National
Native Title
Tribunal

Annual Report 2008–2009

Facilitating timely and effective outcomes.

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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.

Copies of this annual report in book form may be obtained from any Tribunal registry (see back cover for contact details) or online at www.nntt.gov.au in PDF format.

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

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

ISSN 1324-9991
ISSN 1445-7776 (Online)

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National
Native Title
Tribunal

Principal Registry

Commonwealth Law Courts
Level 4, 1 Victoria Avenue
Perth WA 6000
GPO Box 9973
Perth WA 6848

Telephone (08) 9268 7272
Facsimile (08) 9268 7299

29 September 2009

The Hon. Robert McClelland MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I am pleased to submit to you, for presentation to the Parliament, the annual report of the National Native Title Tribunal for the year ended 30 June 2009.

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

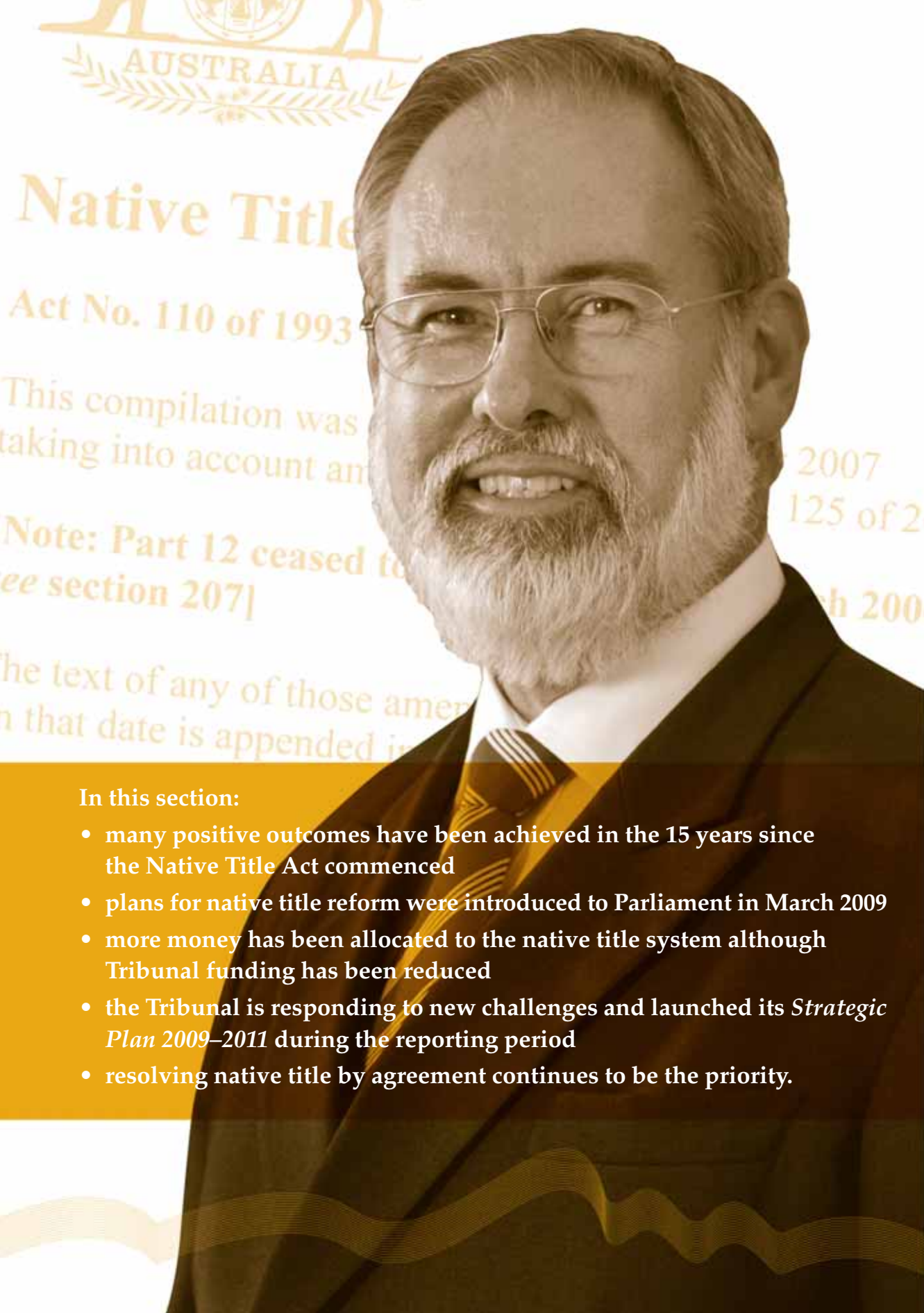
Yours sincerely

Graeme Neate
President

Contents

List of figures

List of tables



In this section:

- **many positive outcomes have been achieved in the 15 years since the Native Title Act commenced**
- **plans for native title reform were introduced to Parliament in March 2009**
- **more money has been allocated to the native title system although Tribunal funding has been reduced**
- **the Tribunal is responding to new challenges and launched its *Strategic Plan 2009–2011* during the reporting period**
- **resolving native title by agreement continues to be the priority.**

President's overview

Year in review

Introduction

The first of January 2009 was the fifteenth anniversary of the commencement of the *Native Title Act 1993* (Cwlth) (the Act) and the establishment of the National Native Title Tribunal (the Tribunal).

In that decade and a half, a national system for dealing with native title issues has been developed within the framework of the Act and other legislation. The operation of the system is informed by judicial decisions and facilitated by administrative procedures involving a range of institutions. For various historical, legal, demographic and political reasons, the system operates differently in each Australian jurisdiction.

The fifteenth anniversary attracted a mixed assessment of what the system has delivered. Commentators and participants expressed concern about the long periods usually taken to obtain results and the variability of those outcomes.

Calls were made for the system to be overhauled, and the Australian Government had already prepared amendments to the Act which were introduced into the Australian Parliament in March 2009.

While acknowledging the concerns and lauding attempts at genuine and effective reform, it is important to recognise that many positive outcomes have been achieved—most of them in the years since leading High Court judgments were delivered. It is also appropriate to celebrate that most of those outcomes were achieved by agreement of the parties.

As required by the Act, this annual report 'relates to the Tribunal's activities during the year'. Accordingly, it deals with the range of registration, mediation, arbitration, assistance and other statutory functions performed by the Tribunal in 2008–09. It also provides a picture of how native title rights and interests are being recognised, often by agreement, alongside other rights and interests.

Tribunal President Graeme Neate.

The Tribunal is uniquely placed to participate in, analyse, and respond to changes to, the native title system from:

- a whole-of-process perspective—because the Tribunal is involved at each stage from providing pre-claim assistance through to the registration, notification and mediation of claims and then to the registration of determinations of native title, and providing assistance with the negotiation of associated agreements—including indigenous land use agreements (ILUAs)—as well as mediating and arbitrating in relation to a range of future acts
- 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 deals, in summary, with:

- external factors affecting the Tribunal and its work
- trends within the Tribunal
- some future trends and challenges for the native title system, particularly the resolution of native title claimant applications.

The rest of the report includes information about various outputs and case studies that give snapshots of how aspects of the native title scheme operate.

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

It is appropriate to note that during the year the former President of the Tribunal, the Honourable Justice Robert French, was appointed as the twelfth Chief Justice of Australia. His Honour was the President of the Tribunal between May 1994 and 31 December 1998. He led the Tribunal with great distinction and remained active in the area of native title following the conclusion of his term of Tribunal President.

External factors affecting the Tribunal

The ways in which the Tribunal meets its obligations are significantly influenced by numerous factors external to the Tribunal, including developments in the law; policies and procedures of governments; procedures and orders of the Federal Court; and the roles and capacity of native title representatives bodies, native title service providers and prescribed bodies corporate (PBCs).

During the reporting period, for example, further reforms of the Act were commenced, and governments sought to identify ways in which native title issues could be resolved more quickly and as part of more comprehensive settlements—although, as discussed later, these two goals might be difficult to achieve concurrently. New financial allocations in relation to the native title system were announced for the four

financial years commencing in 2009–10, including a significant reduction in funding for the Tribunal.

Developments in the law

Legislation

The only amendments to the Act during the reporting period were the addition of s. 60AB (Fees for services provided by registered native title bodies corporate in performing certain functions) and s. 60AC (Opinion of Registrar of Aboriginal and Torres Strait Islander Corporations). These sections were inserted by operation of the *Native Title Amendment (Technical Amendments) Act 2007* (Cwlth) and commenced on 1 July 2008.

Of more direct significance to the Tribunal was the announcement on 17 October 2008 by the Commonwealth Attorney-General, the Hon. Robert McClelland, that the Australian Government had approved changes to the Federal Court of Australia (the Court) to improve the operation of the native title system. Under the proposed changes, the Court 'will assume a central role in managing all claims', including determining which body should mediate native title claims. According to the announcement, 'having one body control the direction of each case means that the opportunities for resolution can be more readily identified'. The new approach was aimed at 'encouraging more negotiated settlements of native title claims', and the change would 'contribute to the Government's vision for a native title system that is more flexible and one that produces broad benefits to Indigenous people and certainty to stakeholders'.

The Native Title Amendment Bill 2009 (the Bill) was introduced in the House of Representatives on 19 March 2009. The Bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs. The Senate Committee called for and received written submissions, held a public hearing on 16 April 2009, and provided a final report on the Bill on 13 May 2009. The Bill was debated in the House of Representatives on 12, 13 and 14 May 2009, and was passed without amendment. At the end of the reporting period, the Bill had not been debated in the Senate.

If enacted, the Bill will amend the Act to, among other things:

- enable the Court to determine who would mediate in relation to a native title claim (the Court, the Tribunal, or another 'appropriate person or body')
- extend the existing provisions concerning the conduct of mediation by the Tribunal to all native title claim related mediation
- enable the Court to direct the Tribunal to hold a native title application inquiry or refer certain native title issues to the Tribunal for review
- enable the Court to rely on a statement of facts agreed between the parties to make consent determinations of native title

- enable the Court to make consent orders that cover matters beyond native title so that parties can resolve a range of native title and related issues at the same time, enabling maximum derivation of benefits from native title rights and interests including economic development opportunities
- allow the amended evidence rules made by the *Evidence Amendment Act 2008* (Cwlth) that concern evidence given by Aboriginal and Torres Strait Islander people to apply to native title claims where evidence has been heard and either the parties agree the rules should apply or the Court has considered the views of the parties and considers it is in the interests of justice for the rules to apply
- expand the current assistance provisions to allow assistance in relation to all mediations
- improve the operation of the native title representative body provisions of the Act by streamlining and improving processes for the recognition of representative bodies and the withdrawal of recognition, and the variation of a representative body's area
- clarify that the Court is required to make a determination as to whether a native title determination is to be held on trust or by a prescribed body corporate at the same time as, or as soon as practicable after, making a determination that native title exists in an area.

The Court will also be able to utilise new provisions in other Bills to assist with the resolution of native title claims, such as changes to the *Federal Court of Australia Act 1976* (Cwlth) to allow the Court to refer a proceeding, or one or more questions arising in a proceeding, to a referee for report. This could assist in native title claims to resolve overlaps and specific legal questions, and determine claim group membership. Because the amendments had not been made by 30 June 2009, the implications of some of the proposed amendments for the resolution of claimant applications are discussed in Future trends and challenges, p. 24. Other legislative reforms, such as those in the *Access to Justice (Civil Litigation Reforms) Amendment Bill 2009*, might also have a bearing on how native title issues are resolved.

Judgments and litigation

As in previous years, the Federal Court delivered almost 50 written judgments on matters involving native title law. Consequently, the legal environment in which some negotiations occur, cases are argued, and administrative decisions are made, is increasingly certain. Ten consent determinations of native title were made during the reporting period. One conditional determination of native title was also made, which determination will take effect when and if the ILUAs are registered. Most judgments, however, involved other technical issues in relation to the interpretation of the Act and aspects of native title practice and procedure. Eighteen of them involved the dismissal of claims that had failed the merit conditions of the registration test, using a power conferred on the Court by amendments to the Act in 2007.

Members of the Tribunal are also involved in the development of the law as they make future act determinations under the Act. A Full Court of the Federal Court reviewed one of these determinations during the reporting period and upheld an appeal against the Tribunal's decision that a grantee party had not negotiated in good faith. An application for special leave to appeal has been made to the High Court. The grantee party in another matter asked the Commonwealth Attorney-General to overrule a determination of the Tribunal that a future act (the grant of a mining lease to that party) must not be done.

Summaries of the main points of significant judicial decisions and Tribunal determinations are set out in Appendix II Significant decisions, p. 113.

Policies and procedures of governments

Role of governments in native title proceedings

Parties usually want agreed rather than litigated outcomes. Governments play a critical role in achieving those outcomes. The agreement-making processes administered by the Tribunal are more productive where the relevant government provides proposals for native title and other outcomes. Without the support of governments, consent determinations of native title cannot be made and many other options for settlement cannot be employed.

For 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 in relation to specific applications. Some agreements have involved matters other than (or in addition to) consent determinations of native title.

It is clear that different approaches have been taken to native title in the various jurisdictions, in part because local circumstances vary. Factors such as the nature and extent of extinguishing tenures; the location, history and social circumstances of Indigenous peoples; and the existence or absence of comprehensive land claim schemes, influence the policy and negotiating position of each government. It is also apparent, 15 years after the Act commenced, that many common issues have emerged, and that conversations and collaboration between governments can assist in resolving them.

During the reporting period there were three significant indications from governments that a broader approach to settlements is likely to occur in the future.

First, at the conclusion of their meeting on 18 July 2008, the Commonwealth, state and territory Native Title Ministers issued a communiqué in which they recorded their agreement that a 'flexible and less technical approach to native title was needed throughout Australia' to achieve the broad range of practical outcomes possible from native title processes. Ministers 'recognised that resolution of native title issues may or may not involve native title determinations; and that land justice and social justice outcomes can meet the needs and aspirations of this and future generations of Indigenous people'.

Ministers agreed to establish a Joint Working Group on Indigenous Land Settlements to 'develop innovative policy options for progressing broader and regional native title settlements. It would seek to complement, not override, existing processes in place for the negotiation of non-technical and flexible native title settlements'. The Joint Working Group comprised officers from all jurisdictions including the Commonwealth and was to report back to the next Native Title Ministers' meeting scheduled for 28 August 2009.

Second, on 4 June 2009, the Victorian Attorney-General and Deputy Premier, the Hon. Rob Hulls, announced the Victorian Native Title Settlement Framework which is to become 'the preferred method for negotiating native title settlements in Victoria'. The framework adopts recommendations made by the Native Title Settlement Framework Steering Committee, which was established in March 2008, and included representatives of Victoria's traditional owners and was chaired by Professor Mick Dodson.

Under the framework:

- traditional owner groups will be able to choose to negotiate directly with the State to settle their native title claim rather than go through the courts
- settlements would only cover Crown land not private property and third party rights and interests are protected
- public access would continue to be determined by principles of sustainability and environmental protection consistent with current policy
- traditional owner groups asserting native title rights and interests would still need to demonstrate their connection to their predecessors at the time Victoria was settled, that they were an inclusive group representative of all traditional owners for the area, and that they had sufficient organisational capacity.

Settlements could include a range of benefits tailored to local circumstances, such as options for the management and transfer of land, access to natural resources, and support for economic and cultural development opportunities.

High hopes are held for the success of the framework. The Victorian Government suggested that it would 'result in quicker resolution of claims, stronger partnerships with Indigenous Victorians and better outcomes including increased economic opportunities'. It would also 'save taxpayers money'.

In announcing the framework, Mr Hulls stressed that its 'final implementation' was subject to securing Commonwealth funding, which he described as 'essential'. The following day the Commonwealth Attorney-General expressed the Australian Government's support for the approach announced by Victoria. He was 'optimistic that through the measures the Commonwealth is taking and measures such as the Victorian alternative framework, further significant progress can be made' but he gave no commitment to Commonwealth financial support for the Victorian scheme.

The third item relates to a settlement option that has been little explored or used under the Act—the negotiation of regional agreements which involve not only extensive areas but also more than one native title group. Although there has been much talk about regional agreements, the focus of agreement-making to date has been on reaching agreements with single native title claim groups or individual groups of native title holders rather than taking a regional approach. No doubt there are practical reasons for that. The Native Title Ministers agreed, however, in July 2008 that, in addition to native title determinations, 'the native title system can facilitate broader regional native title settlements comprising a range of practical benefits for Indigenous people'. The Joint Working Group on Indigenous Land Settlements was to develop policy options for progressing regional native title settlements.

An example of a regional agreement approach was given in Queensland. On 20 August 2008, the Commonwealth Attorney-General and the Queensland Minister for Natural Resources and Water met representatives of traditional owners to discuss options for broader native title outcomes in Cape York Peninsula, Queensland. The parties confirmed that they would 'participate in negotiations to resolve native title, tenure and related issues on a sub-regional basis in the Cape'. The sub-regions identified were the Kowanyama, Olkola and North West Cape areas.

Roles of the Australian Government

The Australian Government has three broad roles in the native title system:

- it administers the Act and can provide policy guidance and initiate amendments to the Act
- it provides funding to many of the major participants in the native title system (and potentially, under s. 200 of the Act, to the states and territories in relation to various liabilities, costs and expenses)
- the Commonwealth Minister (currently the Attorney-General) is a party to some proceedings and is entitled to intervene in a matter arising under the Act.

Events in the reporting period illustrate each role.

Administering and providing policy advice about the Act: The Native Title Act is Commonwealth legislation, and its policy underpinnings are set out at unusual length and in unusual detail in the Preamble to it.

Successive Australian Governments have provided policy guidance publicly (e.g. by convening in recent years meetings of Commonwealth, state and territory Native Title Ministers) and less publicly in its discussions with state and territory governments about whether to consent to specific determinations of native title or at least some of the terms of some proposed determinations.

The policy position expressed by the Australian Government can influence how others operate under the Act. In 2008, Attorney-General Robert McClelland said that the present government had four objectives for the native title system:

- wherever possible, resolving land use and ownership issues through negotiation, because negotiation produces broader and better outcomes than litigation
- facilitating the negotiation of more and better ILUAs and ensuring that traditional owners and their representatives are adequately resourced for this
- making native title an effective mechanism for providing economic development opportunities for Indigenous people
- avoiding unduly narrow and legalistic approaches to native title processes that can result in further dispossession of Aboriginal and Torres Strait Islander people.

Above all, the Attorney-General said, his objective was to ensure that native title was not seen as an end in itself.

The present Australian Government sees native title in a broader social and economic context, not merely in terms of legal process or specific outcomes.

That policy approach can be illustrated by reference to the debate on the Native Title Amendment Bill. In his second reading speech the Attorney-General said:

> Native title is about more than just delivering symbolic recognition. Native title is an important opportunity to create sustainable long-term outcomes for Indigenous Australians.
>
> A native title system which delivers real outcomes in a timely and efficient way can provide Indigenous people with an important avenue of economic development.

He said that the proposed amendments would 'help to encourage a broader and more flexible approach to the resolution of native title'.

During the reporting period the Australian Government sought ideas for improvements to various aspects of the native title system. Having announced the proposed changes to the Act in October 2008, the Attorney-General issued a discussion paper on proposed minor native title amendments. Submissions were called for by February 2009.

The government also established a Native Title Payments Working Group to 'develop tangible suggestions for ensuring that the benefits accruing to Indigenous interests under native title agreements contribute to addressing the economic and social disadvantage facing the Indigenous community and are delivered to current and future generations'. In particular, the working group was asked to consider the type of benefits to be provided, the manner in which benefits should be provided, the manner in which benefits should be administered, and the potential for use of template agreements and specified principles to guide the making and implementation of agreements. Late in 2008, the government published the report of the working group and a discussion paper, 'Optimising Benefits from Native Title Agreements'. Submissions were called for by February 2009.

The Tribunal made written submissions in response to both those discussion papers.

The Commonwealth Attorney-General has stated in various forums that the government is willing to consider other ideas for improving the system.

Funding the participants: The Commonwealth funds many of the participants in the native title system including native title representative bodies and service providers (and, through them, applicants and prescribed bodies corporate), some respondent parties, the Federal Court and the Tribunal. Funding for the reporting period was part of a four-year program that commenced in the 2005–06 financial year.

During the reporting period, a review to assist the Australian Government determine what Commonwealth moneys would need to be appropriated to those parts of the native title system for the four years from 2009–10 (*Review of Native Title Funding)* was completed.

The review was undertaken by the Native Title Coordination Committee comprising representatives of the Attorney-General's Department; Department of Prime Minister and Cabinet; Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA); the Federal Court and the Tribunal.

The 2009 Commonwealth budget papers included announcements that an additional $50.1 million will be provided over four years 'to build a more efficient native title system that focuses on achieving resolution through agreement-making rather than costly and protracted litigation'.

The additional funding includes:

- $45.8 million to improve the capacity of native title representative bodies to represent native title claimants and holders
- $4.3 million to improve claims resolution by working with state and territory

governments to develop new approaches to other settlement of claims through negotiated agreements.

It should be noted that the additional money includes amounts from offsets within the native title system. While additional moneys are to be appropriated for native title representative bodies, the amount allocated to the Tribunal will be reduced by $2.474 million (or 7.7 per cent) compared with the amount allocated in 2008–09 (the implications of which are noted later in this report). The amount allocated for respondent funding through the Attorney-General's assistance program will be reduced annually by some $1.6 million in the coming financial years. It remains to be seen what effects the proportionate reallocation of financial resources will have on the pace and content of negotiations about native title issues.

The *Review of Native Title Funding* in 2008 produced 14 major recommendations designed to improve the disposition of native title matters. A number of those recommendations related to specific initiatives which the Tribunal might undertake, either alone or in collaboration with other agencies. In response to those recommendations, the Tribunal has produced five scoping plans relating to matters including mediation strategies, anthropological evidence and land tenure information. In addition, the Tribunal has produced two practice-oriented papers, the first detailing strategies for the resolution of issues arising from overlapping claim areas, and the second outlining ways in which collaborative agreement-making with non-government respondents may be facilitated. The Tribunal is also actively progressing initiatives to increase the sharing of land tenure information across Australia.

Role as a party: The Commonwealth is also a party to some claimant application proceedings and so has a direct role in whether and how they are resolved.

During the reporting period, the Commonwealth announced that it was adopting a more flexible approach in recognising native title in Australia's territorial waters. On 17 July 2008, the Commonwealth Attorney-General issued a media statement that the Commonwealth is now willing to recognise that non-exclusive native title rights can exist in territorial waters up to 12 nautical miles from the Australian shoreline.

Federal Court procedures and orders

Native title applications are filed in the Court, which manages those applications on a case-by-case and regional basis. The Court supervises the mediation of native title determination applications and compensation applications. The case management practices of the Court influence the practices of the Tribunal and the allocation of its resources.

Around the country, the Tribunal continued with comprehensive regional planning. Representatives of FaHCSIA and the Attorney-General's Department, as the relevant

funding agencies, attended the planning meetings. Such planning is crucial to informing the Tribunal's work. For further information see the discussion of the national case flow management scheme, p. 57.

Tribunal members provided the Court with regional mediation progress reports and regional work plans, as well as reports in individual claims. They reported the progress, or lack of progress, and the reasons for it. Some Tribunal members and employees appeared before the Court on behalf of the Tribunal to improve communications between the institutions.

The Tribunal is concerned that its capacity to assist the Court in these ways may be impaired under the proposed amendments to the Act (discussed pp. 27-31).

Native title representative bodies and native title service providers

Functions, power and capacity
As I have stated in previous annual reports, well functioning representative bodies (and service providers) are not just important for the people they represent. The Court, the Tribunal and parties to native title proceedings or negotiations also benefit from them.

The 2009 Commonwealth budget contained additional funding to improve the capacity of representative bodies to represent native title claimants and holders over the next four financial years. At the AIATSIS native title conference on 5 June 2009, the Commonwealth Attorney-General stated that the additional funding is to assist native title representative bodies 'negotiate broader settlements of claims that provide long-term economic development outcomes and contribute towards closing the gap of Indigenous disadvantage'. The money is to ensure that representative bodies are 'adequately resourced to participate in these broader outcomes focussed negotiations'. According to the Attorney-General, this is 'not more money for more of the same' and it will be 'disappointing if we have nothing more to show after four years than a few more determinations'.

It remains to be seen how the funds will be administered, and what effect that will have on the disposition of claimant applications and future act proceedings, as well as the negotiation of ILUAs and other agreements.

Regions where representative bodies operate
At the end of the previous reporting period there were 21 representative body areas with 14 recognised representative bodies for 15 of those areas.

As at 30 June 2009 there were 19 representative body areas with nine representative bodies for 10 of these areas.

Proposals to amalgamate by 1 July 2008 some or all of the areas covered by three representative bodies in central and southern Queensland and the area covered by Queensland South Native Title Services Ltd were finalised. As a result there were five areas at 1 July 2008 in place of the seven areas at 30 June 2008.

There is no representative body for the Gulf of Carpentaria region of Queensland, the Southern and Western Queensland region, New South Wales, Victoria, Greater South Australia and the Central Desert region of Western Australia. However, the following bodies are funded under s. 203FE(1) of the Act to perform functions of a representative body for those regions: Carpentaria Land Council Aboriginal Corporation, Queensland South Native Title Services Ltd, NTSCORP Ltd, Native Title Services Victoria Ltd, South Australia Native Title Services Ltd, and Central Desert Native Title Services Ltd respectively.

There is no representative body or service provider for the Australian Capital Territory and Jervis Bay, Tasmania or the External Territories area. The absence of a body for those areas does not create practical problems for the native title system.

Prescribed bodies corporate

Where there is a determination that Indigenous people have native title, the Act requires that a prescribed body corporate (PBC) 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 86 registered determinations that native title exists. As more such determinations are made and large areas of the country are subject to those determinations, PBCs are assuming increasing importance as the bodies with whom other people should negotiate in relation to use of those areas of land.

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 and involves the funding and skills capacity of PBCs.

There have been concerns about the workability of native title in the absence of resourced and effective structures to support native title holders. Although PBCs may charge fees for some services, those concerns can only increase if adequate arrangements are not made for appropriately resourced, qualified and advised PBCs to be in place at the time when determinations of native title are made, and so that those PBCs continue to operate at the level necessary to meet local requirements.

Trends within the Tribunal

Changes to Registrar and membership

Native Title Registrar
As noted in last year's annual report, the position of Native Title Registrar (Registrar) was advertised early in 2008 following the completion of the term of Christopher Doepel as Registrar.

The new Registrar, Stephanie Fryer-Smith, was appointed on 7 August 2008 and took up her appointment for five years from 20 October 2008. Immediately before becoming Registrar, Associate Professor Fryer-Smith was the Dean International of the Curtin Business School at the Curtin University of Technology. Ms Fryer-Smith is a lawyer and trained mediator. She has a long standing interest in and knowledge of Aboriginal issues and wrote the *Aboriginal Benchbook for Western Australian Courts*, first published in 2002 and revised in a second edition in 2008. She is familiar with native title having worked in the Federal Court of Australia Western Australian District Registry in Perth from 1999 to 2003, including as a Deputy District Registrar and Native Title Coordinator. Ms Fryer-Smith has taught university courses in native title.

Since taking up the position of Registrar, Ms Fryer-Smith has carried out a range of statutory and administrative functions and took an active role in the finalisation of the Tribunal's *Strategic Plan 2009–2011* (see p. 180). The strategic plan focuses on the Tribunal's role in facilitating timely and effective native title and related outcomes and the delivery of quality services to all Tribunal stakeholders.

In the period prior to the Registrar's appointment, Franklin Gaffney, the Director Corporate Services and Public Affairs, was Acting Registrar. He then assisted Ms Fryer-Smith as Deputy Registrar in her transition period until the end of 2008. Mr Gaffney performed the functions of Acting Registrar with great professionalism and competence. He helped the Tribunal in many significant internal matters as well as representing the Tribunal on the committee undertaking the Australian Government's 2008 *Review of Native Title Funding* for the four years from 2009–10.

Members
During the reporting period:
- Alistair (Bardy) McFarlane, a full-time member of the Tribunal since March 2000, resigned from 25 July 2008 so he could take a position in the resources sector
- Gaye Sculthorpe was reappointed as a full-time member of the Tribunal for 12 months from February 2009
- Ruth Wade's term as a part-time member of the Tribunal concluded in February 2009.

The previous annual report noted that a recruitment process for full-time members was started in May 2008. In August 2008, the Attorney-General suspended the process so that he could give fresh consideration to the overall future needs of the Tribunal.

At the end of the reporting period there were nine members. Seven members were full time and two were part time. This was the lowest number of members for a full year since the Tribunal was established. In order for the Tribunal can continue to perform its statutory functions and deliver its wide range of services, including under the proposed amended Act, it is important the number of members does not fall further. If there are too few members to do the work which the Act requires members to do, it will become increasingly necessary to appoint presidential consultants to perform the mediation and other functions of a member. During the reporting period, Mrs Wade was engaged as a presidential consultant to facilitate the resolution of a claim she had mediated as a member.

For further information about the Tribunal's membership see p. 37 and Appendix I Human Resources p. 111.

Strategic Plan 2009–2011
In April 2009, the Tribunal's new *Strategic Plan 2009–2011* was launched. The strategic plan was the product of many months of consultation within the Tribunal.

The strategic plan contains a new vision: 'Timely, effective native title and related outcomes'. The Tribunal's mission is to:

- facilitate the achievement of timely and effective outcomes
- carry out our functions in a fair, just, economical, informal and prompt way.

