond the Tribunal's control. For example in Queensland a number of matters were delayed because, although the parties had reached agreement, the native title party was unable to fully execute the agreement. The Tribunal allowed time for the government to withdraw the expedited procedure statement so that s. 35 applications for a consent determination could be lodged.

Management



Corporate governance

During the reporting period the Tribunal instituted a review of its governance structures. The review was prompted by the obligations placed on the Tribunal as a result of the *Native Title Amendment Act 2007* and internal adjustments being made to improve the Tribunal's efficiency and effectiveness. The objective of the review was to ensure that the Tribunal is equipped with the most efficient and effective advisory and decision-making processes to support its business. The review will be finalised in the next reporting period.

Members' meetings

The President and members held members' meetings in Perth during November 2006 and in Brisbane during April 2007. 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:

- implications of legislative changes
- new ways of doing business
 - case flow management
 - communicating with the Federal Court
 - Registrar's new functions
 - responding to criticisms of the Tribunal's performance
- Federal Court practice and recent decisions
- general practice issues, including:
 - practical issues of conducting a conference of experts ('hot tubbing')
 - use of geospatially enhanced research tools
- governance arrangements and budget management within the Tribunal
- updates from various Tribunal strategy groups.

An additional meeting was convened in Melbourne during September 2006, which was a joint meeting with the Tribunal's Executive and senior managers to consider the outcomes of the Attorney-General's Claims Resolution Review and anticipated changes to legislation.

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 John Sosso (for part of the year) Deputy President Fred Chaney (for part of the year), ILUA Member Coordinator Ruth Wade, Chair of the Research Strategy Group Dan O'Dea, 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 four times during the reporting period to advise on high-level budget priorities for 2006–07, monitor the Tribunal's performance, endorse and monitor the Tribunal's Business Transformation Plan to affect the necessary responses to both internal and external drivers for change, and make recommendations to the President and Registrar to facilitate Tribunal projects.

The group met four times during the reporting period.

Agreement-Making Liaison Group

The Agreement-Making Liaison Group (AMLG) deals with practice and policy issues around Tribunal-assisted agreement-making processes.

The group is chaired by the President and comprises Members McFarlane, O'Dea and Sculthorpe, the Director of Service Delivery and the Western Australia state manager. The AMLG generally meets each six to eight weeks.

The AMLG produces an overview of the Tribunal's agreement-making practice. The reports identify emerging issues and trends, and stakeholder issues and capacity-building opportunities. This also includes agreement-making activity reports, analysis of Federal Court activity and statistical reporting on projected and actual output performance. The reports are for use internally by strategy groups. During the reporting period AMLG produced five national reports, moving from a six to eight weekly to a quarterly reporting cycle beginning in 2007.

During the reporting period the group concentrated on monitoring impacts on agreement-making practice in relation to the claims resolution review and implementation of recent amendments to the Act. This included monitoring development, and review of agreement-making tools and initiatives and the training and professional development requirements associated with the reforms.

AMLG maintained a watching brief on the development of the national accreditation standard for mediators, with the President and Member Sculthorpe actively involved in external forums providing input on behalf of the Tribunal.

The group met eight times during the reporting period.

National Future Act Liaison Group

The National Future Act Liaison Group (NFALG) identifies and addresses future act issues. The group maintains an overview of the national future act picture on a region by region basis. It is chaired by Deputy President Chris Sumner and comprises future act Members McFarlane, Sosso, Catlin, and O'Dea, the Director of Service Delivery, Manager Geospatial Services and other senior managers.

In April 2007 the NFALG Terms of Reference were reviewed and the purpose of the group was confirmed as being:

- to support future act activities of the Tribunal as set out in the Tribunal's Strategic Plan and respond flexibly to changing requirements
- through consideration of NFALG statistical and state reports, maintain an overview of the national future act picture on a region by region basis with a view to ensuring national consistency as far as practicable
- identify and address future act strategic and policy related issues as required
- cover matters relevant to the coordination of national future act practice, e.g. matters arising from Members' meetings, officer training, information products, database development work, legal and policy issues, and stakeholder liaison
- consider matters referred to it from future act working groups (e.g FA Information Products Group, Future Act Report Statistical System Review Group), or refer matters back to those working groups
- liaise with other Tribunal Strategy Groups as required (liaison with AMLG and RSG is a standing Agenda item)
- where necessary/appropriate, refer issues to the Strategic Planning Advisory Group.

The group met four times during the reporting period.

ILUA Strategy Group

The ILUA Strategy Group facilitates the integration and management of ILUA activity across the Tribunal. The group provides strategic advice to the President and Registrar and acts as a clearing house for strategic and policy issues related to ILUAs.

ILUAs are now integrated as part of the agreement-making process within the native title environment. The ILUA Strategy Group focuses on ensuring processes and procedures are in place to enable the Tribunal to respond appropriately to stakeholder needs.

The group is chaired by ILUA Member Coordinator Ruth Wade, and comprises the Registrar, the Director of Service Delivery and other senior managers including a senior delegate of the Registrar and representatives from Geospatial Services and Legal Services.

During this reporting period, the group has:

- provided technical advice to the Human Rights and Equal Opportunity Commission regarding the use of ILUAs as a tool for economic development of Indigenous communities
- reviewed ILUA information products for external stakeholders
- remapped the processes and development of procedures for dealing with objections to certified and non-certified ILUAs
- continued to review performance against projections and changes in ILUA activity nationally.

Some of the issues considered by ILUA Strategy Group include:

- the implications of the Federal Court’s decision in *Kemp v Native Title Registrar* [2006] FCA 939; (2006) 153 FCR 38
- management of the state-wide ILUA strategy in South Australia
- the impact of the recent amendments to the Act on ILUA planning and processes.

In the reporting period, the group moved from meeting on a quarterly basis to meeting a minimum of twice yearly or as required when issues are identified.

Research Strategy Group

The Research Strategy Group is chaired by Member Dan O’Dea and comprises five members, the divisional directors, the managers of the Research Unit, Legal Services and Library and a representative from the state and territory registries.

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. It provides Tribunal members and staff with timely notice of research findings in the wider native title system.

The group met four times in the reporting period.

External Relations Working Group

The External Relations Working Group helps the Tribunal identify and respond to key external issues and to be proactive in developing relationships with stakeholders at a high level. Chaired by the President, the group comprises Deputy President Sumner, Members Catlin, Faulkner, and MacPherson, the Registrar and the Manager, Public Affairs.

The group met eight 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
- referring appropriate issues to the Strategic Planning Advisory Group.

Issues considered by the group during the reporting period included the development of communication activities about native title and how changes to the *Native Title Act 1993* (Cwlth) would affect the Tribunal and stakeholders, identification of aspects of the whole-of-government approach to service delivery for 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 Tribunal's executive comprises the President, Registrar and directors of the two divisions: Service Delivery and Corporate Services and Public Affairs (see Figure 2, page 35). 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.

The Executive Team (from left): Director Service Delivery Hugh Chevis, Native Title Registrar Chris Doepel and Director Corporate Services and 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 Chief Financial Officer attends the Executive Team meeting to provide financial and strategic assistance to the Registrar and directors.

The Risk Management and Audit Committee met regularly during the reporting period and finalised the Tribunal's risk management policy, risk management framework, risk management plan, and risk management templates. For further information, see Risk Management pages 82–83.

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 and Public Affairs senior managers were held regularly with the director of the division to coordinate divisional projects, work plans and communication strategies
- senior managers met twice by video or tele-conference and twice in a face to face forum, the first meeting was held in Melbourne in conjunction with the Tribunal's members to consider the outcomes of the Claims Resolution Review and anticipated changes to legislation, the second meeting was in Perth, for training, development and planning activities, as well as a shared day with members.

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 Collective Agreement and Australian Workplace Agreements, page 82.

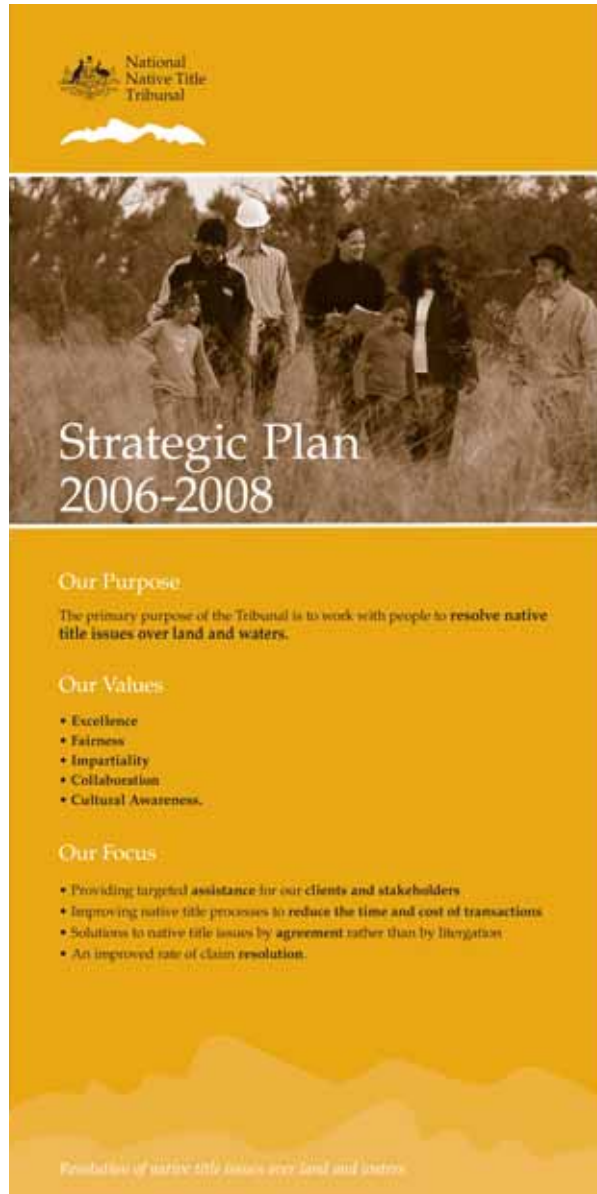
Corporate planning

The *Strategic Plan 2006–2008* is the key governance and operational document for the Tribunal. The plan provides the Tribunal with direction to respond to our environment, and importantly, guide how we are going to deliver outcomes to our clients in response to legislative changes enacted during the current reporting period.

The plan contains four key result areas:

- our clients and stakeholders
- our services
- our people
- 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 were also reflected in staff performance management plans for 2006-07.



Strategic plan: Developed by members and employees to guide the Tribunal over three years in four key success areas.

Management of human resources

The main people management activity during the reporting period was the negotiation of the Tribunal's new Collective Agreement and associated Employee Handbook.

Other activities included:

- delivery of employee health initiatives (previously known as 'Health Month') as part of the Tribunal's Occupational Health and Safety Strategy
- structured learning and development leadership program for Indigenous employees
- review and implementation of recruitment practice
- management and implementation of superannuation choice legislation within the Tribunal
- time recording system upgrades in alignment with Collective Agreement compliance
- introduction of new Australian Public Service Commission (APSC) unscheduled absence reporting together with internal reporting for Collective Agreement purposes.

Learning and development

The focus for the Tribunal during the reporting period continued to be on enhancing the leadership skills of senior managers and middle managers, as part of the 2006–07 Tribunal leadership program. A suite of tools to assist managers to successfully manage absences in the workplace was created which was supported by face-to-face training.

Learning and development activities continued in two 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).

Skills development training included:

- exposure to contemporary leadership perspectives for senior managers and middle managers
- leading organisations in a changing future (change management)
- project management
- governance.

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.

The main focus in the reporting period was to ensure that the Tribunal had the workforce resources to support the implementation of the amendments to the Act.

At 30 June 2007, the Tribunal had 12 Holders of Public Office (President, Registrar and members) and 245 people employed under the Public Service Act 1999 (Cwlth) (PSA), an overall increase of four from the end of the previous reporting period

During the reporting period 22 per cent or 54 PSA employees resigned (37 ongoing, 17 non-ongoing). In the previous reporting year 12.5 per cent or 33 PSA employees resigned.

This increase can be attributed to strong economic conditions which have affected the recruitment and retention of staff and led to periods of unfilled positions. During the reporting period the Tribunal has considered fresh strategies to recruit and retain staff, including the implementation of new recruitment material, the delivery of strong messages on the benefits of working for the Tribunal, and a more flexible use of AWAs.

Of the 245 people employed under the PSA, 172 were female and 73 were male, 206 were full-time and 39 part-time, 210 were ongoing employees and 35 non-ongoing. For further information, see Appendix I pages 93–95.

Twenty seven people identified themselves as being either Aboriginal or Torres Strait Islander, five people identified themselves as having a disability, and 16 people identified as coming from linguistically diverse backgrounds.

Indigenous employees

In the State of the Service Report issued in November 2006, the Public Service Commissioner advised that at 30 June 2006 the average proportion of ongoing Indigenous employees in Australian Public Service (APS) agencies was 2.0 per cent. In that same reporting period, ongoing Indigenous employees made up 10.8 per cent of the Tribunal's ongoing workforce. Of the 84 agencies providing statistical information, the Tribunal ranked fourth in the number of Indigenous employees. At 30 June 2007, the Tribunal's percentage of Indigenous employees was 10.9 per cent of ongoing employees, an increase of 0.1 per cent from the previous reporting period.

Of the 27 Indigenous employees, 23 are employed in the Service Delivery division, four are employed in the Corporate Services and Public Affairs division. For more information about levels and location of Indigenous employees within the Tribunal, see Appendix I, page 95.

Indigenous study awards, traineeships and cadetships

The Tribunal 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 two Indigenous trainees during the reporting period.

Indigenous Advisory Group

As reaffirmed in the *Collective Agreement 2006–2009*, the Tribunal is committed to the maintenance, utilisation and 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.

An Indigenous recruitment and development plan was developed by the IAG in consultation with People Services, incorporating three key strategies:

- Strategy 1—Recruitment to attract Indigenous Australians to the Tribunal
- Strategy 2—Learning and development
- Strategy 3—Provision of organisational support to make the Tribunal a preferred employer for Indigenous employees.

A national Indigenous employees workshop was held in March 2007, with emphasis on building leadership skills and attributes. The three-day program, held early March 2007, included guest speaker presentations on the national approach to indigenous service delivery, the directions for Indigenous staff in the APS and the Tribunal, as well as presentations on Tribunal stakeholder relations, governance and related corporate issues. Participants discussed strategies to increase recruitment and retention of Indigenous employees in the Tribunal and opportunities to develop the role of Indigenous employees in stakeholder relations and agreement-making. Twenty-two Indigenous employees from most states attended this biennial event. There were sessions on Indigenous Leadership and Leadership style presented by the National Indigenous Leadership Centre in Canberra.

IAG provided a report to the Registrar outlining the outcomes of the workshop and containing recommendations and feedback on the future direction and operational effectiveness of the IAG. In the next reporting period, the Registrar and executive will meet with the steering committee to discuss the implications of the report.

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. One Indigenous employee is currently participating in the Indigenous Employees Exchange Scheme (IndEx). The program involving local federal government agencies is currently operating in

Western Australia and is administered by the APSC Western Australia office. Another employee is currently participating in the Indigenous Community Men's Leadership Program. The program involves organising a community event to improve leadership within the community.

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 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 Collective 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 the first half of the reporting period) 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 statements provided by employees upon engagement, two fitness for duty examinations were carried out by the Chief Medical Officer.

Performance against disability strategy

The Tribunal ensures that all employment policies and procedures comply with the *Disability Discrimination Act 1992* (Cwlth).

The Tribunal has recently updated its disability strategies within the Diversity Program 2006-2009.

Collective Agreement and Australian Workplace Agreements

Collective Agreement 2006–2009

The Tribunal finalised its new *Collective Agreement 2006-2009*, in December 2006. The collective agreement was lodged with the Office of the Employment Advocate on 22 December 2006 and its nominal expiry date is 22 December 2009.

Implementation of the Tribunal *Collective Agreement 2006-2009* is progressing in line with development of an Employee Handbook.

Employee Survey

The Tribunal's employee survey in 2006 was used to determine the Tribunal's people management priorities during the reporting period, which included providing assistance with career planning and targeted training. The Tribunal will be using the results of the 2006 employee survey as a benchmark against which the results of the 2007 employee survey can be assessed. The 2007 employee survey undertaken in May 2007 will also assist the Tribunal in determining its people management priorities in the forthcoming reporting periods.

Australian Workplace Agreements

The Tribunal is a party to a number of Australian Workplace Agreements with employees at the Senior Executive Service level, Executive Level and at Australian Public Service Levels 1 to 6.

Risk Management

The composition of the Risk Management and Audit Committee has been reviewed as part of the Tribunal's internal governance review. The committee now comprises the Director of Corporate Services and Public Affairs, nominated senior managers from each division, a Tribunal member and the Tribunal's Chief Financial Officer. The committee can access independent external advice (as required) to assist with their work.

The committee meets on a quarterly basis and during the reporting period finalised the Tribunal's risk management policy, risk management framework, risk management plan, and risk management templates.

During the reporting period the committee's chair, the Director of Corporate Services and Public Affairs, conducted employee information sessions on risk management. To assist with the implementation of a risk management culture at the Tribunal, the

committee will be releasing guidelines to assist employees with the identification and assessment of risk.

The committee reviews the Tribunal's business continuity planning arrangements and addressing areas of improvement as identified by Comcover, including the implementation of risk management practices and reviewing the performance of previous initiatives.

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 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
- Register of Indigenous Land Use Agreements, which contains information about all ILUAs that have been accepted for registration.

As part of a review of the Tribunal's information and knowledge management requirements, the Executive Team commissioned external consultants to advise on the Tribunal's enterprise architecture and information management capabilities to meet future operational requirements. For further information, see 'Appendix III Consultants', pages 129–130.

The Executive Team restructured the Tribunal's organisation structure into two divisions, Service Delivery and Corporate Services and Public Affairs, to improve internal governance arrangements and better alignment across divisions. It also commissioned an internal review of the Tribunal's supporting information technology applications against the enterprise architecture and future purpose. Areas of other concern identified in the consultants' reports, including IT infrastructure and support services, were addressed with the commissioning of a tender for service.

Information management improvements identified in these reports remain ongoing.

Accountability



Ethical standards and accountability

Code of Conduct

Information on ethical standards in the APS Codes of Conduct 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.