The strategic plan contains eight strategic priorities relating to clients and stakeholders, services, workplace culture and accountability. The text of the strategic plan is contained in Appendix VII on p. 180.

As noted earlier in this overview, recent political, legislative and economic factors have taken the native title system into another period of change. After 15 years of native title legislation, governments, native title holders and claimants, other parties and the wider community appear to support a focus on agreement-making. They also want an improvement to the current rate of resolution of native title claims. The Tribunal's new strategic plan provides both a vision and a mission to guide it in responding to the changing environment.

The new vision encompasses the products of all of the Tribunal's functions and activities. In addition to facilitating determinations of native title or registered ILUAs, the vision also embraces giving assistance to parties and others, registration-testing

and maintaining registers, mediating native title applications, assisting in negotiating ILUAs, mediating and arbitrating future acts, and conducting reviews and inquiries.

The mission underscores the critical facilitative and supporting role which the Tribunal undertakes in native title related work. The Tribunal advocates a flexible native title system which encourages more negotiated settlements of native title issues. The mission also emphasises the Tribunal's statutory responsibility to carry out its functions in a fair, just, economical, informal and prompt way.

Performance of statutory functions

In my overview to previous annual reports, I have included detailed information about a range of topics including:

- shifts in the volume of registration, notification and mediation of native title claimant applications
- forms of assistance offered by the Tribunal, including with the negotiation of ILUAs
- the number of determinations of native title
- the performance of the functions of the Native Title Registrar
- future act work of the Tribunal
- the Tribunal's national case flow management scheme.

For further information see Overview of current applications, pp. 50–58. For the purpose of this overview it is sufficient to note a few key points.

Although 23 new claimant applications were filed in the reporting period, the number of current claimant applications dropped by 45 to 459 during the year. At 30 June 2009, 246 (or 54 per cent) of those applications had been referred to the Tribunal for mediation.

Nine determinations that native title exists were registered. Another 52 ILUAs were registered, bringing the total number of registered ILUAs to 389.

These outcomes can be assessed in quantitative and qualitative terms. Determinations of native title cover some 913,680sq km (or 11.9 per cent) of the land mass of Australia, and registered ILUAs cover about 1,105,955sq km (or 14.4 per cent) of the land mass, as well as other areas of sea.

Importantly, all nine of the determinations that native title exists registered during the reporting period were made by consent of the parties. Those determinations and the ILUAs, as well as numerous future act agreements and future act consent determinations, illustrate the strong agreement-making context in which native title issues are usually resolved.

Having regard to the numerous factors that affect the progress of mediation, the Tribunal has developed regional and claim specific mediation programs in accordance with the national case flow management scheme (discussed p. 57) and procedural directions which I issued, informed by regional planning meetings and in response to directions of the Federal Court.

Budgetary outlook
The Tribunal spent $31.08 million during the reporting period. Details of the Tribunal's finances are set out later in this report, starting at p. 43.

As noted earlier, the amount allocated to the Tribunal in the 2009–10 budget is $29.68 million, which is $2.474 million (or 7.7 per cent) less than the amount appropriated in 2008–09. The amounts to be appropriated in the subsequent three financial years are at similar levels. The Tribunal is working through the implications of this reduction for those years, bearing in mind that non-operational costs are likely to rise.

Given that, in practical terms, the reductions will be to operational expenditure, the Tribunal will focus on performing its core statutory functions and will assess whether the level of discretionary assistance (e.g. in relation to the negotiation of ILUAs) will have to be reduced.

The way the Tribunal performs its functions, and the consequent allocation of resources, will be influenced by how the Court administers the amended claimant application scheme, and whether the provision of additional resources to native title representative bodies will lead to increased demands from them for Tribunal mediation in relation to claims and future acts, as well as for ILUA assistance. The reduction in respondent funding and the way in which the respondent funding scheme is administered may also place additional pressure on the Tribunal to assist parties who have little or no funding but who need to be involved in negotiations to secure outcomes in timely and effective ways.

Future trends and challenges

In some previous annual reports I have attempted to predict trends in the native title system. In last year's Overview, I discussed the following five matters related to the resolution of native title applications currently in the system and those that are expected to be made in the years ahead:

- a forecast of how long it is likely to take to resolve those applications, and the context in which the forecast was made and against which it might be assessed
- the issues that are likely to arise in dealing with many of the remaining claimant applications (including proof of connection) and the options for resolving them by broader agreement-making

- some procedural implications of viewing native title claims in a broader context than conventional litigation
- human rights considerations
- the integrated nature of the native title system.

Those comments remained relevant for the current reporting period and need not be expanded upon, other than to note that on 3 April 2009 the Australian Government expressed its support for the United Nations Declaration on the Rights of Indigenous Peoples. It is not yet clear whether, how, or to what extent the statement in support of the Declaration will influence the debate about, or amendments to, the Act or any elements of the native title scheme.

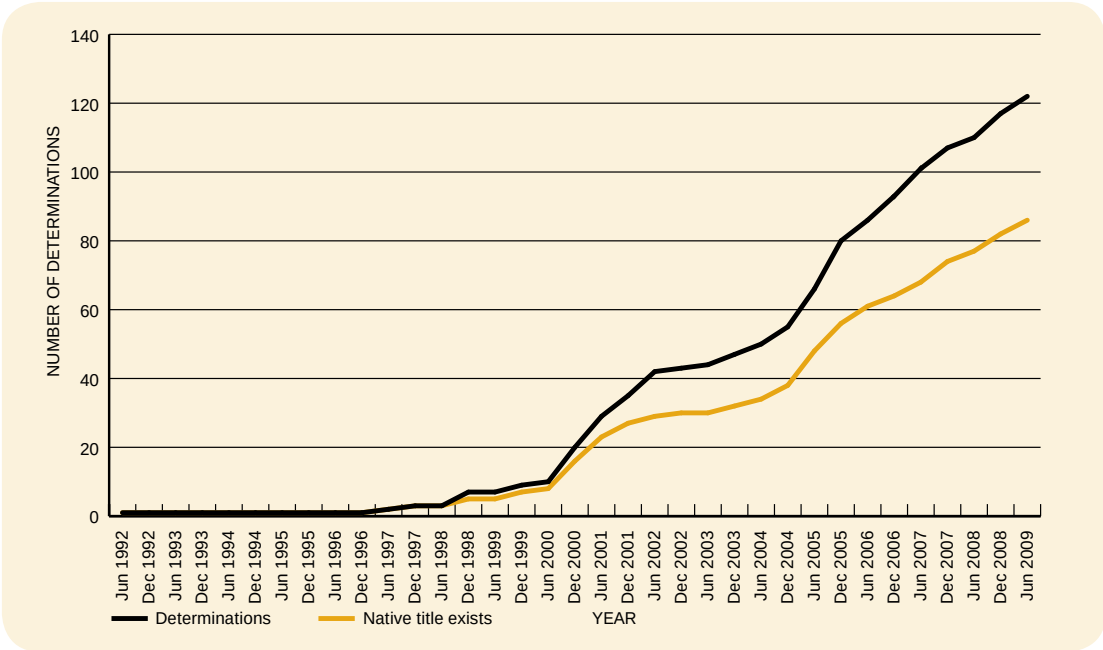
In this Overview, it is appropriate to consider a few of the matters listed above in light of the proposed amendments to the Act.

Forecast for the resolution of native title claims

As at 30 June 2009, there were 491 applications in the system, 459 of them claimant applications, as well as 25 non-claimant and seven compensation applications.

Most of the claimant applications are in the Northern Territory (159 or 35 per cent), Queensland (136 or 30 per cent) and Western Australia (95 or 21 per cent). Most of the non-claimant applications (24 or 96 per cent) are in New South Wales.

Figure 1: Cumulative determinations of native title as at 30 June 2009



As Figure 1 shows, there has been a steady rise in the number of determinations in recent years, particularly following landmark decisions of the High Court up to 2002. The legal ground rules having been established, there is now a clearer framework for negotiating outcomes rather than going to a court hearing.

Despite that change in circumstances, it usually takes years to resolve claimant applications. An analysis of the 123 claimant applications that had been determined as at 30 June 2009 shows that:

- for the 75 determined by *consent,* the average time for achieving a determination was 72 months (six years)
- for the 48 *litigated* determinations, the average time for achieving a determination was 84 months (seven years).

Those averages cannot be used to predict how long it will take to resolve a particular native title claim. The range of periods to finalise those claims was from 10 months to 14 years and three months.

Given the length of time that has passed since many of the current claims were made, those averages are likely to increase rather than decrease in the immediate future. Of the 459 current claimant applications as at 30 June 2009:

- 93 (or 20 per cent) were lodged in or since 1 July 2004, i.e. in the past five years
- 223 (or 49 per cent) were lodged between 1 July 1999 and 30 June 2004, i.e. in the past six to 10 years
- 143 (or 31 per cent) were lodged earlier, i.e. have been in the system for between 10 and 15.5 years.

It should also be recognised that, as noted in last year's annual report, many of the claims that have been resolved to date were relatively straightforward in terms of tenure and connection issues. Many of the remaining claims are in more densely settled areas where it will be more difficult to demonstrate the continuity of traditional laws and customs and the native title rights under them, and where native title has been extinguished (in part or in whole) over substantial areas.

The Tribunal estimates that, at the current rate of claim lodgement and claim resolution (averaged between 2000 and 2008), it will take until about 2035 to resolve the current claims and those that are likely to be lodged in the next few years (e.g. by determination, withdrawal, amalgamation or dismissal).

Although the Tribunal's estimate has prompted some expressions of concern, it is interesting to note another estimate in relation to one Australian jurisdiction. In his speech on 4 June 2009 announcing the Victorian Native Title Settlement Framework, the Victorian Attorney-General and Deputy Premier, the Hon. Rob Hulls, referred to the

'costly and protracted' negotiations that had led to the resolution by agreement of some native title claims in Victoria. According to Mr Hulls, at the rate at which the claims were progressing, it would take 55 years to resolve all existing and predicted claims. Furthermore, the traditional owners' aspirations were unlikely to be fully realised.

That estimate illustrates that in parts of Australia there is an expectation, including at governmental levels, that it will take decades to resolve existing and future claims. That should compel the key participants in the native title system to look at ways of improving existing practices (some of which were summarised at pp. 8–9 of last year's annual report) to secure appropriate outcomes in timely and effective ways.

It is important to note, however, that the rate of disposition will not be uniform across the country. Indeed, it is likely that in some regions all the claims will be resolved much sooner. For example almost all of the native title claims to land in the Torres Strait have been resolved by consent, and the hearing by the Federal Court of the Torres Strait regional sea claim was nearing completion at the end of the reporting period. It is estimated that most, if not all of the native title claims in South Australia north of Port Augusta will be resolved in the next five years. The map of determinations (p. 55) shows the extensive areas of Western Australia that are subject to determinations of native title.

Operation and implications of proposed amendments to the Native Title Act
As noted earlier, the Native Title Amendment Bill 2009 passed through the House of Representatives during the reporting period, but had not been debated in the Senate before 30 June 2009. If enacted, the amendments will affect the claims resolution process by enabling the Federal Court, among other things, to:

- determine who will mediate in relation to native title claims (the Court, the Tribunal or another appropriate person or body)
- rely on statements of facts agreed between parties when making consent determinations of determinations of native title
- make orders by consent of the parties that relate to matters other than native title.

Speaking on the introduction of the Bill, the Commonwealth Attorney-General said that the Australian Government's 'key objective' for the native title system is 'to resolve land use and ownership issues through negotiation, where possible, rather than through litigation'—an objective that has been 'a central plank' of the Act since its introduction in 1994. He said that the amendments would 'contribute to broader, more flexible and quicker negotiated settlements of native title claims'. The key amendments support the Australian Government's objective of 'achieving more negotiated native title outcomes in a more timely, effective and efficient fashion'—an objective that is reflected in the Tribunal's *Strategic Plan 2009–2011*.

The Australian Government has expressed its confidence in the Court as the body to advance the resolution of native title claims in that way by coordinating case management. According to the Commonwealth Attorney-General, having 'one body actively control the direction of each case with the assistance of case management powers means opportunities for resolution can be more easily identified'. In giving it that role, the Government is confident that the Court has the skills to 'actively manage' native title claims in a way which will lead to resolution of claims 'in the shortest possible time frames'. The amendments will draw on the Court's 'significant alternative dispute resolution experience to achieve more negotiated outcomes'.

The ensuing debate in the House of Representatives indicated the degree to which that confidence is shared by other members of Parliament, and the high expectations they have of the Court. The Court also made clear to the Senate Committee that it welcomed the amendments and the responsibility and accountability that will go with them.

The success of the amended scheme will be influenced by, if not dependent on, factors that are, at best, incidental to the legislation. They include:

- the resources available to the parties, Court and Tribunal
- the extent of communication, cooperation and coordination within and between the institutions (principally the Court and the Tribunal)
- primarily, the attitudes of, and approaches taken by, the parties.

Taking into account the resources of the parties, Court and Tribunal: The Court's written submission to the Senate Committee's inquiry into the Bill stated that the Court, as with the Tribunal and others, 'has been and continues to be mindful of the resources available to all in the jurisdiction and as such understands the need for a coordinated approach to the management of the list'. As noted earlier, the Australian Government has included additional money for native title representative bodies in the 2009 budget, but has reduced the amount available for respondent parties.

The issue here is not just the amount of resources but how they are prioritised and used. It is often the case that the progress of claims is delayed because the resources of the claim group and their representatives are directed to what (from their perspective at least) are more tangible, immediate and beneficial outcomes than a bare determination of native title (e.g. the negotiation of ILUAs or various future act agreements). For registered claim groups, the procedural rights which they have while their claim remains registered are as extensive as those they might secure from a determination that native title exists. Indeed, it is possible that, even if their claim ultimately results in a determination that native title exists, the native title rights and interests recognised will be fewer and narrower in scope than those on the Register of Native Title Claims. The incentive to pursue a determination as a matter of priority is diminished accordingly.

Although the Court will assume additional powers and functions, the Senate Committee was informed that, at this stage, the Court did not 'envisage any immediate need to seek any additional resources to take over this responsibility'.

The Tribunal offers a range of mediation services including specialised flexible multidisciplinary agreement-making teams that are created according to the particular requirements of individual claims and can call on a range of geospatial, research and legal resources. The reduced levels of Tribunal membership and annual budgetary allocations for the next four years create challenges to deliver timely and effective services across Australia as required by the Court and the parties.

Communication, cooperation and coordination: At the end of the debate on the Bill, the Attorney-General said:

> The government has confidence in the ability of the Federal Court to provide a nationally coordinated approach to the resolution of native title. ... [T]he court has also made clear that it will be approaching native title claims in a consistent and nationally coordinated way.

The Court's written submission about the Bill to the Senate Committee referred to the requirement for 'coordination, consistency, and a refined focus on appropriate case management and ADR responses with a view to arriving at consent determinations that encompass broad outcomes, as soon as possible'.

It might be expected that any new approach will build on the regional focus on claim management and resolution adopted by the Court since 2007. To be effective (according to the Court's submission), this approach 'requires coordination and sound management and as such the Court will improve its existing case management strategy'.

If enacted, the proposed amendments will realign the relationship between the Court and the Tribunal. It remains to be seen what the practical operational effect will be. For example, to what extent will the Court conduct mediation of claimant applications, including in relation to issues of traditional connection to land or waters? There are also issues about how mediators other than the Court or the Tribunal are to be identified, paid and supported administratively and with specialist geospatial, research, legal and other resources.

Implicit in the proposed amendments is the possible fragmentation of the current regional approach to planning and case management. Much of the success of regional planning, and the progress of individual claimant applications to date, result from a coordinated approach between the Court and the Tribunal. Such an approach has involved:

- clear communication between the Court and Tribunal

- the Court making orders consistent with those proposed by the Tribunal to provide greater imperative to mediation
- the reinforcement through the Court or Tribunal of identified time frames for mediation.

The productive relationship between the Court and the Tribunal was reflected in the reasons for judgment of Justice North when making a consent determination that native title exists in the north-west region of Western Australia. His Honour wrote:

> The respective roles of the Court and the Tribunal in the management of applications for native title determinations have been the subject over recent years of legislative ping pong. At times the Court is put in charge of the process and at other times the Tribunal is put in charge of the process. Through the apparent turbulence of these changes the management of applications has continued unaffected in many cases as a result of the well established and professionally based relationships between judges of the Court and members of the Tribunal. (*Hunter v Western Australia* [2009] FCA 654 at [31])

In that case the Tribunal members 'worked in close and harmonious cooperation with the Court'. They 'facilitated the making of the agreement between the parties, and the Court ... supervised the overall progress of the mediation'.

Since 2007, the Tribunal has had the right to appear before the Court at a hearing in relation to a matter while that matter is with the Tribunal for mediation for the purpose of assisting the Court in relation to a proceeding. The Tribunal may also appear at a hearing to determine whether a matter should be referred to the Tribunal. Under the proposed amendments, the Tribunal's right to appear before the Court and to provide voluntary regional mediation progress reports and regional work plans will be removed.

Much will depend on how the scheme, if enacted in the form set out in the Bill, is administered by individual judges of the Court. The Tribunal will work to the best of its ability to implement whatever changes the Parliament makes, as it has done in relation to numerous amendments to the Act over the past 15 years.

To that end, during the reporting period the Tribunal participated in discussions with representatives of the Federal Court and relevant Australian Government departments about the implementation of the proposed scheme. The Tribunal will continue to work closely with the Court to administer that scheme.

The attitudes and approaches of parties, and broader settlement options: Many parties (not just native title claim groups) see the proceedings as an opportunity to negotiate outcomes that may, but need not, include a determination of native title. The Act clearly contemplates that possibility, and provides for the Court to adjourn proceedings to allow

for negotiations that might result in an application being withdrawn or amended, the parties to a proceeding being varied or some other thing being done in relation to the application. An agreement may involve matters other than native title.

The proposed amendments to the Act provide further indications that participants should take a broad view of native title proceedings. They include provision for the Court to make orders, under ss. 87 and 87A, that give effect to terms of an agreement between parties 'that involve matters other than native title'. The Explanatory Memorandum on the Bill illustrates the potentially very broad scope of such agreements and orders. It states:

> Examples of matters other than native title that may be covered by agreements include matters such as economic development opportunities, training, employment, heritage, sustainability, the benefits for parties, and existing industry principles or agreements between parties or parties and others that might be relevant to making orders about matters other than native title.

It remains to be seen whether (and, if so, how) such amendments will affect case management practices of the Court.

Claims can take years longer to resolve if negotiations involve a broader settlement of indigenous issues (by including, for example, land grants under state or territory legislation, or joint management of conservation reserves) because other processes (e.g. the surveying, gazettal or de-gazettal and creation of titles for parcels of land) have to be undertaken in addition to the native title processes. A bare determination of native title might be a quicker outcome, but a comprehensive land settlement (whether or not it involves a determination of native title) might be much more satisfactory for all the parties.

It should also be understood that there are numerous factors that delay the resolution of claims, most of which will not be met by the proposed amendments to the Act. Any improvement to the processes and practices of the Tribunal and the Court will have a negligible effect on the resolution of native title claims by agreement if the parties to the proceedings are unwilling or unable to participate productively or in a timely manner.

In the same vein, the Attorney-General has stated that 'real advances in native title will only come through changes in the behaviour of all parties, rather than legislative overhaul'.

Meeting the challenges facing the Tribunal

In summary, the challenges for the Tribunal in 2009–10 and beyond include:

- dealing with the effects of the amendments upon the Tribunal's mediation practice and related functions

- obtaining clarity in the respective powers and functions of the Federal Court and the Tribunal under the amended Act
- operating with reduced membership
- operating with reduced funding in each year of the 2009–13 budget cycle
- making other savings that have been mandated in the 2009–10 financial year.

The Tribunal is responding to the new native title environment by:

- strategically repositioning itself through its *Strategic Plan 2009–2011*, in particular as articulated in its new vision, 'Timely, effective native title and related outcomes'
- developing stronger and more effective relationships with the Federal Court and other participants in the system
- regularly reporting to the Federal Court on a regional as well as an individual case basis
- implementing initiatives designed to streamline native title processes, such as holding scoping conferences for non-government respondents
- entering into tenure information-sharing agreements with relevant state and territory authorities
- engaging in cross-institutional projects that will assist in the expediting of claims, such as the investigation of regional approaches to anthropological research.

Conclusion

Some 15 years after the Act commenced, the native title system has provided a range of positive outcomes for many Indigenous Australians. Some of those outcomes are recorded in this annual report.

The native title scheme expressly favours resolution of native title issues by agreement.

The process by which native title applications are resolved by agreement requires the active and positive involvement of applicants and governments. It 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. The Federal Court has an important role in overseeing and at times guiding or directing key processes.

Proposals for the use of land where native title has been proved to exist or might exist, give opportunities to parties to negotiate a range of agreements, some of which provide economic and other opportunities for Aboriginal people and Torres Strait Islanders.

The Tribunal and other participants face significant challenges in the current operating environment. In essence, these challenges are not new. The proposed amendments to the Act might assist in meeting some of those challenges, and may create some new ones.

It falls to all participants to find ways to reach outcomes in a timely and more efficient manner—whether in relation to the hundreds of current and future native title applications, or the many other issues that arise over areas where native title has been shown to exist or might exist.

Effective responses to these many challenges require innovation, leadership and commitment to achieving results across the native title system.

The Tribunal will continue to work constructively with all clients and stakeholders to facilitate the achievement of timely and effective native title and related outcomes.

Graeme Neate
President

In this section:

- **the Native Title Act prescribes the numerous powers and functions of the President, Deputy Presidents, Members and Registrar**
- **the Tribunal's new vision is *timely and effective native title and related outcomes***
- **the output structure focuses on stakeholder and community relations, agreement-making and decisions.**

Tribunal overview

Role and functions

The Native Title Act establishes the Tribunal and sets out its functions and powers.

The Tribunal's vision is *timely and effective native title and related outcomes;* the Tribunal's mission is to facilitate the achievement of timely and effective outcomes and, as required by the Act, to carry out its functions in a fair, just, economical, informal and prompt way. The Tribunal pursues its vision and mission through a wide range of activities which are listed below.

The President, deputy presidents and other members of the Tribunal have statutory responsibility for:

- mediating claimant and non-claimant applications and compensation applications
- reporting to the Court on the progress of mediation
- preparing and providing regional mediation progress reports and regional work plans to the Court
- arbitrating objections to the expedited procedure in the future act scheme
- mediating in relation to certain proposed acts on areas where native title exists or might exist (future acts)
- where parties cannot agree, arbitrating applications for a determination of whether a future act can be undertaken and, if so, whether any conditions will apply
- assisting people to negotiate ILUAs, and helping to resolve any objections to area and alternative procedure ILUAs
- reconsidering decisions of the Registrar (or Registrar's delegate) not to accept a claimant application for registration
- conducting reviews on whether there are native title rights and interests
- conducting native title application inquiries.

Under the Act, the President is responsible for managing the administrative affairs of the Tribunal, with the assistance of 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.

Registrar Stephanie Fryer-Smith.

The Act gives the Registrar specific responsibilities, including:

- assisting people at any stage of any proceedings under the Act, including in the preparation of applications
- assessing claimant applications for registration against the conditions of the registration test, and registering those applications which meet those conditions on the Register of Native Title Claims
- 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. She or he may delegate all or any of the Registrar's powers under the Act to Tribunal employees, and may also engage consultants.

Applications for a native title determination (claimant and non-claimant applications) and compensation applications are filed in and managed by the Court. 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—Native title agreements and related agreements, p. 66.

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 Output 2.3—Future act agreements, p. 72, Output 3.3—Future act determinations and decisions whether negotiations were undertaken in good faith, p. 79 and Output 3.4—Finalised objections to expedited procedure, p. 83.

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 other members. The Act sets out the qualifications for membership. The role of members is defined in various sections of the Act. For further information, see Role and functions, p. 35.

Some members are full time and others are part-time appointees. A biographical note on each current member is available on the Tribunal's website.

At the end of the reporting period, there were nine members, comprising three presidential members (all full time) and six other members (four full time and two part time). For a list of members, their terms of appointment and location see Table 29: Holders of public office of the National Native Title Tribunal as at 30 June 2009, p. 112.

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

Members of the National Native Title Tribunal (left to right) Neville MacPherson, Daniel O'Dea, John Sosso, Gaye Sculthorpe, John Catlin, Graeme Neate, Registrar Stephanie Fryer-Smith, Graham Fletcher, Chris Sumner and Robert Faulkner.

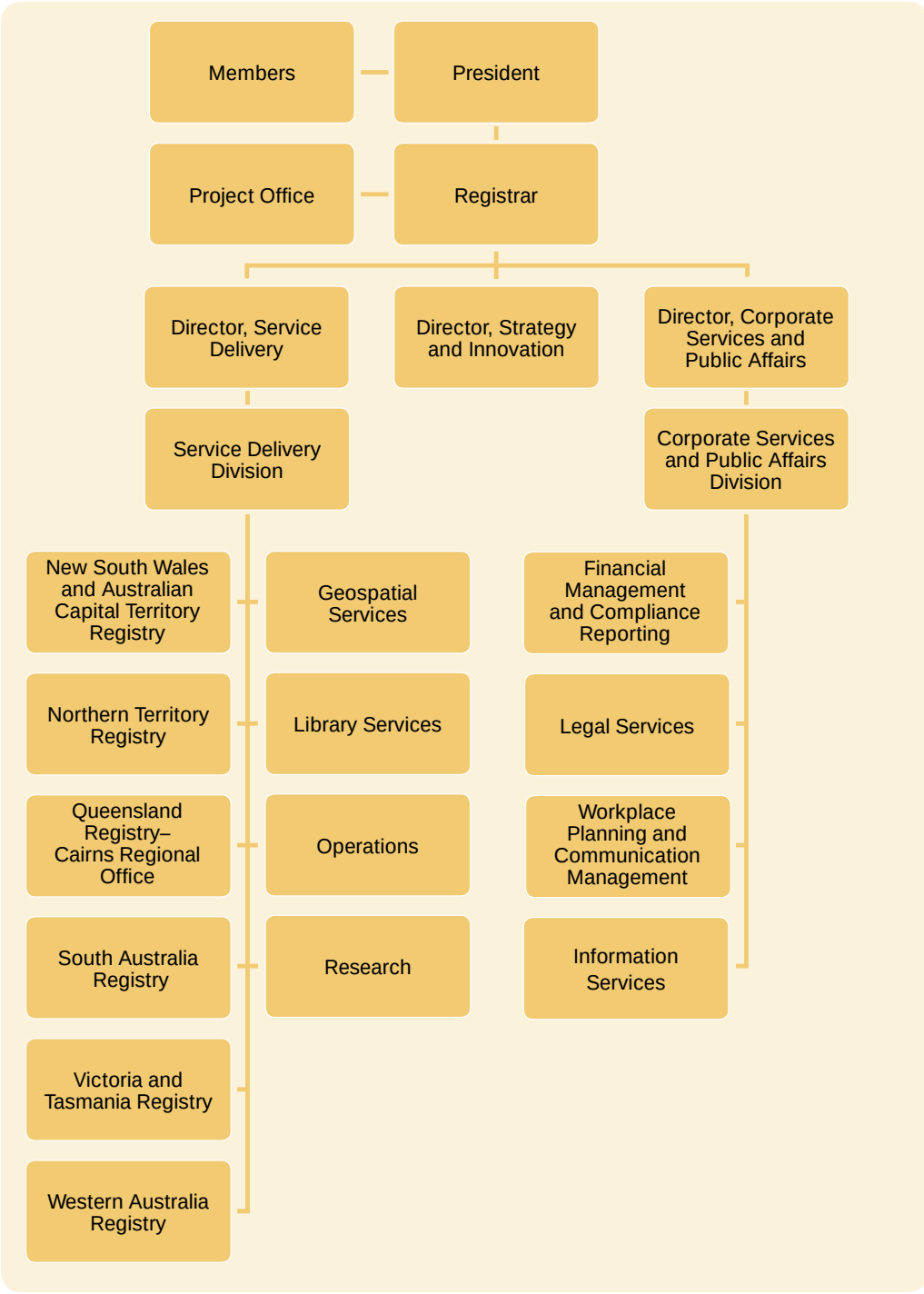
Organisational structure

The Tribunal currently has two divisions; Service Delivery and Corporate Services and Public Affairs. Hugh Chevis is the Director Service Delivery and Franklin Gaffney is the Director Corporate Services and Public Affairs.

From 31 July 2008 until 17 October 2008, while Mr Gaffney was Acting Registrar, manager of workplace planning and communication management Tim Evans acted as the Director Corporate Services and Public Affairs.

On 11 May 2009, New South Wales state manager Frank Russo was appointed as Director Strategy and Innovation for a six-month term. The role assists the President and Registrar to implement the Tribunal's new strategic plan and respond to challenges in the native title system, including those created by the proposed changes in 2009 to the Act and future budgetary constraints.

Figure 2: National Native Title Tribunal organisational structure, 30 June 2009



Outcome and output structure

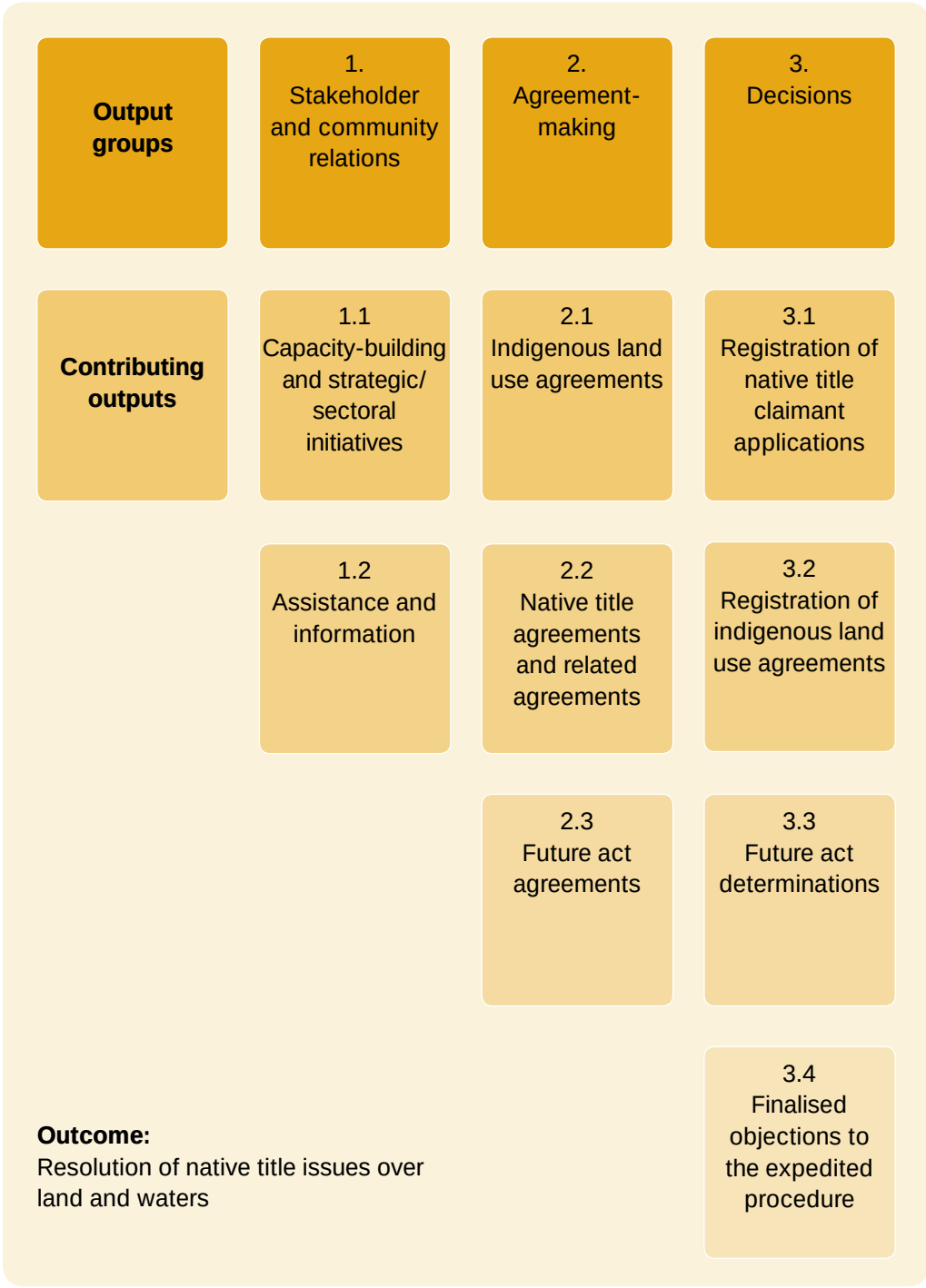
Outcomes are the results, impacts or consequences of action by the Australian Government—in this case, through its agency, the Tribunal—on the Australian community. Outputs are the goods or services produced by agencies (such as the Tribunal) on behalf of the Australian Government for external organisations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

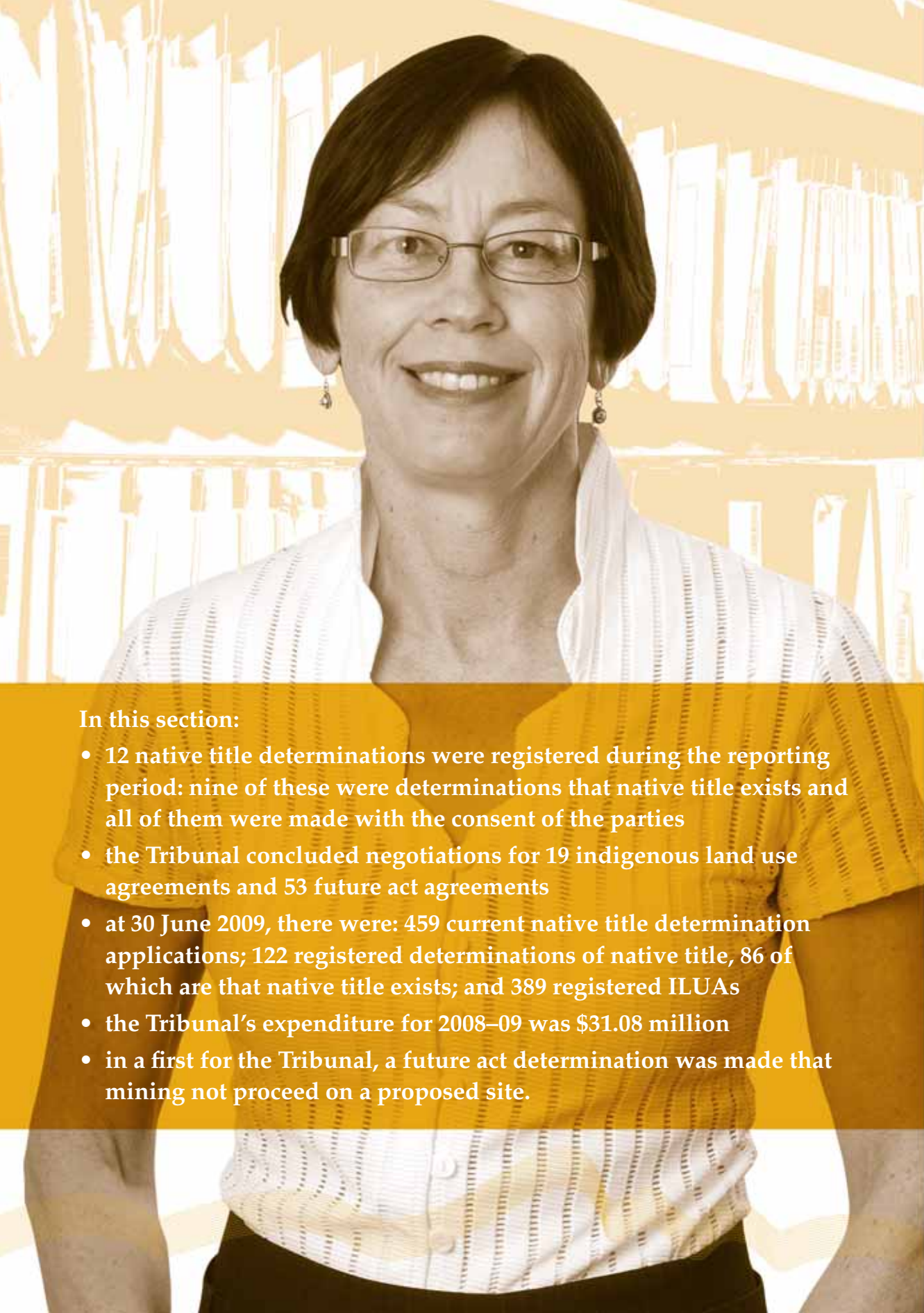
For the reporting period, the Tribunal's outcome was 'Resolution of native title issues over land and waters' and three output groups are applicable. This outcome statement and outputs structure came into effect on 1 July 2005. The Tribunal's output groups are:

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

Details of the Tribunal's performance and costs in accordance with this framework are provided in Outcome and output performance, p. 43.

Figure 3: Outcome and output framework





In this section:

- 12 native title determinations were registered during the reporting period: nine of these were determinations that native title exists and all of them were made with the consent of the parties
- the Tribunal concluded negotiations for 19 indigenous land use agreements and 53 future act agreements
- at 30 June 2009, there were: 459 current native title determination applications; 122 registered determinations of native title, 86 of which are that native title exists; and 389 registered ILUAs
- the Tribunal's expenditure for 2008–09 was $31.08 million
- in a first for the Tribunal, a future act determination was made that mining not proceed on a proposed site.

Report on performance

Financial performance

How the Tribunal is funded

The Tribunal forms part of the 'justice system' group within the Attorney-General's portfolio and it receives all of its funding as departmental appropriation from the Australian Parliament.

The Tribunal uses resources to produce goods and services (i.e. its outputs) at a quantity, quality and price endorsed by government. The Tribunal's outputs for 2008–09 are detailed in Table 1: Total resources for outcome, p. 44.

The current funding cycle concluded on 30 June 2009.

Outcome and output performance

The Tribunal publishes detailed financial forecasts each year as part of the Budget Papers.

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 revising the PBS and revising the estimated numbers of outputs. Any changes are reported to Parliament through the additional estimates process.

The estimation process in 2008–09

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

Tribunal Member Gaye Sculthorpe.

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			
Outcome 1—Resolution of native title issues over land and waters			
	Budget *	**Actual Expenses**	**Variation**
	2008–09	**2008–09**	
	$'000	**$'000**	**$'000**
	(a)	**(b)**	**(a)-(b)**
Output group 1: Stakeholder and community relations			
Departmental outputs			
Output 1.1: Projects and initiatives	862	812	50
Output 1.2: Assistance and information	3,951	4,244	(293)
Subtotal for Output group 1	**4,813**	**5,056**	**(243)**
Output group 2: Agreement-making			
Departmental outputs			
Output 2.1: Indigenous land use agreements	5,048	4,467	581
Output 2.2: Native title agreements	11,774	11,828	(54)
Output 2.3: Future act agreements	1,946	2,171	(225)
Subtotal for Output group 2	**18,768**	**18,466**	**302**
Output group 3: Decisions			
Departmental outputs			
Output 3.1: Claim registration	2,723	3,269	(546)
Output 3.2: Registration of indigenous land use agreements	2,083	1,738	345
Output 3.3: Future act determinations	599	488	111
Output 3.4: Finalised objections	3,370	2,061	1,309
Subtotal for Output group 3	**8,775**	**7,556**	**1,219**
Total for Outcome 1	**32,356**	**31,078**	**1,278**
Departmental			
Less revenue from other sources available to be used (c)	200	75	125
Net cost to government (Appropriation)	**32,156**	**31,003**	**1,153**
Average staffing level (FTE number)		**221**	

* Full-year budget, including any subsequent adjustment made to the 2008–09 Budget

(a) the budget for 2008–09 is the budget published in the Tribunal's 2008–09 Portfolio Budget Statements, adjusted for the increased efficiency dividend

(b) actual expenses shown is the total expenses recorded against each output in the financial statements

(c) revenue from other sources available to be used is miscellaneous revenue from the sale of goods and services, and interest income.

Table 2 identifies the various funding sources that the Tribunal was able to draw upon during the year.

Table 2: Agency resource statement 2008–09

	Actual available appropriations for 2008–09 $'000 (a)	Payments made $'000 (b)	Balance remaining $'000 (a-b)
Ordinary annual services[1]			
Departmental appropriation			
Estimate of resources as per 2009–10 PBS	16,727		
Less cash and cash equivalents included in estimate of resources as per 2009–10 PBS	(1,018)		
Prior year departmental appropriation restated as at 1 July 2008	15,709		
Departmental appropriation	32,156	(32,603)	
Appropriations to take account of recoverable GST (FMA section 30A)	1,046		
Annotations to 'net appropriations' (FMA section 31)	267		
GST recoverable	(172)		
Cash held not appropriated	(37)		
Total ordinary annual services—closing balance	**48,969**	**(32,603)**	**16,366**
Special accounts			
Opening balance	-		
Non-appropriation receipts to			
Special accounts	5		
Payments made		5	
Special accounts—closing balance	**5**	**5**	**-**
Total resourcing and payments	**48,974**	**(32,598)**	

[1] Appropriation Bill (No.1) 2008–09.

Key results in 2008–09

Key results for Tribunal departmental resources included:

- operating surplus: the Tribunal had an operating surplus of $1.15 million, in large part due to reductions in employee costs
- an increase in equity: net equity increased by $1.15 million to a total of $14.39 million due to accumulated surpluses.

The Tribunal received an unqualified audit report on the 2008–09 financial statements from the Australian National Audit Office.

Tribunal finances

The Tribunal's appropriation for 2008–09 was $32.16 million. In addition, revenue from other sources amounted to $0.075 million. The Tribunal's expenditure for the 2008–09 reporting period was $31.08 million, and consequently the Tribunal finished the year with an operating surplus of $1.15 million.

Significant shifts in the Tribunal's income, expenses and balance sheets in this reporting period were:

- although expenses rose in comparison to 2007–08, total expenditure was below budget, and costs of employees remained the Tribunal's largest single expense ($19.6 million)
- liabilities dropped slightly due to a reduction in employee provisions
- the increase in net assets was largely attributable to an increase in non-financial assets (leasehold improvements) and the overall net operating surplus for the year.

Details of trends in Tribunal finances are provided in Table 3.

Table 3: Comparison of income, expenses, assets and liabilities

Trends in departmental finances		(1) 2007–08 $m	(2) 2008–09 $m	(2)–(1) Change from last year $m
Revenue from Government		32.97	32.16	-.81
Other revenues		.24	.07	-.17
Total income		**33.21**	**32.23**	**-.98**
Employee expenses		19.73	19.61	.12
Supplier expenses		9.96	10.96	-1.00
Other expenses		.44	.51	-.07
Total expenses		**30.13**	**31.08**	**-.95**
Operating result		**3.08**	**1.15**	**-1.93**
Financial assets	A	16.59	17.35	.76
Non-financial assets	B	2.00	2.35	.35
Liabilities	C	5.35	5.31	.04
Net assets = A+B-C		**13.24**	**14.39**	**1.15**

Understanding the Tribunal's financial statements

The content and format of the financial statements is prescribed by the Minister for Finance and Deregulation under the *Financial Management and Accountability Act 1997* (Cwlth). The statements include:

- an income statement showing Tribunal income and expenses on an accrual basis
- a balance sheet detailing Tribunal assets and liabilities, as well as the amount of the Australian Government's equity at year-end
- a statement of cash flows showing where the cash the Tribunal used during the year came from and how it was used
- a statement of changes in equity showing how the Australian Government's equity held by the Tribunal has changed due to changes in asset valuation, accumulated surpluses and capital transactions.

More information is provided in the accompanying schedules and explanatory notes, while information on related topics is available elsewhere in this report as follows:

- executive remuneration policies (see Recruitment and workforce planning, p. 95)
- procurement policies and practices (see Performance against purchasing policies, p. 108)
- consultancies (see Consultancies, p. 109)
- payments for market research and advertising (see Appendix IV Use of advertising and market research, p. 140).

Full details are available in Appendix VI Audit report and notes to the financial statements, p. 143.

Performance overview

Price

The total price for the Tribunal's outputs was $31.08 million. The price for each output is set out in the performance at a glance tables in the following sections. Detailed information is provided in Tribunal finances, p. 46.

Client satisfaction

The Tribunal, as part of corporate performance management, is required to identify clients' needs and monitor its performance in delivery of services. Client satisfaction is one of the accountability measures attached to the Tribunal's outputs and research is undertaken every two years. New research will be undertaken in 2009–10. For further information see Client satisfaction, p. 106.

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.

In addition, the client satisfaction research report informs reporting and benchmarking against the first effectiveness indicator. The results for the second and third effectiveness indicator are drawn from quantitative outcomes achieved in the reporting period

Results

Client satisfaction research will be undertaken in 2009–10 in line with the Tribunal's commitment to research every two years. Accordingly there are no results to report against the first indicator.

The Tribunal met the second and third effectiveness indicators. During the reporting period, there was an increase in the proportion of native title and related outcomes as follows:

- all of the nine determinations (100 per cent) that native title exists were made by consent of the parties, this is an increase over the 2007–08 reporting period in which

eight of the nine (88 per cent) determinations that native title exists were made by the consent of the parties
- seventy-two concluded agreements (19 ILUAs and 53 future act agreements) compared to one arbitrated Future Act Determination Application.

Requests for appeal or review were made in relation to four Tribunal decisions. At the end of the reporting period, two requests were awaiting outcome, one was successful and one was unsuccessful. The figures were well below the effectiveness indicator of five per cent of decisions successfully appealed or reviewed.

Table 4: Decisions

Decision type	Number of decisions made	Number appealed/ reviewed	Outcome*	Number
Registration of claimant applications	40	2	Process pending	-
Registration of indigenous land use agreements	52	1	Appeal dismissed	-
Future act determinations	39	1	Appeal upheld	1
Finalised objections to the expedited procedure	1184	0	n/a	-

* See Appendix II for further details.

Overview of current applications

Tables 5 and 6 provide an overview of the number of matters on the three registers maintained by the Registrar and the number of current applications as at 30 June 2009.

Table 5: Overview of public registers maintained by the Native Title Registrar

Register	Number
National Native Title Register—approved native title determinations	122 (86 where native title does exist and 36 where native title does not exist)
Register of Native Title Claims—native title determination applications that have met the requirements for registration	399
Register of Indigenous Land Use Agreements—indigenous land use agreements accepted for registration	389

Table 6: Current applications as at 30 June 2009

Native title applications		Future act applications		Indigenous land use agreements	
Claimant	459	FA Determinations (s. 35)*	16	Lodged	8
Compensation	7	FA Mediation (s. 31)	102	Accepted for notification	3
Non-claimant	25	FA Objection*	778	In notification	3
				Notification ended	1
Total	**491**		**896**		**15**

* Note: counted by tenement.

Shifts in volume of registration, notification and mediation of native title determination applications

The Tribunal carries out a number of key functions in respect of native title determination applications (or claimant applications); in particular, registration testing, notification and mediation. These functions involve the Registrar, employees and members of the Tribunal. Under the Tribunal's output structure, notification of specified people, organisations and governments of native title applications and applications for the registration of indigenous land use agreements, is not reported as an output. Nevertheless, it is an indicator of the number of applications that might be referred to the Tribunal for mediation.

At 30 June 2009, there were 459 claimant applications at some stage between filing and disposition. The total was lower than the 503 current claimant applications at 30 June 2008. In the reporting period, 67 claimant applications were discontinued, dismissed, struck-out, combined with other applications, or were the subject of native title determinations. As a result, 1,031 (or 69 per cent) of the claimant applications made

since the Act commenced have been finalised. Twenty-three new claimant applications were filed in the reporting period, compared with 13 in 2007–08.

Registration: In the period covered by this report 40 registration test decisions were made, 64 fewer than the 104 decisions made in the previous year. They included 20 registration tests made on applications for the second, third or fourth times. The substantial reduction in registration test decisions can be explained by reference to the number of additional registration test decisions required under the 2007 amendments to the Act, discussed in detail in last year's annual report.

For further information about the registration testing carried out by the Tribunal see Output 3.1—Registration of native title claimant applications, p. 74.

Notification: The level of notifications increased slightly in 2008–09, with 19 claimant applications being notified, compared with 14 in the previous year. Ten non-claimant and no compensation applications were notified. Some 433 (94 per cent) of current claimant applications had been notified by 30 June 2009.

Mediation: At 30 June 2008, 270 current matters were with the Tribunal for mediation. At 30 June 2009, 246 current claimant applications had been referred to the Tribunal for mediation, including 12 matters that were referred to it during the reporting period.

Although 54 per cent of current applications have been referred to the Tribunal for mediation, it is difficult to actively mediate a significant number of them. This is because parties are not sufficiently prepared for that purpose or they lack resources to engage in mediation at the time. As many as half of the applications referred to the Tribunal are not being actively mediated for reasons beyond the Tribunal's control.

Having regard to the numerous factors that affect the progress of mediation, the Tribunal has developed regional and claim specific mediation programs in accordance with the national case flow management scheme (discussed p. 57) and procedural directions issued by the President, informed by regional planning meetings and in response to directions of the Federal Court.

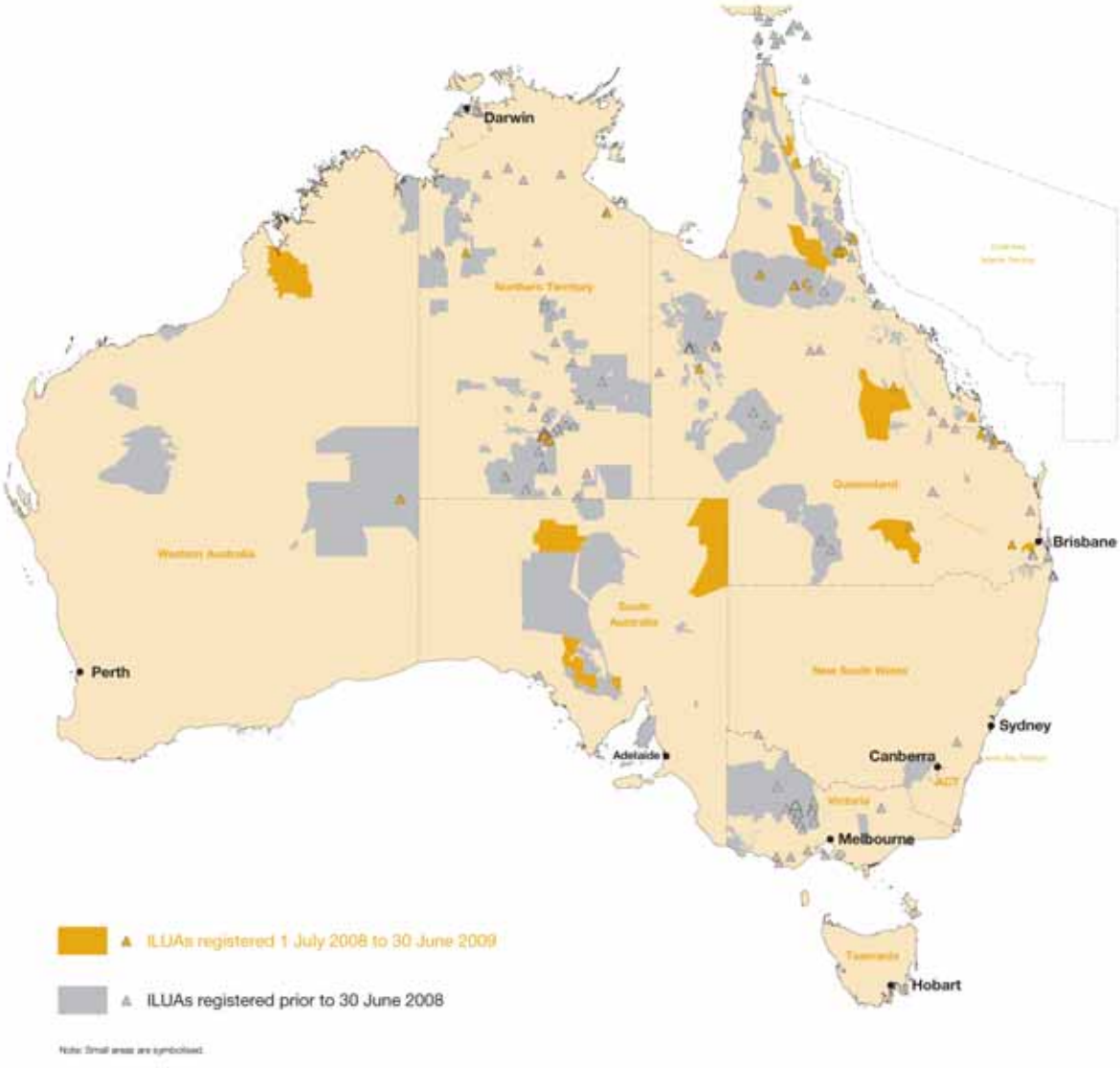
Forms of assistance offered by the Tribunal

Under the Act 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 Output 1.1—Capacity-building and strategic/sectoral initiatives, p. 59, Output 1.2—Assistance and information, p. 60 and in the Tribunal's *Strategic Plan 2009–2011.*

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. During the reporting period another 52 ILUAs were registered, bringing the total number of ILUAs on the Register of ILUAs as at 30 June 2009 to 389. Registered ILUAs covered about 1,105,955sq km or 14.4 per cent of the land mass of Australia and approximately 2,555sq km of sea as shown. At 30 June 2009, 15 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 claimant applications than through 'stand alone' ILUA negotiations. That continued a trend identified in last year's annual report. For further information see Output 2.1 —Indigenous land use agreements, p. 63.

Figure 4: Map of indigenous land use agreements at 30 June 2009



Spatial data sourced from and used with permission of: Landgate (WA), Dept of the Environment & Resource Management (Qld), Dept of Lands (NSW), Dept of Planning & Infrastructure (NT), Dept for Environment & Heritage (SA), Dept for Transport, Energy & Infrastructure (SA) Dept of Sustainability & Environment (Vic) and Geoscience Australia, Australian Gov t.
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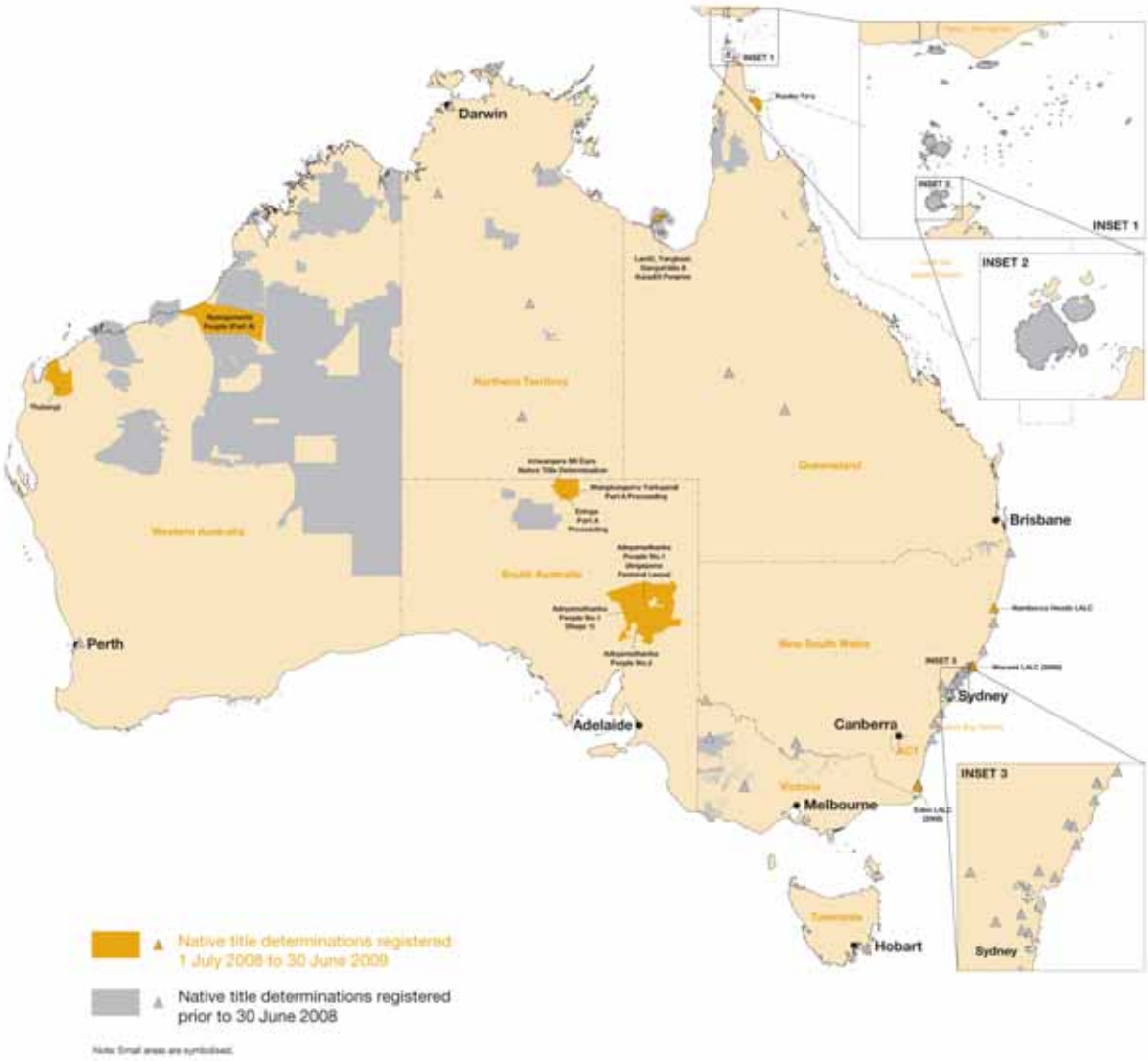
Increase in the number of determinations of native title
During the reporting period the Native Title Registrar registered 12 determinations of native title, nine of them that native title exists in relation to specific areas of land or waters. This was more than the nine determinations registered in 2007–08, but was the same number of determinations that native title exists as in that period. Details of some determinations are discussed in Appendix II Significant decisions, p. 113.

These determinations are on the public record held by the Tribunal in the National Native Title Register and are available to be viewed through the Tribunal's website under applications and determinations. The determinations 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 determination area.

All of the nine determinations that native title exists were made by consent of the parties. The three determinations that native title does not exist were the result of non-claimant applications, only one of which was litigated. That indicated the strong agreement-making environment, which is also evident in the number of agreements that deal with issues or set out processes or frameworks for mediation, see Table 13: Number of agreements by state and territory, p. 67.