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

During the reporting period, two internal complaints of alleged breaches of the APS Code of Conduct were finalised. In relation to one complaint, it was determined that there was no breach of the Code of Conduct. In relation to the other complaint, it was determined that the employee had breached the Code of Conduct and appropriate sanctions were applied.

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. As Tribunal members are not members of the APS, they are not directly governed by the APS Code of Conduct, although they may be subject to it if they are involved in the supervision of staff.

Tribunal members have voluntarily adopted a code of conduct, procedures for dealing with alleged breaches of the members' voluntary code of conduct and an extended conflict of interest policy. During the reporting period there were no complaints under either document.

External scrutiny

Judicial decisions

There were no High Court judgments on native title during the reporting period but there were more than 50 written Federal Court judgments. Significant decisions are summarised in Appendix II, pages 96–128. Some decisions are also referred to in the President’s Overview, pages 1–11.

Freedom of information

During the reporting period, no 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, pages 131–135.

Other scrutiny

In September 2005 the Attorney-General announced a package of six inter-connected measures to improve the performance of the native title system.

One of those measures was the independent review of the native title claims resolution process. The review examined the roles of the National Native Title Tribunal and the Federal Court and considered measures for the more efficient and effective management of native title claims.

The consultants provided their report to the Attorney-General on 31 March 2006. The Australian Government released the Report of the Claims Resolution Review and the Government’s response to the Claims Resolution Review on 21 August 2006.

The recommendations made following the review and other reforms to the native title system led to the development of the Native Title Amendment Bill 2006.

On 7 December 2006, the Senate referred the provisions of the Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report by 23 February 2007. The inquiry received 18 submissions. The Tribunal’s submission is available from the committee website www.aph.gov.au/senate/committee/legcon_ctte/native_title/submissions/sub17.pdf

The *Native Title Amendment Act 2007* was passed by Parliament on 28 March 2007. Most of the provisions in the Act came into force on Royal Assent 15 April 2007.

A second piece of legislation, the *Native Title Amendment (Technical Amendments) Act 2007*, was developed to amend provisions of the Act relating to:

- future acts
- Indigenous land use agreements
- the scope of alternative state or territory regimes to the right to negotiate established under s. 43 of the Act
- the making and resolution of native title applications
- the obligations of the Registrar in relation to the registration of native title applications
- internal review of registration test decisions
- native title representative bodies
- prescribed bodies corporate.

On 29 March 2007, the Senate referred the provisions of the above Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report by 8 May 2007. The inquiry received 12 submissions. The Tribunal's submission is available at the committee's website at www.aph.gov.au/senate/committee/legcon_ctte/native_title_tech/submissions/sub04.pdf

The *Native Title Amendment (Technical Amendments) Act 2007* was passed by Parliament on 20 June 2007. It did not receive Royal Assent in the reporting period.

For further information on the implications of the *Native Title Amendment Act 2007* and *Native Title Amendment (Technical Amendments) Act 2007*, see the President's Overview, pages 1–27.

The Human Rights and Equal Opportunity Commission tabled in Parliament the Aboriginal and Torres Strait Islander Social Justice Commissioner's *Native Title Report 2006* in June 2007.

The report contains 14 recommendations. While none are directly actionable by the Tribunal, several around land access and aspirations of traditional owners are related to the Tribunal's outcome of resolution of native title issues over land and waters.

The report contained a national survey of Indigenous land owners, which found that although custodial responsibilities and land care were their first priority, nearly all respondents strongly supported economic development. It also found the majority of traditional owners do not have a good understanding of the agreements on land which led to the Commission calling for a committed communication strategy for all Indigenous Australians.

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 did not undertake commissioned research during the reporting period. The research, usually undertaken every two years and as part of the Tribunal's outputs reporting, was postponed due to uncertainty following the review of native title and then proposed changes to the Act (since implemented).

New research will be undertaken in 2007–08 to measure satisfaction in the new operating environment.

Client Service Charter

The Tribunal maintains a Client Service Charter to ensure that service standards meet client needs. The Charter was reviewed during the reporting period and updated. No complaints that required action under the Charter were received during the reporting period.

Social justice and equity in service delivery

The work of the Tribunal impacts 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 otherwise 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, pages 44–47.

The Tribunal 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 pages 48–59.

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 started a major upgrade of its website during the period to better meet the information needs of stakeholders and clients, including improved navigation, design and content management.

The website will provide improved access to the Tribunal's geospatial products, statistical information, national and state overviews and applications, determinations and indigenous land use agreements. The site continues to meet Australian Government online standards.

The upgrade will be completed in December 2007.

Native TitleVision (NTV), the Tribunal's extranet visualisation and enquiry product continues to be recognised by stakeholders. More than 180 organisations are registered as users. It is used to provide supporting information in mediations and as background to decision-making by other stakeholders.

The Tribunal provides targeted training for NTV and during the reporting period held sessions in South Australia for stakeholders.

Performance against purchasing policies

Procurement

The Tribunal publishes an annual procurement plan on AusTender by 1 July each year, to draw the early attention of businesses to potential procurement opportunities. The Tribunal engages consultants based on value for money, open and effective competition, ethics and fair dealing and accountability. Consultants continue to provide services where specialised or professional skills are not available in the Tribunal or where there is an identified need for independent research or assessment.

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 page 83, the Tribunal commissioned external consultants to advise on the Tribunal's enterprise architecture and information management capabilities to meet its future operational requirements.

Consultancies

Consultancies and competitive tendering and contracting

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

Consultancy services

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, pages 129–130.

For actual expenditure on consultancies during the reporting period, see Table 11 below.

Table 11 Expenditure on consultancies by division 2006–07

Information and Knowledge Management	\$ 273,156
Corporate Services and Public Affairs	\$ 173,606
Service Delivery	\$ 38,500
Total	\$ 485,262

There was a decrease of \$1,391,855 or 74.15 per cent in overall expenditure associated with the engagement of consultants compared to the previous reporting period. This decrease reflects little or no engagement of contract specialist skills due to the deferral of IT projects pending the development of the Tribunal's enterprise architecture.

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, which was incorporated into the Tribunal's *Certified Agreement 2003–2006*, will be adopted into the Employee Handbook.

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. The Tribunal continues to be proactive in investigating energy saving programs that might be both environmentally and economically viable.

Appendices and Index



Appendix I Human resources

Employees

Table 12 Employees by classification, location and gender at 30 June 2007																	
Classification		Location															
Registry	Salary Range	Male								Female							
		Principal	WA	NSW	Qld	Vic	SA	NT	Total	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Traineeship	10,375–27,667											1					1
Cadet	11,971–36,755																
APS 1	20,751–38,225									1							1
APS 2	39,139–43,402	3	2		2	1	1		9	11	15		8	1	1	1	37
APS 3	44,582–48,1117	1							1	13	4	2	1	1			21
APS 4	49,689–53,949	1	3	2					6	14	8	1	10	2	3	1	39
APS 5	55,422–58,765	9							9	5	1						6
APS 6	59,858–68,760	11	5	2	1	2	2	1	24	10	6	7	7	1	2	1	34
Legal 1	445,935–91,789	2							2	4							4
Legal 2	101,928–106,343	1							1								
Media 1	62,350–70,850									2							2
Media 2	80,791–91,789									1							1
Library 1	41,739–58,557									1							1
Library 2	59,858–66,894									1							1
Executive level 1	76,736–82,858	5	1	1	2				9	10	4	4	2	1			21
Executive level 2	88,503 –101,691	6		1	1	1		1	10	1	1				1		3
Senior executive	120,000–220,000	2							2								
Total employees		41	11	6	6	4	3	2	73	74	39	15	28	6	7	3	172

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.

Holders of public office

Table 13 Holders of public office of the National Native Title Tribunal at 30 June 2007					
Members	Appointed	Term	Re-appointed	Expiry	Registry
President					
Mr Graeme Neate	01/03/99 ¹	5 yrs + 3 yrs + 3 yrs	01/03/07	28/02/12	Brisbane
Presidential Members—Full-time					
The Hon. Chris Sumner AM	18/04/00 ²	3 yrs + 4 yrs + 5 yrs	18/04/07	17/04/12	Adelaide
Mr John Sosso	28/02/00 ³	3 yrs + 4 yrs + 5 yrs	28/02/07	27/02/12	Brisbane
Non-Presidential Members—Full-time					
Dr Gaye Sculthorpe	02/02/00 ⁴	3 yrs + 4 yrs	02/02/04	01/02/08	Melbourne
Mr Bardy McFarlane	20/03/00	3 yrs + 4 yrs + 5 yrs	20/03/07	19/03/12	Adelaide
Mr Graham Fletcher	20/03/00	3 yrs + 4 yrs + 5 yrs	20/03/07	19/03/12	Cairns
Mr Dan O'Dea	09/12/02	3 yrs + 2 yrs	09/12/07	08/12/07	Perth
Mr John Catlin	06/10/03	3 yrs + 5 yrs	06/10/06	05/10/11	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
Mr Neville MacPherson ⁵	01/09/03	3 yrs + 5 yrs	01/09/06	31/08/11	Melbourne
Mr Robert (Bob) Faulkner PSM	02/08/04	5 yrs		01/08/09	Sydney
Native Title Registrar					
Mr Christopher Doepel PSM	11/01/98	4 yrs + 4 yrs + 2 yrs	01/01/06	31/12/07	Perth

¹ Re-appointed from Part-time Member to President

² Re-appointed from Full-time Member to Deputy President

³ Re-appointed from Full-time Member to Deputy President

⁴ Re-appointed from Part-time to Full-time Member

⁵ Re-appointed from Full-time to Part-time Member

Indigenous employees

Table 14 Indigenous employees by division and location at 30 June 2007								
Classification	Location							
Registry	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Traineeship			1					1
Cadet								
APS level 1								
APS level 2	4	2		3	1	1	1	12
APS level 3		1	1					2
APS level 4	1			3	1			5
APS level 5		1						1
APS level 6		2		1			1	4
Legal 1								
Legal 2								
Media 1								
Media 2								
Library 1								
Library 2								
Executive level 1				1				1
Executive level 2				1				1
Senior executive								
Total	5	6	1	9	2	1	2	27

Appendix II Significant decisions

During the reporting period, the following decisions of the Federal Court and Tribunal members were the most significant in terms of their impact on the operation of the Tribunal. There were no judgments of the High Court in relation to native title for the reporting period.

In this Appendix references to sections are to sections of the *Native Title Act 1993* (Cwlth) (the Act) unless stated otherwise.

Federal Court decisions

During the reporting period there were several native title determinations or proposed determinations following trials, as well as determinations by consent of the parties and dismissals of applications. A number of decisions on appeals to the Full Court of the Federal Court were also handed down. 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).

Full Court Appeals

Risk v Northern Territory [2007] FCAFC 46, French, Finn and Sundberg JJ, 5 April 2007

In *Risk v Northern Territory* [2006] FCA 404 (see summary in Annual Report 2005–2006), Justice Mansfield dismissed claimant applications made on behalf of the Larrakia people and the Danggalaba clan/descendants of Kulumbiringin ancestors. His Honour later made a determination pursuant to s. 225 of the Act that native title did not exist in the area covered by those applications. The main ground for that finding was that neither of the groups claiming native title (the Larrakia people or the Danggalaba/Kulumbiringin clan) possessed rights and interests under traditional laws and traditional customs in the sense required by s. 223(1)(a) of the Act.

Appeals against the judgment were subsequently filed by William Risk and others, on behalf of the Larrakia, and Kevin Quall, on behalf of the Danggalaba/Kulumbiringin. The main issue in this appeal was whether the primary judge was right in deciding that native title did not exist in relation to areas in and around Darwin.

The Larrakia appeal

The three grounds of the Larrakia appeal were that the primary judge:

- failed to deal with a significant body of oral evidence bearing on whether there had been a substantial interruption in the acknowledgement of traditional laws and the observance of traditional customs

- misapplied *Yorta Yorta* in finding that the Larrakia's traditional laws and customs had been 'discontinued' at some stage during the 20th century
- was wrong in failing to adopt the findings of fact made by the Aboriginal Land Commissioner in the Kenbi land claim.

Ground 1: treatment of the evidence

According to French, Finn and Sundberg JJ, the primary judge amply discharged his duty to consider all the evidence.

Ground 2: misapplied *Yorta Yorta*

French, Finn and Sundberg JJ carefully examined the primary judge's analysis of evidence and reasoning and found no error in the process by which the primary judge informed himself of the *Yorta Yorta* test and applied it to reach his conclusions.

Ground 3: Kenbi land claim report

Their Honours considered that the primary judge's reasons 'were apposite and relevant' and found no error that could impugn the exercise of discretion available under s. 86 of the Act.

The Quall appeal

Their Honours concluded that bearing in mind both his Honour's observation that the only evidence directly supporting this claim came in effect from Mr Quall, and the changing composition of the claim group, the dismissal of the claim by the primary judge was unobjectionable.

Both appeals were dismissed.

Shortly before the hearing of the appeal, the Attorney-General for the Commonwealth intervened pursuant to s. 84A(1) of the Act. The reason for intervening was to submit that the course set in certain Full Court decisions determined since the High Court's decision in *Yorta Yorta* departed from the principles laid down by the majority in that decision.

After considering all the submissions made on appeal, the court decided it was not necessary to deal with any of the matters raised by the Attorney-General because of the 'limited issues...that call for decision' and awarded costs of the intervention against the Commonwealth.

Gumana v Northern Territory [2007] FCAFC 23, French, Finn and Sundberg JJ, 2 March 2007

This case dealt with two appeals, one concerning dealing with issues arising under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) (ALRA) and the other with issues arising under the Act in Blue Mud Bay in the Northern Territory.

The ALRA proceedings and the Act proceedings were heard together by Justice Selway in 2004– *Gumana v Northern Territory* (2005) 141 FCR 457; 218 ALR 292; [2005] FCA 50. However, as Selway J died before making final orders, his Honour Justice Mansfield gave ‘full effect’ to Selway J’s reasons in *Gawirrin Gumana v Northern Territory (No 2)* [2005] FCA 1425.

The key issue in the ALRA appeal was whether, under grants of fee simple title to land made pursuant to the ALRA, the land trust holding those grants had exclusive possession to the intertidal zone. The Yolngu people are, under the ALRA, the recognised ‘traditional owners’ of parts of north-east Arnhem land, including the area known as Blue Mud Bay.

Justices French, Finn and Sundberg concluded that the *Fisheries Act 1988* (NT) had no application in relation to areas within the boundary lines of the ALRA grants and did not confer on the Northern Territory’s Director of Fisheries a power to grant a licence under the Fisheries Act that authorised or permitted the holder of that licence to enter and take fish or aquatic life from areas subject to the ALRA grants.

The key issues in the Native Title Act appeal were:

- whether s. 47A of the Act applied to the inter-tidal zone
- the status of spouses to a clan estate in any determination of native title
- whether the native title ‘bundle’ included the right to control the use and enjoyment of the determination area by other Aboriginal people governed by native title holders’ traditional laws and customs.

Concerning s. 47A, the Full Court found that, irrespective of s. 47A permitting prior extinguishment of native title to be disregarded, from the time of its reception in Australia, the common law of this country never recognised any exclusive native title rights to the territorial sea or the inter-tidal zone.

The court rejected the Commonwealth’s submission in its cross-appeal that the spouse of a Yolngu clan member did not necessarily have a connection with that member’s clan estate and the rights and interests of those spouses were not necessarily native title rights and interests as defined in s. 223(1) of the Act.

Their Honours said a native title right to make decisions about access to, and the use and enjoyment of, the determination area by Aboriginal people who recognised themselves as governed by the traditional laws and customs acknowledged and observed by the native title holders, could not be recognised in a native title determination. This was because it was inconsistent with the public’s right of access to the inter-tidal zone and outer waters for fishing and navigation, as Aboriginal people are part of the public, whether they do or do not recognise themselves as governed by the traditional laws and of the native title holders.

The Territory unsuccessfully sought a stay of orders pending the outcome of any appeal (*Arnhem Land Aboriginal Land Trust v Northern Territory* [2007] FCAFC 31).

Moses v WA [2007] FCAFC 78.

This was an appeal from the determination of native title of the Ngarluma and Yidjibarndi Peoples, in the Pilbara region of northwest Western Australia, slightly west of Port Hedland.

The substantive decision of the judge on the native title claims was delivered 2003: *Daniel v State of Western Australia* [2003] FCA 666. These reasons included a draft determination of native title. Final orders were made in May 2005 after further submissions from the parties.

The Ngarluma and Yindjibarndi peoples partly succeeded in their claim of native title. The primary judge made extensive preliminary findings on issues of extinguishment which were further refined in the subsequent decisions after further submissions from the parties.

The applicants lodged appeal in relation to seven issues. The appeals were partly successful. Their Honours Justices Moore, North, and Mansfield dealt with the appeal as follows.

Issue A—Extinguishment by grant of pastoral leases:

The primary judge had determined that five pastoral leases granted after 1975 had fully extinguished native title. The appeal in relation to pastoral leases was upheld with the agreement of all parties. The effect of this was that non-exclusive native title rights and interests were recognised over those five leases.

Issues B and C—Disregarding extinguishment pursuant to ss. 47A and 47B of the Act: In relation to s. 47A, the applicants raised new argument, by leave of the court. The court held that the grant of a particular pastoral lease and associated freehold titles owned by a company owned by local Aboriginal persons did not attract the benefit of s. 47A.

In relation to whether s. 47B applied to certain Crown land subject to temporary mining reserves, so as to cause any extinguishment to be disregarded, the court concluded the primary judge erred in saying the temporary mining reserves prevented s. 47B from applying. However, some areas claimed as being subject to s. 47B failed because the court held they were not ‘occupied’ as required by s. 47B.

Issue D—Internal geographical limitations to native title rights and interests : Their Honours accepted the parties’ agreed position that there should not be the

geographical limitations that the primary judge imposed on the enjoyment of certain rights and interests he found to exist.

Issue E—Existence of native title in the Karratha area:

After a consideration of the relevant law; historical, archaeological, linguistic and anthropological evidence; and the claimants' oral evidence of observable behaviour, their Honours upheld the primary judge's findings.

Issue F—Description of native title holders:

The Full Court held that the primary judge's descriptions of the native title claim groups, as 'Ngarluma people' and 'Yindjibarndi People' were sufficient.

Issue G—Whether more than one prescribed body corporate (PBC) could be nominated for a determination area:

The primary judge had made a determination which provided for two PBCs in the one determination area. The Full Court upheld this decision in the circumstances of the application.