At 30 June 2009, there were 122 registered determinations of native title, including 86 determinations that native title exists. The determinations covered a total area of about 913,680sq km or 11.9 per cent of the land mass of Australia. A further two conditional determinations that native title exists are also in the system, increasing the area to about 991,720sq km or 12.9 per cent of the land mass.

Figure 5: Map of native title determinations at 30 June 2009



Spatial data sourced from and used with permission of: Landgate (WA), Dept of the Environment & Resource Management (Qld), Dept of Lands (NSW), Dept of Planning & Infrastructure (NT), Dept for Environment & Heritage (SA), Dept for Transport, Energy & Infrastructure (SA) Dept of Sustainability & Environment (Vic) and Geoscience Australia, Australian Gov t.
© The State of Queensland (DERM) for that portion where their data has been used.

Performing the additional functions of the Native Title Registrar
The Act was amended in 2007 to include a scheme for the potential removal from the system of:

- registered claimant applications that were made in response to future act notices (and hence attracted certain procedural rights) but which were not being progressed after the future act was complete
- unregistered claimant applications that do not meet (and are not amended to meet) the merit requirements of the registration test, and in respect of which, in the opinion of the Court there is 'no other reason why the application in issue should not be dismissed'.

The Registrar reports to the Federal Court in relation to:

- applications lodged in response to future act notices where the future acts have been finalised over certain claimant application areas (ss. 66C, 94C)
- where a claimant application is not accepted for registration because it does not satisfy a 'merit' condition of the registration test (s. 190D(1)).

In each case it is open to the Court to dismiss the application if certain criteria are satisfied.

Future act related applications: During the reporting period, only one native title determination application was identified as meeting the requirements for providing advice under s. 66C. Due to the particular facts of that case, the Registrar, in consultation with the Federal Court Native Title Registrar, did not provide a formal report in respect of that matter.

Registration testing: The Act requires the Registrar, within one year after the relevant 2007 amendments commenced (on 15 April 2008 for some categories of applications and 1 September 2008 for others), to use best endeavours to apply the registration test to categories of claimant applications that had been registration tested and were not on the Register of Native Title Claims, or that were on the Register but were not previously required to go through the registration test. Particular focus was on whether each application satisfies all of the 'merit' conditions in s. 190B of the Act. In the reporting period, 10 decisions were made under the 2007 Transitional Provisions (or Technical Amendments) of the Act.

At 30 June 2009, 23 applications had been dismissed by the Federal Court under s. 190F(6) because they had failed the merit conditions of the registration and the other statutory criteria were satisfied.

Reconsideration of registration test decisions
Since the Act was amended in 2007, it has been possible for an applicant to request an internal reconsideration of a registration test decision made by the Registrar that his or

her application fails to meet all the conditions of the test. The reconsideration is to be made by a member of the Tribunal.

The first request for internal reconsideration was made in May 2009. The reconsideration was not completed before 30 June 2009.

No other requests for reconsideration were received during the reporting period.

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 has been determined to exist or might exist. For further information see Output 2.3—Future act agreements, p. 72.

Future act consent determinations continue to be a common means of finalising negotiations: during the reporting period 26 of the 27 future act determinations were made by consent.

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

There has been a decrease in the number of objections to the use of the expedited procedure under the Act. The number of objections fell from 1,786 in 2007–08 to 1,330 in 2008–09. As in previous years, most of those objections were in Western Australia. For further information see Table 23: Objection application outcomes by tenement, p. 84.

Strategies to maintain the momentum of agreement-making

National case flow management scheme
The Tribunal has continued to administer its national case flow management scheme which was established in 2007. The scheme is an internal management tool to assist the Tribunal perform its statutory functions better and to align its resources to relevant needs, having regard to such factors as court orders and the attitude and capacity of parties to resolve native title applications.

The scheme has a strong regional focus. It provides for:
- the maintenance and periodic updating of three separate lists of native title applications
- a process which operates from a regional basis for a nationally consistent approach to the allocation (and reallocation) of each native title application to one (or sometimes two) of the lists
- the appointment of Tribunal members as regional members or substantive members in relation to specific categories of native title applications
- a process for the nationally consistent allocation (or reallocation) of the Tribunal's resources to regions.

Every current application is allocated to one of three lists:

- a *substantive list* of applications that have been referred to the Tribunal for mediation and are likely to be resolved within the next two years by negotiation, withdrawal, strike-out or dismissal
- a *regional list* of applications that have been referred to the Tribunal for mediation and require considerable preparation with regard to key features such as connection, tenure and resolution of overlaps before they can move to the substantive list
- the *Registrar's list* of matters that require registration testing or notification, or that have not been referred to the Tribunal for mediation, future act affected applications, applications that are subject to Federal Court orders that the Tribunal not mediate, and applications that are subject of a determination that native title exists and that are awaiting the registration of a prescribed body corporate.

Detailed Procedural Directions issued by the President set out actions to be taken by members and employees in relation to applications referred to the Tribunal for mediation. The Procedural Directions are available on the Tribunal's website.

The periodic allocation (or reallocation) of each application to a list (or lists) is the responsibility of the President, assisted by advice and recommendations from the Registrar and Deputy President Sosso. They draw on recommendations and information provided by members and state managers for each state and territory. An indication of where matters stand is available from the allocations to the various lists as follows as at 30 June 2009:

Table 7: Lists

Lists	No	Application type
Substantive list	46	46 claimant
Regional list—advanced development	40	40 claimant
Regional list—less advanced development	156	153 claimant, 2 non-claimant, 1 compensation
Regional list—mediation in abeyance	6	5 claimant, 1 compensation
Registrar's list (not in mediation)	243	215 claimant, 23 non-claimant, 5 compensation

Output group 1—Stakeholder and community relations

Output 1.1—Capacity-building and strategic/sectoral initiatives

Description
Initiatives in this output category comprise large-scale projects and activities that contribute to the planning of native title activities with stakeholders and build their capacity to participate in the native title process.

These are part of the Tribunal's key role to inform stakeholders about, and assist them with, the native title processes and to further relationships with, and between, stakeholders.

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.

Table 8: Output 1.1 performance at a glance

Measure	Estimate	Result
Quantity	7	11
Quality	80% of respondents are satisfied with the initiative	Client satisfaction research not undertaken in reporting year. See p. 106
Average price per unit	$ 123,973	$ 73,840
Total price for the output	**$ 867,808**	**$ 812,244**

Comment on performance
In the reporting period, the Queensland Registry facilitated two meetings of the Queensland Native Title Liaison Committee, which comprises representatives from the Commonwealth Attorney-General's Department; the Department of Families, Housing, Community Services and Indigenous Affairs; native title representative bodies; AgForce; the state and local governments; Queensland Seafood Industry Association; and various other agencies such as the Indigenous Land Corporation; the Great Barrier Reef Marine Park Authority and Indigenous Business Australia. The meetings provide the Tribunal an opportunity to inform and update attendees on the work it is doing and the progress of claims and ILUAs. The meetings are also a forum for attendees to give updates on issues affecting them and report on trends and workloads.

In Western Australia, the Tribunal commenced an initiative intended to enhance the understanding of ILUAs within state government departments, including the Department of Housing. In the first phase of this initiative, the Tribunal provided information, training, background research and mapping products.

The Western Australian Registry also provided intensive training on future act processes to the South West Aboriginal Land and Sea Council and legal representatives for the Yindjibarndi native title holders.

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 assistance and information are:

- Quantity—the number of assistance events, products or services
- Quality—80 per cent of respondents are satisfied with Tribunal services
- Price—average price per unit and total price of output.

Table 9: Output 1.2 performance at a glance

Measure	Estimate	Result
Quantity	394	361
Quality	80% of respondents are satisfied with services	Client satisfaction research not undertaken in reporting year. See p. 106
Average price per unit	$ 10,013	$ 11,757
Total price for the output	**$ 3,945,229**	**$ 4,244,180**

Comment on performance
There were fewer requests for assistance and information in the reporting period than in earlier years. This could be an indication of a growing level of maturity within the native title system as a whole and increasing stability of personnel within the various agencies that deal with native title issues.

However, requests for geospatial products and geometric data remained strong, as the Tribunal directed more attention to reducing the number of parties to applications by identifying their interests in the land subject to claim and its underlying tenure. The

Tribunal also undertook a range of native title related research projects and produced a number of issue-based reports. A list of most research reports and papers can be found in the bibliographies section of the Research page on the Tribunal website at www.nntt.gov.au

Research paper explores the notion of traditional owner

In June 2009, senior research officer David Edelman delivered a paper at the 2009 AIATSIS native title conference in Melbourne entitled 'Broader native title settlements and the meaning of the term traditional owners'. The paper was prepared in recognition that approaches currently taken by state governments to broader settlements of native title claims (that may or may not include native title outcomes) vary with regard to what level of evidence they expect from claimant groups about their traditional connection to the claim area before they will agree to enter into such settlements. Some evidentiary thresholds, such as those used for broader settlements, revolve around the concept of traditional ownership, whereby members of the Indigenous group need to demonstrate to the government that they are the 'right people for country'. However, the meanings and usages of this concept can vary.

The conference paper critically examined the notion of Indigenous traditional ownership, canvassing the various legislative and other interpretations of this term. It explored the extent to which interpretations of traditional ownership might accommodate a 'ranking' of associations to country, the distinction between traditional owners and 'historical people', and the conflicts between groups about traditional ownership.

The themes explored in the paper have significant relevance for native title and related matters, and for the broader land settlement initiative, the Victorian Native Title Settlement Framework, which was endorsed by the Victorian State Government in June 2009.

More than 40 information sessions were provided to stakeholders and other interested groups around the country. The Tribunal also assisted parties by providing comments on draft native title determinations.

As in previous years, the Tribunal supplied statistical data on the progress of native title determination applications, future acts and ILUAs on a regular or ad hoc basis to other agencies working in the native title system.

Throughout the reporting period, the Tribunal continued its practice of producing newsletters and other products to keep stakeholders informed of the latest developments in native title. Four issues of *Talking Native Title* were published to the Tribunal's website and mailed out to subscribers. These newsletters cover current events, new agreements, emerging issues and updates about Tribunal services and staff. A selection of electronic newsletters, focused on region-specific issues, was also produced. The DVD, *15 years of native title*, was translated using Chinese subtitles.

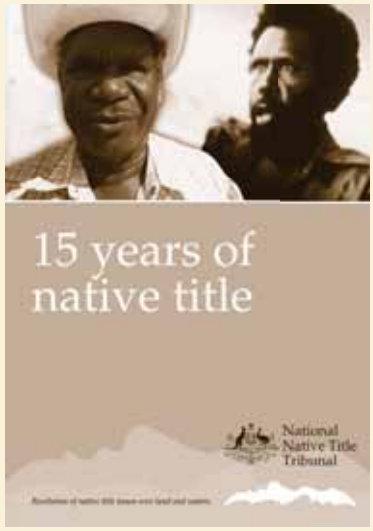
Three issues of *Native Title Hot Spots* were produced. Written largely for legal practitioners, they provide summaries of the latest developments in native title case law. These too are available via the website or subscription.

Two editions of the *Indigenous Fishing Bulletin* provided updates on significant issues relating to Indigenous fishing interests.

Native title documentary translated into Chinese

The Tribunal re-released its *15 years of native title* DVD with Chinese subtitles in December 2008. This was in response to the burgeoning involvement of Chinese investors in Australia's mining industry.

Produced to promote Chinese investors' understanding of Australia's native title laws, the DVD documents the journey of native title through history, law and changes since it was first legally recognised in Australia in 1992. Viewers take a visual journey through the Mabo, Yorta Yorta, Wik and Wik Way and Noonkanbah cases, each providing a different perspective on native title and the ways in which native title applications may be determined by consent, after negotiation, or by judicial process.



In one of the stories, the documentary tells how native title provided security for the Wik and Wik Way People of Aurukun who, during the making of the documentary, were negotiating with Chinese bauxite mining company, Chalco.

Aurukun Traditional Owner Keri Tamwoy said at the time that one of the benefits of native title was that the company (Chalco) wanted local Indigenous people to work alongside the company workers and be jointly trained so the local people would have opportunities.

The DVD was released to clients in selected mining operations, federal and state government, Chinese diplomatic representatives, legal and industry bodies, and the Australian-based Chinese community and media.

The DVD can be ordered by completing the online order form at www.nntt.gov.au .

Output group 2—Agreement-making

Output 2.1—Indigenous land use agreements

Description
This output category covers finalised indigenous land use agreement 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 can only be made where there is no registered native title body corporate for the entire agreement area.
- Body corporate agreements can only be made where there is at least one registered native title body corporate for the entire agreement area. This means there must be at least one determination that native title exists over the entire agreement area.
- Alternative procedure agreements can only be made where there is no registered native title body for the entire agreement area. However, there must be at least one registered native title body corporate for part of the area or at least one representative Aboriginal/Torres Strait Islander body (i.e. representative body) for the agreement area.

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 claimant applications.

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

Performance
The performance indicators for ILUAs are:

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

Table 10: Output 2.1 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	2.1a) 57 2.1b) 23 2.1c) 113	2.1a) 19 2.1b) 21 2.1c) 127
Total	193	167
Quality*	Clients' perception of the quality of the agreement-making process	Client satisfaction research not undertaken in reporting year. See p. 106
Average price per unit 2.1a) 2.1b) 2.1c)	 $ 31,079 $ 42,818 $ 20,559	 $ 63,492 $ 49,869 $ 17,426
Total price for the output	**$ 5,079,447**	**$ 4,466,717**

Table 11: Quantity of ILUAs achieved by state and territory									
Type of agreement	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
2.1a) Fully concluded ILUA and use and access agreement negotiations	-	-	-	11	-	-	-	8	19
2.1b) Milestone agreements in ILUA negotiation outside NTDAs*	-	-	-	10	1	-	2	8	21
2.1c) Milestone agreements in ILUA negotiation within NTDAs*	-	3	1	47	50	-	-	26	127
Total	**-**	**3**	**1**	**68**	**51**	**-**	**2**	**42**	**167**

* Native title determination applications.

Comment on performance

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

During the reporting period, the Tribunal concluded negotiations for 19 ILUAs. All of the concluded ILUAs for which the Tribunal provided negotiation assistance were negotiated within the context of native title determination application mediation.

The highest level of ILUA activity was in Queensland where 11 ILUA negotiations were concluded. The majority of ILUA activity has been in far north Queensland and has been associated with the resolution of claimant applications. In South Australia the progressing of consent determinations, rather than ILUAs, has been prioritised and governmental funding to support the negotiation of ILUAs was reduced.

In Western Australia, five body corporate ILUA negotiations were concluded in relation to the Thalanyji consent determination (*Hayes on behalf of the Thalanyji People v Western Australia* [2008] FCA 1487), which was handed down on 18 September 2008. (For further information about the ILUAs, see the case study on p. 65). Three other body corporate ILUA negotiations were concluded in relation to the Nyangumarta consent determination.

Case study

Tribunal negotiation resolves practical coexistence issues

Several years before the Thalanyji people achieved legal recognition of their native title rights and interests on 18 September 2008, the Tribunal was actively involved in resolving questions of access to pastoral country covered by the claim, which would arise after a determination of native title.

The Thalanyji claim was over land in the western Pilbara of Western Australia. There were 174 respondent parties. Because almost all the claim area was covered with pastoral leases, pastoralists played a major role in the successful finalisation of the claim.

In the first five years after it was filed, the claim was not advanced greatly by the applicants, largely due to a lack of resources. During this period some work was done to resolve overlaps with neighbouring claims. In 2004 the applicants—many of whom were old and frail—applied to the Federal Court to preserve their evidence by way of an 'on country' hearing. They wanted to ensure that the evidence would not be lost to them should those witnesses pass away before a trial.

After hearing the evidence, the Court's view was that there was no significant barrier preventing the claim's resolution by agreement in a short period of time. Yet the Thalanyji application required a further four years to finalise for a variety of reasons, including the need for additional evidence of connection, the need for pastoral lease agreements and the applicants' lack of resources.

While the issue of connection was being resolved, the Tribunal convened a series of mediation meetings and on-country visits between 2004 and 2008. These were to resolve the intra-indigenous issues and overlaps with neighbouring claim groups, and to reach in-principle agreements concerning access agreements between the applicants and the pastoralists.

The Tribunal employed a number of strategies to hasten resolution of the matter. It provided research assistance and detailed maps for overlap resolution, identified tenures where native title is extinguished, and helped the applicants and pastoralists to develop access and coexistence agreements.

The six body corporate ILUAs resulted in practical coexistence arrangements between native title holders and pastoralists, demonstrating that relationships developed during native title negotiations can form the basis for successful ongoing agreements on the ground.

For further information about the resolution of the Thalanyji application, see Negotiating consent determination—Co-operative mediation: the Thalanyji experience, paper by Member Daniel O'Dea, at www.nntt.gov.au .

Thalanyji native title holder Lesley Hayes with Federal Court Justice Tony North.

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

Twenty-one milestones in ILUA negotiation were achieved. Ten milestones were achieved in Queensland, relating to progress of the Cape Alumina mining ILUA.

In Victoria, two milestones were achieved in the negotiation of ILUAs, and one in South Australian negotiations. Eight milestones were achieved in Western Australia, the majority of which resulted from the Bunuba/Kimberley Diamond Corporation ILUA negotiations. Also captured under this output is the agreement to withdraw the objection to the Nyikina Mangala ILUA in the Kimberley region of Western Australia.

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

One hundred and twenty-seven milestones were achieved as part of mediating claimant applications.

The most milestones–50–were achieved in South Australia. Twenty-three milestones were the result of negotiations in the Cultana Expansion Area ILUA; and 13 were associated with the Far West Coast Fishing ILUA.

Forty-seven milestones were achieved in Queensland. For the most part, these related to the resolution of the Kuuku Ya'u claim on Cape York, and the focus on progressing ILUAs quickly.

Western Australia also recorded 26 milestones. These related to the mediation of the Kariyarra, Thudgarri, Jurruru and Njamal claimant applications.

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 includes:

- 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, or 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.

Table 12: Output 2.2 performance at a glance

Measure	Estimate	Result
Quantity	2.2a) 27 2.2b) 124 2.2c) 185	2.2a) 13 2.2b) 168 2.2c) 322
Total	336	503
Quality	Clients' perception of the agreement-making process	Client satisfaction research not undertaken in reporting year. See p. 106
Average price per unit 2.2a) 2.2b) 2.2c)	 $ 64,244 $ 49,729 $ 20,700	 $ 115,827 $ 27,184 $ 17,873
Total price for the output	**$ 11,730,499**	**$ 11,827,702**

Comment on performance

In the reporting period fewer consent determinations, and fewer milestones on issues, were achieved than had been anticipated. The number of process or framework milestones, however, was higher than expected. This reflects the fact that, across the country, the Tribunal worked closely with parties in regional planning processes and in developing strategies and setting priorities for claims.

Table 13: Number of agreements by state and territory

Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
2.2a) Agreements that fully resolve NTDAs*	-	-	-	6	3	-	-	4	13
2.2b) Agreements on issues, leading towards the resolution of native title determination applications	-	15	3	37	4	-	-	109	168
2.2c) Process/framework agreements	-	15	8	135	50	-	14	100	322
Total	**-**	**30**	**11**	**178**	**57**	**-**	**14**	**213**	**503**

* Native title determination applications.

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

In this reporting period 13 agreements were reached to fully resolve native title determination applications. It appears that a number of factors operated to impede the progress of other matters to conclusion. These included the fact that a number of native title representative bodies experienced short-term funding difficulties, resulting in the need for extension to timelines for the finalisation of agreements. In Western Australia, the change of government in October 2008 caused some delays in relation to particular matters. In other parts of the country, cabinet approval processes to ratify agreements have taken longer than expected.

Of the 13 2.2a) agreements made this financial year, three were in South Australia. In the Flinders Ranges area, three agreements were reached that resulted in the consent determination that native title is held by the Adnyamathanha People. These agreements resolved the largest native title claim in South Australia, covering an area of 41,085sq km. The Adnyamathanha People are now finalising an ILUA with the South Australian government for the co-management of the Flinders Ranges National Park.

Other 2.2a) agreements were reached in Western Australia, with consent determinations that native title is held by the Nyangumarta people and the Thalanyji people. In Queensland, native title was recognised over 23 islands in the Gulf of Carpentaria, giving exclusive and non-exclusive rights to the Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples. In the Cape York region, the Kuuku Ya'u people were recognised as native title holders.

Other agreements resulted in the withdrawal of a non-claimant application in Western Australia and the withdrawal of some overlapping claims in Queensland. The latter agreements will facilitate the resolution of the remaining claimant applications.

Case study

First native title agreement made over Queensland seas

On 25 June 2009, the Kuuku Ya'u People of Cape York become the first Indigenous people in Queensland to have their native title rights recognised, through agreement, over their traditional sea country.

The Kuuku Ya'u native title holders have exclusive native title rights over 10sq km of land and non-exclusive rights over about 1,970sq km of the sea on the east of Cape York Peninsula, in far north Queensland. The consent determination area includes land in the vicinity of the Portland Roads township, Rocky Island, Sandy Islet, Pigeon Island, Quoin Island National Park, Piper Islands National Park, part of Forbes Islands National Park and surrounding seas.

With mediation assistance from the Tribunal, the Kuuku Ya'u People, the Australian and Queensland governments, local government bodies, Australian Maritime Safety Authority and commercial fishing licence holders, all negotiated about their rights and interests in the claimed areas to reach this consent determination.

Having fostered constructive relationships during the negotiations, the parties were also able to develop three ILUAs to establish how their respective rights will be exercised alongside one another in the agreement area. They now have certainty about their futures and the protection of their rights in this area.

For the Kuuku Ya'u People, the outcome provides a solid foundation to play their part in the processes of government infrastructure development and land management, including the national parks and marine park management, on their traditional country in the years ahead

Native title was first recognised over Australian seas in October 2001 when, after more than five years of litigation, the High Court ruled that members of the Croker Island community in the Northern Territory had non-exclusive native title rights over their traditional seas. This case charted the way for further sea claims. In March 2004 the Lardil, Yangkaal, Gangalidda and Kaiadilt Peoples won recognition of their non-exclusive native title rights to the sea around the Wellesley, South Wellesley, Forsyth and Bountiful Island groups in Queensland's Gulf of Carpentaria through a litigated case in the courts.

Tribunal case manager Karrell Ross and senior case officer Rachelle Christian with native title holder Lloyd Hollingsworth at the June 2009 Kuuku Ya'u native title determination.

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

Nationally, the Tribunal worked with parties to narrow issues in dispute and otherwise assist in reaching final agreement to resolve native title determination applications.

In New South Wales, agreements were reached to resolve tenure issues; in some cases this resulted in claim areas being amended.

In South Australia, reaching agreement to resolve overlapping claims was critical to the Adnyamathanha and Witjira National Park consent determinations.

Parties in Western Australia reached agreement on a range of issues including the identification of the right people for country, on tenure issues, and on overlapping claim boundaries. In other cases it was important to ascertain whether certain respondent parties' interests would be affected by a determination of native title. If not, such parties may withdraw from the claim, which assists greatly in resolving the matter more quickly.

'Scoping conferences' (introduced as a mediation strategy in Western Australia following the 'Getting Outcomes Sooner' workshop held by the Tribunal and AIATSIS in the Barossa Valley in 2007) have proved successful. At a scoping conference the Tribunal assists parties to clarify issues and concerns and to determine the information needs of respondent parties. For further information see the Western Australian case study on p. 71).

The Tribunal worked closely with parties in Queensland to address tenure issues and to identify whether respondent parties' interests would be affected by a determination of native title. In several claims the number of respondent parties was reduced.

During the reporting period, the Victorian Government worked closely with a representative group of traditional owners to negotiate a Victorian Native Title Settlement Framework. Although the development of, and commitment to, such a framework has been welcomed by all participants in the native title system, the focus in Victoria on the Framework negotiations meant that in practice other matters, such as the progression of existing native title claims, were delayed. Accordingly, no milestone agreements were reached in Victoria.

Case study

Mediation initiative speeds up claim resolution

A number of native title claims in Western Australia are on track to be resolved more quickly through an initiative that emphasises earlier consultation between parties, as part of mediation.

The plan for holding on-country mediation 'scoping' conferences was initiated by Tribunal members Daniel O'Dea and John Catlin and first applied to a number of claims in the Geraldton region, in August 2008. It was informed by discussions between the Tribunal and the Pastoralists and Graziers Association of WA (PGA) in 2007 about the need for parties to meet and discuss issues related to their claim earlier in the mediation process.

In the past, pastoralists had been excluded from the connection process* (see definition below) and their concerns could only be raised later after the material has been assessed by the State Government, a practice that could add years to the process.

According to PGA's native title director Dr Henry Esbenshade, scoping conferences have the potential to resolve any questions about people's relationship to each other and the land informally, face-to-face, and provide an opportunity to talk about their propositions for reaching a consent determination (*Talking Native Title*, March 2009, p. 7).

The scoping conferences are usually open to any interested respondent party. So far, in addition to pastoralists, fishers and local government have participated.

The conferences are scheduled at a crucial stage of the mediation process—ideally before claimants' connection material is completed and submitted to the State Government for assessment. They give the parties the chance to raise and have addressed any issues they have about claimants' connection to the land before material is submitted. The process is also designed to enable the parties to discuss those issues in a mutually advantageous way and, perhaps, begin to negotiate the content of the consent determination or collateral agreements, which may become ILUAs, about things such as access to and usage of the land concerned.

The first scoping conference was held for the Wajarri Yamatji claim on 26 August 2008 and was followed by others for the Wiluna, Njamal and Nyikina and Mangala claims. Seven more occurred in the reporting period.

Pastoralists and Graziers Association solicitor Marshall McKenna (left), Tribunal Member Daniel O'Dea, and pastoralists Tom Jackson and Ellen Rowe inspect a map showing the Wajarri Yamatji claim, at a scoping conference in Cue, Western Australia in August 2008.

** Connection process: a multidisciplinary process involving the compilation of research materials, ethnographic analysis and other information from the native title claimants. The materials are prepared by, or on behalf of, the native title applicants. They are usually presented in the form of a formal written 'connection report', sometimes prepared by reference to criteria provided by a state government. The report is provided to the relevant state government. The report or a summary of it may be given to other respondent parties. The native title claimants need to convince the other parties that they have maintained their substantially uninterrupted connection to an area through continued acknowledgement of their traditional laws and observance of traditional customs to an extent sufficient to resolve the native title application by consent and without recourse to a trial in the Federal Court.*

2.2c) Process/framework milestones
Across the country, the Tribunal worked closely with claimants' representatives and state and territory governments to develop mediation work programs. A number of agreements also set out detailed processes to resolve issues relevant to specific claims. The precise identification of issues requiring resolution, and the development of clear timelines for their resolution, enable the Tribunal to allocate resources strategically and to apply appropriate mediation strategies.

As can be seen from Table 13 (p. 67), more framework/process milestones were achieved than had been anticipated.

Output 2.3—Future act agreements

Description
This output category includes agreements that allow a future act (such as the granting of an exploration or mining tenement) to proceed where Tribunal members or staff have assisted with mediation. It also includes milestones reached during the mediation of a future act application and leading to the final agreement.

The Tribunal mediates in relation to future act matters when it is requested to do so by one or more 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 provides 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.

Table 14: Output 2.3 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	2.3a) 60 2.3b) 55	2.3a) 53 2.3b) 94
Total	115	147
Quality	Clients' perception of the agreement-making process	Client satisfaction research not undertaken in reporting year. See p. 106
Average price per unit 2.3a) 2.3b)	 $ 21,144 $ 12,533	 $ 24,704 $ 9,171
Total price for the output	**$ 1,957,958**	**$ 2,171,422**

Table 15: Future act agreements by state and territory									
Type of agreement	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
2.3a) Agreements that fully resolve future act applications	-	-	3	-	-	-	-	50	53
2.3b) Milestones in future act mediations	-	-	19	8	-	-	-	67	94
Total	**-**	**-**	**22**	**8**	**-**	**-**	**-**	**117**	**147**

Comment on performance

2.3a) Agreements that fully resolve future acts
Both the Western Australian and Queensland registries saw a decrease in the number of applications for s. 31 mediation assistance in this reporting period. However, the Western Australian Registry exceeded its projected number of finalised s. 31(1)(b) agreements.

Mediation of future act applications in the Northern Territory has yet to realise significant outcomes, with only one agreement being lodged with the Tribunal this reporting period. Four of the nine applications were adjourned because the grantee party went into liquidation. Three mediations were placed on hold while the Northern Land Council and the Northern Territory Government began negotiations for a small-mining template agreement. While the template agreement was being negotiated, the government did not refer any future act matters to the Tribunal for mediation. Negotiations are progressing on the other matters, with outcomes expected to be recorded in the next financial year.

2.3b) Milestones in future act mediations
The Tribunal exceeded its estimated milestones for this financial year, with both Western Australia and Queensland doubling their projected numbers.

As mentioned above, due to the adjournment of a number of its mediation applications, the Northern Territory was unable to meet its estimated milestones during this reporting period. However, taking into account the unexpected adjournments due to grantee party liquidation, the milestones reached in the remaining matters exceeded expectations.

Output group 3—Decisions

Output 3.1—Registration of native title claimant applications

This output category relates to the Native Title Registrar's decisions about whether to register a claimant application on the Register of Native Title Claims.

Aboriginal peoples and Torres Strait Islanders who seek a determination that native title exists over an area of land or waters must make a claimant application to the Court. The application is then referred to the Registrar to decide whether the claim in the application meets the requirements for registration.

Under the Act, the Registrar must consider all new, and most amended, claimant applications for registration. In general, the Registrar will apply the full 'registration test' comprised of a series of merit and procedural conditions for registration. In some circumstances, however, the registration test will not be applied to claims made in an amended application (see s. 190A(1A)). In other circumstances claims made in an amended application will have a more limited test applied to them (see s. 190A(6A)).

If the Registrar decides that the claim does not meet all the conditions for registration, an applicant may request that a member of the Tribunal reconsider whether the claim meets the conditions for registration or the applicant may seek a review of the decision in the Federal Court.

If the claim is accepted for registration, claimants gain certain procedural rights over the claim area, including the right to negotiate with respect to certain future acts. If the claim does not meet the merit conditions of the registration test, the Court may dismiss the application. Before doing so, the Court must be is satisfied that all avenues of review have been exhausted and the application has not been, and is not likely to be, amended in a way that would lead to the claim being accepted for registration, and there is no other reason why the application should not be dismissed.

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 six months of receipt of the original or amended application submitted for registration
- Price—average price per unit and total price of output.

Table 16: Output 3.1 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	52	40
Quality	70% of decisions completed within 6 months of receipt of the original or amended application submitted for registration	80% of decisions completed within 6 months of receipt of the original or amended application submitted for registration
Average price per unit	$ 52,965	$ 81,724
Total price for the output	**$ 2,740,158**	**$ 3,268,963**

Note: Ten decisions were made under the 2007 Transitional Provisions (or Technical Amendments) and were therefore not included in the performance assessment.

Comment on performance

Fewer claimant applications were amended during the reporting period than had been amended in previous years. As Table 17 (below) shows, the majority of registration decisions were made for applications in Queensland.

During the reporting period, the Tribunal received its first application to reconsider a claim for registration. The reconsideration decision will be made in the next reporting period.

Of the 40 registration test decisions made in the reporting period, five amended claims were accepted for registration following the more limited test. Twenty-six of the 35 claims that had the full registration test applied were accepted for registration. Nine did not satisfy one or more of the conditions and so were not registered on—or were removed from—the Register of Native Title Claims.

Ten of the claims that were considered for registration were tested pursuant to amendments to the Act which had been introduced in the previous reporting period.

Table 17: Number of registration test decisions by state and territory				
State	**Accepted**	**Accepted—s. 190A(6A)**	**Not accepted**	**Total**
ACT	-	-	-	-
NSW	3	-	3	6
NT	6	-	-	6
Qld	12	3	1	16
SA	1	2	-	3
Tas	-	-	-	-
Vic	-	-	1	1
WA	4	-	4	8
Total	**26**	**5**	**9**	**40**

Timeliness of decisions
The six-month performance time frame did not apply to the 10 decisions which were tested pursuant to the 2007 amendments to the Act.

Eighty per cent of the remaining 30 decisions were tested within the six-month performance time frame, exceeding the 70 per cent performance target. Where statutory time frames required the test to be applied in a shorter time frame (i.e. in response to a future act notice), that shorter time frame was met.

Output 3.2—Registration of indigenous land use agreements

Description
This output category relates to the Registrar's decisions about whether to register an ILUA on the Register of Indigenous Land Use Agreements.

Parties to an ILUA apply to the Registrar to register their agreement on the Register of Indigenous Land Use Agreements. Under the Act each registered ILUA, as well as having the effect as if it were a contract among the parties, also 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 organisations and individuals with an interest in the area and, except in the case of body corporate agreements, notify the public
- determine any objections or other potential bars to the registration of the ILUA.

If requested, the Tribunal can assist parties to negotiate the withdrawal of an objection to the registration of an area 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 ILUAs are:
- Quantity—the number of decisions completed in the reporting period
- Quality—90 per cent of decisions are completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration
- Price—average price per unit and total price of output.

Table 18: Output 3.2 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	71	52
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	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
Average price per unit	$ 29,524	$ 33,421
Total price for the output	**$ 2,096,180**	**$ 1,737,907**

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

Table 19: ILUAs lodged or registered by state and territory									
	ACT	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
ILUAs lodged	0	0	11	20	13	0	0	7	51
ILUAs registered	0	0	10	26	14	0	0	2	52

Comment on performance

During the reporting period 52 ILUAs were registered. This number is the same as the average number of ILUAs registered in the previous four years.

The most significant activity was in Queensland, where 26 ILUAs were registered. The high level of registration activity is due to various pipeline projects.

Of the total number of ILUAs registered, two ILUAs were body corporate agreements and 50 were area agreements. To date, the Tribunal has not received any applications to register an alternative procedure agreement.

As reported last year, the Tribunal provided assistance to negotiate the withdrawal of an objection to the Nyikina Mangala ILUA in Western Australia. The agreement was registered on 19 November 2008 after the Registrar was advised that the objection had been withdrawn.

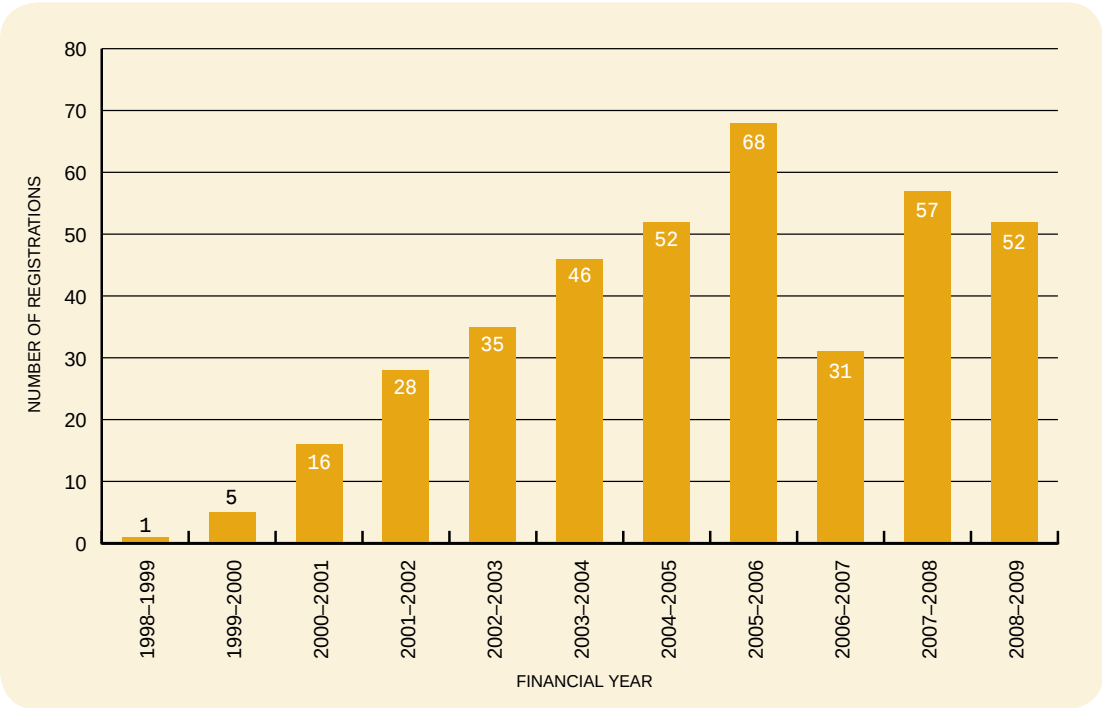
In the last reporting period, an application for review of the Registrar's decision to register the Traveston Crossing Dam ILUA was filed in the Federal Court. The Court's decision dismissing the application for review was handed down in this reporting period in *Fesl v Delegate of the Native Title Registrar* (2008) 173 FCR 150. For further information see Decisions at first instance on p. 119.

Timeliness of decisions

During the reporting period, an objection or adverse information was received in respect of four of the 52 ILUAs which were tested for registration. Of the remaining 48 applications, 90 per cent of the registration decisions were made within six months, meeting its performance target. Four applications failed to meet the performance time frames as they had to be re-notified due to an administrative error. The ILUA notification procedures have since been revised to minimise future potential for errors. A fifth application was registered one day later than the six-month time frame.

The performance figures do not include ILUAs for which objections were received.

Figure 6: Number of ILUA registrations per reporting period



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 must 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 as to 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 power to proceed with the substantive inquiry.

Performance

Performance indicators for future act determinations and decisions as to 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.

Table 20: Output 3.3 performance at a glance

Measure	Estimate	Result
Quantity	55	39
Quality*	80% of future act determination applications finalised within 6 months of the application being made	96% of future act determination applications finalised within 6 months of the application being made
Average price per unit	$ 10,953	$ 12,506
Total price for the output	**$ 602,436**	**$ 487,731**

* Note: Twelve decisions related to whether negotiation in good faith requirements were satisfied and were therefore not included in the performance assessment.

Comment on performance

Although the number of future act determination applications to the Tribunal was lower than last year, consent determinations continued to be the preferred method of resolution.

The Western Australian Registry experienced the biggest decline in applications, receiving less than half of the number filed in the previous financial year. The Victorian Registry saw a return to average figures this year after the peak of seven

last financial year. Queensland, on the other hand, saw a significant increase in future act determination applications filed during the reporting period, all determined by consent. In Western Australia, 62 per cent of determinations were made by consent, as was the single matter in Victoria.

Tribunal members made seven decisions (affecting 12 tenements) relating to the statutory requirement that parties negotiate in good faith, all relating to Western Australian applications.

Table 21: Future act determination application outcomes by tenement

Tenement outcome	Qld	Vic	WA	Total
Application withdrawn*	-	-	12	12
Consent determination—future act can be done	9	1	16	26
Determination—future act cannot be done	-	-	1	1
Dismissed—s. 148(a) no jurisdiction*	-	-	1	1
Tenement withdrawn*	-	-	1	1
Total	**9**	**1**	**31**	**41**

* Note: Not counted for output reporting purposes.

Although, during this reporting period, most of the determinations were made by consent of the parties, the Tribunal handed down four determinations of significant public interest, three in relation to good faith, and one in relation to whether the future act (the grant of a mining lease) could be done.

In early 2008, Deputy President John Sosso presided over a future act determination application made by grantee party, FMG Pilbara Pty Ltd (FMG), in (WF07/40).

In the course of negotiations pursuant to s. 31(1)(b) of the Act, each negotiation party is obliged to negotiate in good faith with a view to obtaining the agreement of each of the native title parties to the doing of the proposed future act, either conditionally or unconditionally. If any of the negotiation parties satisfies the Tribunal that any other negotiation party (other than a native title party) has not negotiated in good faith, then the Tribunal must not make a determination on the application. During the course of the hearing, both native title parties to the application WF07/40 asserted that the grantee party had not negotiated in good faith.

On 11 July 2008, Deputy President Sosso handed down a decision that the grantee party had not negotiated in good faith and that, as a consequence, the Tribunal did not have jurisdiction to hear and determine the application. FMG appealed this decision and, on 30 April 2009, a Full Federal Court set the Tribunal's decision aside, returning the matter to the Tribunal for determination. On 25 May 2009, one of the native title

parties made an application for special leave to appeal the Full Court's decision to the High Court. In the interim, the Tribunal directed that contentions and evidence be provided for the substantive inquiry, rejecting an application by one of the native title parties for a stay of proceedings pending the High Court's consideration of the matter.

On 17 April 2009, Deputy President Sosso handed down a further decision that a grantee party, in this case, Mineralogy Pty Ltd, had not negotiated in good faith (WF08/29) as was asserted by the two affected native title parties. No appeal against this decision was filed.

In contrast to the above determinations, Member Daniel O'Dea considered the issue of good faith in three applications (WF08/32, WF08/33 and WF09/1) when the two native title parties challenged whether the grantee party (again FMG as beneficial holder of the tenements) and the government party had negotiated in good faith. Member O'Dea determined that not only had the grantee party negotiated in good faith, but also that the Wintawara Guruma native title party had not. While a native title party's failure to negotiate in good faith does not go to the Tribunal's jurisdiction to hear and determine the future act determination application, it does emphasise that each negotiation party, as defined by the Act, has an obligation to negotiate in good faith.

On 27 May 2009, for the first time, a future act determination was made that mining activity will not be allowed on a proposed site. For further information see the case study, p. 82.

Case study

Tribunal decision prevents Pilbara potash plan

A potash mine at Lake Disappointment in the eastern Pilbara was not allowed to go ahead, following a determination that the future act must not be done. This is the first such determination made by the Tribunal.

In September 2008, Holocene Pty Ltd (a wholly owned subsidiary of Reward Minerals Ltd) applied to the Tribunal to determine if the company could be granted a tenement to mine potash at Lake Disappointment, 460 km east of Newman in the Gibson Desert.

The presiding member, Deputy President Sumner, assessed evidence from Holocene, the Western Desert Lands Aboriginal Corporation (WDLAC) and the State Government before deciding not to allow mining activity in the area. WDLAC represented the Martu People, who in 2002 were recognised as exclusive native title holders for about 136,000sq km of land in the Western Desert.

Deputy President Sumner weighed up the evidence from all parties, particularly in relation to the cultural and economic importance of the project.

This decision was made because of the substantial evidence that the site has special cultural significance to the native title holders.

The Tribunal's role in the future act process is governed by the Native Title Act and it is required to make a decision based on the evidence presented.

Decisions are made by considering the criteria in s. 39 of the Act which takes into account many factors. These include the effect of the mining on native title rights and interests, sites of special significance to the native title holders, economic significance and public interest in the mine going ahead.

Parties unhappy with the inquiry outcome can lodge an appeal with the Federal Court. The Act also provides for the Commonwealth Minister to overrule a decision of the Tribunal.

The grantee party did not appeal the decision but instead asked the Commonwealth Attorney-General to overrule the Tribunal's determination, with or without conditions, on the basis that the doing of the act is in both the national interest and the interest of the State of Western Australia. The Attorney-General declined to overrule the determination.

For further information see Tribunal decisions, p. 127.

Tribunal Deputy President Chris Sumner.

Output 3.4—Finalised objections to expedited procedure

Description
This output category concerns the processing and finalisation by the Tribunal of objections to the inclusion of the expedited procedure statement in state/territory government notices issued under s. 29 of the Act.

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.

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

Performance
The performance indicators for objections to the expedited procedure are:

- Quantity—number of objections resolved
- Quality—80 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.

Table 22: Output 3.4 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	1,123	1,184
Quality	80% of objections resolved other than by agreement finalised within 9 months of the s. 29 closing date	79% of objections resolved other than by agreement finalised within 9 months of the s. 29 closing date
	70% of objections resolved by agreement finalised within 9 months of acceptance	61% of objections resolved by agreement finalised within 9 months of acceptance
Average price per unit	$ 2,971	$ 1,741
Total price for the output	**$ 3,336,286**	**$ 2,061,134**

Note: Ninety-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, withdrawal of the objection application prior to acceptance and withdrawal of the objection application due to external factors.

Comment on performance

A large number of tenement applications were withdrawn during the reporting period. This trend, coupled with an apparent reduced commitment to exploration expenditure, has resulted in a significant decrease in the number of public notices where the expedited procedure is asserted. Figures for this financial year show a decrease of 51 per cent in the number of notices published compared to the last reporting period.

Table 23: Objection application outcomes by tenement			
Tenement outcome	**Qld**	**WA**	**Total**
Consent determination—expedited procedure does not apply	-	9	9
Determination—expedited procedure applies	-	4	4
Determination—expedited procedure does not apply	-	4	4
Dismissed—s. 148(a) no jurisdiction	4	58	62
Dismissed—s. 148(a) tenement withdrawn	37	294	331
Dismissed—s. 148(b)	-	194	194
Expedited procedure statement withdrawn	1	38	39
Expedited procedure statement withdrawn—s. 31 agreement lodged	61	-	61
Objection not accepted	-	45	45
Objection withdrawn—agreement	11	717	728
Objection withdrawn–external factors	-	4	4
Objection withdrawn—no agreement	11	40	51
Objection withdrawn prior to acceptance	-	45	45
Tenement withdrawn prior to objection acceptance*	7	3	10
Total	**132**	**1,455**	**1,587**

* Note: Not counted for output reporting purposes.

It appears that many grantee parties showed reluctance to commit to negotiations; and there was evidence that the feasibility of some projects was reassessed, as were proposals or offers previously made to native title parties. Since January 2009, the Western Australian Government has taken a more robust approach to grantee parties who fail to progress tenement applications in the expedited procedure in a timely manner. Consequently there has been an increase in the number of expedited procedure objections referred to inquiry.

The Tribunal achieved its projected outputs for the resolution of objection applications made against the inclusion of expedited procedure statement in s. 29 notices, with Western Australia exceeding its estimated outputs in this category.

Although the Department of Mines and Energy in Queensland reports that tenement applications increased during the reporting period resulting in a substantial backlog, the number of notices published under s. 29 was considerably lower than the previous year.

An increase in native title parties seeking separate legal representation for future act matters partly explains the increase in objection applications being lodged with the Tribunal.

In this section:

- the President and Registrar's decision-making is informed by the corporate governance arrangements, including various strategy and management groups
- efforts to increase efficiency through new information technology systems are ongoing, but have already delivered significant benefits
- at 30 June 2009, the percentage of Indigenous employees was 9.2 per cent
- three scholarships were presented to Indigenous employees in 2009 to encourage further study
- unscheduled absences fell across the Tribunal.

Library Services Manager Kathy Wright.

Management

Tribunal executive

Role and responsibilities

The President and Registrar are the Tribunal's primary decision-makers in relation to the governance and the management of the Tribunal. 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, and also has responsibilities under the *Public Service Act 1997* (Cwlth) and the *Financial Management and Accountability Act 1999* (Cwlth). The Registrar may delegate all or any of her or his powers under the Act to Tribunal employees.

The Registrar and the directors of the two divisions, Service Delivery and Corporate Services and Public Affairs, together with the Director Strategy and Innovation, comprise the Executive Team. A description of the qualifications and backgrounds of the Tribunal's Executive Team is available on the Tribunal's website.

The Executive Team meets regularly to consider strategic, operational, financial and administrative issues. It is the main forum at which the Registrar and directors discuss a range of issues affecting the Tribunal. The Chief Financial Officer attends Executive Team meetings as a non-voting member.

Registrar
Stephanie Fryer-Smith.

Director Service Delivery
Hugh Chevis.

Director Corporate Services and Public Affairs
Franklin Gaffney.

Director Strategy and Innovation
Frank Russo.

Corporate governance

The Tribunal's strategic framework is embodied in its *Strategic Plan 2009-2011*, which enables all staff to have a shared understanding of the Tribunal's:

- vision and mission
- values
- key priorities
- key strategies and targets.

For further information see Corporate and operational planning and performance monitoring, p. 93.

The Tribunal's corporate governance assists the Tribunal to meet its vision of *timely, effective native title and related outcomes.*

The President and Registrar have overall responsibility for making decisions affecting the Tribunal. They are assisted by the Tribunal's Project Office in managing the Tribunal's organisational governance. The President's and Registrar's decision-making is supported and informed by corporate governance arrangements and practices which are overseen by a number of management groups and committees as detailed in this chapter.

The governance arrangements in place to manage risk cover controls established under the financial management framework, including the Chief Executive's Instructions and supporting guidelines, business continuity planning and reporting on legislative compliance.

Members' meetings

In 2008–09 the President and members held meetings in Perth during September 2008 and in Sydney during March 2009. A range of issues was discussed at the meetings with a particular focus on the Tribunal's strategic direction and current operating environment. Other issues included:

- professional development training led by Professor Michelle LeBaron
- implications of proposed (2009) amendments to the Act
- liaison with the Federal Court
- implementation of national case flow management scheme
- updates from various Tribunal strategy groups.

The Sydney meeting included a session with the Attorney-General and a representative from the Attorney-General's Department about the proposed amendments to the Act.

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 Presidents Christopher Sumner and John Sosso, ILUA Member Coordinator Graham Fletcher (formerly Ruth Wade), Chair of the Resources Coordination Group Daniel O'Dea, Agreement-making Liaison Group Member Gaye Sculthorpe, the Registrar and the directors.

The group integrates management and administration with the strategic direction of the organisation as described in the Tribunal's *Strategic Plan 2009–2011.* It met four times by teleconference during the reporting period to monitor the high-level budget priorities for 2008–09, consider the implications of the proposed amendments to the Act and recommendations from the Native Title Coordination Committee, monitor the Tribunal's performance, and make recommendations to the President and Registrar to facilitate Tribunal projects.

External Relations Working Group

The External Relations Working Group is responsible for managing and overseeing matters relating to communication with national stakeholders.

The work of this group includes considering the Tribunal's relationship with Ministers and Members of Parliament and the political processes of the Australian Government, and liaison with bodies conducting formal inquiries and investigations (such as the inquiry by the Senate Standing Committee on Legal and Constitutional Affairs into the Native Title Amendment Bill 2009). It also includes identifying and developing responses to strategic issues relevant to the Tribunal and developing relationships with stakeholders at a high level.

Chaired by the President, the group comprises Deputy President Christopher Sumner, members John Catlin, Robert Faulkner, and Neville MacPherson, the Registrar and the manager, workplace planning and communication management.

The group met three times by teleconference in the reporting period. Matters considered by the group during the reporting period included:

- the ongoing development and publication of a national report and national statistical package on the status of the native title system, focusing primarily on the progress of native title claimant applications (the first edition was released in July 2008, the second was released in March 2009)
- engaging with the Federal Court and the Attorney-General's Department about proposed amendments to the Native Title Act including discussions about procedures and procedural amendments
- the Tribunal's new *Strategic Plan 2009–2011*

- Tribunal attendance at ceremonies, delivering speeches and official representation at functions and participation in community activities.

Agreement-making Liaison Group

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

The group is chaired by the President and comprises members Daniel O'Dea, Gaye Sculthorpe and Graham Fletcher, the Director Service Delivery and the Western Australian state manager. It meets quarterly by teleconference.

The group produces periodic overview reports of agreement-making practice covering claimant and non-claimant applications, ILUAs and future acts. The reports identify emerging issues and trends, and stakeholder issues and capacity-building opportunities. They also include agreement-making activity reports, analysis of Federal Court orders, directions and practices, and statistical reporting on projected and actual output performance. The reports are for use internally by strategy groups with an executive summary report developed for wider internal publication within the Tribunal. During the reporting period the group produced four national reports.

The group continued to identify and implement various measures to meet the National Mediation Accreditation Standard as appropriate. Initiatives implemented in respect of member accreditation included a process for recording of mediation and professional development hours, a professional development program and a debriefing system. The Tribunal's complaints handling procedures were reviewed and recommendations in relation to the Client Service Charter and complaints procedures are currently being progressed by the Registrar. Five members have been accredited to the Australian National Mediation Standards.

During the reporting period the group also considered possible impacts on agreement-making practice of the proposed amendments to the Act.

National Future Act Liaison Group

The group maintains an overview of the national future act activity on a region by region basis. It is chaired by Deputy President Christopher Sumner and comprises Deputy President John Sosso and future act members Neville MacPherson, John Catlin and Daniel O'Dea, as well as the Registrar, the Director Service Delivery, manager geospatial services and other senior managers.

The group meets every three months by teleconference. During the reporting period, the group:

- monitored the reduction in the number of tenement applications nationally due to the global economic downturn, and the subsequent impact on future act applications to the Tribunal
- undertook a review of practices which resulted in the amendment of key procedural documents.

ILUA Strategy Group

The purpose of the ILUA Strategy Group is to ensure that ILUAs are seen as a useful option for agreement-making in the native title system. The group provides strategic advice to the President and Registrar with a view to improving organisational performance and the quality of service to external stakeholders in relation to ILUA negotiation.

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

During this reporting period, the group oversaw a comprehensive review of the Tribunal's internal ILUA procedures, which included the:

- review of procedures for processing applications for registration of certified and non-certified area agreements and body corporate agreements
- development of a suite of template documents to facilitate timely and consistent administration of applications for registration of ILUAs
- development of a revised ILUA Electronic Management System (database) and Register of Indigenous Land Use Agreements.

In addition, the group has:

- overseen the development and presentation of a national ILUA training program for Tribunal staff
- overseen the review of publicly available ILUA information products (including web-based information)
- responded to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report, 'Open for Business: Developing Indigenous Enterprises in Australia'
- overseen the implementation of a back-up Register of Indigenous Land Use Agreements
- continued to monitor organisational performance against projections.

The group meets by teleconference at least twice yearly, and met four times in the reporting period.

Resources Coordination Group

Chaired by Member Daniel O'Dea, the Resources Coordination Group consists of Tribunal Member Neville MacPherson, the Director Service Delivery, the Director Corporate Services and Public Affairs, a state manager and the managers of the Geospatial, Legal and Research sections.

As an advisory body, the group makes recommendations to the Registrar about the allocation of specialist resources for substantial projects across all aspects of the Tribunal's business, including:

- projects related to resolution of claimant applications
- projects with broad regional implications
- specific issue projects with strategic impact (including projects related to future acts and ILUAs).

Few matters were raised with the group in the reporting period. It was decided to monitor the level of interest in the group's services with a view to potentially modifying its purpose. It may be that, in the next reporting period, the Tribunal's tight budgetary environment will create circumstances where there will be more demand.

The group held four teleconference meetings in the reporting period.

Senior managers' meetings

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 by teleconference to plan for and oversee service delivery through the Tribunal's regional registries. It comprises state and territory managers and senior staff, such as the Director Service Delivery, and other senior staff according to the issues at the time
- Corporate Services and Public Affairs senior managers met regularly with the director of the division to coordinate divisional projects, work plans and communication strategies
- the Registrar instituted monthly videoconference meetings of all senior managers.

See p. 100 for information on leadership training.

Corporate and operational planning and performance monitoring

During the reporting period a new strategic plan was developed and released. Aspiring to the new vision—*timely, effective native title and related outcomes*—the *Strategic Plan 2009–2011* articulates ways in which the Tribunal will respond to the challenges of a rapidly changing and dynamic native title environment.

The strategic plan contains four key result areas:

- clients and stakeholders
- services
- workplace culture
- accountability.

Priorities, strategies and targets are listed under each of those key result areas. Section and registry operational plans have been developed based on the key result areas above. Those plans take into account issues in the external and internal operating environment, external client and stakeholder feedback and the future direction of the Tribunal.

Risk management

The Risk Management and Audit Committee comprises the Director Corporate Services and Public Affairs, nominated senior managers from each division, a member of the Tribunal appointed by the President (Neville MacPherson), and the Tribunal's Chief Financial Officer. If required the committee can access independent external advice to assist with its work.

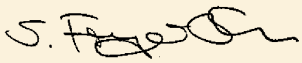
The committee met regularly by teleconference during the reporting period to monitor the Tribunal's Risk Management Framework. The main focus was to embed risk management practices more transparently and routinely into the Tribunal's work environment, practices and decision-making. This strategy has been incorporated into the Tribunal's *Strategic Plan 2009–2011*. The committee has communicated its activities to Tribunal employees through a dedicated page on the Tribunal's intranet.

The Tribunal participated in Comcover's annual Risk Management Benchmarking program which measures the effectiveness of the Tribunal's risk management framework, practices and systems. The Tribunal achieved an increase in all key performance areas and was rated as 'comprehensive'. This reflects three progressive years of improvement.

Figure 7: Certification of Tribunal fraud control arrangements

I, Stephanie Fryer-Smith, certify that I am satisfied that for the financial year 2008-09 the Tribunal has had:

- appropriate fraud risk assessments and a fraud control plan prepared that comply with the Commonwealth Fraud Control Guidelines 2002
- appropriate fraud prevention, detection, investigation and reporting procedures and processes in place, and
- annual fraud data that has been collected and reported in compliance with the Commonwealth Fraud Control Guidelines 2002.



Stephanie Fryer-Smith
Registrar
21 September 2009

Information and technology management

The Registrar is required by the Act to maintain a number of registers which hold records of native title claimant and non-claimant applications, determinations and certain agreements made under the Act. These are the Register of Native Title Claims, National Native Title Register and Register of Indigenous Land Use Agreements.

Since the last reporting period when work commenced on consolidating the Tribunal's information management environment, the information technology governing committee has made significant progress in redeveloping the Tribunal's business systems.

The program of works has been underpinned by the Tribunal's Enterprise Architecture that seeks to unify platforms and realise efficiency savings where possible. This is encompassed within a project called 'Tribunal 2.0', which links previously disparate systems together with an improved reporting capability.

New systems delivered or soon to be launched include:

- National Caseflow Management System (redeveloped in-house)
- Practice and procedures library (redeveloped in-house)
- Geotrack (redeveloped in-house)
- Operations Help Desk (new product)
- ICT Service Desk (new product)
- Finance 1 (upgrade of existing system)
- E-recruitment (new product).

During the reporting period there was a complete technology refresh of the Tribunal's standard operating system on desktop machines and laptops, which incorporated the successful integration of Microsoft Windows Vista and Office 2007.

A significant network upgrade to all registries was also completed using in-house specialist services. This resulted in faster inter-office and internet speeds for all users and a reduction in overall cost. Trials were also begun to value-add videoconferencing and voice call capacity, economising on existing telecommunications charges.

The main Perth data centre was moved into a new facility incorporating improved fire safety, air conditioning, security and power systems for improved hardware reliability.

The Tribunal's records management processes were fortified by the completion of a business classification system, the upgrade of the license for the Hummingbird records management system, and an office refit for more secure storage and improved inter-office mail services.

A project manager was recruited to ensure the cost-effective and timely delivery of proposed and future information technology projects. The position reports directly to the Tribunal's executive and works closely with all business unit representatives.