Dale v Moses [2007] FCAFC 82

This appeal was brought on behalf of the Wong-Goo-TT-OO people who were one of the claimant groups in native title proceedings. The Wong-Goo-TT-OO people's application was determined to the extent it overlapped that of the Ngarluma and Yidjibarndi Peoples (see *Moses v WA* [2007] FCAFC 78, summarised in this annual report).

A determination of native title was made by Nicholson J in those proceedings though not in favour of the Wong-Goo-TT-OO (see *Daniel v State of Western Australia* [2005] FCA 536, summarised in the 2004-2005 annual report).

The appellants contended that, on the basis of numerous alleged errors of fact and law, the trial involved a wholly inadequate appraisal of the evidence of the appellant group and a misdirection of what was required to establish the elements of native title under s 223(1) of the Act.

Their Honours Justices Moore, North, and Mansfield dismissed the appeal.

Proposed determination of native title—Single Noongar application

Bennell v State of Western Australia [2006] FCA 1243; (2006) 153 FCR 120; Wilcox J, 19 September 2006

The Federal Court dealt with three preliminary issues in a separate proceeding relating

to six claimant applications in the south-west of Western Australia. The preliminary issues were:

- putting extinguishment to one side, whether native title existed in the part of the Single Noongar [No. 1] application to which the separate proceedings related (referred to as Part A, which encompassed the city of Perth and surrounding non-urban areas)
- if so, whether native title was held by ‘the Noongar people’ as a single, communal title
- without purporting to make a formal determination of native title, whether the native title rights and interests were rights to occupy, use and enjoy the area in certain specified ways.

All three questions were answered in the affirmative.

The Single Noongar application, filed in September 2003 on ‘behalf all Noongar people’, has an external boundary that encompasses a large part of the south-west of Western Australia. However, any area where native title has been extinguished is excluded from the area covered by the Single Noongar application. Given the current tenure of the area, as noted in this case, the area that might eventually be subject to a determination recognising the existence of native title is far less than that encompassed by the external boundary. Although the separate proceeding dealt with only a small part of the area covered by the Single Noongar application, the evidence given by the claimants related to the whole of the area encompassed by the external boundary of that application.

Justice Wilcox found that:

- the claimants did not have to establish descent from people living in Part A at date of settlement
- if members of the Single Noongar claimant group had native title rights and interests over Part A, then they were entitled to recognition of that claim regardless of the birthplace and/or residence of the ancestors of the particular people who made the communal native title claim.

After noting that, while European settlement had a ‘profound effect’ on Aboriginal people in the south-west of WA, Wilcox J found that ‘the culture of those people persisted’. His Honour distinguished the facts of this case from those relevant in the Yorta Yorta case in that, unlike the Yorta Yorta people, the south-west community did not suffer a cataclysmic event that totally removed them from their traditional country. Although families were pushed around and broken up, people continued to identify with their Aboriginal heritage.

His Honour noted that many laws and customs of the 1829 Noongar community

have not survived. He said that one should look for evidence of the continuity of the society, rather than require unchanged laws and customs.

The evidence was found to indicate that:

- Noongar people have, since sovereignty, continued to occupy, use and enjoy those parts of the lands and waters of the claim area to which they have had legal access
- it was appropriate to make a determination of a non-exclusive right (at least) to occupy, use and enjoy the area concerned
- the specific rights attached to that general right ought to be exhaustively stated.

His Honour held that, subject to formulation of the precise wording of the determination and the application of the principle of extinguishment, what survives as native title is the right of the Noongar people to occupy, use and enjoy lands and waters for the following purposes:

- to live on and access the area
- to use and conserve the natural resources of the area for the benefit of the native title holders
- to maintain and protect sites within the area that are significant to the native title holders and other Aboriginal people
- to carry out economic activities on the area, such as hunting, fishing and food-gathering
- to conserve, use and enjoy the natural resources of the area for social, cultural, religious, spiritual, customary and traditional purposes
- to control access to, and use of, the area by those Aboriginal people who seek access or use in accordance with traditional law and custom
- to use the area for the purpose of teaching, and passing on knowledge, about the area and the traditional laws and customs pertaining to it
- to use the area for the purpose of learning about it and the traditional laws and customs pertaining to it.

Wilcox J rejected the claimants' assertion of:

- rights to inherit, dispose of or give native title rights and interests, to determine and regulate membership of, and recruitment to, the native title holding group and to regulate and resolve disputes between the native title holders because they were not 'rights and interests ... in relation to lands and waters', as required by s. 223(1)
- the right to conduct social, religious, cultural and economic activities on the area because initiation and corroborrees are not part of the contemporary system of law and custom and it was not clear what other activities this right might contemplate.

The right to control access to and use of the area by all Aboriginal people, not only Noongars, but such a right concerning Aboriginal people who seek access to, or use of, the claim area in accordance with traditional law and custom was accepted.

Mr Bodney's applications were all dismissed mainly because his claims were inconsistent with the finding that the relevant community in 1829 was the Single Noongar community.

Wilcox J retired soon after delivering this decision. The State filed an appeal against certain aspects of the decision. The appeal was heard by the Full Federal Court in April 2007.

Proposed determination of native title

Griffiths v Northern Territory [2006] FCA 903 Weinberg J, 17 July 2006

The proceedings, before Justice Weinberg, involved three separate, but related, claimant applications brought on behalf of the Ngaliwurru and Nungali Peoples. The area covered by the applications was the town of Timber Creek in the Northern Territory. The Northern Territory (the territory) and the Amateur Fishermen's Association of the Northern Territory (AFANT) were the only respondents. The area covered by the application had previously been subject to a number of pastoral leases. The town lies along the south bank of the Victoria River and a waterway known as Timber Creek (the Creek) flows through the claim area.

The claimants based their case largely upon findings made by various Aboriginal Land Commissioners (the commissioners) under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) (the ALRA) between 1985 and 1992 which related to the area surrounding the town of Timber Creek. Weinberg J noted one 'key distinction' between the ALRA and the Act. Under the ALRA, claimants are not required to establish either continuity or historical links with the land. Under the Act the claimants must show that they are a society united in and by their acknowledgment and observance of a body of laws and customs; that the present day body of accepted laws and customs is, in essence, the same body of laws and customs acknowledged and observed by their ancestors (adapted to modern circumstances); and that the acknowledgment and observance of those laws and customs has continued substantially uninterrupted by each generation since the assertion of sovereignty by the Crown in 1825.

A total of 14 witnesses, mostly elders of the Ngaliwurru and Nungali Peoples, gave evidence, including 'restricted evidence' in a confidential session, on site at Timber Creek. Weinberg J was of the view that the restricted evidence 'painted a somewhat different picture of the claimants' adherence to ceremonial and ritual practice than had previously been adduced'.

His Honour was satisfied that the claimants established they possess native title rights and interests in the claim area as defined in s. 223(1) of the Act.

At one time the entire claim area was the subject of pastoral leases. His Honour observed that pastoral leases may abrogate any 'exclusive' native title rights and interests.

If s. 47B applies to an area, then all extinguishment brought about by the 'creation of any prior interest...must be disregarded' for all purposes under the Act. To attract this provision, among other things, the area concerned must not be 'covered' by (among other things) a 'proclamation' that was 'made by the Crown in any capacity under which the whole or a part of the... area is to be used for public purposes or for a particular purpose'.

A proclamation constituting the town boundaries of Timber Creek made in 1975 was found not to be a 'proclamation' for the purposes of s. 47B. Accordingly, with the exception of certain lots, s. 47B applied and so any extinguishment brought about by pastoral leases in relation to the claim area must be disregarded for all purposes under the Act.

His Honour held that the claimants were entitled to a determination of native title that specifies rights of a usufructuary nature. These include the right to hunt and forage in or on the land, and the right to fish in the waters of the Creek; the right to engage in rituals and ceremonies upon the land, and to be appropriately consulted about, and protect particular sites located within the claim area. These rights were non-exclusive.

In relation to the waters of Timber Creek:

- the claimants had native title which allowed them the right to fish, and to gather and take resources from, the waters of the creek
- for tidal waters, those rights go no further than would be encompassed by the public right to fish in such waters
- for non-tidal waters, the rights are non-exclusive, just as they are in relation to the land component of the claim area
- the claimants had no right to prevent others from exercising similar rights in those waters.

The determination subsequently made is referred to later in this Report: see *Griffiths v Northern Territory (No 2)* [2006] FCA 1155.

The claimants filed an appeal against the decision that their native title rights and interests did not confer a right to exclusive possession. The appeal was heard by a Full Federal Court in May 2007.

Determination of native title

Griffiths v Northern Territory (No 2) [2006] FCA 1155 Weinberg J, 28 August 2006

Judgment in this matter was delivered by the Federal Court on 17 July 2006 in *Griffiths*

v Northern Territory of Australia [2006] FCA 903 (see summary above in this Report). The parties were ordered to file material regarding the form of any determination of native title to give effect to it.

A joint draft determination was subsequently filed and his Honour Justice Weinberg made the orders, declaration, and determination accordingly.

The determination also said that, in accordance with traditional laws and customs, ‘other’ Aboriginal people have rights in respect of the land and waters of an estate which is not their own, such people being:

- members of estate groups from neighbouring estates
- spouses of the estate group members
- members of other estate groups with ritual authority.

Although Weinberg J referred to these other Aboriginal people as holding ‘native title rights and interests’, they are not defined as ‘native title holders’ and arguably hold contingent rights only which are narrowly defined non-exclusive rights.

Consent Determinations of native title

Yankunytjatjara/Antakirinja Native Title Claim Group v South Australia [2006] FCA 1142
Mansfield J, 28 August 2006

This was a consent determination of native title over land in central northern South Australia. The claim group, made up of members of the Western Desert social and cultural bloc, was comprised of approximately 1300 people from 19 families. Most identified as Yankunytjatjara but the group included people from other groups who were married to Yankunytjatjara people. None of the claimants lived on the claim area, residing primarily in neighbouring towns. The main respondents were the State of South Australia and the owners of several pastoral leases in the area.

The determination, which was over part of application area, recognised non-exclusive rights to 18,665sq km of land and waters over Alberga Creek and Neales Creek and the catchment areas of Arkaringa Creek, across the interface of the Simpson Desert and Great Victoria Desert and included three pastoral stations and parts of four other pastoral leases.

The nature and extent of the native title rights and interests are non-exclusive rights to use and enjoy the determination area in accordance with the native title holders’ traditional laws and customs, being rights to:

- access and move about, hunt and fish and gather and use the natural resources such as food, medicinal plants, wild tobacco, timber, stone and resin
- use the natural water resources

- live, camp and erect shelters and cook and light fires for all purposes other than the clearance of vegetation
- engage and participate in cultural activities, including those relating to births and deaths and conduct ceremonies, hold meetings, teach the physical and spiritual attributes of locations and sites within the area
- maintain and protect sites and places of significance to native title holders under their traditional laws and customs
- be accompanied on to the area by those people who, though not native title holders, are spouses of native title holders, people required by traditional law and custom for the performance of ceremonies or cultural activities on the area, people who have rights in relation to the area according to the additional laws and customs acknowledged by the native title holders or people required by native title holders to assist in, observe, or record traditional activities on the area
- make decisions about the use and enjoyment of the area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders.

The native title rights and interests are for personal, domestic and non-commercial communal use and do not confer possession, occupation, use and enjoyment to the exclusion of others.

Ward v Western Australia (Miriuwung Gajerrong #4 Determination) [2006] FCA 1848 North J, 24 November 2006

The area covered by this determination was about 7sq km in the north-east Kimberley region of Western Australia. It was bounded on three sides by the area the subject of the first Miriuwung Gajerrong determination (*Attorney-General of the Northern Territory v Ward* (2003) 134 FCR 16; [2003] FCAFC 283, see summary in 2002-2003 Annual report).

The determination area is made up of areas identified with the Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija languages or dialects. Each of Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija is a group identified with those respective languages or dialects.

Over part of the determination area, native title was determined to be the exclusive right to possession, occupation, use and enjoyment of the land and waters, subject to some qualifications, including in relation to rights to water.

Over the remainder of the determination area, non-exclusive rights were recognised, including:

- the right to hunt and fish, to gather and use the resources of the area (such as food

and medicinal flora, timber, charcoal, ochre, stone and wax) and have access to, and use of, water

- the right to live on the determination area (defined as entering and remaining on the land), to camp and erect structures for that purpose and to light camp fires
- the right to engage in cultural activities on the land, conduct ceremonies, hold meetings, teach the physical and spiritual attributes of places and areas of importance, participate in cultural practices relating to birth and death
- the right to have access to, maintain and protect places and areas of importance on or in the land and waters
- the right to make decisions about the use and enjoyment of the land and waters by the native title holders
- the right to share or exchange subsistence and other traditional resources obtained on or from the land and waters.

Non-exclusive native title rights and interests were found in relation to the flowing, tidal and underground waters of the determination area.

Hughes (on behalf of the Eastern Guruma People) v State of Western Australia [2007] FCA 365, Bennett J, 1 March 2007

The parties reached an agreement as to the terms of the determination made in relation to most of the land and waters covered by the Eastern Guruma Application in the Pilbara region of Western Australia, which the parties designated “Determination Area A”. The balance of the land and waters, Tom Price townsite, is the subject of separate negotiations.

The applicant in the Eastern Guruma Application agreed to discontinue its application in respect of the land and waters covered by the Innawonga Bunjima application, and reached agreement with the applicants in the Kuruma Marthudunera and the Puuntu Kunti Kurrama Pinikura native title determination applications, in relation to areas of special interest that those native title claim groups have within Determination Area A.

The nature and extent of the native title rights and interests held by the native title holders are non-exclusive rights to:

- enter and remain on the land, camp, erect temporary shelters, and travel over and visit any part of the land and waters
- hunt, fish, gather or take and to use, share and exchange the resources of the land and waters such as food, water and medicinal plants and trees, timber, charcoal, ochre, stone and other traditional resources (excluding minerals)
- engage in ritual and ceremony on and in relation to the land and waters, and
- care for, maintain and protect from physical harm, particular objects, sites and areas of significance to the native title holders.

The native title rights and interests are exercisable in accordance with the traditional laws and customs of the native title holders for personal, domestic and non-commercial communal purposes (including social, medicinal, cultural, religious, spiritual and ceremonial purposes) and do not confer exclusive possession nor a right to control the access of others to the land and waters of Determination Area A.

Lovett v Victoria [2007] FCA 474, per North J, 30 March 2007

The application area of the Gunditjmarra People is bounded on the west by the Glenelg River, to the north by the Wannon River and in the east by the Shaw River. Lady Julia Percy Island and coastal foreshore between the South Australian border and the township of Yambuk were also included. It relates to Crown land and waters within the total application area including state forests, national parks, recreational reserves, river frontages and coastal foreshores comprising 140,000 hectares.

There were 170 individual respondents including State and Commonwealth Government interests, mining, farming, local government, fishing, beekeeping, and recreational land user interests.

The application area was divided into Part A and Part B. Part B is an area of land on the eastern edge of the application area comprising the area over which the Framlingham Aboriginal Trust presently has cultural heritage protection responsibilities under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth). This determination was in relation to the balance of the application area, Part A only.

His Honour Justice North ordered that the proceeding in respect of Part B continue in mediation.

The determination relating to Part A, recognises that the Gunditjmarra People have non-exclusive native title rights over 133,000 hectares to access or enter and remain on the lands and waters, to camp on the lands and waters landward of the high water mark of the sea, to use and enjoy the land and waters, to take the resources of the land and waters, and to protect places and areas of importance.

The determination specifies areas amounting to 7600 hectares over which the parties agree native title has been extinguished.

Cox v Western Australia [2007] FCA 588, French J, 27 April 2007

This was a determination by consent recognising the existence of native title in respect of a claimant application made on behalf of the Yungngora people. The area it covered was just over 1,800sq km in the Kimberley region of Western Australia and

included the area covered by the Noonkanbah pastoral lease (held by the Yungngora Association Inc), a small parcel of unallocated Crown land and two unvested reserves.

Native title over the area covered by Noonkanbah station and some unallocated Crown land is:

- the exclusive communal right to possess, occupy, use and enjoy the land and waters
- the communal right to take, use and enjoy the flowing and subterranean waters for personal, domestic and non-commercial communal purposes but not to the exclusion of others.

Native title over the remainder of the determination area consists of non-exclusive, communal rights to use and enjoy the land and waters as follows:

- the right to enter and remain on the land and waters
- the right to camp and erect shelters and other structures and to travel over and visit any part of the land and waters
- the right to take fauna and flora from the land and waters for personal, domestic and non-commercial communal purposes
- the right to take other natural resources of the land such as ochre, stones, soils, wood and resin for personal, domestic and non-commercial communal purposes
- the right to take, use and enjoy the waters and flowing and subterranean waters for personal, domestic and non-commercial communal purposes
- the right to engage in ritual and ceremony
- the right to have access to, care for, maintain and protect from physical harm, particular sites and areas of significance to the common law holders.

Alexander Brown, Jeffrey Brown, Clinton Cooke and Charlie Coppin on behalf of the Ngarla people (Ngarla) and Alexander Brown, Jeffrey Brown, Clinton Cooke and Charlie Coppin on behalf of the Ngarla People (Ngarla #2) and Peter Coppin and others on behalf of the Njamal People #10 v the State of Western Australia and ors; Bennett J, 30 May 2007

This consent Determination recognised the existence of native title in respect of Determination Area A which covered most of the Ngarla and Ngarla #2 claimant applications and part of the area covered by the Njamal #10 applications.

The lessees of the pastoral lessees of the De Grey and Pardoo pastoral stations agreed to the terms of the Determination in relation to those portions of their leases situated within Determination Area A. The Strelley Pastoral Pty Ltd consented to the making of the determination on the basis that:

- the orders and any findings of fact or conclusions in law implicit in its making were confined in their application and effect to Determination Area A.
- in particular, neither the orders nor any finding of fact or conclusion in law has any

effect on assertions or responses thereto, made in relation to Determination Area B.

- their consent was not to be construed as providing any admissions or concessions in relation to the undetermined balance of any native title applications that overlapped the Warrarn Application.

No determination was made in relation to Determination Area B, the balance of the area covered by the Ngarla Applications which comprise areas covered by mineral leases and the overlapping areas of the Warrarn Application. Mediation was to continue and the matter was listed for directions on a date to be fixed to consider the future conduct of the proceedings.