Management of human resources

Recruitment and workforce planning

There was a relatively high turnover of staff during the first half of 2008-09, while the second half of the year was marked by very low staff turnover. From 1 July to 31 December 2008, 26 people left the agency, compared with 13 people from 1 January to 30 June 2009. The aggregate turnover rate for the year was 16 per cent, substantially less than the 30 per cent turnover rate in 2007–08.

The Tribunal has continued to implement and develop different ways to attract applicants and streamline recruitment processes, including simplifying application processes and shortening the time taken to finalise recruitment exercises.

Towards the end of the reporting period, the Tribunal started a project to develop and implement an online recruitment system to meet the needs of the Tribunal now and into the future.

The year 2009 is the last year of the Tribunal's current Collective Agreement 2006–2009 and one of the productivity goals of that agreement was to see a reduction in the Tribunal's unscheduled rate of absence over the first two years of the agreement. This

productivity initiative was endorsed by unions and employees and provides that a failure to meet the target rate puts at risk 0.5 per cent of the annual salary increase provided for in the Collective Agreement 2006–2009.

The target figure was achieved in both years. During 2008, the Tribunal was able to record an unscheduled absence level of 8.42 days, against the target figure of 8.67 days.

The Tribunal's workforce profile
At 30 June 2009, the Tribunal had 10 Holders of public office (President, Registrar and members) and 250 people employed under the *Public Service Act 1999* (Cwlth) (PSA).

The average head count of APS employees for the year was 244.

Of the 250 employees:
- 229 were covered by the Collective Agreement
- 9 were on common law agreements (including one SES)
- 12 were on Australian Workplace Agreements (including one SES)

Over the period, the Tribunal increased the number of non-ongoing employees as a percentage of total workforce. This allowed the Tribunal greater flexibility to manage numbers in preparation for the next four-year budget cycle.

The Tribunal recognises the value of interdepartmental transfers and in the reporting year the Tribunal hosted two people who joined the Tribunal on fixed-term engagements, while one employee of the Tribunal accepted a fixed-term appointment with another government agency.

During the reporting year, ongoing workforce planning was undertaken, aimed at alignment of workload and resources with the Tribunal's statutory functions and the *Strategic Plan 2009–2011*. Three employment reviews were undertaken during the year, including one by the APS on the Tribunal's executive level structure, and all these reports provided data used for the review of the Workforce Plan.

Table 24: Tribunal employees by division and location as at 30 June 2009								
Classification	**Location/registry**							
	Principal	**WA**	**NSW**	**Qld**	**Vic**	**SA**	**NT**	**Total**
Traineeship			1	1				2
Cadet								0
APS level 1								
APS level 2	14	21		13	2	2	1	53
APS level 3	19	5	5				1	30
APS level 4	9	13	2	9	3	2	1	39
APS level 5	10	1		1				12
APS level 6	24	11	5	10	5	3	2	60
Legal 1	5			1				6
Legal 2	1							1
Media 1	1			1				2
Media 2	1							1
Library 1	1							1
Library 2				1				1
Executive level 1	16	3	4	5	1			29
Executive level 2	6	1	1		1	1	1	11
Senior executive	2							2
Total employees	**109**	**55**	**18**	**42**	**12**	**8**	**6**	**250**

Table 25: Employees by equal employment opportunity group participation and type of employment		
Employees	**At 30 June 2008**	**At 30 June 2009**
Female	173	175
Indigenous	29	24
Linguistically diverse background	11	15
People with a disability	5	5
Ongoing	216	196
Part time	32	55

Indigenous employees

At 30 June 2009, the Tribunal's percentage of Indigenous employees was 9.2 per cent of employees. Exit data shows that most of the Indigenous employees who have left the Tribunal have done so to take up other opportunities outside the APS.

The composition of the Tribunal's Indigenous employees as at 30 June 2009 is shown in Table 26.

Table 26: Indigenous employees by division and location as at 30 June 2009

Classification	Location/registry							
	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Traineeship			1	1				2
Cadet								
APS level 1								
APS level 2	5				1		1	7
APS level 3		1	2					3
APS level 4		1	1	3	1			6
APS level 5	1							1
APS level 6		1		1			1	3
Legal 1								
Legal 2								
Media 1								
Media 2								
Library 1								
Library 2								
Executive level 1		1		1				2
Executive level 2								
Senior executive								
Total employees	**6**	**4**	**4**	**6**	**2**	**0**	**2**	**24**

Since 2003, the Tribunal has maintained a dedicated working group comprising its Indigenous employees which is known as the Indigenous Advisory Group (IAG). All Indigenous employees are encouraged to join the IAG which, through a steering committee, progresses matters relevant to Indigenous employees within the Tribunal. The meetings of the IAG are chaired by the Registrar and often non-Indigenous employees attend as observers for particular purposes.

During June 2009, an Indigenous Employee Workshop was held in Perth, and was attended by almost all Indigenous employees. This two-day workshop is held biennially. The workshop theme for the reporting year was 'Growing Together—IAG and the NNTT', and speakers included representatives of the APS and the Institute of Public Administration Australia.

Indigenous Employee Study Award

A key initiative that the Tribunal promotes each year for the benefit of its Indigenous employees is a scholarship which enables an Indigenous employee (or employees) to

undertake a course of study relevant to their employment in the APS. All Indigenous employees are eligible to apply for this scholarship and in the reporting period the Tribunal offered three scholarships.

The scholarships assist Indigenous employees, at all levels, in undertaking a full-time program of study in order to:

- increase their expertise and efficiency by gaining career skills and qualifications appropriate to the Tribunal
- enable them to more effectively advance their careers within the Tribunal and the APS
- gain tertiary qualifications to increase their career prospects within the Tribunal and the APS
- increase the number of graduate Indigenous employees able to better compete for middle level and senior employee positions at the Tribunal.

The scholarships presented in 2009 were:

- the Tertiary Preparation Award which enables an Indigenous employee in the Tribunal to attend a course of study which may include a Senior Secondary Certificate of Education (Year 12 certificates), a recognised university preparation or bridging scheme, or some other certificate/diploma of study which is relevant to a career in the Tribunal or the APS
- the Undergraduate Award which enables an Indigenous employee of the Tribunal to attend an Australian university or other tertiary institution to study, on a full-time basis a course of study relevant to the Tribunal or the APS.

A third award was granted for an employee to complete a course in library studies at TAFE.

Employee survey

The Tribunal undertakes employee surveys, with the assistance of an external provider, to assess staff satisfaction and determine priorities for people management.

The survey for the reporting year was conducted between June and July 2008 and 185 people participated in the survey, representing 77 per cent of employees.

The 2008 Tribunal staff survey showed improvements in staff ratings of most aspects of working at the Tribunal with particularly strong gains in the perceived client orientation of the Tribunal, communication and consultation and learning and development. However, the survey also showed scope for improvement in each of those areas as well as the need to enhance the decision-making abilities of its managers and supervisors. A number of special initiatives were introduced in response to the employee survey results under five key areas, namely: decision-making and governance; communication and consultation; performance of senior executive

and managers; Tribunal engagement with external clients and stakeholders; and, performance management plans and learning and development. Projects and activities have been initiated in each of those areas.

The Tribunal's performance management system will be reviewed following feedback from the survey. The new system will come into operation for the 2009–10 reporting year.

Reward and recognition

The Tribunal values the work of all of its employees and recognises there will be times that an employee, or employees, may perform duties, or complete projects that are beyond what would normally be expected of them. The Tribunal makes provision under its Reward and recognition program to recognise such employees.

During the reporting year the Tribunal recognised four work teams and six individual employees (which in total represented 42 employees) who had shown exceptional dedication, innovation and commitment to their work and the Tribunal. A new Innovation award was also introduced during the reporting period and awarded to the Registration Test Delegate's team.

During the previous reporting year the Tribunal had commenced recognising the service of those employees who had given more than 10 years of service to the Tribunal and had marked this service by presenting them with a gift. This is something that the Tribunal will continue with into the future and in the reporting year the Tribunal was able to honour more employees for reaching that milestone of service.

During the year, Tribunal President Graeme Neate also achieved this milestone.

Learning and development

Tribunal sponsorship for learning and development activities seeks to achieve the following:

- satisfy the need for skills and knowledge to increase the Tribunal's capacity to achieve its corporate goals, manage change and extend organisational competence
- provide trained employees for specific current and future workplace requirements
- assist an employee with his/her career development
- improve current and future job performance. To meet this goal the Tribunal continues to provide opportunities to all employees to enhance their skills and also to meet the compliance requirements for occupational health and safety, and technical training.

Leadership training

The Tribunal has always been committed to developing the leadership strength of its managers and in 2009 the Tribunal combined a two-day day workshop entitled

'Leading and Managing in Times of Change' with its annual meeting of senior managers. Prior to the course all managers of Executive level 1 and above took part in a 360 degree feedback survey, and the consolidated findings from that survey were also discussed at the senior managers' training.

Studies assistance
The Tribunal's studies assistance program aims to support employees in gaining tertiary or further educational qualifications by providing access to study leave and financial assistance. During the reporting period the Tribunal received 20 applications from employees for studies assistance, of which 16 were successful.

Occupational health and safety performance

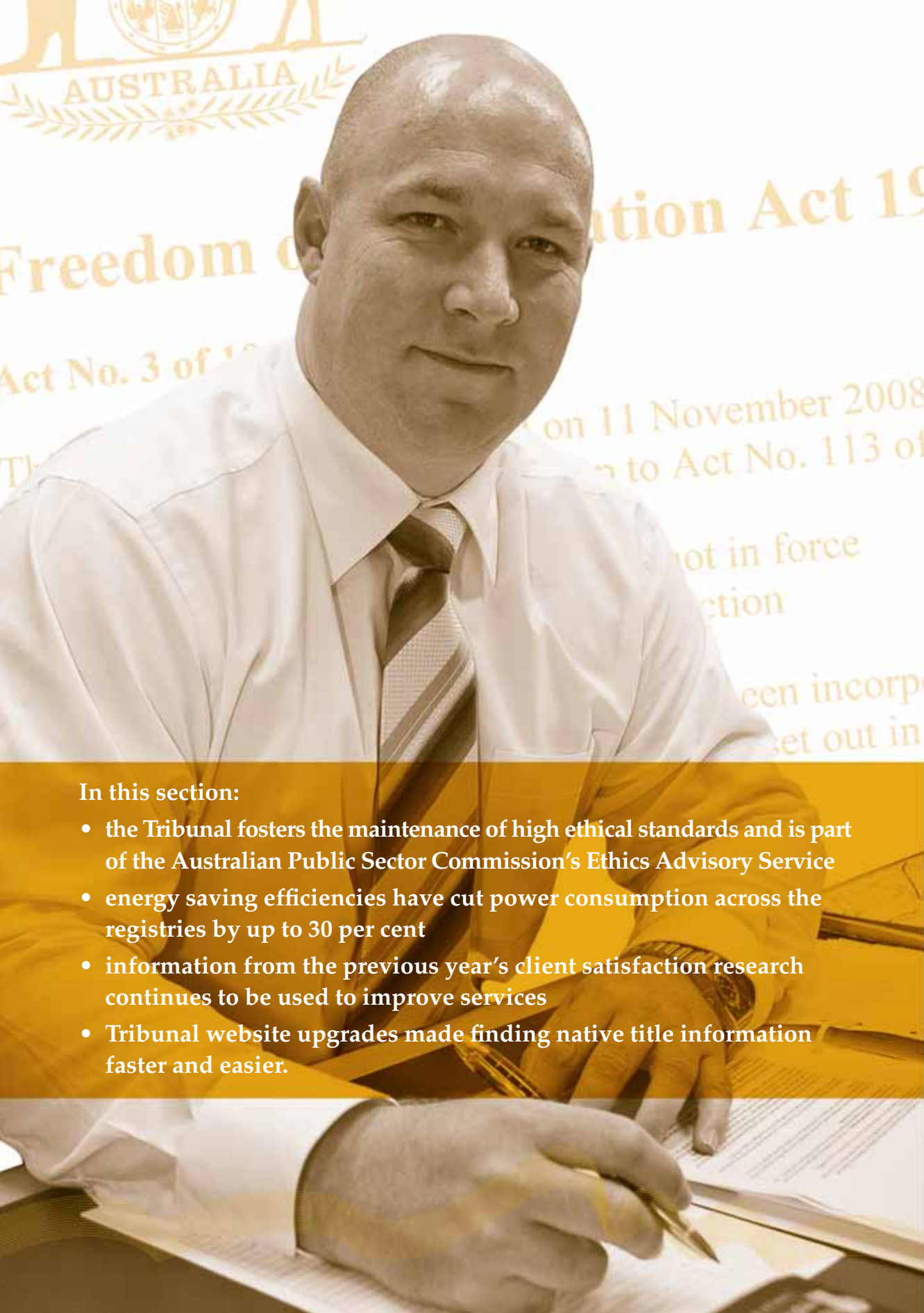
The occupational health and safety coordinator and representatives provided regular reports to the Tribunal's Consultative Forum and National Health and Safety Management committee.

During the reporting period, there was one accident notified under s. 68 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (Cwlth) and no performance improvement notices were provided to the Tribunal.

Initiatives taken during the year to ensure the health, safety and welfare at work of employees included:

- preventative occupational health and safety assistance (e.g. workstation assessments and ergonomic assessments)
- Employee Assistance Program (independent, confidential and professional counselling service)
- Psychological health program focusing on identifying, understanding and addressing interaction in the workplace and broader work environment. This required the engagement of a senior psychologist to lead these information sessions within each of the Tribunal's registries with specific work-based content provided by the Tribunal's occupational health and safety coordinator. These information sessions were presented as modules, one module was specific to the organisation and the other was for the professional benefit of managers and supervisors
- all health and safety representatives nationally were provided with additional certification training in the areas of Comcare Code of Practice roles and responsibilities, ergonomic workstation assessment and resuscitation
- influenza vaccination program.

A range of health initiatives were undertaken to assist employees in maintaining a healthy lifestyle and a safe work environment, e.g. information sessions by Nutrition Australia, and Outback Walkabout, challenging individuals and teams to walk the distance from Kakadu to Uluru using pedometers in a virtual environment.



In this section:

- the Tribunal fosters the maintenance of high ethical standards and is part of the Australian Public Sector Commission's Ethics Advisory Service
- energy saving efficiencies have cut power consumption across the registries by up to 30 per cent
- information from the previous year's client satisfaction research continues to be used to improve services
- Tribunal website upgrades made finding native title information faster and easier.

Accountability

Ethical standards and accountability

The Tribunal fosters the maintenance of high ethical standards. Information on the ethical standards prescribed by the APS Code of Conduct is provided to employees at induction and information sessions, and through a range of guidelines and other materials available on the Tribunal's intranet. The induction materials summarise employees' responsibilities as public servants and describe whistleblowing procedures, procedures for determining alleged breaches of the APS Code of Conduct and other ethical guidelines.

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. The Tribunal is also part of the Australian Public Sector Commission's Ethics Advisory Service.

During the reporting period, one internal complaint of alleged breaches of the APS Code of Conduct was finalised. It was determined that there was a minor breach of the Code of Conduct and appropriate sanctions were applied.

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. Tribunal members are not subject to the by the APS Code of Conduct except insofar as they may be, directly or indirectly, 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 the one formal complaint under their code of conduct was resolved.

Legal officer Scott Tredwell.

Ecologically sustainable development and environmental performance

In the reporting period, the Environmental Management Group met seven times. The group comprises representatives from each registry and a management representative. It reports quarterly to the Executive Team Meeting.

Removal of superfluous lighting and the installation of energy efficient globes has reduced energy consumption across the majority of registries, with reductions in the range of four to 31 per cent. Water saving devices were also installed in all registries.

Other initiatives undertaken during this reporting period included:

- involvement by all registries in the 2009 Earth Hour event
- monthly intranet announcements relating to workplace environmental issues sponsored by the Environmental Management Group
- production of a bibliography of library books relating to environmental issues
- consideration of a national paper consumption monitoring program
- integrated environmental management education and awareness within all registries
- when appropriate, a commitment to online publication of information material in place of printing
- where possible, use of recycled paper and vegetable inks in the printing process
- a preference for promotional materials sourced from recycled or biodegradable materials
- undertaking a program to reduce the number of servers (aiming at a 50 per cent server reduction over the next 12 months)
- using virtualisation technology to provide an online full-service solution to facilitate home/remote-based working (reduced travel/office-based costs)
- consolidating all of the power consumption for the new server room infrastructure into a single supply console and uninterrupted power source setup, which can now be monitored and converted into emissions or dollar costs
- using single monitors where appropriate
- moving to a new server room with efficient cooling and hot/cold aisle design to maximise efficiency
- trialling new video conferencing-from-the-desktop facilities with a view to reducing the need for interstate travel.

External scrutiny

Judicial decisions

No judgments relating to native title were handed down by the High Court during the reporting period; however, the Federal Court delivered almost 50 written judgments, some of which involved decisions of the Registrar. For further information see Federal Court, p. 113.

Freedom of information

During the reporting period, no formal requests were made under the *Freedom of Information Act 1982* (Cwlth) for access to documents. Further information is provided in Appendix III Freedom of Information, p. 135.

Other scrutiny

Australian Human Rights Commission

Under s. 209 of the Act, the Aboriginal and Torres Strait Islander Social Justice Commissioner is required to report annually on the operation of the Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

The Commissioner's *Native Title Report 2008* was tabled in Parliament on 30 April 2009.

As well as examining the challenge of climate change for Australia's Indigenous peoples, the report asked the government to move decisively to make legislative and policy changes to the native title system to achieve 'more, and better outcomes delivered through native title processes'.

The report contained 32 recommendations, one for the Australian Government to 'amend the Native Title Act to provide a presumption of continuity. This presumption could be rebutted if the non-claimant could prove that there was "substantial interruption" to the observance of traditional law and custom by the claimants'.

Of particular relevance to the Tribunal is the recommendation that the Australian Government and the Tribunal 'draft a comprehensive and clear guide to the registration test', and that the Australian Government should 'consider whether further guidance on the registration test should be included in the law', through regulation or amendment to the Act. It may be noted that the Tribunal's publication *Native title claimant applications: a guide to understanding the requirements of the registration test* is available from the Tribunal's website.

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

Accountability to clients

Client satisfaction
The Tribunal commissions research into the satisfaction of its clients and stakeholders every two years. Research was not undertaken in 2008–09.

The research undertaken in the previous reporting period identified four areas for potential improvement that were not mentioned in the 2005 research:
- better mediation and more consultation
- fairer, more impartial advice
- better mapping and research
- more advice on or assistance with registration changes.

In the current reporting period the Tribunal used this information to inform its continuous improvement program.

Client Service Charter
The Tribunal maintains a Client Service Charter to ensure that service standards meet client needs. 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 noted earlier, the Tribunal's primary purpose is to facilitate the achievement of timely and effective native title and related outcomes. Under the terms of the Act, the Tribunal must carry out its functions in a fair, just, economical, informal and prompt way and may take into account the cultural and customary concerns of Aboriginal and Torres Strait Islander people.

It is critical for all parties to native title proceedings to understand the complex processes involved in reaching agreements and facilitating native title outcomes 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, p. 59.

The Tribunal recognises the benefits to Indigenous Australians which arise from negotiated agreements about native title and related matters. For further information see Output group 2—Agreement-making, p. 63.

The *Strategic Plan 2009–2011* sets out the Tribunal's vision, mission, values and strategic priorities, with specific strategies, aimed at facilitating timely and effective native title and related outcomes.

Online services

To better meet stakeholders' and clients' information needs, in 2008–09 the Tribunal launched an upgraded website with improved navigation, design and content management. Improvements were made within the site such as enhancing the search tools for speeches and the native title case law newsletter, *Native Title Hot Spots.*

Native title in the news

On the Tribunal's website, clients and stakeholders can:

- watch television clips and Tribunal DVDs that highlight topical native title issues
- hear radio interviews addressing current issues in native title
- read copies of the Tribunal's monthly column in the national *Koori Mail* newspaper.

Visitors to the Tribunal's website can access a range of newspaper, radio and television reports including monthly *Koori Mail* newspaper columns, regular radio interviews, television reports and films about native title, including a Chinese subtitled version of the *15 years of native title* which was launched in December 2008.

Performance against purchasing policies

Procurement

The Tribunal's policy and procedures on procurement are communicated through the Chief Executive Instructions to assist employees in complying with the requirements of the *Financial Management and Accountability Act 1997* (Cwlth) and the accompanying regulations, and the Commonwealth Procurement Guidelines. The Tribunal's procurement policies and practices reflect the principles set out in the Guidelines.

The Tribunal publishes an annual procurement plan on AusTender by 1 July each year to draw the early attention of service providers and other businesses to potential opportunities.

During the reporting period the Tribunal published details of:

- publicly available business opportunities with a value of $10,000 or more on AusTender
- actual contracts or standing offers awarded with a value of $10,000 or more on AusTender
- actual contracts or standing offers with a value of $100,000 or more on the Tribunal website as required by Senate Order 192 (see below).

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.

Consultancies

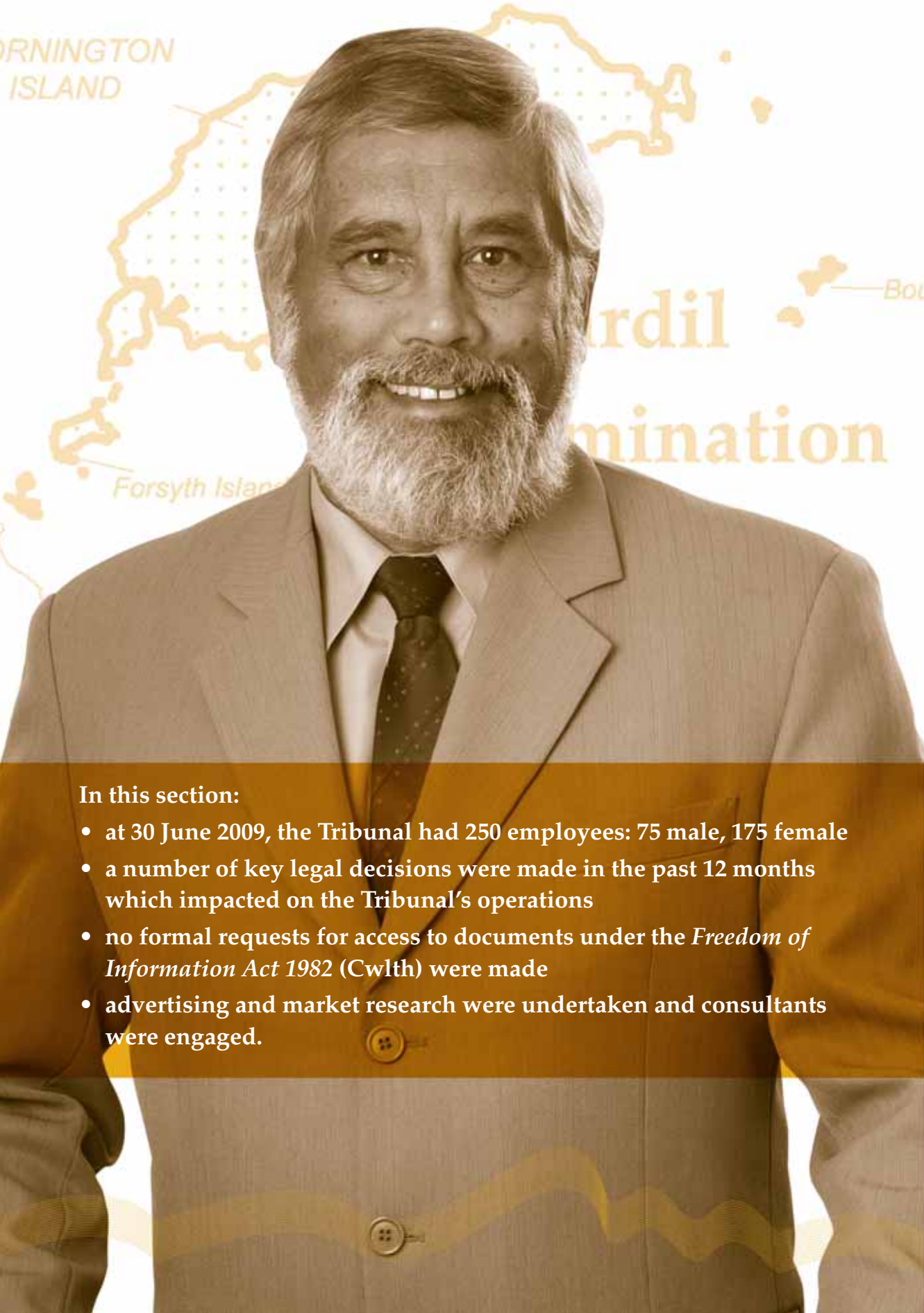
Consultants continue to provide services where specialised or professional skills are not available within the Tribunal or where there is an identified need for independent research or assessment.

The Tribunal engages consultants based on value for money, open and effective competition, ethics and fair dealing and accountability.

During the reporting period, two new consultancy contracts were entered into involving a total actual expenditure of $22,248. In addition, one ongoing consultancy contract was active during the 2008–09 year, involving total actual expenditure of $13,629. More detailed information on consultancy contracts let during the year to a value of $10,000 or more is available in Appendix V Consultants, p. 141.

Table 27: Expenditure on consultancies by division

Division	Expenditure
Corporate Services and Public Affairs	$ 35,877
Service Delivery	$
Total	**$ 35,877**



In this section:

- **at 30 June 2009, the Tribunal had 250 employees: 75 male, 175 female**
- **a number of key legal decisions were made in the past 12 months which impacted on the Tribunal's operations**
- **no formal requests for access to documents under the *Freedom of Information Act 1982* (Cwlth) were made**
- **advertising and market research were undertaken and consultants were engaged.**

Appendices

Appendix I Human resources

Table 28: Employees by classification, location and gender as at 30 June 2009

Classification	Salary Ranges	Male								Female							
		Location/Registry								Location/Registry							
		Principal	WA	NSW	QLD	Vic	SA	NT	Total	Principal	WA	NSW	QLD	Vic	SA	NT	Total
Traineeship	$11,186–$29,828				1				1			1					1
APS level 1 and Cadet rates	$22,444–41,344																
APS level 2	$42,333–$46,944	2	1			1	1		5	12	20		13	1	1	1	48
APS level 3	$48,220–$52,044	4							4	15	5	5				1	26
APS level 4	$53,744–$58,351	2	2	1		1			6	7	11	1	9	2	2	1	33
APS level 5	$59,945–$63,561	6							6	4	1		1				6
APS level 6	$64,742–$74,370	15	5	2	4	1	1	1	29	9	7	2	6	4	2	1	31
Legal 1	$49,683–$99,279				1				1	5							5
Legal 2	$110,245–$115,021	1							1								
Media 1	$67,438–$76,631									1			1				2
Media 2	$87,306–$99,279									1							1
Library 1	$45,145–$63,335									1							1
Library 2	$64,742–$72,353												1				1
Executive level 1	$82,997–$89,619	6	1	1	3				11	10	2	3	2	1			18
Executive level 2	$95,725–$112,153	6		1		1		1	9		1				1		2
Senior executive	From $144,733	2							2								
Total employees	**250**	**44**	**9**	**5**	**9**	**4**	**2**	**2**	**75**	**65**	**47**	**12**	**33**	**8**	**6**	**4**	**175**

The average number of employees for 2008–09 was 244. This is a headcount figure not a full-time equivalent figure and does not include holders of public office (President, members or Registrar).

Tribunal Member Robert Faulkner.

Table 29: Holders of public office of the National Native Title Tribunal as at 30 June 2009

Name	Title	Appointed	Term	Location
Graeme Neate	President	1 Mar 1999[1] 1 Mar 2004 1 Mar 2007	Five years Reappointed for a further three years Reappointed for a further five years	Brisbane
Christopher Sumner	Full-time Deputy President	18 Apr 2000[2] 18 Apr 2003 12 Apr 2007	Three years Reappointed for a further four years Reappointed for a further five years	Adelaide
John Sosso	Full-time Deputy President	28 Feb 2000[3] 28 Feb 2003 28 Feb 2007	Three years Reappointed for a further four years Appointed as a Deputy President for five years	Brisbane
John Catlin	Full-time member	6 Oct 2003 6 Oct 2006	Three years Reappointed for a further five years	Perth
Graham Fletcher	Full-time member	20 Mar 2000 20 Mar 2003 20 Mar 2007	Three years Reappointed for a further four years Reappointed for a further five years	Cairns
Daniel O'Dea	Full-time member	9 Dec 2002 9 Dec 2005 9 Dec 2007	Three years Reappointed for a further two years Reappointed for a further five years	Perth
Gaye Sculthorpe	Full-time member	2 Feb 2000[4] 2 Feb 2003[5] 2 Feb 2004 2 Feb 2008 3 Aug 2008 3 Feb 2009	Three years Reappointed for a further three years Reappointed as full-time for four years Reappointed for a further six months Reappointed for a further six months Reappointed for a further year	Melbourne
Robert Faulkner	Part-time member	2 Aug 2004	Five years	Sydney
Neville MacPherson	Part-time member	1 Sep 2003[6] 1 Sep 2006	Three years Reappointed for a further five years	Melbourne
Stephanie Fryer-Smith	Registrar	20 Oct 2008	Five years	Perth

1 Reappointed from part-time member to President

2 Reappointed from full-time member to Deputy President

3 Reappointed from full-time member to Deputy President

4 Reappointed from part-time member to full-time member

5 Resigned as part-time member, reappointed as full-time member

6 Reappointed from full-time member to part-time member

Appendix II Significant decisions

During the reporting period, the following decisions of the Federal Court were the most significant in terms of their impact on the operations of the Tribunal. Significant decisions made by the Tribunal in future act matters are also noted. More extensive summaries of these decisions can be found in the *Native Title Hot Spots* archive on the Tribunal's website. References to sections in this appendix are references to sections of the *Native Title Act 1993* (Cwlth) (the Act) unless stated otherwise.