Native title was determined to exist in relation to that part of Determination Area A which is landward of the lowest astronomical tide of the mainland coast. Native title was determined not exist in land and waters seaward of that line.

The nature and extent of the native title rights and interests held by the common law holders were determined to be non-exclusive rights to:

- access, and to camp on, the land and waters
- take flora, fauna, fish, water and other traditional resources (excluding minerals) from the land and waters
- engage in ritual and ceremony
- care for, maintain and protect from physical harm, particular sites and areas of significance to the common law holders.

Dismissal of native title applications—The Wongatha decision

Harrington-Smith v Western Australia (No 9) [2007] FCA 31, Lindgren J, 5 February 2007

The Federal Court considered whether or not a determination of native title should be made in relation to a large part of the Goldfields area in Western Australia. It was decided that no determination under s. 225 of the ACT should be made.

Eight overlapping claimant applications made were before the court: the whole of the Wongatha and Cosmo Newberry (Cosmo) applications and (to the extent that they overlapped the Wongatha claim area) the Mantjintjarra Ngalia, Koara, Wutha, Maduwongga and the two Ngalia Kutjungkatja applications (NK1/NK2). Only Wongatha, Wutha and Cosmo were on the Register of Native Title Claims when this decision was made.

After a trial hearing lasting 100 days, Justice Lindgren was of the view that the various claim groups failed to establish their claims on the merits and in all cases except the Mantjintjarra Ngalia claim, the applications were also found not to be authorised. Therefore, in those cases, the Court lacked jurisdiction to make a determination of native title.

Lindgren J said that dismissal rather than a determination under s. 225 ostensibly meant that fresh claimant applications can be made (i.e. the prohibition on further proceedings found in s. 68 does not apply).

The eight claimant applications originated in 35 earlier applications (the antecedent applications), 33 of which were made under the old Act i.e. the Act as in force prior to 30 September 1998, when most of the provisions the *Native Title Amendment Act 1998* (Cwlth) (the Amendment Act) took effect.

The court decided to hear the Wongatha claim because it had the maximum number of overlaps. This was the first time so many claims were dealt with in the one proceeding.

All eight claim groups relied on the Western Desert Cultural Bloc as the relevant 'normative society'. Lindgren J assumed without making a finding, that the Bloc is a single normative society. His Honour determined that the western boundary of the Bloc at sovereignty was a line running from Menzies to Lake Darlot. This meant that any native title claim in relation to any part of the Wongatha claim area west of that line failed to that extent.

Lindgren J found among other things the evidence did not establish that the 'group' rights and interests claimed existed in any part of the Wongatha claim area under Western Desert Bloc traditional laws and customs and that it was more likely that 'ownership' of an area may be at the level of the individual which he referred to as a 'my country' area.

His Honour said that individuals who claimed to have rights and interests in respect of 'my country' areas had, at some point, aggregated themselves into claim groups of their choice for the purposes of the Act rather than already being part of landholding groups identified by the traditional laws and customs of the Western Desert Bloc.

The Wongatha, Koara, Wutha and NK1/NK2 were also rejected because many of the claimants were the descendants of Western Desert people who migrated into the Wongatha claim area post-sovereignty, usually under the influence of European settlement, from other parts of the Western Desert, and it was not established that their ancestors had any connection with the Wongatha claim area at sovereignty.

Noting the difficulty of proof of group claims by semi-nomadic people, the court noted that the presence of overlaps, and the lack of agreement as to either who held native title in the overlapping area or what principles should apply to resolve them, may be evidence of the lack of an 'vital' overriding normative system.

Lindgren J decided not to resolve the question whether the Claim groups continue to

acknowledge and observe the body of traditional (pre-sovereignty) Western Desert laws and customs for the purposes of s. 223(1)(a), since he reached a decision adverse to each Claim's success on other grounds.

However, in order to provide 'a complete factual basis' on which an appellate court could reach its own conclusion should appeal proceedings be filed, his Honour decided to set out the 'complete factual basis' for each claim.

Lindgren J concluded there was evidence to show some acknowledgment and observance of some traditional Western Desert Bloc laws and customs by some members of each of the eight claim groups. However, his Honour did not decide whether this evidence was sufficient to lead to the conclusion that there was acknowledgement and observance by each claim group, as a whole, of the body of pre-sovereignty laws and customs.

His Honour held that none of the claim groups had the requisite connection because none of the claim groups were recognised, directly or indirectly, by traditional Western Desert Bloc law and custom. Lindgren J said all claims were artificial and driven by the Act.

Regarding authorisation, Lindgren J said authorisation goes to jurisdiction, and non-compliance is 'fatal' because it deprives court of jurisdiction to make a determination of native title.

His Honour found the Wongatha application was no longer being made on behalf of all the actual holders of the particular native title claimed i.e. 'the Wongatha People' and therefore, the Wongatha application did not meet the requirements of the Act.

Similarly, the Koara, Wutha, Maduwongga and Cosmo applications were not duly authorised, because they were not authorised by all the people who formed part of the claim group.

The Ngalia Kutjungkatja applications relied upon a traditional decision-making process but no evidence was led of such a process being provided for in the traditional laws and customs of the claim group.

The court extended time for filing an appeal. Only Cosmo has appealed.

The Commonwealth filed a non-claimant application over the whole of the Wongatha claim area on the second-last day of the hearing of this case, apparently to provide the court with jurisdiction to make a determination of native title under s. 225 should jurisdiction otherwise be lacking due to a failure of authorisation. His Honour stood the non-claimant application over until delivery of judgment on the claimant applications.

As his Honour declined to make a determination of native title under s. 225 (i.e. that native title did not exist) in relation to any of the claimant applications, it was noted in the reasons for decision that the Commonwealth was 'at liberty to have its non-claimant application listed'. The Commonwealth has indicated that it intends to proceed with the non-claimant application and seek a determination under s. 225 that native title does not exist in the Wongatha claim area.

Federal Court review of decision to register an area agreement

Kemp v Native Title Registrar [2006] FCA 939 (2006); 153 FCR 38 Branson J, 25 July 2006

This was an application under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth)) for judicial review of the Native Title Registrar's decision to register an area agreement a type of indigenous land use agreement, (ILUA).

The applicant in this case was earlier joined as a respondent to two claimant applications made on behalf of the Kattang People over an area known as Saltwater. The applicant in this case is a descendant of the Pirripaayi people who were traditionally associated with the area concerned.

The Minister for Lands for NSW subsequently applied to the Native Title Registrar for the registration of an area agreement (the ILUA). Mr Kemp was not a party to the ILUA, and objected to its registration.

In December 2005, a delegate of the Registrar (the delegate) determined that, notwithstanding Mr Kemp's objection, the ILUA should be registered. While Mr Kemp was a person who, *prima facie*, may hold native title in the area, it was considered that his objection to the registration of the ILUA did not, in itself, result in the ILUA not being properly authorised.

Mr Kemp applied for judicial review of the delegate's decision.

The application for registration had been accompanied by a statement recording that Mr Kemp had attended part of the meeting held for the purposes of authorising the ILUA and expressed his objection to the making of that agreement.

The court held that the ILUA could not be registered unless Mr Kemp had authorised its making. The court said that the intended meaning of the words 'all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement' should be construed literally so that, for example, where two competing groups each claimed to hold the common or group rights which constitute the native title in the area, the words were capable of including the persons in both groups. Her Honour set aside the delegate's decision and remitted the application to the Registrar to be determined according to law.

Federal Court reviews of registration test decisions

Wakaman People #2 v Native Title Registrar [2006] FCA 1198; (2006) 155 FCR 107; 235 ALR 115; Kiefel J, 5 September 2006

The issue before the Federal Court was whether the Registrar's delegate could 'look behind' the certificate provided under s. 203BE of the Act by the North Queensland Land Council (the representative body) in relation to the authorisation of the claimant application. The Wakaman People #2 application had been refused registration because the delegate was not satisfied that the application met the requirements relating to authorisation of description of the claim group.

The application was subsequently amended to change the description of the native title claim group and the amended application was certified by the North Queensland Land Council. The description of the claim group was further amended and the further amended application was accompanied by a copy of the same certificate from the NQLC as was provided with the previous amended application.

The Registrar's delegate refused to accept the further amended application for registration, concluding that, due to the further amendment, the native title claim group had changed significantly after the issuing of the certificate and, therefore, the certificate could not be relied upon.

The court held that the delegate had neither the duty nor the power to go behind the certification provided. The delegate's decision was set aside and the court proposed making orders requiring the Registrar to accept the application for registration and include the details of the claim in the Register of Native Title Claims.

In *Wakaman People #2 v Native Title Registrar (No 2)* [2006] FCA 1251; (2006) 155 FCR 120 her Honour subsequently declined to make orders backdating registration of the claim to the date of the delegate's decision not to accept it.

Doolan v Native Title Registrar [2007] FCA 192; (2007) 158 FCR 56, Spender J, 23 February 2007

In this review of a registration test decision, the main issue before the Federal Court was whether the term 'the applicant' in s. 61 of the Act meant 'all of the persons authorised by the native title claim group and no fewer' or 'all of the persons authorised by the native title claim group who, at any particular time, were willing and able to act'.

The Butchulla Land and Sea claimant application was filed in January 2006. This was preceded by the members of the native title claim group holding an authorisation

meeting in April 2005. At that meeting, the native title claim group authorised 18 people to comprise the applicant. Later, two of the 18 people who were authorised to be 'the applicant' withdrew. When the application was made in January 2006, the applicant was comprised of the remaining 16 persons.

The Native Title Registrar's delegate concluded that the application did not meet the authorisation requirements and decided not to accept the claim made in the application for registration.

On review, his Honour Justice Spender considered that the authorisation of a number of persons as the 'applicant' was not an appointment of each of them 'jointly and severally' but an authorisation of persons to act collectively, rather than each of them personally.

Therefore, the delegate's decision was found to be wrong.

The court ordered that the decision of the delegate be set aside and the Registrar accept the claim for registration. In relation to another ground of review, the Registrar was also ordered to enter the following rights in the Register of Native Title Claims:

- the right to hunt and fish on the land and waters
- the right to access and move about on the land and waters
- the right to camp on the land
- the right to gather and use natural products on the land.

Overlapping claims—splitting proceedings under s. 67

Kokatha Native Title Claim v South Australia [2006] FCA 838 Finn J, 30 June 2006

The applicant in a claimant application made on behalf of the Arabunna People sought orders in the Federal Court to ensure that the portion of their application that overlapped the Kokatha Native Title Claim would be heard in the proceedings to deal with the rest of their application. The motion arose from an 'overlap proceeding' created by court order which resulted in the whole of the Kokatha claim and parts of the Barngarla and the Arabunna Peoples' claim (to the extent that they overlap both the Kokatha claim and each other's claim) being set down to be heard in the same proceedings.

His Honour dismissed the motion for a number of reasons, one in particular being that the retention of the Arabunna claim in the Kokatha overlap proceedings was both 'desirable and necessary' because the evidence given by all of the various claim groups in relation to the overlap area could well inform or assist in casting light on issues that might arise in relation to lands contiguous to the area where other claimant groups had overlapping claims.

Replacing the applicant under s. 66B

Butchulla People v Queensland [2006] FCA 1063; (2006) 154 FCR 233; Kiefel J, 18 August 2006

In the Butchulla People's claimant application, the current applicant was said to be authorised for the purposes of s. 251B via a contemporary process involving a combination of consent of senior members, seniority and consensus within the native title claim group.

A meeting held that purportedly authorised the removal of the current applicant and its replacement with a new group of people authorised to be the applicant was challenged by the current applicant because inadequate notification and the absence of anthropological evidence or some other method of identifying the members of the claim group, meant the court could not be satisfied that the authorisation was given by the remaining persons who constitute the applicant.

Her Honour said it could be inferred that the database kept by the representative body reflected the names of persons who had previously attended meetings and persons recognised as part of the families having a line of descent from the named ancestors. Sufficient steps were taken at the meeting to ensure that only members of the Butchulla group took part in the authorisation process and it was 'difficult' to believe that persons at the meeting would not have spoken out if they had observed persons outside the group taking part.

Kiefel J also held that the claim group as a whole had no law or custom that must apply and so s. 251B(b) applied, i.e. authorisation was to be given via a decision-making process that was agreed to and adopted by the claim group. Any submission that the meeting required something approaching a unanimous resolution should be rejected.

Her Honour upheld the notice of motion under s. 66B(1) to replace the applicant.

Party status

Dann v Western Australia [2006] FCA 1249 French J, 18 September 2006

In this case the court denied an application to be joined as a party by the peak fishing body in Western Australia (the Western Australian Fishing Industry Council (Inc) (WAFIC)).

His Honour Justice French said that WAFIC cannot acquire party status by reason of the possible effects of a native title determination on the interests of its members. There was no evidence logically linking WAFIC's economic interests to a native title determination or to demonstrate 'any real basis upon which WAFIC's capacity to participate in the committees to which it has referred would be affected'.

Joinder was refused. It was noted that WAFIC was acting as an agent for fishing interests in other cases and that did not require the intervention of the Federal Court, because a party to the native application can appoint an organisation as its agent.

Akiba v Queensland (No.1) [2006] FCA 1102 French J, 18 August 2006

The issue before the Federal Court was whether to join the Torres Shire Council as a respondent to a claimant application. Joinder was denied, Justice French noting that the council's interests would be sufficient interests for the purposes of s. 84 of the Act, however, in this case, those interests did not reflect any actual or proposed engagement or activity of the council in the area concerned.

Akiba v Queensland (No 2) [2006] FCA 1173 French J, 8 September 2006

The issue before the Federal Court was whether a national of Papua New Guinea (PNG) should be joined as a party to a claimant application referred to as the Torres Strait Regional Claim. The applicant for joinder submitted that he, as part of a group, enjoyed traditional rights of movement, ownership and use of resources in the Torres Strait region, parts of which are subject to a claimant application referred to as the Torres Strait Regional Seas Claim. The applicant for joinder lived in a Papuan New Guinean village which was not one of the 14 'treaty villages' whose inhabitants are accepted, as beneficiaries of a treaty entered into in 1978 by Australia and PNG concerning sovereignty and maritime boundaries in the area between the two countries, including the Torres Strait. This meant that he was not recognised as a 'traditional inhabitant' with traditional customary rights under the treaty.

French J was of the view that it was possible that a PNG national living in PNG who is a traditional inhabitant of the claim area may have rights and interests capable of recognition by the common law, however, the definition of 'native title' and 'native title rights and interests' in s. 223(1) applies relevantly to 'Torres Strait Islanders' defined as 'descendant(s) of an indigenous inhabitant of the Torres Strait Islands'. This meant that a determination of native title could not be obtained under the Act by PNG nationals on the strength of rights and interests possessed within Australian waters under the traditional laws acknowledged and the traditional customs observed by the society of which they are part. Nonetheless, the rights and interests of such persons might limit or qualify the native title rights and interests of Torres Strait Islanders (e.g. as an element of traditional law and custom observed by the Islanders) and, on that basis, the applicant would be eligible for joinder as a party.

However, even though the interests of traditional inhabitants of the Torres Strait regional sea claim area from PNG may be affected by a native title determination French J said the court should not exercise discretion to join them as parties. The

question of whether a PNG village whose members are not treated as ‘traditional inhabitants’ by the executive governments of PNG and Australia under the treaty should also be so treated for the purpose of these proceedings was a matter for those executive governments. Joinder may open the proceedings to debates between village communities in PNG about their respective interests in the Torres Strait Region Seas Claim area and these matters were best left to the courts of PNG or its executive government to resolve by agreement with the Australian Government under the treaty.

Akiba v Queensland (No 3) [2007] FCA 39, Spender J, 31 January 2007

This case dealt with an application by a PNG national for leave to appeal against a decision of Justice French in *Akiba v Queensland (No 2)* [2006] FCA 1173 (see summary in this Annual report) to dismiss his application to be joined as a party to a claimant application.

Assuming leave to appeal was required, two issues were then relevant:

- whether, in all the circumstances, the decision of French J was attended by sufficient doubt to warrant it being reconsidered by the Full Court of the Federal Court
- whether substantial injustice would result if leave was refused, supposing the decision to be wrong.

The PNG national was granted leave to appeal. Spender J was of the view that he had an ‘arguable’ case.

Bodney v Bennell [2007] FCAFC 11, Finn J, 16 February 2007

The question before the court in this case was whether a group of respondents holding pastoral interests should be granted leave to intervene in an appeal against a decision of Justice Wilcox in relation to native title in the Perth metropolitan area (see *Bennell v Western Australia* [2006] FCA 1243; (2006) 153 FCR120; summarised in this Annual report).

Prior to making that decision, his Honour had decided to deal with all the claimant applications that covered the Perth metropolitan area (including part of one known as the Single Noongar claim) in a separate proceeding. The State of Western Australia appealed against the judgment on the separate proceeding.

Although they were parties to the Single Noongar claim, the pastoralists seeking to intervene in the state’s appeal were not parties to the separate proceeding. They sought leave to intervene in relation to one ground of the state’s appeal, which alleged a denial of procedural fairness because (among other things):

- when the judge decided to constitute the separate proceeding, he effectively excluded certain respondents, including the pastoral interests
- his Honour should have given those respondents an opportunity to become a party once he decided to determine the question of whether there was native title in the whole claim area, not just the Perth metropolitan area, in the separate proceeding.

While Justice Finn was of the view that it was likely that the pastoralists' contribution would, in essence, parallel that of the state on the particular ground of appeal, he granted leave to intervene, subject to conditions.

Mediation under the Act—role of Tribunal and powers of Federal Court

Franks v Western Australia [2006] FCA 1811 French J, 21 December 2006

This case considered the role of the National Native Title Tribunal in the mediation of applications referred to it by the Federal Court under s. 86B of the Act and the court's power to make orders in relation to the conduct of that mediation.

Justice French said that a 'chronic problem of delay' had arisen in the mediation of claimant applications in various regions of Western Australia, caused largely by limitations on both human and financial resources. These limitations affected both relevant representative Aboriginal/Torres Strait Islander bodies and the applicants they represented, along with the unrepresented applicants and the State of Western Australia and other respondents. The greatest difficulties arose in relation to the resolution of overlaps between claimant applications and the preparation, by or on behalf of applicants, of materials sufficient to satisfy the state that the claim group had the requisite relationship with the area subject to claim (i.e. preparation of 'connection' materials).

The court noted that mediation of native title determination applications is primarily a matter for the Tribunal.