High Court

There were no High Court decisions in relation to native title during the reporting period. The decision in *Northern Territory v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24; [2008] HCA 29 (often referred to as the Blue Mud Bay case) concerned the nature of the rights over the inter-tidal zone held under a grant of fee simple made pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth).

Federal Court

Full Court

Registration test—factual basis
Gudjala # 2 v Native Title Registrar (2008) 171 FCR 3; [2008] FCAFC 157, French, Moore and Lindgren JJ, 27 August 2008

The main issue in these appeal proceedings was the proper approach to assessing an anthropological report provided for the purposes of s. 190B(5) of the Act, a condition of the registration test which deals with the sufficiency of the factual basis provided to support the claim. This is the first time a Full Court of the Federal Court has fully considered the interpretation of that provision. It is also only the second Full Court decision to deal with the application of the registration test. The other is *Western Australia v Strickland* (2000) 99 FCR 33; [2000] FCA 652.

The claimant application to which this decision relates was made on behalf of the Gudjala People in April 2006 (Gudjala People #2). The Native Title Registrar's delegate decided it must not be accepted for registration because it did not meet various conditions of the registration test. The applicant filed a claim registration review application pursuant to ss. 69(1) and 190D(2) (as it was then. Now, see s. 190F). In August 2007, Justice Dowsett found that the application did not meet the conditions found in ss. 190B(5), 190B(6) and 190B(7) and so dismissed the application for review: *Gudjala People # 2 v Native Title Registrar* [2007] FCA 1167. In November 2007, an application for leave to appeal out of time against that judgment was filed on behalf of

the Gudjala People. Leave was granted unopposed at the commencement of the Full Court hearing in May 2008.

The proper interpretation of two provisions of the Act is of particular importance in this case. The first is s. 62(2)(e), which requires that a claimant application must contain 'a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist' and that:

- the native title claim group have, and the predecessors of those persons had, an association with the area—s. 62(2)(e)(i)
- there exist traditional laws and customs that give rise to the claimed native title—s. 62(2)(e)(ii), and
- the native title claim group have continued to hold the native title in accordance with those traditional laws and customs—s. 62(2)(e)(iii).

The second is s. 190B(5), which provides that the Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support that assertion.

In addition to the 'examples' of the 'facts giving rise to the assertion of native title' set out in schedule F of the application and the affidavit of a member of the claim group, a report by Rod Hagen, an anthropologist, formed part of the application. The Court canvassed the report, noting (among other things) that Mr Hagen had worked intermittently with the Gudjala People since June 2000 and had been asked to comment on the factual basis that supported the native title rights and interests claimed in the application. In the report, Mr Hagen explained the relationship of particular Gudjala families with the four apical ancestors named in the application. He also stated that the materials he had reviewed supported the identification of the current claimants as members of the Gudjala group on the basis of descent from those apical ancestors and that contemporary members of the claim group continued to maintain an association with the Gudjala area, which included maintenance of 'an unbroken chain of occupation of the overall claim area'. Mr Hagen's conclusions were that the native title claim group have, and the predecessors of those persons had, an association with the area and that the native title claim group's ongoing observance of traditional laws and customs was consistent with the maintenance of traditional rights and interests in the land subject to the claim.

After setting out a summary of the delegate's findings, the Full Court turned to Dowsett J's reasons for judgment. His Honour's analysis of the requirements of s. 190B(5) was noted. Dowsett J had (among other things) identified two 'real deficiencies' in the application:

- it failed to explain how, by reference to traditional law and customs presently acknowledged and observed, the claim group was limited to descendants of the

identified apical ancestors, and

- no basis was shown for inferring that there was, at and prior to 1850–1860, a society which had a system of laws and customs from which relevant existing laws and customs were derived and traditionally passed on to the existing claim group.

The Full Court stated that what was of 'central importance' in this case was the details specified in s.62(2)(e), which 'are in aid of the description, with some particularity, required by s. 62(2)(d) of the asserted native title rights and interests'. Their Honours were of the view that:

> [I]t is only necessary for an applicant to give a general description of the factual basis of the claim and to provide evidence in the affidavit that the applicant believes the statements in that general description are true. Of course the general description must be in sufficient detail to enable a genuine assessment of the application by the Registrar under s 190A and related sections, and be something more than assertions at a high level of generality. But what the applicant is not required to do is to provide anything more than a general description of the factual basis on which the application is based. In particular, the applicant is not required to provide evidence of the type which, if furnished in subsequent proceedings, would be required to prove all matters needed to make out the claim. The applicant is not required to provide evidence that proves directly or by inference the facts necessary to establish the claim.

Some of Dowsett J's observations were said to suggest he thought the material before the Registrar should be 'evaluated as if it was evidence furnished in support of the claim'. If, 'in truth', this was the approach adopted, then the Full Court was of the view that 'it involved error' on Dowsett J's behalf. However, the reason for allowing the appeal was that Dowsett J 'was critical of, and in many respects did not accept, the opinions expressed by Mr Hagen'. The Full Court found that:

> Mr Hagen's report ... contained much material which, if accepted as a recitation of facts, went a considerable way towards establishing the factual basis asserted by the applicant in relation to the various matters referred to in s 190B(5).

Dowsett J had commented that he could find no factual basis on the material available 'supportive of an inference that there was, in 1850–1860, an indigenous society in the area, observing identifiable laws and customs'. This was indicative of error, according to their Honours, in that:

> Mr Hagen's report, which formed part of the application (and in respect of which there were affidavits from members of the claim group saying the statements in the application were true), contained several statements which, together, would have provided material upon which a decision maker could be satisfied that there was, in 1850-1860, an indigenous society in the claim area observing identifiable laws and customs. It may be accepted that Mr Hagen's report does not deal in direct and unequivocal terms with this question and others that s 190B requires

> must be addressed. But it is not true that his report provides no factual basis in the way described by his Honour. Had his Honour given appropriate weight to Mr Hagen's report, that report together with other material could well have sustained a conclusion that the application should be accepted. We accept that in relation to some of the asserted native title rights and interests there was a dearth of material that such rights and interests had been and continue to be observed, but that would not have been fatal to the acceptance of the claim.

The Full Court allowed the appeal, set aside Dowsett J's orders and remitted the matter to his Honour for further consideration.

Negotiation in good faith—future act proceedings
FMG Pilbara Pty Ltd v Cox [2009] FCAFC 49, Spender, Sundberg and McKerracher JJ, 30 April 2009

The questions of law before the Full Court of the Federal Court in this case were whether:

- negotiations in good faith must have reached a certain stage at the end of the prescribed six-month period before an application for a future act determination can be made
- a negotiation party has negotiated in good faith 'about' or 'over' a particular future act if negotiations conducted on a broader basis include that future act.

The first respondent (PKKP) is the registered native title claimant in relation to the Puutu Kunti Kurrama Pinikura People's claimant application. The second respondent (WGAC) is the registered native title body corporate in relation to the approved determination of native title made in *Hughes v Western Australia* [2007] FCA 365 pursuant to s. 13(3)(a) of the Act.

Notice of the proposal to grant the mining lease was given under s. 29 of the Act on 25 April 2007 by the State of Western Australia. The proposed lease area overlapped part of the PPKP's claim area and part of the WGAC's determination area. If the government party (i.e. the state) gives notice under s. 29 that it proposes to do a future act to which the right to negotiate applies, registered native title claimants and registered native title bodies corporate have the 'benefit' of the 'negotiation procedure' set out in s. 31(1)(b) of the Act, pursuant to which the 'negotiation parties' (in this case, the state, PKKP, WGAC and FMG) must negotiate in good faith with a view to obtaining the agreement of each of the native title parties to the doing of the future act covered by the notice, with or without conditions. However, if no agreement is reached, and at least six months have passed since the 'notification day' specified in the s. 29 notice, any negotiation party may apply to the Tribunal for a future act determination under s. 38: see ss. 30A and 31(1)(b), 35(1). On 23 November 2007,

FMG applied to the Tribunal for such a determination. FMG was prima facie entitled to make the application. However, the native title parties argued that FMG had not negotiated in good faith about the grant of the mining lease.

FMG and WGAC had commenced 'whole of project' negotiations in relation to a draft land access agreement (LAA) in late March 2006. FMG and PKKP started negotiations in relation to a second draft LAA in February 2007. The Tribunal found that productive negotiations on the LAA had taken place with PKKP but it was only on 6 September 2007 that FMG confirmed that it wanted to include the proposed mining lease in those negotiations. Whilst acknowledging that s. 31(1)(b) could be satisfied if the LAA discussions included 'advanced negotiations on the doing of the relevant future act', it was noted that PKKP agreed to include negotiations about the proposed mining lease in the LAA discussions as 'a sign of common sense and goodwill on its behalf'. It was 'not an abdication of its right to negotiate about the [particular] future act'. FMG had confused 'appropriate negotiating behaviour' by PKKP with 'surrender of rights'. In relation to WGAC, the Tribunal found that, because the LAA negotiations stalled, FMG was obliged to revive negotiations about the proposed mining lease because there had been no substantive discussions about the mining lease in question. Therefore, the Tribunal concluded that:

- in relation to PKKP, the duty to negotiate in good faith under s. 31(1)(b) was not discharged where one party (FMG) unilaterally concluded negotiations about the mining lease covered by the s. 29 notice at an 'embryonic stage'
- when the LAA negotiations with WGAC broke down, FMG was obliged to negotiate specifically in relation to the mining lease in question.

In circumstances where it was found FMG had not fulfilled its obligations under s. 31(1)(b) in relation to either of the native title parties, the Tribunal determined that it had no jurisdiction to conduct an inquiry and make a future act determination pursuant to ss. 38 and 139(b) of the Act: see *Cox v Western Australia* (2008) 219 FLR 72. FMG filed an appeal in the Court against the Tribunal's decision under s. 169(1) of the Act. The matter was referred to the Full Court of the Federal Court pursuant to s. 20(1A) of the *Federal Court Act 1976* (Cwlth).

Pursuant to s. 32(6) of the Act, the Tribunal cannot make a future act determination if a negotiation party satisfies it that any other negotiation party (other than a native title party) did not negotiate in good faith. Justices Spender, Sundberg and McKerracher were of the view that negotiation in good faith is not a 'jurisdictional precondition'. The statutory prohibition found in s. 36(2) affects the Tribunal's 'power' to make a determination, rather than its 'jurisdiction'. If there were no negotiations in good faith but the point was not taken, the Tribunal would still have jurisdiction and power.

The Full Court accepted that the right to negotiate regime is an element of the protection of native title, one of the main objects found in s. 3 of the NTA and that, given its beneficial nature, it was not to be narrowly construed. However, the expression 'negotiate in good faith' was also to be construed 'in its natural and ordinary meaning' by identifying what the 'good faith' obligation is intended to achieve. According to the Court, this was 'made obvious by the wording of the provision in which it is found within the context of the statutory scheme'. According to their Honours, only two obligations were 'spelt out' by the statutory scheme:

- negotiations directed to reaching an agreement are carried out in good faith, and
- not less than six months has passed since the notification day in the s. 29 notice.

The Full Court did not agree with the Tribunal's conclusion that negotiations that had only reached an 'embryonic' stage could not be considered negotiations for the purpose of s. 31(1)(b). According to the Court:

> The interpretation adopted by the Tribunal ... is an additional requirement which is not to be found in the Act. It puts a gloss on the statutory provisions and places a fetter on a negotiation party's entitlement to make an application under s 35 in order to obtain ... [a future act] determination.

The Full Court was of the view that:

> [T]here could only be a conclusion of lack of good faith within the meaning of s 31(1)(b) ... where the fact that the negotiations had not passed an 'embryonic' stage was, in turn, caused by some breach of or absence of good faith such as deliberate delay, sharp practice, misleading negotiating or other unsatisfactory or unconscionable conduct.

The difficulty PKKP faced on appeal, according to their Honours, was that the Tribunal 'quite reasonably' concluded that FMG had, in the 'conventional sense', negotiated in good faith during the six-month period with a view to reaching the relevant agreement and 'there is nothing more under the statute that it was required to do'. In these circumstances, the fact that negotiations were at a preliminary stage when FMG made application under s. 35(1) 'could not constitute a failure to negotiate in good faith' for the purposes of s. 31(1)(b). In relation to WGAC, the Tribunal's finding that, if the LAA negotiations broke down, the parties must revert to negotiating specifically about the proposed future act, rather than the whole of claim or project, was found to impose 'an additional requirement' that was not to be found in s. 31(1)(b).

The Full Court declared that, on the facts found by the Tribunal, FMG had fulfilled its obligation to negotiate in good faith and so the Tribunal had power to conduct an inquiry and make a future act determination under s. 38. The appeal was allowed and the Tribunal's decision set aside. PKKP filed an application in the High Court for special leave to appeal against the whole of the judgment on 25 May 2009.

Decisions at first instance

Dismissal where merit conditions of the registration test not met—s. 190F(6)
During the reporting period, the Federal Court, on its own motion, considered whether 14 claimant applications should be dismissed pursuant to s. 190F(6). In all but one of those cases, the application was dismissed.

George on behalf of the Gurambilbarra People v Queensland [2008] FCA 1518, Logan J, 10 October 2008.

This was the first case in which the Court considered the proper exercise of the power to dismiss a claimant application under s. 190F(6). This provision was inserted into the Act by the *Native Title Amendment (Technical Amendments) Act 2007* (Cwlth) (TA Act). It provides that the Court may, of its own motion or on the application of a party, dismiss a claimant application if:

- the Court is satisfied that the application in issue has not been amended since consideration by the Registrar, and is not likely to be amended in a way that would lead to a different outcome once considered by the Registrar, and
- in the opinion of the Court, there is no other reason why the application in issue should not be dismissed.

Subsection 190F(5) (also inserted by the TA Act) provides that s. 190F(6) applies if:

- in the Native Title Registrar's opinion, the claim made in the application does not satisfy all of the merit conditions found in s. 190B or it is not possible to determine whether all of those conditions are met because of a failure to meet all of the procedural and other conditions found in s. 190C, and
- the Court is satisfied that all avenues for judicial review or reconsideration by the Tribunal have been exhausted without the claim being registered.

Justice Logan commented that, while the registration test is not a screening mechanism for access to the Federal Court, the presence of s. 190F(6) indicates that satisfaction of the registration test has ramifications for whether an application should be allowed to remain on the Court's list. As s. 190F(6) provides a 'wholly self contained power of dismissal', the case law in relation to strike-out under s. 84C is not relevant to the application of s. 190F(6).

The 'immediate end' to which s. 190F(6)(a) is directed is whether there is any feature of the application which has changed, or is likely to change in the future, 'which would lead to a different registration decision by the Registrar'. In assessing this, the Court must form the requisite opinion. The meaning of 'likely' in this context was found to be 'elusive'. However, the fact that dismissal without a hearing of the merits may be a consequence of the application of s. 190F(6)(a) was one reason not to

construe it as meaning 'more likely than not'. Another was that the wording 'is not likely to be amended in a way that would lead to a different outcome once considered by the Registrar' in s. 190F(6)(a) 'unusually' requires the Court to make 'a predictive assessment' of both the prospect of the application being amended and the outcome of fresh consideration of the amended application by the Registrar. For these (and other) reasons, the Court was inclined to construe 'likely' to mean 'what would reasonably be regarded as a real chance irrespective of whether that chance is greater than 50 per cent, as opposed to nothing more than a mere possibility'. It is important to note that there must be some evidence before the Court that provides a reasonable foundation for the predictive value judgment called for in s. 190F(6)(a).

As to s. 190F(6)(b), Logan J noted that, while it was apparently something of a 'fail safe' to enable justice to be done, it did not constitute 'an invitation to preserve an application on the basis of whimsy or sympathy'. The opinion based on that 'other reason' provides a basis for preserving an application even though it was not accepted for registration because s. 190B was not met, review remedies are exhausted, there had been no amendment of the application and the Court was not satisfied that amendment of the application would bring about a different result. Therefore, 'one might think ... the circumstances warranting the formation of that opinion would be very singular indeed'. However, it was not appropriate to delineate what those circumstances might be because they would be case specific. However, it was noted that later judicial authority disclosing that the Registrar's approach to s. 190B was 'overly rigorous' may provide an 'other reason' for the purposes of s. 190F(6)(b).

In this case, the application was dismissed because his Honour was satisfied that it had not been amended since it was considered by the delegate, it was not likely to be amended in a way that would lead to a different outcome once considered by the Registrar and there was no other reason why the application should not be dismissed.

The other cases decided in the reporting period dealing with s. 190F(6) are:

- *Allison v Western Australia* [2008] FCA 1560
- *Collard v Western Australia* [2008] FCA 1562
- *Evans on behalf of the Koara People v Western Australia* [2008] FCA 1557
- *Morich v Western Australia* [2008] FCA 1567
- *Walker v Western Australia* [2008] FCA 1558
- *Walker v Western Australia* [2008] FCA 1559
- *Wonyabong v Western Australia* [2008] FCA 1561
- *Taylor v Western Australia* [2008] FCA 1675
- *Phillips v Western Australia* [2008] FCA 1676
- *Martin v Western Australia* [2008] FCA 1677
- *Whalebone v Western Australia* [2008] FCA 1678
- *Hogan v Western Australia* [2009] FCA 610.

In *Hunter on behalf of the Wiri People No 2 v Queensland* [2009] FCA 325, the Court dismissed the application of its own motion both pursuant to s. 190F(6) and for default of appearance.

ILUA registration—judicial review
Fesl v Delegate of the Native Title Registrar (2008) 173 FCR 150; [2008] FCA 1469
Logan J, 1 October 2008

The main issues arising in this case, which dealt with review of a decision to register an indigenous land use agreement (ILUA), were whether:

- it was part of the Native Title Registrar's function to make an assessment as to whether the Traveston Crossing Dam Agreement was an ILUA as defined in the NTA
- there was evidence before the Registrar's delegate to justify the decision to register the agreement
- the delegate failed to take into account relevant considerations.

Queensland Water Infrastructure Pty Ltd (QWI), which is responsible for the development of the proposed Traveston Crossing Dam, entered into an agreement with persons who claimed to hold native title to the project area. On 14 April 2008, the Registrar's delegate decided to register the agreement on the Registrar of ILUAs. The applicants in this case sought judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) of the decision to register.

The applicants submitted that the delegate made errors of law or improperly exercised the power conferred upon her in finding that the agreement must be registered. The Court categorised the grounds of review as being:

- 'no evidence'
- failure to take into account relevant considerations
- whether the agreement may be characterised as an ILUA in the light of the Cultural Heritage Investigation Management Agreement (CHIMA) provisions of the agreement, the provisions of the *Aboriginal Cultural Heritage Act 2003* (Qld)(ACHA) or otherwise.

As was noted, the second condition for registration, found in s. 24CG(3)(b) of the Act, is that the Registrar considers that the requirements in paragraph 24CG(3)(b) (which relate to identifying native title holders and ensuring that they have authorised the making of the agreement) have been met. Justice Logan looked at the meaning of the word 'considers' in this context, noting (among other things) that as a matter of construction, the use of the verb 'considers' places s. 23CG(3)(b) within the category of laws the operation of which 'is made conditional upon the opinion or satisfaction as to certain matters of a designated authority or person'. As a result, it was not for the

Court on judicial review to decide on the merits of matters which were 'consigned by the Parliament' to the Registrar to consider.

QWI had raised the question of whether or not it was part of the Registrar's function to make an assessment as to whether or not 'what was presented for registration was an ILUA'. Logan J held, among other things, that it was appropriate to do so. An agreement will only be an area agreement ILUA if it meets the requirements of ss. 24CB to 24CE of the Act. If it does not, the Registrar is both 'entitled and obliged' not to register it on the Register, even if the conditions in s. 24CL were otherwise met. Thus, a decision to register an agreement that was not an ILUA would be 'no decision under s. 24CJ'. However, the applicants in this case were entitled to raise grounds going to whether the agreement was an ILUA.

By the time the delegate came to make the registration decision (i.e. after the close of the notification period), she had received a submission that the CHIMA provisions of the agreement contravened the ACH Act, were therefore contrary to law and in violation of the requirement in s. 24CE(1) that (among other things) the agreement may be subject to any conditions 'other than' conditions that contravene any law. The delegate referred back to the earlier finding that the agreement was an ILUA (i.e. the pre-notification assessment) and stated that, in making the registration decision, 'there is no scope for me to consider this point and I have no further comment in relation to this assertion'. The Court held that, while the delegate was entitled to make a pre-notification assessment of whether the agreement was an ILUA, this did not mean that whether the agreement was, in law, an ILUA was quarantined from scrutiny upon an application for the judicial review of the registration decision. Having made an initial (pre-notification) assessment, the delegate's reasons evidenced a rigidity of thinking, i.e. that what she had to consider was circumscribed by s. 24CL. If a condition of an agreement for which registration was sought was unlawful, a question arose as to whether that agreement was one which could be registered either at all or only if the offending condition were severable. While the delegate was not obliged to narrowly scrutinise the agreement looking for any condition which may be unlawful in the absence of the question having been raised, once it was raised, the delegate was in error in deciding that she could not deal with it when making the registration decision.

While this meant that one of the grounds of review was made out, the question of whether or not the delegate's decision ought to be set aside depended on whether or not the agreement contained terms and conditions that were unlawful. His Honour found that the CHIMA conditions were lawful. According to the Court, the ACH Act was designed to complement the Act. Under the ACH Act, an agreement with an 'Aboriginal party' was an alternative to an ILUA for the purposes of the ACH Act. Therefore, not every agreement must be with an 'Aboriginal party', as the applicants for review had argued.

The submission that there was nothing to justify the delegate's decision that the second condition for registration was met, i.e. that all persons who hold, or may hold, native title to the agreement area had authorised the making of the agreement, was also rejected. Logan J held that the evidence was such that it was open to the delegate to conclude that this condition was met. Similarly, the applicants' argument that the meeting held to authorise the making of the agreement was not lawful was rejected. In coming to this conclusion, his Honour noted that the authorities on s. 251B (authorisation of claimant applications) to were relevant to s. 251B (authorisation to make an ILUA), provided those authorities were modified appropriately to accommodate the differences between those two provisions.

As none of the grounds raised were made out, the application for review was dismissed.

Replacing the applicant—section 66B must be used
Sambo v Western Australia (2008) 172 FCR 271; [2008] FCA 1575
Siopis J, 22 October 2008

The main issue before the Federal Court was whether people could be removed from the group constituting 'the applicant' for a claimant application pursuant to Order 6 rule 9 of the Federal Court Rules (FCR) or whether s. 66B of the Act was the only option. The claimant application relevant to this case is in the Central West Goldfields region of Western Australia.

Pursuant to s. 61(2)(c), seven of the people where jointly 'the applicant' for the claim. Five of those seven people sought to have the other two (Sue Wyatt and Victor Cooper) removed either because they were no longer proper or necessary 'parties' to a proceeding under O 6 r 9 of the FCR or pursuant to s. 66B(1), in circumstances where no meeting of the native title claim group was held to authorise a change to the constitution of the applicant. The evidence filed in support of the notice of motion indicated that the relationship between those who sought the orders (the movers) and the other two members of the group comprising the applicant had broken down. It was submitted that the conduct of Ms Wyatt and Mr Cooper had hindered the progress of the application and that the Court should find they had ceased to be proper or necessary parties to a proceeding within the meaning of O 6 r 9(b) of the FCR.

The Act was amended in September 2007 by the *Native Title Amendment (Technical Amendments) Act 2007* (Cwlth) to:

- expand the circumstances in which s. 66B(1)(a) would apply to include the death or incapacity of a member of the applicant or a member consenting to being removed, and
- repeal s. 64(5), which provided for an amendment to be made to replace the applicant with a new applicant.

The Court noted that, in the Explanatory Memorandum to the *Native Title (Technical Amendments) Bill 2007*, it was said that 'proposed section 66B would be the only mechanism through which any changes to the applicant could be made'. According to the Court, upon the reading s. 66B(1)(a)(i) with s. 66B(1)(b), it was clear that, even when a person comprising the applicant has died, Parliament's intention was that 'there is to be an authorisation by the claim group of the replacement applicant, whether or not the deceased person is replaced by another person as part of the applicant'. Further, since the passing of the 2007 amendments, the only means whereby 'any changes can be made to the composition of the applicant' is via s. 66B. It was noted that decisions to the contrary in *Chapman v Queensland* (2007) 159 FCR 507, *Butchulla People v Queensland* (2006) 154 FCR 233 and *Doolan v Native Title Registrar* (2007) 158 FCR 56 had been superseded by the amendments. Given those findings, his Honour rejected the contention that Ms Wyatt and Mr Cooper could be removed by reference to O 6 r 9 of the FCR on the basis that each was not a proper or necessary party.

In the alternative, the movers submitted Ms Wyatt and Mr Cooper could be removed pursuant to s. 66B(1) because their conduct was such that they no longer had the authority to act on behalf of the claim group. His Honour rejected this contention because '[t]here was no evidence as to the terms on which the members of the applicant were originally appointed'. Therefore, the notice of motion to change the constitution of the applicant was dismissed.

Determination of native title—consideration of s. 87A
Adnyamathanha No 1 Native Title Claim Group v South Australia [2009] FCA 358, Mansfield J, 19 March 2009

The issue before the Court was whether it was appropriate to make several native title determinations by consent in relation to a single application pursuant to s. 87A of the Act.

The Adnyamathanha No 1 claimant application covered a substantial area of South Australia. Two consent determinations under s. 87A were sought in relation to Adnyamathanha No 1. The first was to cover a single pastoral lease. It was anticipated that an ILUA and management plan would be executed in relation to it. The second would cover a much larger part of the area covered by the claimant application but there would still be an undetermined part, consisting of an area of overlap with another claimant application and some areas where negotiations were ongoing. A third consent determination was sought under s. 87 in relation to the area covered by the Adnyamathanha No 2 native title claim, which covered the Flinders Ranges National Park. The State of South Australia supported the applicant and no other respondent party opposed them.

Section 87A was introduced by the *Native Title Amendment Act 2007* (Cwlth) and then amended by the *Native Title Amendment (Technical Amendments) Act 2007* (Cwlth), both of which commenced some time after Adnyamathanha No 1 was filed. However, as was noted, s. 87A applies regardless of when an application was made. The benefits of s. 87A, according to his Honour, were that:

- pursuant to s. 64(1B), the area subject to the claim was automatically amended so that the unresolved area remained as the claim area, and
- the claim as amended, if it was registered at that time, did not have to go through the registration test again and remained on the Register of Native Title Claims: see ss. 190(3)(a)(iii) and 190A(1A).

In this case, the Court had 'no hesitation' in deciding that (subject to the other requirements of the Act) it was appropriate to make the determination over the larger area. As to the separate determination over the pastoral lease, Mansfield J was of the view that it was 'not routinely desirable' that an agreement to resolve the whole or part of a claim should be 'splintered' into a series of separate determinations because (among other things) there were 'obvious efficiencies' in having only one consent determination that reflected the agreement. However, his Honour emphasised that these observations were not 'intended to inhibit the full use of s. 87A' but were made to indicate that, once a proposed determination in respect of an area included in the wider claim area is proposed, there should be a 'sound reason for any further "subdivision" of the area'. In this case, the parties sought a separate determination over the pastoral lease because discussions about complex and varying proposed land uses over that area were the subject of ongoing discussions. Mansfield J was satisfied for this reason, and others, that it was appropriate to make a separate consent determination over the leased area.

Determination of native title—non-claimant application
Worimi Local Aboriginal Land Council v Minister for Lands for New South Wales (No 2) [2008] FCA 1929, Bennett J, 18 December 2008

This is the first case where a non-claimant application was actively opposed. The Court had to decide whether to make a determination that native title did not exist over an area in Port Stephens, New South Wales. The most important aspect of the decision is the consideration given to the onus of proof in a case where a non-claimant application is opposed.

The Worimi Local Aboriginal Land Council (the land council) is the body corporate established under s. 50 of the *Aboriginal Land Rights Act 1983* (NSW) (the NSW Act) for the relevant area. Its non-native title interest arose from the transfer of land in Port Stephens (including Lot 576, the area this case concerns) by the Minister for Lands for New South Wales (the minister) pursuant to s. 36 of the NSW Act in 1998. Other

than Worimi (also known as Gary Dates), who was a respondent and opposed the application, the only Aboriginal people to give evidence did so as witnesses for the land council. There was no dispute that the land council wished to sell Lot 576 to pay off debts and to provide housing. The land council's witnesses generally, but not universally, supported the sale.

As a non-claimant application is a 'native title determination application', stringent requirements are placed the applicant. According to Justice Bennett, if the court was not satisfied that native title did not exist, the land council's application should be dismissed. The parties agreed (among other things) that:

- the land council carried the burden of proof to satisfy the Court that no native title existed in Lot 576 and the applicable standard of proof was the balance of probabilities
- the Court could only grant the declaratory relief sought by the land council if satisfied that Lot 576 was not subject to native title.