In regional reports submitted to the court prior to the directions hearing, the presiding member of the Tribunal informed the court of significant non-compliance with the mediation protocols and proposed draft orders for applications, grouped according to sub-regions aimed at expediting the mediation of the applications with a particular focus on resolving overlaps.

The Tribunal suggested that greater utilisation of its 'significant research assistance capabilities' could be beneficial to progressing matters.

French J noted that the court had previously made orders requiring parties to prepare mediation protocols and programs and requiring that they adhere to the timetables in

those programs, and concluded the court has the power to make orders of reasonable specificity calculated to assist Tribunal mediation to proceed expeditiously.

French J made orders in the terms proposed by the Tribunal.

Injunction sought to prevent removal from claims register

Harrington-Smith v Native Title Registrar [2007] FCA 414, Lindgren J, 12 March 2007

Justice Lindgren dismissed three claimant applications that had been on the Register of Native Title Claims on 5 February 2007: Wongatha and Cosmo Newberry in their entirety and, in so far as the area it covered overlapped the area covered by the Wongatha claim area, Wutha (*Harrington-Smith v Western Australia (No 9)* [2007] FCA 31, in this Annual report).

The Act requires the Registrar of the Federal Court to notify the Native Title Registrar ‘as soon as practicable’ of the details of any decision or determination of the court that covers a claim. The Native Title Registrar must, as soon as practicable, if the application in question has been dismissed or otherwise finalised, remove the entry on the Register of Native Title Claims that relates to the claim; or in any other case amend the entry on the Register.

Applications were made to the court seeking orders restraining the Native Title Registrar from removing or amending the Register as required. The ‘final’ relief claimed in each proceeding was an injunction directed to preserving the status quo until any appeal against the orders of 5 February 2007 was heard and determined.

Lindgren J ordered the Native Title Registrar not to remove or amend the relevant entries on the Register to allow all parties time to file and serve submissions.

After submissions Lindgren J said the word ‘dismissed’ in relation to this matter should bear its literal meaning.

The proceedings had been dismissed on 5 February 2007 and, as a result of this decision, on 13 March 2007 the Native Title Registrar removed the details of the Wongatha and the Cosmo Newberry claims from the Register and amended the entry in relation to the Wutha claim in so far as it related to the area also covered by the Wongatha claim.

Future acts decisions by Tribunal members

Good faith

Raymond Dann & Ors (Amangu People)/Western Australia/Empire Oil Company (WA) Limited, WF06/21, [2006] NNTTA 153 (24 November 2006) Mr John Sosso

The native title party challenged the jurisdiction of the Tribunal in contending that the grantee party had not negotiated in good faith in relation to negotiation of a proposed petroleum exploration permit.

The native title party had earlier challenged the validity of the s. 29 notice. The grantee had reached agreement with the Yued people whose claim area was also overlapped by the proposed tenement.

The Tribunal reviewed the parties' accounts of negotiations over terms of a heritage agreement and in particular the grantee party's refusal to pay compensation at the exploration stage. The Tribunal had convened a number of mediations over a period of months in late 2005 and early 2006. At one stage of the negotiations, the grantee offered 5% of on ground expenditure over crown land or non native title land. When the grantee resiled from this position the native title party asserted that the withdrawal of offer was inconsistent with the grantee's duty to negotiate in good faith. Another issue was the native title party's requirement that heritage surveys be required for all of the land and water not only where the native title was claimable, which was the grantee's position.

The native title party's overall contentions were of a lack of fair dealing by the grantee party summarised by the Tribunal as an allegation that 'by constantly shifting the goal posts, by failing to disclose allegedly critical contractual changes and by engaging in intransigent and unreasonable negotiation conduct, has manifestly failed to negotiate in good faith'.

The Tribunal outlined the legal principles in evaluating whether s. 31(1) negotiations in good faith have taken place, confirming that s. 31(1) does not limit the scope of matters the subject of negotiations. Rather the Act creates an opportunity for dialogue. However the Act does not compel government and grantee parties to reach agreement beyond the scope of the legislation. Section 31(2) relieves a negotiation party from having to negotiate about matters unrelated to the effect of the proposed tenement on the native title party's registered native title rights and interests.

The Tribunal held:

The native title party's determination application specifically excludes land and waters where native title has been extinguished. Therefore freehold land and roads are excluded from the claim. In that excluded area there are no native title rights about which a grantee party or government party has to negotiate in good faith as 'there is no legislative nexus' imposing an obligation to negotiate in respect of land and water outside the claim area.

A determination under s. 38 of the Act requires the Tribunal to take into account the effect of the proposed tenement on the land and waters concerned. It was open to the

native title party to seek protection for a greater area but there was no obligation to negotiate heritage protocols for areas over which the native title party does not have registered interests. A refusal to do so is not a failure to negotiate in good faith.

The material before the Tribunal did not support a finding of dishonesty on the part of the grantee.

It is not open to the Tribunal to decide if there have been good faith negotiations on the basis of the Tribunal's view of the reasonableness of the substantive offers. Rather the Tribunal is required to determine if there has been a genuine attempt to reach agreement.

The grantee party had negotiated in good faith as required by s. 31(1)(b) and the Tribunal has jurisdiction to inquire into and make a s. 38 determination in relation to the proposed tenement.

Right to negotiate—Bullen distinguished

Aubrey Lynch and Others on behalf of the Wongatha People/Western Australia/ Heron Resources NL NNTT WF06/50, [2006] NNTTA 162 (20 December 2006) Member O'Dea

Both the combined Wongatha People's application and the combined Maduwongga People's applications overlapped the area of land subject of an old Act s. 29 notices notified on 17 March 1997. Before the Tribunal was a future act determination application proposed by consent, but it did not include the Maduwongga People, who provided their own minute of consent.

The Tribunal inquired into whether the Maduwongga People were a native title party with the right to negotiate even though they had been removed from the Register of Native Title Claims. The Maduwongga People were not legally represented and did not make any submissions. The two earliest Maduwongga People claims were entered on the Register prior to 27 June 1996. The combined Maduwongga claim was registered and subsequently amended by court order on 11 August 2003. It later failed to satisfy the registration test and its details were removed from the Register on 12 September 2005.

The Tribunal accepted the government party submissions that the Transitional provisions sub-item 11(11) of the Act did not apply. The removal of the combined claim on 12 September 2005, subsequent to the further amendment of the claim, was argued as not relating to the removal of the matter from Sub-item 11(9) or (10). The Tribunal agreed with the government party's submission that the decision in *Bullen v State of Western Australia* [1999] FCA 1490, (1999) 96 FCR 473 should be distinguished from this matter.

The Tribunal held the Maduwongga applicants did not have the right to negotiate in relation to these matters subsequent to 12 September 2005, and their consent was not required to the determination. The Tribunal was satisfied that the consent determination was appropriate as it relates to the Wongatha native title party and by consent, determined that the future act be done.

Whether ceasing to be a native title party

Mr Wilfred Hicks and Others on behalf of Wong-goo-tt-oo/ Western Australia/ Red River Resources Ltd, NNTT WO06/228, [2007] NNTTA 30 (30 March 2007) Hon CJ Sumner

A preliminary issue in this expedited procedure objection matter was whether the objector still retained native title party status. In June 2006, an expedited procedure objection application was lodged with the Tribunal by Mr Wilfred Hicks and Others on behalf of the Wong-goo-tt-oo.

Prior to the Ngarluma/Yindjibarndi native title claim determination of 2 May 2005, the Wong-goo-tt-oo registered native title claim area overlapped the Ngarluma/Yindjibarndi registered native title claim area by 52 per cent. On 3 July 2003, Nicholson J concluded in the reasons for judgment that the Wong-goo-tt-oo claim applicants do not hold native title rights and interests in the Ngarluma/Yindjibarndi Determination Area save as they may do so as Ngarluma or Yindjibarndi people. As part of the final determination on 2 May 2005, Nicholson J ordered that the Wong-goo-tt-oo claim application be dismissed, to the extent it overlapped with the Ngarluma/Yindjibarndi claim application, such dismissal being without prejudice to any rights the members of the Wong-goo-tt-oo claim group may have as Ngarluma People or Yindjibarndi People (and not as Wong-goo-tt-oo) to be native title holders. Subsequently the record of the Wong-goo-tt-oo claim application was amended on the Register of Native Title Claims to exclude that portion which overlapped the Ngarluma/Yindjibarndi Determination Area. The Wong-goo-tt-oo claim applicant appealed against the Federal Court determination. The appeal was heard in May 2006 and judgment was reserved at the time of the hearing of this objection to the expedited procedure.

Although an appeal had been lodged by the Wong-goo-tt-oo the Tribunal said it must proceed on the basis of the Federal Court determination and consequent amendment to the Wong-goo-tt-oo native title party's registered claim. Prior to the Ngarluma/Yindjibarndi determination the Wong-goo-tt-oo claim would have overlapped the proposed licence area by 100 per cent. As a result of the Federal Court Determination the Wong-goo-tt-oo overlap was reduced to 44.4 per cent.

Some of Mr Hicks' evidence related to areas outside of the area of the Wong-goo-tt-oo claim but within the area of the Ngarluma/Yindjibarndi determination. The question arose whether the Tribunal can have regard to that particular evidence. The Tribunal

said Mr Hicks had status as a native title party because his registered claim partially covered the proposed licence area. However, that case was different from the present one in that for the balance of the area there is a determination of who are the native title holders. The question arose whether Mr Hicks was in those circumstances a native title holder in respect of the Ngarluma/Yindjibarndi determined area. The Federal Court determination left open the possibility that at least some of the Wong-goo-tt-oo claim group are native title holders by virtue of being Ngarluma/Yindjibarndi people. Had this not happened it would have been clear that the Wong-goo-tt-oo native title party were only to be regarded as holders of native title over the area of their registered claim and not the area of the Ngarluma/Yindjibarndi determination. If there had been no evidence to suggest that Mr Hicks was part of the Ngarluma/Yindjibarndi people then it would not have been possible to regard him as a native title holder for the purposes of s 237. However, based on the evidence from his affidavit of his association with the Ngarluma/Yindjibarndi determined area the Tribunal was prepared to accept, for the limited purposes of this determination, that he is a native title holder for the purposes of s. 237 by virtue of his being a Ngarluma/Yindjibarndi person.

Pending the outcome of the appeal his evidence permitted the Tribunal to make a finding that he was a native title holder for the purposes of s 237 either because he was a registered claimant (over the registered claim area) or part of a group which holds native title (over the Ngarluma/Yindjibarndi determination area).

Since this decision, the Full Court of the Federal Court has dismissed Mr Hick's appeal (see *Dale v Moses* [2007] FCAFC 82 summarised in this Annual report).

Uranium mining

Wilma Freddie and Others on behalf of the Wiluna Native Title Claimants/Western Australia/Globe Uranium Ltd, [2007] NNTTA 37 (14 May 2007) Hon C J Sumner

The native title party made an expedited procedure objection application in relation to a proposed grant of an exploration licence over an area of 30.9 sq km north east of Wiluna. The Tribunal noted recent amendments to the *Mining Act 1978* (WA) and to the Standard Conditions attached to an exploration licence. In particular, s. 63(aa) of the Mining Act introduced a new provision that ground disturbing work will not be permitted unless a programme of work has been approved by the prescribed officer, who is an environmental officer in the Department of Industry and Resources.

A principal issue was whether the exploration for uranium made any difference to the consideration of s. 237(c) or (a) of the Act. The native title party contended in respect of s. 237(c) that there are no regulations or guidelines that directly regulate the exploration for uranium including the increased risk of radioactive contamination

and that radioactive material contamination would constitute a major disturbance to land or waters. The grantee's statement said that the major health issue associated with exploring for low grade uranium is the ingestion of dust contaminated with radioactive material.

The grantee party provided in its contentions a sample of the Radiation Safety Manual and stated it abides by it in its exploration of calcrete hosted uranium. Uranium Guidelines are also said to be complied with. The level of activity in the grantee's proposed first year work programme included some ground disturbing work and the Tribunal inferred there would be subsequent ground disturbing activities as allowed under s. 66 of the *Mining Act*. The grantee contended uranium exploration is heavily regulated and referred to its own compliance with best practices and its undertakings as to how exploration will be conducted.

The Tribunal summarised the government party's contentions on its regulatory scheme and noted the Standard Conditions, condition 4 required a Radiation Management Plan if there was a likelihood of encountering radioactive material.

Section 237(a): The government party contended there is not likely to be direct interference with the carrying on of community or social activities because of the regulatory regime of the Mining Act, including s. 63 and additional conditions and endorsements. The native title party provided very limited evidence to substantiate contentions as to the native title holders in the area who conduct activities in accordance with their native title rights. A video relevant to s. 237(b) provided some evidence as to hunting and preparing food. The Tribunal noted there was no evidence as to the frequency or nature of the activities.

The native title party asserted it comprises 'members of the public who will be particularly exposed to radiation, especially the ingestion of particles, because of both where they live and aspects of their traditional way of life, such as cooking in the ground, camping on the ground, allowing their children to play in the dirt and consuming animals and plants from the area of the proposed exploration'. However there was no evidence of traditional activities in the area. The Tribunal was satisfied the grantee party was aware of its responsibilities to ensure that uranium exploration is carried out to minimise health risks to its employees and the public.

Further the native title party contended there was an absence of information regarding enforcement of any regulatory regime governing radioactive material and contended as the Wiluna people are nomadic and transient it will be difficult for the grantee party to identify who of the Wiluna people to include as a critical group and negotiations with the native title party are required to ensure compliance with guidelines.

The Tribunal accepted that there are Aboriginal people who are nomadic but there was little evidence from the native title party in regard to how a nomadic lifestyle manifested itself in the community and social activities around the proposed grant. The genuine concerns of the native title party regarding radiation exposure were not supported by evidence of activities in the area. The Tribunal held considering the regulatory regime and the grantee's stated intentions, it could not make a finding that the community and social activities of the NTP would be interfered with whether or not uranium was the exploration target.

Section 237(b): The native title party provided gender restricted evidence, including a video tape, of a site of particular significance identified as Tjukurra (dreaming track) of a mythical being. The Tribunal was satisfied the Tjukurra passed through the proposed licence area and is a site of particular significance.

The native title party's legal representatives had previously executed a Wiluna Standard Heritage Agreement but contended the agreement is defective in some ways and did not adequately protect sites of significance. The Tribunal found there was nothing in these sites which would render the government's regulatory scheme under the *Aboriginal Heritage Act 1972* (WA) ineffective. Further the Tribunal noted the grantee is now on notice as to the sites existence and cannot avail itself of the defence under that Act.

Section s 237(c): The Tribunal found apart from the native title party contentions in regard to the special circumstances of uranium exploration there was nothing in this matter to suggest the proposed exploration would cause a major disturbance. The Tribunal summarised the regulatory regime, Guidelines and evidence in relation to the preparation and approval of a Radiation Management Plan. The existence of the government's contradictory policy of allowing uranium exploration and not uranium mining was found to be irrelevant to the matter.

Having regard to the fact that there are no Aboriginal communities in the area of the proposed grant and that there were no topographical or environmental factors which would cause the general community to think exploration would cause a major disturbance. The Tribunal found there was not likely to be a major disturbance to the land.

The Tribunal held the grant is an act attracting the expedited procedure.

Section 29 and jurisdiction

Raymond Dann & Ors (Amangu People)/Western Australia/Empire Oil (WA) Limited, NNTT WF06/21, [2006] NNTTA 126 (25 August 2006) Mr John Sosso

The grantee party lodged a s. 35 application for a future act determination pursuant to s. 38. The native title party responded by challenging the validity of the s. 29 notice and the jurisdiction of the Tribunal. The Tribunal considered the authorities and accepted that the s. 29 notice process is a jurisdictional pre-condition for the Tribunal to make a determination. If a jurisdictional question is raised it is the duty of the Tribunal to make inquiry.

The s. 29 notice jurisdictional challenge included:

- the s. 29 notice did not comply with the Notices Determination clause 6(5) as it did not include a 'clear description of the area that may be affected by the act'. In using three coordinates to identify the area and describing only two boundaries of the tenement area the description allowed for a number of possible shapes to describe the area in the s. 29 notice
- the s. 29 notice did not comply with clause 9 of the Notices Determination as it was not published in a print size at least as large as that used for most of the editorial content of the newspaper
- the s. 29 notice did not comply with s. 29(4)(b) as it inserted an incorrect date as the closing date.

The Tribunal considered the issue one of statutory interpretation, and followed the majority of the High Court in *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355, who said, in determining the question of purpose, regard must be had to 'the language of the relevant provision and the scope and object of the whole statute'.

In relation to a 'clear description', the Tribunal held that what is a clear description can only be answered on a case by case basis. 'The issue is whether a putative native title claimant is provided in the public notice with sufficient material to enable that person or persons to make an informed decision whether to file a native title determination application in response to the notice.' If a notice fails to contain a clear description this deficiency is not remedied by providing details on how a clear description can be provided.

The only issue to be decided is whether the advertisement did or did not clearly describe the area of the proposed tenement.

The failure to provide a map of the proposed tenement does not result in failing to provide a clear description.

The s. 29 notice complied with the Notice Determination clause 6(5)(a).

In relation to the print size requirement, the Tribunal held that clause 6(1) Notices Determination requires publication of the notice in both a newspaper that circulates

generally in the area and a relevant special interest newspaper. 'Editorial content' for the purposes of clause 9 is any space in a publication excluding advertising and public notices, which consists of text, photographs, graphics and illustrations.

The fact that the government had not complied with clause 9 did not make the notice invalid. The proper approach is to determine whether the legislature intended failure to comply to result in invalidity of the act done or whether the validity could be preserved despite the non-compliance.

The compliance deficiency in this case was minor, consequently the technical failure to comply with clause 9 did not invalidate the s. 29 notice and the Tribunal was not deprived of jurisdiction.

Regarding an alleged failure to comply with subsection 29(4) of the Act by including the wrong closing date, the Tribunal accepted the closing date notified was incorrect, however concluded neither s. 29(4) nor clause 6(5) requires the s 29 notice to include a closing date. The Tribunal held the insertion of the incorrect closing date was irrelevant to the question of jurisdiction.

The Tribunal found it had the necessary jurisdiction to consider the s. 35 determination application made by the government party.

Appendix III Consultants

Table 15 Consultancy services let under s. 131A of the Act 2006–07, of \$10,000 or more

Consultant	Description	Contract price	Selection process	Justification
Nil				

Table 16 Consultancy services let under s. 132 of the Act 2006–07, of \$10,000 or more

Consultant	Description	Contract price \$		Selection process ⁽¹⁾	Justification ⁽²⁾
Allens Arthur Robinson	Legal Services	17,465	1/7/06 to 30/6/07	Deed of Extension	C
Alpha West	Technical Services	31,852	1/7/06 to 30/6/07	Deed of Extension	C
Ambit Group P/L	Data Analysis	21,250	03/07/06 to 29/09/06	Panel	A
Candle	Systems development, Programming and support services	74,349	1/7/06 to 30/6/07	Deed of Extension	A
Dialog	Systems development, Visual Basic services	96,800	03/07/06 to 29/09/06	Deed of extension	A
Fujitsu	Project management	111,546	1/07/06 to 30/06/07	Deed of extension	B
Hudson	Data modelling, system developer, systems analysis	38,500	03/07/06 to 29/09/06	Deed of extension	A
Kinetic IT	Database Administrator	43,560	03/07/06 to 29/09/06	Deed of extension	A
McCullogh Robertson	Legal Services	54,942	1/7/06 to 30/6/07	Deed of extension	C
Orima Research	Staff satisfaction survey	16,940	01/07/06 to 30/06/07	Deed of extension	C
Vivid Group	Website Project	52,000	07/05/07 to 28/06/07	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 eight 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 2007 is provided in Figure 2, page 35. An outline of the responsibilities of its executive and senior management committees is provided under Tribunal executive, pages 75–76.

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, pages 28–37.

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. The *Native Title Amendment Act 2007* conferred additional functions and powers (see the President's Overview on pages 1–27).

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 no formal request for internal review of a decision by the authorised decision-maker regarding access to documents under the Freedom of Information Act.

Avenues for public participation

The Tribunal actively encourages the general public and those involved in the native title process to contribute their ideas and suggestions on how 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, page 88).

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).
- 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 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 Paper 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 summarising recent cases in native title law and Tribunal future act determinations
- *About Native Title* booklet
- *Using the Registers of the National Native Title Tribunal*
- 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
- 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, page 74).

Databases: A number of databases are maintained to support the information and processing needs of the Tribunal (see Information management, page 83).

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 one market research organisation during the reporting period. The Tribunal paid \$8500 for the conduct of research and evaluation into staff satisfaction by Orima Research. The survey will be completed in the next reporting period.

The Tribunal paid \$22,425 to Lasermail Pty Ltd, an external distribution agency, for labour costs associated with sorting, packaging, and mailing of information products. The costs for advertising via a media advertising organisation are in Table 17 below.

Table 17 Expenditure on advertising (via a media advertising organisation) 2006–07

Notification of applications as required under the Act	\$ 329,102
Staff recruitment	\$ 116,016
Other advertising (for example, tenders and consultants)	\$ 9,416
Total expenditure on advertising	\$ 454,534

The total amount for market research, distribution and advertising was \$485,459

Public notices: Ongoing improvements implemented to public notification advertising in the press.

Notice of applications to register area agreements on the Register of Indigenous Land Use Agreements
Queensland
Notification day: 20 June 2007

National Native Title Tribunal

LOCALITY MAP 1

Q12006/024

Eastern Kuku Yalanji & Douglas Shire Council ILUA – Q12006/024

Description of the agreement area: The agreement area of approximately 1,701km² is located north-west of Port Douglas and south of Wujal Wujal as shown on the locality map.

The agreement area falls within the Douglas Shire Council local government area.

LOCALITY MAP 2

Q12006/025

Eastern Kuku Yalanji & Cook Shire Council ILUA – Q12006/025

Description of the agreement area: The agreement area of approximately 603km² is located north of Wujal Wujal and extending to about 20km south of Cooktown as shown on the locality map.

The agreement area falls within the Cook Shire Council local government area.

Parties to the agreements and their contact address:

<p>Agnes Walker, Eileen Walker, Hazel Douglas, John Walker Jr and Peter Fischer (‘the Native Title Parties’), C/- Cape York Land Council, PO Box 2496, CAIRNS QLD 4870</p>	<p>Cook Shire Council [Party to Q12006/025 only] C/- MacDonnell’s Law, PO Box 5046, CAIRNS QLD 4870</p>	<p>Douglas Shire Council [Party to Q12006/024 only] C/- MacDonnell’s Law, PO Box 5046, CAIRNS QLD 4870</p>
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These agreements contain the following statements:

[Explanatory notes in brackets inserted by the National Native Title Tribunal]

4.4 Subdivision F of Division 3 of Part 2 of the Native Title Act is not intended to apply to any Future Acts for which the Native Title Parties have given consent under this Deed.

7.1 If any area of land or waters comprising the ILUA Area no longer forms part of the local government area of the Shire of Douglas [in relation to Q12006/024, or], the Shire of Cook [in relation to Q12006/025] the ILUA Area will be reduced to the extent of the area removed from the Shire of Douglas [in relation to Q12006/024, or], the Shire of Cook [in relation to Q12006/025].

8.3 The Native Title Parties consent to the continued operation, use and maintenance of:

<p>(a) the Non-Extinguishing Infrastructure;</p> <p>(b) the land on which the Non-Extinguishing Infrastructure is located; and</p> <p>(c) any land or waters which is adjacent to the land on which the Non-Extinguishing Infrastructure is located which is necessary for, or incidental to, the operation of the Non-Extinguishing Infrastructure.</p> <p>Clause 30.4 The Parties consent to the doing of Approved Future Acts and agree that Subdivision F of Division 3 of Part 2 of the Native Title Act is not intended to apply to Approved Future Acts.</p> <p>Clause 11.3 The Parties consent to the construction or carrying out of Minor Works or Activities on the conditions described in Schedule 4 [in relation to Q12006/024, and] described in Schedule 5 [in relation to Q12006/025].</p>	<p>Clause 13.2 Subject to subclause 13.3, the Parties consent under the Native Title Act to the doing of any Future Act (other than a surrender of Native Title Rights and Interests) in relation to that part of the ILUA Area that is Aboriginal Land.</p> <p><i>[Clause 1.1 of the agreements includes definitions of the terms ‘Aboriginal Land’, ‘Approved Future Acts’, ‘Future Act’, ‘Minor Works or Activities’, ‘Non-Extinguishing Infrastructure’ and ‘Road Opening Area’. Clauses 9.1 and 9.3 of the agreements provide for the consent of the Native Title Parties to the doing of particular future acts within the Road Opening Area. Full details of these defined terms and clauses 9.1 and 9.3 can be obtained upon request from the National Native Title Tribunal by contacting Karen Townrow at the Cairns Registry on 1800 640 501.]</i></p>
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Responses to an application to register an ILUA—where the application has not been certified

Because these applications for registration of the agreements have not been certified by the Representative Aboriginal/Torres Strait Islander Bodies for the area, there is no opportunity to make a formal objection to registration. However, if you claim to hold native title in relation to any of the land or waters covered by these agreements, you may wish to make a native title determination application or equivalent application under a law of a state or territory in respect of any part of the area. If that application is registered on the Register of Native Title Claims, the registered native title claimants must be a party to these agreements before they can be registered. The native title determination applications must be made by 4 October 2007.

Any person wishing to provide any information regarding the identification of persons who may hold native title to the area and the authorisation by those persons of these agreements, should forward it to the Native Title Registrar, National Native Title Tribunal, GPO Box 9973, Cairns QLD 4870 by 4 October 2007.

Data statement: agreement area boundaries compiled by the National Native Title Tribunal based on spatial reference data from the Department of Natural Resources and Water. Search and photocopy fees may apply. Details of the terms of the agreements are not available from the National Native Title Tribunal.

For assistance and further information about these applications, contact Karen Townrow on freecall 1800 640 501 or visit www.nntt.gov.au

Resolution of native title issues over land and waters.

Appendix VI Audit report and notes to the financial statements



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Scope

I have audited the accompanying financial statements of the National Native Title Tribunal (NNTT) for the year ended 30 June 2007, which comprise: a statement by the Chief Executive and Chief Financial Officer; income statement; balance sheet; statement of changes in equity; cash flow statement; schedules of commitments and administered items; a summary of significant accounting policies; and other explanatory notes.

The Responsibility of the Chief Executive for the Financial Statements

The Chief Executive is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and the Australian Accounting Standards (including the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor

considers internal control relevant to NNTT's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of NNTT's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Chief Executive, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

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.

Auditor's 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 the Australian Accounting Standards (including the Australian Accounting Interpretations); and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the National Native Title Tribunal's financial position as at 30 June 2007 and of its financial performance and its cash flows for the year then ended.

Australian National Audit Office

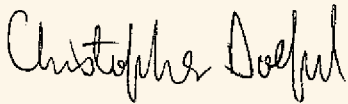


Mark A Moloney
Senior Director
Delegate of the Auditor-General
Canberra

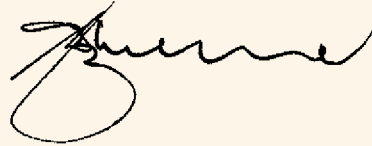
National Native Title Tribunal

Statement by the Chief Executive and Chief Finance Officer

In our opinion, the attached financial statements for the year ended 30 June 2007 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Christopher Doepel PSM
Chief Executive Officer



Max Szmekura
Chief Finance Officer

4 September 2007

Income statement for the period ended 30 June 2007

	Notes	2007 \$'000	2006 \$'000
INCOME			
Revenue			
Revenue from Government	3A	32,667	32,013
Sale of goods and rendering of services	3B	63	47
Other revenue	3C	–	23
Total revenue		32,730	32,083
Gains			
Sale of assets	3D	2	2
Other gains		–	–
Total gains		2	2
Total Income		32,732	32,085
EXPENSES			
Employee benefits	4A	18,916	19,393
Suppliers	4B	8,570	10,469
Depreciation and amortisation	4C	726	763
Write-down and impairment of assets	4D	–	6
Other expenses	4E	9	–
Total Expenses		28,221	30,631
Surplus (Deficit)		4,511	1,454
Surplus (Deficit) attributable to minority interests			
		–	–
Surplus (Deficit) attributable to the Australian Government		4,511	1,454

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

Balance sheet as at 30 June 2007

	Notes	2007 \$'000	2006 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	456	1,450
Trade and other receivables	5B	12,918	8,872
Total financial assets		13,374	10,322
Non-Financial Assets			
Land and buildings	6A	142	259
Infrastructure, plant and equipment	6B	548	1,006
Intangibles	6C	135	210
Other non-financial assets	6D	1,129	63
Total non-financial assets		1,955	1,538
Total Assets		15,329	11,860
LIABILITIES			
Payables			
Suppliers	7A	479	340
Other payables	7B	15	–
Total payables		494	340
Provisions			
Employee provisions	8A	4,217	3,543
Other provisions	8B	457	442
Total provisions		4,674	3,985
Total Liabilities		5,168	4,325
Net Assets		10,161	7,535
EQUITY			
Parent Entity Interest			
Contributed equity		2,415	2,415
Retained surplus (accumulated deficit)		7,746	5,120
Total Equity		10,161	7,535
Current Assets		13,374	10,385
Non-Current Assets		1,955	1,475
Current Liabilities		3,790	763
Non-Current Liabilities		1,378	3,562

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

Statement of changes in equity as at 30 June 2007

	Retained Earnings		Contributed Equity/Capital		Total Equity	
	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000
Balance carried forward from previous period	5,120	3,666	2,415	2,415	7,535	6,081
Return of funds	(1,921)	–	–	–	(1,921)	–
Adjustment for error	36				36	
Adjusted opening balance	3,235	3,666	2,415	2,415	5,650	6,081
Income and expense						
Sub-total income and expenses recognised directly in Equity	3,235	3,666	2,415	2,415	5,650	6,081
Surplus (Deficit) for the period:	4,511	1,454	–	–	4,511	1,454
Total income and expenses	7,746	5,120	2,415	2,415	10,161	7,535
of which:						
attributable to the Australian Government	7,746	5,120	–	–	7,746	5,120
Closing balance at 30 June	7,746	5,120	2,415	2,415	10,161	7,535
Less: minority interests	–	–	–	–	–	–
Closing balance attributable to the Australian Government	7,746	5,120	2,415	2,415	10,161	7,535

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

Cash flow statement for the period ended 30 June 2007

	Notes	2007 \$'000	2006 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		36	47
Appropriations		27,467	32,013
Net GST received		794	1,033
Other cash received		426	–
Total cash received		28,723	33,093
Cash used			
Employees		(18,243)	(20,099)
Suppliers		(10,690)	(11,260)
Cash Transferred to OPA		(700)	(3,000)
Total cash used		(29,633)	(34,359)
Net cash from or (used by) Operating Activities	9	(910)	(1,266)
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		(84)	(506)
Net cash from or (used by) investing activities		(84)	(506)
Net increase or (decrease) in cash held		(994)	(1,772)
Cash at the beginning of the reporting period		1,450	3,222
Cash at the end of the reporting period	5A	456	1,450

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

Schedule of commitments as at 30 June 2007

	2007 \$'000	2006 \$'000
BY TYPE		
Commitments receivable		
GST recoverable on commitments	(556)	(597)
<i>Total commitments receivable</i>	(556)	(597)
Other commitments		
Operating leases	6,112	6,240
Other commitments	479	327
<i>Total other commitments</i>	6,591	6,567
Net commitments by type	6,035	5,970
BY MATURITY		
Commitments receivable		
One year or less	(556)	(597)
<i>Total commitments receivable</i>	(556)	(597)
Commitments payable		
Operating lease commitments		
One year or less	189	3,890
From one to five years	5,923	2,676
<i>Total operating lease commitments</i>	6,112	6,566
Other commitments		
One year or less	479	327
<i>Total other commitments</i>	479	327
Net commitments by maturity	6,035	6,296

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

Schedule of administered items

Income administered on behalf of the Government for the period ended 30 June 2007

	Notes	2007 \$'000	2006 \$'000
REVENUE			
Fees and fines	16	5	13
Other revenue		–	–
Total income administered on behalf of Government		5	13

Administered Cash Flows for the period ended 30 June 2007

OPERATING ACTIVITIES

Cash received

Fees	16	5	13
Total cash received		5	13

Cash used

Other cash used: Return of fees		1	2
Total cash used		1	2
Net Cash from or (used by) Operating Activities		4	11
Net Increase (Decrease) in Cash Held		4	11

Cash at the beginning of the reporting period

Cash from Official Public Account for:		–	–
Appropriations		5	13
		5	13

Cash to Official Public Account for:

Appropriations		(5)	(13)
		(5)	(13)
Cash at End of Reporting Period		–	–

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

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 1	Summary of significant accounting policies
Note 2	Events after balance sheet date
Note 3	Income
Note 4	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	Credit risk exposure
Note 16	Income administered on behalf of a government
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 and Notes are required by clause 1(b) of Schedule 1 to 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) for reporting periods ending on or after 1 July 2006
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board that apply for the reporting period.

This financial report has been prepared on an accrual basis and is in accordance with historical cost convention, except for certain assets at fair value.

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 an alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to the Entity 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.

1.4 Statement of compliance

Australian Accounting Standards require a statement of compliance with International Financial Reporting Standards (IFRSs) to be made where the financial report complies with these

Notes to and forming part of the financial statements for the year ended 30 June 2007

standards. Some Australian equivalents to IFRSs and other Australian Accounting Standards contain requirements specific to not-for-profit entities that are inconsistent with IFRS requirements. The Tribunal is a not-for-profit entity and has applied these requirements, so while this financial report complies with Australian Accounting Standards including Australian equivalents to International Financial Reporting Standards (AEIFRSs) it cannot make this statement.

Adoption of new Australian Accounting Standard requirements

No Accounting Standard has been adopted earlier than the effective date in the current period.

Other effective requirement changes

The following amendments, revised standards or interpretations have become effective but have had no financial impact or do not apply to the operations of the Tribunal.

Amendments:

2005–1 Amendments to Australian Accounting Standards [AASBs 1, 101, 124]

2005–2006 Amendments to Australian Accounting Standards [AASB 3]

2006–1 Amendments to Australian Accounting Standards [AASB 121]

2006–3 Amendments to Australian Accounting Standards [AASB 1045]

Interpretations:

UIG 4 Determining whether an Arrangement contains a Lease

UIG 5 Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds

UIG 7 Applying the Restatement Approach under AASB 129 Financial Reporting in hyper inflationary Economies

UIG 8 Scope of AASB 2

UIG 9 Reassessment of Embedded Derivatives

Future Australian Accounting Standard requirements

The following standards and interpretations have been issued by the Australian Accounting Standards Board but are not applicable to the operations of the Tribunal.

- AASB 1049 Financial Reporting by General Government Sectors by Governments
- UIG 10 Interim Financial Reporting and Impairment.

1.5 Revenue

Revenues from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue.

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 2006–2007 financial year, by agreement with the Department of Finance and Administration the Tribunal relinquished control of surplus output appropriation funding of \$1,921,000 which was returned to the Official Public Account. On 28 July 2006 the Finance Minister made a determination to reduce the Departmental Output Appropriation relative to 2003–2004 by \$1,921,000. This transaction is shown in Note 17.

1.8 Employee benefits

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

Liabilities for ‘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.

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.

Notes to and forming part of the financial statements for the year ended 30 June 2007

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 were 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 as well as superannuation liabilities applicable to the total leave provisions.

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 2007.

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

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.

1.13 Impairment of financial assets

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 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 the Income Statement.

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.

1.14 Supplier and other payables

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

Notes to and forming part of the financial statements for the year ended 30 June 2007

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. Contingent assets are reported when settlement is probable, and contingent liabilities are recognised when settlement is greater than remote.

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, property, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. 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 less 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.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

	2007	2006
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 10 years	4 to 9 years

Heritage and cultural assets are assessed as having an infinite useful life and are not depreciated. The Tribunal recorded no heritage and cultural assets at 30 June.

Impairment

All assets were assessed for impairment at 30 June. 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 (2005–06: 5 years).

All software assets were assessed for indications of impairment as at 30 June.

Notes to and forming part of the financial statements for the year ended 30 June 2007

1.19 Taxation/competitive neutrality

The Tribunal is exempt from all forms of taxation except fringe benefits tax (FBT) 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.

Revenue is generated from fees charged on 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 Events after balance sheet date

There have been no events after balance date that significantly effect the balances in the accounts

Note 3 Income

	2007 \$'000	2006 \$'000
Revenue		
Note 3A: Revenue from Government		
Appropriation:		
Departmental outputs	32,667	32,013
Total revenue from Government	32,667	32,013
Note 3B: Sale of goods and rendering of services		
Rendering of services - external entities	63	47
Total sale of goods and rendering of services	63	47
Note 3C: Other revenue		
Resources received free of charge	–	23
Total other revenue	–	23
Gains		
Note 3D: Sale of assets		
Infrastructure, plant and equipment		
Proceeds from sale	24	2
Carrying value of assets sold	(22)	–
Net gain from sale of assets	2	2

Note 4 Expenses

Note 4A: Employee benefits		
Wages and salaries	13,092	16,066
Superannuation	2,566	2,370
Leave and other entitlements	2,938	204
Separation and redundancies	321	753
Total employee benefits	18,916	19,393
Note 4B: Suppliers		
Provision of goods – external entities	436	772
Rendering of services – related entities	466	2,169
Rendering of services – external entities	5,108	4,425
Operating lease rentals:		
Minimum lease payments	2,362	2,857
Workers compensation premiums	198	246
Total supplier expenses	8,570	10,469

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 4 Expenses (continued)

	2007 \$'000	2006 \$'000
Note 4C: Depreciation and amortisation		
Depreciation:		
Infrastructure, plant and equipment	519	470
Buildings	132	205
Total depreciation	651	675
Amortisation:		
Intangibles:		
Computer Software	75	88
Total amortisation	75	88
Total depreciation and amortisation	726	763
Note 4D: Write-down and impairment of assets		
Impairment of non-financial assets		
Infrastructure plant and equipment	–	6
Total write-down and impairment of assets	–	6
Note 4E: Other expenses		
Loss resulting from asset write off	9	–
Total other expenses	9	–

Note 5 Financial assets

Note 5A: Cash and cash equivalents

Cash on hand or on deposit	456	1,450
Total cash and cash equivalents	456	1,450

Note 5B: Trade and other receivables

Goods and services	46	18
Appropriations receivable:		
for additional outputs	12,750	8,735
Total appropriations receivable	12,796	8,753
GST receivable from the Australian Taxation Office	125	122
Total trade and other receivables (gross)	12,921	8,875
Less Allowance for doubtful debts:		
Goods and services	(3)	(3)
Total trade and other receivables (net)	12,918	8,872

Receivables are aged as follows:

Not overdue	12,918	8,875
Overdue by:		
61 to 90 days	2	–
More than 90 days	1	–
Total receivables (gross)	12,921	8,875

Note 5 Financial assets (continued)

	2007 \$'000	2006 \$'000
The allowance for doubtful debts is aged as follows:		
Overdue by:		
Less than 30 days	–	(3)
61 to 90 days	(2)	–
More than 90 days	(1)	–
Total allowance for doubtful debts	(3)	(3)
Receivables are represented by:		
Current	12,918	8,872
Total trade and other receivables (net)	12,918	8,872

Note 6 Non-financial assets

Note 6A: Land and buildings

Leasehold improvements

Fair value	4,542	4,537
Accumulated amortisation	(4,400)	(4,278)
Impairment losses	–	–
Total leasehold improvements	142	259
Total land and buildings (non-current)	142	259

No indicators of impairment were found for leasehold improvements.

Note 6B: Infrastructure, plant and equipment

Infrastructure, plant and equipment:

Fair value	2,586	3,034
Accumulated depreciation	(2,038)	(2,028)
Total infrastructure, plant and equipment	548	1,006
Total infrastructure, plant and equipment (non-current)	548	1,006

No indicators of impairment were found for infrastructure, plant and equipment.

Note 6C: Intangibles

Computer software at cost:

– Internally developed – in use	1,322	1,321
– Accumulated amortisation	(1,186)	(1,111)
– Accumulated impairment write-down	–	–
Total intangibles (non-current)	135	210

No indicators of impairment were found for intangible assets.

Note 6D: Other non-financial assets

Prepayments	1,129	63
Total other non-financial assets	1,129	63

All other non-financial assets are current assets.

No indicators of impairment were found for other non-financial assets.

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 6 Non-financial assets (continued)

Note 6E: Analysis of property, plant and equipment

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2006-07)

Item	Buildings \$'000	Specialist military equipment \$'000	Other IP & E \$'000	Heritage and Cultural \$'000	Total \$'000
As at 1 July 2006					
Gross book value	4,537	–	3,034	–	7,571
Accumulated depreciation/ amortisation and impairment	(4,278)	–	(2,028)	–	(6,306)
Net book value 1 July 2006	259	–	1,006	–	1,265
Additions:					
by purchase	5	–	79	–	84
Depreciation/amortisation expense	(122)	–	(528)	–	(650)
Other movements	–	–	(9)	–	(9)
Net book value 30 June 2007	142	–	548	–	690
Net book value as of 30 June 2007 represented by:					
Gross book value	4,542	–	2,585	–	7,127
Accumulated depreciation/ amortisation and impairment	(4,400)	–	(2,037)	–	(6,437)
	142	–	548	–	690

Other movements represents the net write off value of assets no longer in commission.

Table B – Reconciliation of the opening and closing balances of property, plant and equipment (2005-06)

As at 1 July 2005					
Gross book value	4,487	–	2,589	–	7,076
Accumulated depreciation/ amortisation and impairment	(4,073)	–	(1,645)	–	(5,718)
Net book value 1 July 2005	414	–	944	–	1,358
Additions:					
by purchase	50	–	456	–	506
Depreciation/amortisation expense	(205)	–	(383)	–	(588)
Net book value 30 June 2006	259	–	1,006	–	1,265
Net book value as of 30 June 2006					
Gross book value	4,537	–	3,034	–	7,571
Accumulated depreciation/ amortisation and impairment	(4,278)	–	(2,028)	–	(6,306)
	259	–	1,006	–	1,265

Note 6: Non-financial assets (continued)**Note 6F: Intangibles****Table A: Reconciliation of the opening and closing balances of intangibles (2006-07)**

Item	Computer software internally developed \$'000	Computer software purchased \$'000	Other intangibles internally developed \$'000	Other intangibles purchased \$'000	Total \$'000
As at 1 July 2006					
Gross book value	1,321	–	–	–	1,321
Accumulated depreciation/ amortisation and impairment	(1,111)	–	–	–	(1,111)
Net book value 1 July 2006	210	–	–	–	210
Additions:					
by purchase or internally developed	–	–	–	–	–
Amortisation	(75)	–	–	–	(75)
Net book value 30 June 2007	135	–	–	–	135
Net book value as of 30 June 2007 represented by:					
Gross book value	1,321	–	–	–	1,321
Accumulated depreciation/ amortisation and impairment	(1,186)	–	–	–	(1,186)
	135	–	–	–	135

Table B: Reconciliation of the opening and closing balances of intangibles (2005-06)

As at 1 July 2005					
Gross book value	1,321	–	–	–	1,321
Accumulated amortisation and impairment	(1,024)	–	–	–	(1,024)
Net book value 1 July 2005	297	–	–	–	297
Additions:					
by purchase or internally developed	–	–	–	–	–
Amortisation	(87)	–	–	–	(87)
Net book value 30 June 2006	210	–	–	–	210
Net book value as of 30 June 2006 represented by:					
Gross book value	1,321	–	–	–	1,321
Accumulated depreciation/ amortisation and impairment	(1,111)	–	–	–	(1,111)
	210	–	–	–	210

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 7 Payables

	2007 \$'000	2006 \$'000
Note 7A: Suppliers		
Trade creditors	479	340
Operating lease rentals	–	–
Total supplier payables	479	340
Supplier payables are represented by:		
Current	479	340
Non-current	–	–
Total supplier payables	479	340

Settlement is usually made net 30 days.

Note 7B: Other payables

Unearned income	14	–
GST payable to ATO	1	–
Total other payables	15	–

All other payables are current liabilities.

Note 8 Provisions

Note 8A: Employee provisions

Salaries and wages	146	55
Leave	3,569	3,303
Superannuation	502	185
Total employee provisions	4,217	3,543

Employee provisions are represented by:

Current	2839	1,801
Non-current	1,378	1,742
Total employee provisions	4,217	3,543

Note 8B: Other provisions

Restoration obligations	457	442
Total other provisions	457	442

Other provisions are represented by:

Current	–	–
Non-current	457	442
Total other provisions	457	442

	Provision for guarantee \$'000	Provision for restoration \$'000	Total \$'000
Carrying amount 1 July 2006	–	442	442
Additional provisions made	–	15	15
Closing balance 2007	–	457	457

The Agency currently has 6 agreements for the leasing of premises which have provisions requiring the Agency to restore the premises to their original condition at the conclusion of the lease. The Agency has made a provision to reflect the present value of this obligation.

Note 9 Cash flow reconciliation

	2007 \$'000	2006 \$'000
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash Flow Statement	456	1,450
Balance Sheet	456	1,450
Difference	-	-
Reconciliation of operating result to net cash from operating activities:		
Operating result	4,511	1,454
Depreciation / amortisation	726	763
Net write down of non-financial assets	9	6
Gain on disposal of assets	(2)	(2)
(Increase) / decrease in net receivables	(4,046)	(2,986)
(Increase) / decrease in prepayments	(1,066)	(47)
Increase / (decrease) in employee provisions	674	(185)
Increase / (decrease) in supplier payables	153	(225)
Increase / (decrease) in other provisions	15	13
Return of funds	(1,921)	-
Adjustment for error	36	(57)
Net cash from / (used by) operating activities	(910)	(1,266)

Note 10 Contingent liabilities and assets

Quantifiable Contingencies and unquantifiable contingencies

The Tribunal has no quantifiable or unquantifiable contingencies at the 30 June 2007.

Remote Contingencies

The Tribunal on behalf of the Commonwealth has indemnified the State Governments of Western Australia and Queensland, and the Northern Territory Government, against any action brought against those Governments which results from spatial data provided to the Tribunal by those Governments. The indemnities are unlimited.

At 30 June 2007, the Tribunal has indemnified the Lessors of the buildings in which the South Australia, Queensland and Cairns, Northern Territory, Victoria/Tasmania, New South Wales/ Australian Capital Territory, and Western Australia registry offices are located against any action brought against the Lessors which results from actions of Tribunal staff. These indemnities are unlimited.

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 11 Executive remuneration

	2007	2006
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
\$145 000 to \$159 999	–	1
\$160 000 to \$174 999	–	–
\$175 000 to \$189 999		1
\$190 000 to \$204 999	2	–
Total	<u>2</u>	<u>2</u>
The aggregate amount of total remuneration of executives shown above.	\$377,846	\$333,170
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.	–	\$21,681

Note 12 Remuneration of Auditors

Financial statement audit services are provided free of charge to the agency.

	2007 \$'000	2006 \$'000
The fair value of the audit service	–	23
	<u>–</u>	<u>23</u>

The charge for the audit of these 2006/2007 financial statements is to be made in the year to June 2008

Note 13 Average staffing levels

	2007	2006
The average staffing levels for the Agency during the year were:	213	263

Note 14 Financial instruments

Note 14A: Interest Rate Risk

Financial Instrument	Note	Floating Interest Rate		Fixed Interest Rate Maturing In						Non-Interest Bearing		Total		Weighted Average Effective Interest Rate			
				1 Year or Less		1 to 5 Years		> 5 Years									
		2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 %	2006 %		
Financial Assets																	
Cash at bank	5A	-	-	-	-	-	-	-	-	456	1,450	456	1,450	n/a	n/a		
Receivables for goods and services	5B	-	-	-	-	-	-	-	-	42	15	42	15	n/a	n/a		
GST receivable from ATO	5B	-	-	-	-	-	-	-	-	125	122	125	122	n/a	n/a		
Appropriations receivable	5B	-	-	-	-	-	-	-	-	12,750	8,735	12,750	8,735	n/a	n/a		
Total		-	-	-	-	-	-	-	-	13,373	10,322	13,373	10,322	n/a	n/a		
Total Assets										15,329	11,860						
Financial Liabilities																	
Government loans		-	-	-	-	-	-	-	-	-	-	-	-				
Finance lease liabilities		-	-	-	-	-	-	-	-	-	-	-	-				
Trade creditors	7A	-	-	-	-	-	-	-	-	479	340	479	340	n/a	n/a		
Other payables	7B	-	-	-	-	-	-	-	-	15	-	15	-	n/a	n/a		
Provision for guarantee		-	-	-	-	-	-	-	-	-	-	-	-	n/a	n/a		
Total		-	-	-	-	-	-	-	-	494	340	494	340				
Total Liabilities										5,168	4,325						

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 14 Financial instruments (continued)

14B Fair values of financial assets and liabilities

	Notes	2007		2006	
		Total	Aggregate	Total	Aggregate
		Carrying Amount	Fair Value	Carrying Amount	Fair Value
		\$'000	\$'000	\$'000	\$'000
Departmental					
Financial Assets					
Cash at bank	5A	456	456	1,450	1,450
Receivables for goods and services	5B	42	42	15	15
Appropriations receivable	5B	12,750	12,750	8,735	8,735
GST receivable from ATO	5B	125	125	122	122
Total Financial Assets		13,373	13,373	10,322	10,322
Financial Liabilities (Recognised)					
Trade creditors	7A	479	479	340	340
Other payables	7B	15	15	–	–
Total Financial Liabilities (Recognised)		494	494	340	340

Note 15: Credit risk exposure

The Agency's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The Agency has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 16: Income administered on behalf of a government

	2007	2006
	\$'000	\$'000
Note 16A: Revenue		
Fees and fines		
Other fees from regulatory services	5	13
Total fees and fines	5	13

Note 16B: Administered reconciliation table

*Opening administered assets less administered liabilities
as at 1 July 2006*

	–	–
Plus: Administered revenues	5	13
Less: Administered expenses	–	–
Transfers to OPA	(5)	(13)

*Closing administered assets less administered liabilities
as at 30 June 2007*

	–	–
--	---	---

Note 17 Appropriations

Table A: Acquittal of authority to draw cash from the consolidated revenue fund for ordinary annual services appropriations and borrowings

Particulars	Administered Expenses		Departmental Outputs		Total	
	2007	2006	2007	2006	2007	2006
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Balance carried from previous period	-	-	14,310	12,819	14,310	12,819
Adjustment to prior year disclosures	-	-	(4,029)	-	(4,029)	-
Departmental adjustments by Finance Minister (Appropriation Acts)	-	-	(1,921)	-	(1,921)	-
Adjusted prior year balance	-	-	8,360	-	8,360	-
Appropriation Act (No.1)	-	-	32,667	32,013	32,667	32,013
FMA Act:						
Appropriations to take account of recoverable GST (FMA s. 30A)	-	-	795	1,016	795	1,016
Annotations to 'net appropriations' (FMA s. 31)	-	-	36	47	36	47
Total appropriation available for payments	-	-	41,858	45,895	41,858	45,895
Cash payments made during the year (GST inclusive)	-	-	(28,591)	(31,585)	(28,591)	(31,585)
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	-	2	13,267	14,310	13,267	14,310
Represented by						
Cash at bank and on hand	-	-	413	1,407	413	1,407
Departmental appropriations receivable	-	-	12,750	8,980	12,750	8,980
Departmental adjustments by the Finance Minister awaiting approval (Appropriation Acts)	-	-	-	3,821	-	3,821
Cash held not appropriated	-	-	(21)	(21)	(21)	(21)
GST recoverable	-	-	125	123	125	123
Undrawn, unexpired administered appropriations	-	-	-	-	-	-
Total	-	-	13,267	14,310	13,267	14,310

Notes to and forming part of the financial statements for the year ended 30 June 2007

Note 17 Appropriations (continued)

Departmental and non-operating appropriations do not lapse at financial year end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. On 28 July 2006, the Finance Minister determined reduction in departmental outputs appropriations following a request by the Minister for the Attorney General's Department. The amount determined under Appropriation Act (No. 1) of 2003-04 was: \$1.921million.

Table B: Acquittal of authority to draw cash from the consolidated revenue fund for other than ordinary annual appropriations.

Particulars	Operating		Total	
	Outcome 1			
	2007	2006	2007	2006
	\$'000	\$'000	\$'000	\$'000
Balance carried forward from previous period	43	43	43	43
FMA Act:				
Refunds credited (FMA s30)	-	-	-	-
Appropriations to take account of recoverable GST (FMA s30A)	-	-	-	-
Adjustment of appropriations on change of entity function (FMA s32)	-	-	-	-
Total appropriations available for payments	43	43	43	42
Cash payments made during the year (GST inclusive)	-	-	-	-
Balance of authority to draw cash from consolidated revenue fund for other than ordinary annual services appropriations.	43	43	43	43
Represented by:				
Cash	43	43	43	43
Appropriation receivable	-	-	-	-
Undrawn, unexpired administered appropriations	-	-	-	-
Total	43	43	43	43

Note 18 Special accounts

Other Trust Monies Special Account

Legal Authority: *Financial Management and Accountability Act 1997*; (s20); Appropriation: *Financial Management and Accountability Act 1997*; (s21).

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 1988. 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. This account is non-interest bearing.

	2007 \$'000	2006 \$'000
Balance carried from previous period	15	25
Appropriation for reporting period	–	–
Receipts	82	92
Available for payments	97	117
Workers Compensation Payments	(77)	(102)
Balance carried to next period	174	219
Represented by:		
Cash–transferred to the Official Public Account	–	–
Cash–held by the Agency	20	15
Total balance carried to the next period	20	15

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 2007

19A Net cost of outcome delivery

	Outcome	
	2007	2006
	\$'000	\$'000
Administered	–	–
Departmental	28,221	30,505
Total expenses	28,221	30,505
Costs recovered from provision of goods and services to the non-government sector		
Administered	–	–
Departmental	(65)	(70)
Total costs recovered	(65)	(70)
Other external revenues		
Administered	–	–
Departmental	–	–
Total other external revenues	–	–
Net cost/(contribution) of outcome	28,156	30,435

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	
	2007	2006	2007	2006	2007	2006
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Departmental expenses						
Employees	537	460	1,765	1,779	2,302	2,239
Suppliers	243	226	800	875	1,043	1,101
Depreciation and amortisation	21	15	69	60	89	75
Total departmental expenses	801	701	2,633	2,714	3,434	3,415
Funded by:						
Revenues from government	927	700	3,048	2,711	3,975	3,411
Sale of goods and services	2	1	6	3	8	4
Other non-taxation revenues	–	–	–	–	–	–
Total departmental revenues	929	701	3,054	2,714	3,983	3,415

19B Major classes of departmental revenues and expenses by output groups and outputs

Output Group 2	Output 2.1		Output 2.2		Output 2.3		Total Output 2	
	2007	2006	2007	2006	2007	2006	2007	2006
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Departmental expenses								
Employees	1,699	1,699	5,990	5,597	1,796	2,798	10,888	10,094
Suppliers	836	836	2,714	2,951	814	1,377	4,933	5,164
Depreciation and amortisation	57	57	233	202	70	94	423	353
Total departmental expenses	2,592	2,592	8,936	8,750	2,679	4,269	16,244	15,611
Funded by:								
Revenues from government	2,589	2,589	10,344	8,737	3,102	4,264	18,803	15,590
Sale of goods and services	3	3	21	13	6	5	37	21
Other non-taxation revenues	-	-	-	-	-	-	-	-
Total departmental revenues	2,592	2,592	10,364	8,750	3,108	4,269	18,840	15,611

Output Group 3	Output 3.1		Output 3.2		Output 3.3		Output 3.4		Total Output 3	
	2007	2006	2007	2006	2007	2006	2007	2006	2007	2006
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Departmental expenses										
Employees	2,175	1,599	1,279	1,998	1,027	1,001	1,245	2,898	5,726	7,496
Suppliers	985	787	580	983	465	491	564	1,426	2,594	3,687
Depreciation and amortisation	85	54	50	67	40	34	48	96	222	251
Total departmental expenses	3,245	2,440	1,909	3,048	1,532	1,526	1,857	4,420	8,543	11,434
Funded by:										
Revenues from government	3,756	2,437	2,209	3,046	1,773	1,523	2,150	4,416	9,889	11,422
Sale of goods and services	7	3	4	2	4	3	4	4	20	12
Other non-taxation revenues	-	-	-	-	-	-	-	-	-	-
Total departmental revenues	3,764	2,440	2,214	3,048	1,777	1,526	2,154	4,420	9,908	11,434

Outcome 1 is in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

Notes to and forming part of the financial statements for the year ended 30 June 2007

19C Major classes of administered revenues and expenses by outcomes

	Outcome		Total	
	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000
Administered Revenues				
Sale of goods and services - Fees	5	13	5	13
Total Administered Revenues	5	13	5	13
Administered Expenses				
Refund of Fees	1	2	1	2
Total Administered Expenses	1	2	1	2

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.

Alternative procedures agreement: A type of indigenous land use agreement (ILUA).

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 provides for appropriations — notably, but not exclusively, the Appropriation Acts.

APS: Australian Public Service.

Arbitration: The hearing or determining of a dispute between parties.

Area agreement: A type of indigenous land use agreement (ILUA).

Body Corporate agreement: A type of indigenous land use agreement (ILUA).

Claimant application/claim: See native title claimant application/claim.

Claims Resolution Review: Established by the Attorney-General to consider the process by which native title applications are resolved. The Review examined the roles of the National Native Title Tribunal and the Federal Court and considered measures for the more efficient management of native title claims within the existing framework of the *Native Title Act 1993*.

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: Funds comprising the Commonwealth Public Account.

Consultancy: A particular type of service delivered under a contract for services. A consultant is an entity—whether an individual, a partnership or a corporation—engaged to provide professional, independent and expert advice or services.

Corporate governance: The process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.

CPA: Commonwealth Public Account, the Commonwealth's official bank account kept at the Reserve Bank. It reflects the operations of the Consolidated Revenue Fund, the Loan Funds, the Reserved Money Fund and the Commercial Activities Fund.

Current assets: Cash or other assets that would, in the ordinary course of operations, be readily consumed or convertible to cash within 12 months after the end of the financial year being reported.

Current liabilities: Liabilities that would, in the ordinary course of operations, be due and payable within 12 months after the end of the financial year under review.

Determination: A decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

Expenditure: The total or gross amount of money spent by the Government on any or all of its activities.

Expenditure from appropriations classified as revenue: Expenditures that are netted against receipts. They do not form part of outlays because they are considered to be closely or functionally related to certain revenue items or related to refund of receipts, and are therefore shown as offsets to receipts.

Financial Management and Accountability Act 1997 (FMA): The principal legislation governing the collection, payment and reporting of public moneys, the audit of the Commonwealth Public Account and the protection and recovery of public property. FMA Regulations and Orders are made pursuant to the FMA Act.

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 (NTRBs) 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.

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.

PBC: Prescribed body corporate.

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 nationally.

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: A record of indigenous land use agreements. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

Registrar: An office holder who heads the Tribunal's administrative structure, who helps the President run the Tribunal and has prescribed powers under the Act.

Registration test: A set of conditions under the Native Title Act 1993 that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the 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 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>.

SES: Senior executive service.

Index

A

- Aboriginal Heritage Act 2006 (Vic)*, 10
- Aboriginal Land Rights (Northern Territory) Act 1976*, 1, 53, 97–8
- Aboriginal Lands Trust Act 1966 (SA)*, 1
- agreement-making, 2, 3, 27
 - activity, 40
 - incentives for, 7
 - role of governments, 9
- Agreement-Making Liaison Group, 72
- agreements, 20–1
 - as output measure, 21, 48–59
 - on process, 54
 - see also* future acts applications and agreements
- Akiba v Queensland*, 117–18
- Amangu People, future act decision challenged, 120–2, 126–8
- applications, 42–3
 - filed in Federal Court, 30, 60
 - lodged with Tribunal
 - see also* claimant applications: compensation applications
- assistance with proceedings, 20–1, 45, 46–7
 - see also* capacity-building; financial assistance
- Attorney-General
 - assistance from *see* financial assistance
 - review of claims resolutions by, 4–5, 12–13, 31, 43, 71, 86
- Australian Government, whole-of-government approach, 26
- Australian Workplace Agreements, 76, 82

B

- Batchelor, Town of, 46
- benchmarking, 40–1
- Bennell v Western Australia* *see* Single Noongar application and judgment
- Blue Mud Bay intertidal zone, 9, 98
- Bodney v Bennell*, 118–19
- Bundjalung People, 49, 50
- Butchulla Land and Sea claimant group, 62, 114–15, 116

C

- capacity-building, 10, 44
 - see also* assistance
- case studies, 3, 55, 57, 59
- Central Land Council, 69
 - future acts mediations, 58
- Certified Agreement 2003–2006*, 91
- claim groups
 - just treatment of, 88
 - recognition of, 6, 98, 114–16, 123–4
- claimant applications, 17–19, 43, 60
 - discontinued, 18, 19
 - dismissed by Federal Court, 18, 61–2, 96
 - Federal Court judgements on, 8–9, 86–120
 - regional management of, 6, 13, 22–3, 43
 - registration tests, 18–19, 60, 61–2
 - resolution process *see* native title processes
 - retesting of, 7, 8, 19, 60, 62
 - review of process, 4–5, 12–13, 31, 43, 71, 86
 - see also* applications
- client satisfaction, 88
- Client Service Charter*, 88, 132
- Collective Agreement, 78, 80, 82
- communications, 132–4
- compensation applications, 19–20, 43
 - see also* applications
- connection evidence, 10

- role of state governments, 10–12
- consultancies, 83, 88, 90–1, 129–30, 136
- Cosmo application *see* Wongatha claims and judgment
- Cox v Western Australia* *see* Noonkanbah consent determination
- cultural heritage protection, 10, 23–4
 - agreements *see* Regional Standard Heritage Agreements

D

- Dale v Moses* appeal, 100
- Dann v Western Australia*, 116–17
- decisions of Tribunal, 120–8
 - cost of, 37, 39
 - as output measures, 60–9
- determinations, 9, 21–2, 42
 - consent, 6, 8, 22, 52–3, 54, 57, 57
 - map, 41
- disability strategies, 81
- Doolan v Native Title Registrar*, 62, 114–15

E

- Eastern Guruma People, 107–8
- Eastern Kuku Yalanji People, 49
- effectiveness measures, 40, 88
- environmental sustainability practices, 91
- expedited procedures, 67
- objections to, 23–4, 67–9, 124–6
- External Relations Working Group, 74–5

F

- Federal Court, 12–13
 - applications filed with, 30, 60
 - case management by, 12, 13
 - dismissals, 61–2, 96
 - judgments, 8, 82–120
 - referrals to Tribunal, 5, 6, 7, 20, 119–20, 132
 - relationship with Tribunal, 4–5, 6, 12–13
- Federal Court, Full Court of
 - appeals heard, 9, 96–7, 100
- financial assistance to respondents
 - Guidelines* revised, 12
 - incentives for agreements, 4, 6, 12
- fishing
 - Blue Mud Bay appeal, 97–8
 - ILUA, 50
- Franks v Western Australia*, 119–20
- Freedom of Information requests, 131, 135
- future acts applications and agreements, 23–4, 30, 40, 43
 - claimant applications in response to, 7
 - determination challenged, 120–2
 - determinations, 23, 66–7
 - management within NNTT, 72–3
 - mediated, 56–8
 - negotiations, 58, 67
 - expedited procedures *see* expedited procedures

G

- geospatial information, 20, 47, 134
 - see also* assistance with proceedings
- Geraldton region agreements, 53
- Githabul People consent determination, 52, 54
- Goldfields Land and Sea Council, 69
- governments
 - in agreement making, 9
 - native title ministers' meeting, 9–10, 17
 - in negotiations, 4, 10, 26
 - variations in approach of, 3, 10
- Griffiths v Northern Territory*, 8, 103–5

Gumana v Northern Territory, 9, 97–9

Gunditjmara Peoples determination, 11, 54, 59, 59, 108
connection evidence, 10–11

H

Harrington-Smith v Western Australia, 8, 120

Hicks, Wilfred, native title party status, 123–4

High Court judgments, 86, 96

Hiley, Graham, 4, 12–13

Hughes v Western Australia, 107–8

Human Rights and Equal Opportunity Commission,
Native Title report, 87

I

ILUA *see* indigenous land use agreements

ILUA Strategy Group, 73–4

Indigenous Australians in Public Service, 80–1

indigenous land use agreements, 12, 20–1, 48

determinations, 21, 49, 50, 53

and economic development, 73

map, 65

as output category, 40, 48–50

registration of, 23, 62–5, 64

registration contested, 113

in South Australia, 49, 50

workshops, 45, 46, 47

information management, 83, 89

information for public, 126–8, 132–4, 136

review of, 24, 33, 83, 89

see also National Native Title Register; Register
of Indigenous Land Use Agreements; Register of
Native Title Claims

K

Kemp v Registrar Native Title Tribunal, 64, 74

Kimberley Land Council, 69

Kimberley region, 106–7

consent determinations, 53

King v Northern Territory, 8

Kokatha Native Title Claim v South Australia, 115

L

Larrakia People, 96–7

Levy, Ken, 4, 12–13

Lovett v Victoria see Gunditjmara Peoples determination

M

Mabo v Queensland (No 2), 1, 2, 26

Maduwonngga People, negotiating rights, 122–3

mediation, 6, 7, 132

additional powers for, 5, 6, 7

case numbers, 20

on connection evidence, 10

orders for, 119–20

regional management of, 6, 22–3, 43

members *see under* National Native Title Tribunal

mining activities, 23, 43

future act negotiations, 58, 120–2, 124–6

impact of, 53, 54

Miriuwung Gajerrong determinations, 106–7

Moses v Western Australia appeal, 99–100

N

Narunga ILUA, 50

National Future Act Liaison Group, 72–3

National Native Title Register, 22, 42, 83, 133

removal of dismissed claims, 120

National Native Title Tribunal, 3, 29–30, 88, 131–2
budgets, 24–5, 39, 40, 77

case flow management, 22–3, 43

codes of conduct, 85

executive team, 75–6, 75

financial management, 90, 91, 134, 137–70

governance, 71–6, 77

human resources *see* staff

information management *see* information
management

mediation role *see* mediation

members, 11, 17, 29, 31, 32, 94

members' meetings, 22, 31, 71

organisation structure, 25, 33, 34, 35, 83, 131

powers, 5, 6, 7, 36, 136

publications, 133–4

risk management, 76, 82–3

staff *see* staff

native title, 1, 2, 3

certainty increasing, 8

detailed in Register, 22

determinations of, 16

extinguished, 99

information sessions on, 47

in SW Western Australia, 2

Native Title Act 1993 (Cwlth), 1–2, 29

amendments *see* *Native Title Amendment Act 2007*

amendments, technical *see* *Native Title Amendment*
(*Technical Amendments*) *Act 2007*

clarification of law, 8

Native Title Amendment Act 2007, 2–6, 30, 36, 60, 61, 86

Native Title Amendment (Technical Amendments) Act 2007,
4, 7–8, 30, 86–7

Native Title List judges, 13

native title processes, 1–6, 9

agreements over, 54

benefits from, 10, 88

differences between states, 3, 10

reforms to, 2–3, 4–6, 23, 26–7

slowness of, 26

Native Title Registrar, 29, 30, 60, 75, 131–2

review of decisions, 62, 64, 113, 114–15

native title representative bodies *see* representative
bodies

native title rights and interests, 102, 105–8

assessment of claims of, 6

recognition be agreement, 3

workshops on, 47

native title service providers, 6, 15

Native Title Services Victoria Ltd, 15, 45

Native Title Vision (online service), 45, 89

New South Wales

agreements, 54

assistance to parties, 46

credible evidence meetings, 44

ILUAs, 49, 50

information sessions, 46

New South Wales Native Title Services Ltd, 15

newsletters, electronic, 47

Ngaliwurruru and Nungali Peoples, 8, 103–5

Ngarla People consent determination, 21, 109–10

Ngarluma and Yidjibarndi Peoples appeal, 99–100, 124

Njama Peoples, 108–10

non-claimant applications, 19–20, 42, 43, 112–13

Noongar People *see* Single Noongar claim

Noonkanbah dispute, 2, 57

Noonkanbah consent determination, 2, 18, 57, 57, 108–9

North Queensland Land Council, 114

Northern Land Council, 45, 46

Northern Territory

awareness program, 44

representation of claimant groups, 46
 stakeholder meetings, 45, 46
 notification, 17, 19–20

O

outcome and output structure, 36, 37, 40
 outputs, 3, 20, 36, 44–69
 costed, 39, 39, 40, 42, 44, 46, 48, 51, 56, 61, 66, 68
 see also individual outputs
 overlapping claims, 8, 20, 96, 100, 107, 110–13, 115, 119, 122–3

P

PJC *see* Parliamentary Joint Committee on Native Title
 Papua New Guinea nationals, Torres Strait claims, 117–18
 Parliamentary Joint Committee on Native Title
 report on representative bodies, 14, 16
 pastoral leases and native title, 55, 57, 99, 104, 105, 109–10, 118–19
 Perth region *see* Single Noongar application and judgment
 Pilbara, 54
 consent determinations, 53
 prescribed bodies corporate, 15–17
 reforms, 4, 6
 resource issues, 16–17, 45
 workshops for, 45
 President (of the Tribunal), 29, 75
 public notices, 67, 126–8

Q

Quall appeal, 97
 Queensland
 agreements on process, 54
 future act determinations, 67
 ILUAs, 47, 49, 64
 objections to expedited procedures, 24, 67, 68
 registration of claims, 61
 stakeholder meetings and workshops, 44, 47
 Queensland South Native Title Services Ltd, 15

R

Regional Standard Heritage Agreements, 23–4, 47, 69
 Register of Indigenous Land Use Agreements, 42, 62–3, 83, 133
 see also registration *under* indigenous land use agreements
 Register of Native Title Claims, 42, 60, 83, 132–3
 registration testing, 7, 18–19, 60, 61–2
 retesting provisions, 7, 8, 19, 60, 62
 registrations, 42, 60
 associated rights, 60
 representative bodies, 13–15
 effectiveness, 4, 14
 recognition of, 6, 14, 15
 regions without, 15
 resources for, 14, 15
 Research Strategy Group, 74
 papers, 134
 Risk Management and Audit Committee, 76, 82–3
Risk v Northern Territory appeal, 96–7

S

Single Noongar application and judgment, 8, 53, 100–3
 appeal, 2, 118–19
 claimant group, 101–2
 research assistance, 47
 South Australia, 43

agreement templates, 49, 50
 consent determination, 55, 55, 59
 ILUAs, 49, 50, 53, 54, 64, 74
 stakeholders' workshops, 45, 47, 89
 South West Aboriginal Land and Sea Council, 47, 69
 staff, 79–82, 93–5
 collective agreement, 78, 80, 82
 development and training, 78
 diversity measures, 79, 81
 health initiatives, 78, 81
 Indigenous, 79–81, 95
 performance management, 77
 recruitment issues, 24, 79
 safety training, 78, 81
 satisfaction survey, 82, 136
 unscheduled absence reporting, 76
 stakeholder and community relations, 44–7, 88, 132
 cost of, 39
 as output, 44–7
 see also assistance; capacity building; communications; research
Strategic Plan 2006–2008, 20, 43, 72, 77, 88
 Strategic Planning Advisory Group, 71–2

T

Tennant Creek agreements, 52–3
 Timber Creek determination, 9, 103–5
 Torres Strait Regional Claim, 117–18

U

uranium exploration, 124–6

V

Victoria
 agreements mediated, 54
 determination, 54, 59, 108
 native title meetings, 45, 47
 Native Title Unit, 45

W

Wakaman People No 2 v Native Title Registrar, 62, 114
Ward v Western Australia, 106–7
 Western Australia
 agreements, 54
 future act determinations, 67
 future act mediations, 38, 58
 objections to expedited procedures, 67, 69
 workshops and assistance to stakeholders, 45, 47
 Western Australian Fishing Industry Council, 116–17
 Western Desert Cultural Bloc, 111–12
 Wiluna Native Title claimants objection to uranium exploration, 124–6
 Won-goo-tt-oo Peoples
 appeal, 100, 123
 holders of native title, 123–4
 Wongatha claims and judgment, 8, 47, 53, 110–13, 120, 122

Y

Yamatji Land and Sea Council, 69
 Yankunytjatjara / Antakirinja consent determination, 52, 55, 55, 105–6
 Yorta Yorta case, 96, 97, 101
 Yulara townsites compensation appeal, 9
 Yungngora Peoples *see* Noonkanbah consent determination

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The Tribunal welcomes feedback on whether this information was useful. Email Public Affairs with your comments and suggestions to enquiries@nntt.gov.au or telephone 08 9268 7495.