According to her Honour, the real difference between the parties related to their submissions regarding what evidence was sufficient to establish the negative proposition. Bennett J found (among other things) that:

- the beneficial nature of the NTA does not mean that a different standard applies to the evidentiary burden and the onus of proof
- in the absence of an overlapping claimant application, the Court is entitled, at least, to infer an absence of native title, subject to the matters raised by Worimi
- a non-applicant native title claimant (i.e. a respondent such as Worimi) can, by establishing the elements of native title, prevent a determination that native title does not exist but cannot secure a positive determination of native title under the NTA
- Worimi's evidence might raise a doubt as to the non-existence of native title without amounting to proof necessary for a finding that native title exists, i.e. Worimi did not need to establish that native title existed on the balance of probabilities
- after assessing the totality of the evidence, the Court must determine whether the land council had established, on the balance of probabilities, that native title did not exist
- all of the evidence must be weighed according to the proof which it was in the power of one side to produce and in the power of the other to have contradicted
- once the land council established sufficient evidence from which an absence of native title might be inferred, Worimi carried an evidential burden to advance evidence of any particular matters going to the existence of native title and the land council was then required to deal with that evidence in the discharge of its overall burden of proof

- there is no presumption of the existence of native title under the NTA, either for a claimant seeking a determination of the existence of native title or for a non-claimant seeking a determination of the absence of native title
- if it was necessary to prove each of a number of elements to establish native title, and it could be shown that one of those elements was missing, that was sufficient to demonstrate that, presently, there was no native title over particular land
- the fact that no expert evidence was available in these proceedings did not prevent a decision being reached as to whether the land council had satisfied the burden of establishing the absence of native title on the basis of the evidence adduced.

In relation to the land council's evidence, it was found (among other things) that:

- it established no Aboriginal person other than Worimi (and some of his immediate family) asserted that native title existed in relation to Lot 576
- all of the Aboriginal witnesses called by the land council identified as Worimi people, all were aware of the assertions made by Worimi concerning the existence of native title in Lot 576 and all gave evidence generally rejecting those assertions
- no other person was called to give evidence in support of Worimi's contentions, despite (among others) the fact that he asserted he held native title as a Worimi man.

Bennett J held that:

- the land council had presented sufficient evidence from which the absence of native title over the area could be inferred
- Worimi's evidence was insufficient to cast doubt on the council's case
- therefore, the land council was entitled to a determination that there was no native title over Lot 576.

Tribunal decisions

Determination that a mining lease must not be granted
WDLAC (Jamukurnu–Yapalikunu)/Western Australia/Holocene Pty Ltd [2009] NNTTA 49, Deputy President Sumner, 27 May 2009

In this case the native title party sought a determination that a future act (the grant of a mining lease) must not be done. The area the mining lease in question would affect if granted is a site of particular significance to the native title party. The Tribunal determined that the lease must not be granted, essentially because the interests, proposals, opinions and wishes of the native title party in relation to the management, use and control of the area concerned should be given greater weight than the potential economic benefit or public interest in the mining project proceeding. This is the first determination made by the Tribunal to that effect.

The state (the government party) gave notice under s. 29 of the Act of a proposal to grant a mining lease under the *Mining Act 1978* (WA) to Holocene Pty Ltd (Holocene). The lease was to cover 3144 hectares, around 87 per cent of which affected part of Lake Disappointment in the Gibson Desert. The area the lease was to cover was wholly within a site registered under the *Aboriginal Heritage Act 1972* (WA) (AHA). It also entirely overlapped part of the determination area of the Western Desert Lands Aboriginal Corporation (Jamukurnu-Yapalikunu) (WDLAC, the native title party). WDLAC is the registered native title body corporate that holds the Martu People's native title on trust.

The grantee party proposed to use the lease area to extract and process potash (potassium sulphate). A resource of 25 million tonnes had been established within the exploration licences the grantee party already held. Mining was to take place on the surface of the Lake Disappointment by means of a five-metre wide and three-metre deep brine collection trench. A causeway would be built adjacent to the trench. Brine would be pumped from the trench into evaporation ponds near the northern shore of the lake. Potassium salts would be harvested using a fleet of harvesters and trucks. The area affected by the various project facilities would be around 25sq km. The anticipated lifespan of the project was 40 to 50 years, with a workplace of about 60 people employed on a fly in/fly out basis unless local people could be employed.

More than six months after the s. 29 notice was given, Holocene made an application pursuant to s. 35(1) on the basis that negotiating parties had been unable to reach agreement of the kind mentioned in s. 31(1)(b). In *Holocene Pty Ltd/Western Desert Lands Aboriginal Corporation (Jamukurnu–Yapalikunu)/Western Australia* [2009] NNTTA 8, the Tribunal rejected the native title party's submission that Holocene had not negotiated in good faith.

Pursuant to s. 38(1), the Tribunal must make one of three types of future act determination:

- the act must not be done
- the act may be done
- the act may be done subject to conditions to be complied with by any of the parties.

The grantee party sought a determination from the Tribunal that the act may be done subject to certain conditions. The government party sought a determination that the act may be done but reserved its position regarding conditions. The native title party sought a determination that the act must not be done. This is one of the few cases in which the native title party has maintained this position in an inquiry before the Tribunal.

In deciding which type of determination to make, the Tribunal must weigh the criteria found in s. 39. This is done by giving consideration to each on the basis of the

evidence. As there is no common thread running through the s. 39 criteria, the Tribunal may be required to take into account diverse and sometimes conflicting interests. Further the NTA does not direct that greater weight be given to some criteria over others and so the weight given to each depends upon the evidence.

At an on-country hearing, held at a community called Jigalong, oral evidence limited to matters addressed in the affidavit by seven Martu elders was given. All but one of the deponents of that affidavit gave evidence, as did six additional witnesses. The native title party's evidence also included:

- a statement about the cultural significance of Lake Disappointment by Professor Robert Tonkinson (the Tonkinson statement)
- the 2001 Martu native title claim connection report
- the affidavit of Jeremy Maling, an anthropologist, annexing a draft heritage survey report (the Maling report).

The native title party made contentions based on the importance of protecting Martu native title rights, including that the wishes of the native title party should be a paramount consideration, which 'undoubtedly' was 'one of the central matters for consideration' in this case.

Under s. 39(1)(a)(i), the Tribunal must take into account 'the effect of the act on the enjoyment by the native title parties of their registered rights and interests', i.e. the rights and interests determined by the Court and registered on the National Native Title Register. Pursuant to s. 29, the 'native title party' was WDLAC but it was 'self-evident' that is was the effect of the act on the Martu People's enjoyment of those rights and interests that was relevant. It was agreed that the native title right to 'exclusive possession' would be affected by the grant of the lease and that the right to make decisions about the use and enjoyment of the area of the proposed lease would be abrogated for the life of the lease. It was also agreed that several other registered native title rights would be affected. However, the evidence was that the Martu did not exercise these rights over the area concerned. Overall (leaving to one side issues as to the significance of the Lake Disappointment and the impact on the Martu People's culture and authority in relation to it), the Tribunal found that the effect of the act on the physical enjoyment of the Martu People's registered rights would not be substantial.

Pursuant to s. 39(1)(a)(ii), the Tribunal must take into account the effect of the act on the way of life, culture and traditions of the native title party. Generally speaking, the Tribunal was satisfied that the grant of the proposed lease would not detrimentally impact on the way of life, culture and traditions of the native title party in any substantial way. However, the effect of the future act on Lake Disappointment had relevance to this criterion because of the importance of the lake to the Martu and its connection to their way of life, culture and traditions in a spiritual way and otherwise

Under s. 39(1)(a)(iii), the Tribunal must take into account the effect of the act on 'the development of social, cultural and economic structures' of the native title party. There was no evidence of any economic structures of the Martu which could be affected in an adverse way and no specific evidence relating to any effect on the Martu People's social structures. As the effect on Martu cultural structures was 'inextricably bound up' with the importance of Lake Disappointment, it was dealt with later in the Tribunal's reasons.

Under s. 39(1)(a)(iv), the Tribunal had to take into account the effect of the act on the native title party's 'freedom of access' and 'freedom to carry out rites, ceremonies or other activities of cultural significance' on the area concerned in accordance with their traditions. The conditions proposed by both the government and the grantee party attempted to maintain Martu access to the area to the greatest extent possible.

Under s. 39(1)(a)(v), the Tribunal must consider 'whether there is an area or site of particular significance (being that which is of special or more than ordinary significance to that native title party) that will be affected by the future act'. This involved making a value judgment about whether, from the Martu's point of view (and according to their traditions) the area or site was special or different from other areas or sites. It was determined that Lake Disappointment was a site of particular significance. The main area of dispute was the level of its significance. The native title party said it was of profound cultural significance and danger. The grantee party said that it was of special significance but not of such a level that mining could not be contemplated without the formal consent of the Martu. The Tribunal noted (among other things) that the Martu elders' affidavit included the following evidence:

- Lake Disappointment 'country', which includes the lake itself and the country around it, 'has long been an area that is special to the Martu. Our song line goes all around and through Lake Disappointment'
- the whole of Lake Disappointment is a sacred site under Martu culture and the lake also contains other sites that are special
- 'big parts' of Lake Disappointment 'are dangerous and there are areas on and around the lake that must not be disturbed'.

Submissions were made in relation to the protective regime found in the AHA, which the Tribunal takes into account when making a future act determination. In an appropriate case, it may leave issues arising under s. 39(1)(a)(v) to the state regime. However, doing so in this case would mean 'avoiding the Tribunal's responsibilities' to properly consider the issue. It was found that even the most 'efficient and well resourced' site-protection system could not ensure that the project would go ahead without interference with an Aboriginal site of particular significance to the native title party. The Tribunal also found that there would be considerable interference with Lake Disappointment if the mining lease was granted.

The Tribunal concluded that Lake Disappointment not only formally fell within s. 39(1)(a)(v) as a site of particular significance but that it is of very great significance to the Martu 'despite the contemporary qualification that mining on part of it could be contemplated on acceptable terms'.

Under s. 39(1)(b), the Tribunal must take into account the native title party's 'interests, proposals, opinions or wishes in relation to the management, use or control of land or waters in relation to which there are registered native title rights and interests that will be affected by the act'. In this case, there was no doubt that there were registered rights that would be affected (e.g. the right to make decisions about the use and enjoyment of the area). It was accepted that opposition to mining was not raised by the native title party until after negotiations dissolved. However, the Tribunal also accepted the Martu elders' reasons for now declining to give their consent, i.e. it was one thing to enter negotiations in contemplation of mining which involved certain benefits and other terms but 'quite another to consent to it when an acceptable and beneficial agreement could not be reached'. The fact that the native title party was not opposed to mining but had not reached a satisfactory agreement in negotiations conducted in relation to it did not 'automatically justify a determination that the act may be done'. As was noted, in this case the Tribunal was dealing with a future act which would directly affect a site of particular significance to the Martu, an important matter that had to be weighed in the balance.

The Tribunal also found that the existence of registered native title rights amounting to the right to exclusive possession (as in this case) increased the weight to be given to s. 39(1)(b). This was not tantamount to a veto in all cases. However, as a general proposition, there is a difference between making a future act determination over an area of exclusive possession and making a determination over an area where the right to exclusive possession has been extinguished and the capacity to exercise or enjoy other native title rights seriously attenuated.

Under s. 39(1)(c), the Tribunal must take into account the economic or other significance of the act to Australia, the state or territory concerned, the area in which the land or waters concerned are located and the Aboriginal peoples and Torres Strait Islanders who live in the area. As was noted, it is the significance of the future act itself which must be considered, not its contribution to the maintenance of a viable mining industry overall. The Tribunal accepted the native title party's contention that the benefit, economic or otherwise, to the local Aboriginal people (essentially, the Martu) was limited to 'the possibility of some of them being employed and their businesses engaged in work contracts and an upgraded road'. The native title party's entitlement to compensation could not be seen as an economic benefit. Rather, it is a legal entitlement to be recompensed for loss or damage suffered.

The Tribunal accepted that, for the purposes of s. 39(1)(e), there is a public interest in a thriving mining industry and that the grant of the mining lease in question had the potential to enhance it. It also acknowledged that, 'in the abstract', it may be in the public interest to refuse the grant of a mining tenement. In this case, the Tribunal was satisfied that the public interest would be served by the project. However, this interest had to be balanced against the interests of the Martu People and their wishes in relation to the interference with an important traditional site.

Under s. 39(1)(f), the Tribunal took account of the fact that the grantee party had expended approximately $250,000 in payments to the native title party for meetings and heritage surveys, in addition to the high cost of its exploration programs. The grantee party contended it incurred this expenditure because the native title party consistently advised that it did not object, in principle, to the project. The Tribunal was not convinced that the native title party's agreement to exploration constituted an 'in principle' agreement to mining. The environmental protection regime was also taken into account. While rehabilitation of the proposed lease area would, in practice, fully restore any suppressed native title rights, this would only be done at the end of the project, i.e. some 50 years hence. Therefore, it was not a factor that should be given a great deal of weight. The Tribunal also decided (over the objections of the grantee party) that it could have regard to the Martu People's current opposition to mining based on the fact that there had been a failure to agree acceptable terms.

The Tribunal noted that weighing up the various factors involved in exercising its discretion under s. 38 had not been an easy task in this case. Given that the other factors raised by s. 39 were fairly evenly balanced, the main issue was the effect of the project on a site of particular significance (Lake Disappointment), 'in the context of the interests, proposals, opinions or wishes of the native title party in relation to the management, use or control of the land'. The 'clear inference' from the evidence was that the native title party would not have agreed to exploration, entered into negotiations (beyond those required as part of its obligation to negotiate in good faith) or continued to negotiate if the only result was going to be an entitlement to compensation and 'not the other benefits that were clearly in contemplation' during the negotiations. It was found that the interests, proposals, opinions and wishes of the native title party in relation to the use of Lake Disappointment should be given greater weight than the potential economic benefit or public interest in the project proceeding. Accordingly the Tribunal determined that the act, i.e. the grant of the mining lease, must not be done.

On 10 June 2009, Holocene asked the Commonwealth Attorney-General to overrule the Tribunal's determination on the grounds that it is in the national interest or in the interests of the State of Western Australia for the minister to do so.

Negotiation in good faith—future act proceedings
Cosmos/Alexander/Western Australia/Mineralogy Pty Ltd [2009] NNTTA 35
Sosso DP, 17 April 2009

The issue in this case was whether or not Mineralogy Pty Ltd (Mineralogy) had negotiated in good faith with two native title parties before making a future act determination application pursuant to s. 35(1) of the Act. Mineralogy lodged a future act determination application in relation the proposed grant of an exploration licence. The area covered by the application for the licence was completely overlapped by the area subject to the Yaburara Mardudhunera People's registered claimant application (the first native title party) and the area of the Kuruma Marthudunera People's registered claimant application (the second native title party). The second native party lodged an objection to the application of the expedited procedure to the grant of the licence (the future act), which was resolved in October 1998 by consent so the expedited procedure did not apply to the grant of the licence. Therefore, pursuant to s. 31(1)(b), all of the negotiation parties were required to negotiate in good faith with a view to obtaining the agreement of the native title parties to the doing of the future act. Negotiations were initiated by the government party (the State of Western Australia) on 12 December 2006. Mediation assistance was provided by the Tribunal until it was terminated by the Tribunal on 17 October 2008 because of the Mineralogy's failure to participate.

The Tribunal adopted the analysis of the obligation to negotiate in good faith stated in *Placer (Granny Smith) v Western Australia* (1999) 163 FLR 87, the legal principles set out in *Gulliver v Western Australia Aboriginal Corporation* (2005) 196 FLR 52 and the indicia set out in *Western Australia v Taylor* (1996) 134 FLR 221. It was noted (among other things) that:

- the focus of statutorily mandated good faith negotiations is the effect of the proposed future act on the registered native title rights and interests of the native title party
- the matters set out in s. 39 can logically form the basis of negotiations but the negotiations are not limited to such matters
- the question as to whether or not there have been negotiations in good faith cannot be answered in the abstract and each matter has to be dealt with on the particular facts presented
- there is a proportionate analysis, in that the greater the possible impact of the proposed future act has on registered native title rights and interests, the greater the obligation on non-native title parties to negotiate about possible impacts.

In relation to the first native title party, the Tribunal found (among other things) that Mineralogy:

- made limited efforts to contact and negotiate with the first native title party and no effort after receiving notice of the first native title party's new address for service

- was obliged to make contact after receiving that notice and the failure to do so was 'fatal' to the grantee party's contention that it had negotiated in good faith
- is a substantial organisation with experience in native title negotiations and litigation and it would know from that experience the obligations imposed by s. 31(1)(b).

The Tribunal also noted there were negotiations between the first native title party and the grantee, or its business associates, in regard to other tenements, which raised further questions as to why there were no negotiations over the licence the subject of these proceedings.

In relation to the second native title party, the Tribunal found (among other things) that:

- there was a long history of poor relations between Mineralogy and the second native title party, which was demonstrated in both the evidence before the Tribunal and other matters
- the obligation under s. 31(1)(b) required more than making a PowerPoint presentation on its position and then simply listening to the second native title party's submissions, as Mineralogy had done in this case—it was obliged to negotiate, which meant 'communicating, having discussions or conferring with a view to reaching agreement'
- Mineralogy had been on notice for a number of years that the second native title party had 'legitimate and long held concerns' about an earlier cultural heritage survey.

The Tribunal found that Mineralogy did not discharge its obligation to negotiate in good faith as required by s. 31(1)(b) with either of the native title parties and, therefore, that the Tribunal was not empowered to conduct an inquiry and make a future act determination.

Appendix III Freedom of Information

Section 8 of the *Freedom of Information Act 1982* (Cwlth) requires each Australian Government agency to publish information about the way it is organised, and its functions, powers, and arrangements for public participation in the work of the agency. Agencies are also required to publish the categories of documents they hold and how members of the public can gain access to them.

Inquiries regarding freedom of information may be made at the Principal Registry and the regional registries or offices.

Number of formal requests for information

During the reporting period the Tribunal received no formal request for access to documents under the Freedom of Information Act.

Organisation

An outline of the responsibilities of its executive and senior management committees is provided under the Tribunal's organisational structure as at 30 June 2009 is represented in Figure 2, p. 39.

Functions and powers

The broad functions of the Tribunal are discussed in the Tribunal overview section in this report, p. 35. A summary of the information related to the Tribunal's functions and powers is provided below to meet the requirements of the *Freedom of Information Act 1982* (Cwlth).

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 also arbitrates in certain future act matters. The Tribunal seeks to carry out its functions in a fair, just, economical, informal and prompt way.

Authority and legislation

The functions and powers of the Tribunal are conferred by the *Native Title Act 1993* (Cwlth), as amended, under which the Tribunal was established.

Native Title Registrar

Under the Act, the Native Title Registrar must assist the Tribunal's President in the management of the administrative affairs of the Tribunal. The Registrar may delegate all or any of her or his powers under the Act to Tribunal officers, and she or he 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.

Avenues for public participation

The Tribunal actively encourages the general public and those involved in native title processes to contribute their ideas and suggestions on how it could improve its operations. The Tribunal invites public comment from individuals and organisations through its website at www.nntt.gov.au .

The Tribunal holds regular meetings with clients and stakeholders including representative and peak bodies, state, territory and Australian Government agencies (for example, the Federal Court, and land use and mapping agencies) and solicitors who represent claimants and other parties.

In addition, public meetings may be held nationwide by Tribunal members and staff.

Tribunal members and staff attend community festivals or events, regional shows, industry conferences and trade shows, representative or peak body conferences, forums, seminars, workshops etc. Attending these events provides important opportunities 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 further information see Client Service Charter, p. 106.

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

The information available for purchase includes 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—contains information about each native title determination application that has satisfied the conditions for registration in s. 190A.
- National Native Title Register—contains 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 ILUAs that have been accepted for registration (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 2009–2011*
- ILUA information
- *Guide to future act decisions made under the Commonwealth right to negotiate scheme*
- Occasional Paper Series (including commissioned and specific issue reports)
- *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)
- *Negotiating native title in local government* (booklet)
- *About the National Native Tribunal's Registers*
- *Native title claimant applications: a guide to understanding the requirements of the registration test*
- previous copies of annual reports
- applications affected by future act notices
- 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, including member procedural/practice directions
- bibliographies
- Tribunal's portfolio budget statements

- 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.

Databases: A number of databases are maintained to support the information and processing needs of the Tribunal.

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* (Cwlth)) are also available from the Tribunal.

Enquiries 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. Enquiries concerning access to documents or other matters relating to freedom of information should be directed to the Freedom of Information contact officer, Legal Services, Principal Registry.

An application for access pursuant to the *Freedom of Information Act 1982* (Cwlth) 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.

The Tribunal must make a decision in relation to FOI requests within 30 days of the date of receiving a request. The Tribunal's obligations under the Freedom of Information Act and how to access documents under the Freedom of Information Act are available on the Tribunal's website.

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. Enquiries should be directed to the case manager for the application. It may be necessary to obtain some documents from the Federal Court.

Appendix IV Use of advertising and market research

The Tribunal used the services of two research organisations during the reporting period. The Tribunal paid $18,227 for research and evaluation into staff satisfaction by ORIMA Research. For further information see Employee survey, p. 99.

The Tribunal paid $5,370 to external distribution agencies (Lasermail Pty Ltd and Quickmail), for labour costs associated with sorting, packaging, and mailing of information.

The costs for advertising via a media advertising organisation are as shown in Table 30.

Table 30: Expenditure on advertising (via a media advertising organisation)

Type	Expenditure
Notification of applications as required under the Act	$290,382
Staff recruitment	$121,956
Other advertising (for example, tenders and consultants)	$1,845
Total expenditure on advertising	$414,183

The total amount for distribution and advertising was $419,553.

Appendix V Consultants

Table 31: Consultancy services of $10,000 or more

Consultant	Description	Contract price ($)	Other	Selection process*	Justification
Australian Government Solicitor	Legal services	13,629	Ongoing	Panel	B
Australian Public Service Commission	Structure review	11,798		Panel	B
Marchent Pty Ltd	Consulting work on strategic planning	10,450		Select tender	B
Total		**35,877**			

* Selection process terms drawn from the Commonwealth Procurement Guidelines, 2008.

Open tender: A procurement procedure in which a request for tender is published inviting all business 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's 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 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.

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

Annual report 12(6) requirement—Consultants
During 2008–09, two new consultancy contracts were entered into involving total actual expenditure of $22,248. In addition, one ongoing consultancy contract was active during the 2008–09 year, involving total actual expenditure of $13,629.

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 for the year ended 30 June 2009, which comprise: a Statement by the Chief Executive Officer and Chief Finance Officer; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Administered Items; and Notes and Forming Part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of Chief Executive for the Financial Statements

The National Native Title Tribunal's Chief Executive Officer 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*, including the Australian Accounting Standards (which include 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. I have conducted my audit 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 the National Native Title Tribunal'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 the National Native Title Tribunal'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 requirements of the Australian accounting profession.

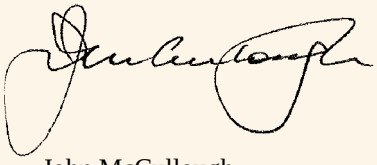
Auditor's Opinion

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*, including the Australian Accounting Standards; 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 2009 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



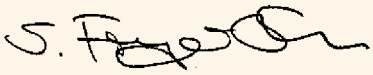
John McCullough
Audit Principal
Delegate of the Auditor-General

Canberra
28 August 2009

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 2009 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.



Stephanie Fryer-Smith
Chief Executive Officer

Hardip Bhabra
Chief Finance Officer

25 August 2009

Income statement for the period ended 30 June 2009

	Notes	2009 $'000	2008 $'000
INCOME			
Revenue			
Revenue from Government	3A	**32,156**	32,965
Sale of goods and rendering of services	3B	**65**	79
Interest	3C	**10**	163
Total revenue		**32,231**	33,208
Gains			
Sale of assets	3D	**2**	-
Total gains		**2**	-
Total Income		**32,233**	33,208
EXPENSES			
Employee benefits	4A	**19,607**	19,731
Suppliers	4B	**10,957**	9,960
Depreciation and amortisation	4C	**514**	440
Total Expenses		**31,078**	30,131
Surplus (Deficit) attributable to the Australian Government		**1,155**	3,077

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

Balance sheet as at 30 June 2009

	Notes	2009 $'000	2008 $'000
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	**805**	595
Trade and other receivables	5B	**16,541**	15,990
Total financial assets		**17,346**	16,585
Non-Financial Assets			
Land and buildings	6A	**932**	99
Infrastructure, plant and equipment	6B	**1,054**	841
Intangibles	6C	**16**	84
Other non-financial assets	6D	**353**	978
Total non-financial assets		**2,355**	2,002
Total Assets		**19,701**	18,588
LIABILITIES			
Payables			
Suppliers	7A	**468**	404
Other payables	7B	**31**	40
Total payables		**499**	444
Provisions			
Employee provisions	8A	**4,352**	4,449
Other provisions	8B	**457**	457
Total provisions		**4,809**	4,906
Total Liabilities		**5,308**	5,350
Net Assets		**14,393**	13,238
EQUITY			
Parent Entity Interest			
Contributed equity		**2,415**	2,415
Retained surplus (accumulated deficit)		**11,978**	10,823
Total Equity		**14,393**	13,238
Current Assets		**17,346**	16,585
Non-Current Assets		**2,355**	2,002
Current Liabilities		**4,499**	3,842
Non-Current Liabilities		**809**	1,508

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

Statement of changes in equity as at 30 June 2009

	Retained Earnings		Contributed Equity/Capital		Total Equity	
	2009	2008	2009	2008	2009	2008
	$'000	$'000	$'000	$'000	$'000	$'000
Opening balance						
Balance carried forward from previous period	**10,823**	7,746	**2,415**	2,415	**13,238**	10,161
Return of funds	**-**	-	**-**	-	**-**	-
Adjustment for errors	**-**	-	**-**	-	**-**	-
Adjusted opening balance	**10,823**	7,746	**2,415**	2,415	**13,238**	10,161
Income and expenses						
Sub-total income and expenses recognised Directly in Equity	**10,823**	7,746	**2,415**	2,415	**13,238**	10,161
Surplus (Deficit) for the period	**1,155**	3,077	**-**	-	**1,155**	3,077
Total income and expenses	**11,978**	10,823	**2,415**	2,415	**14,393**	13,238
of which:						
attributable to the Australian Government	**11,978**	10,823	**2,415**	2,415	**14,393**	13,238
Closing balance at 30 June 2009	**11,978**	10,823	**2,415**	2,415	**14,393**	13,238
Less: minority interest	**-**	-	**-**	-	**-**	-
Closing balance attributable to the Australian Government	**11,978**	10,823	**2,415**	2,415	**14,393**	13,238

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

Cash flow statement for the period ended 30 June 2009

	Notes	2009 $'000	2008 $'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		**40**	79
Appropriations		**31,500**	30,005
Interest		**10**	163
Net GST received		**1,046**	824
Other cash received		**215**	160
Total cash received		**32,811**	31,232
Cash used			
Employees		**(19,677)**	(19,275)
Suppliers		**(11,381)**	(11,180)
Cash transferred to OPA		**-**	-
Total cash used		**(31,058)**	(30,455)
Net cash flows from or (used by) operating activities	9	**1,753**	777
INVESTING ACTIVITIES			
Cash received			
Proceeds from sale of assets		**2**	-
Total cash received		**2**	-
Cash used			
Purchase of property, plant and equipment		**(1,545)**	(638)
Total cash used		**(1,545)**	(638)
Net cash flows from or (used by) investing activities		**(1,543)**	(638)
Net increase or (decrease) in cash held		**210**	139
Cash and cash equivalents at the beginning of the reporting period		**595**	456
Cash and cash equivalents at the end of the reporting period	5A	**805**	595

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

Schedule of commitments as at 30 June 2009

	2009 $'000	2008 $'000
BY TYPE		
Commitments Receivable		
GST recoverable on commitments	**(868)**	(910)
Total Commitments Receivable	**(868)**	(910)
Other commitments		
Operating leases	**8,976**	10,013
Other commitments	**573**	-
Total other commitments	**9,549**	10,013
Net commitments by type	**8,681**	9,103
BY MATURITY		
Commitments receivable		
Operating lease income		
One year or less	**(271)**	(310)
From one to five years	**(597)**	(527)
Over five years	**-**	(73)
Total operating lease income	**(868)**	(910)
Commitments payable		
Operating lease commitments		
One year or less	**2,405**	3,408
From one to five years	**6,571**	5,797
Over five years	**-**	808
Total operating lease commitments	**8,976**	10,013
Other Commitments		
One year or less	**573**	-
Total other commitments	**573**	-
Net Commitments by Maturity	**8,681**	9,103

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

Schedule of administered items

	Notes	2009 $'000	2008 $'000
Income administered on behalf of Government for the year ended 30 June 2009			
Revenue			
Non-taxation revenue			
Fees and fines	14A	**20**	13
Total non-taxation revenue		**20**	13
Total revenues administered on behalf of Government		**20**	13
Total income administered on behalf of Government		**20**	13
Assets administered on behalf of Government *as at 30 June 2009*			
Financial assets			
Cash and cash equivalents	14C	**1**	-
Total financial assets		**1**	-
Total assets administered on behalf of Government		**1**	-
Liabilities administered on behalf of Government *as at 30 June 2009*			
Payables			
Other payables	14D	**1**	-
Total payables		**1**	-
Total liabilities administered on behalf of Government		**1**	-
Administered Cash Flows for the period ended 30 June 2008			
OPERATING ACTIVITIES			
Cash received			
Fees	14A	**20**	13
Total cash received		**20**	13
Cash used			
Other: Return of fees		**19**	3
Total cash used		**19**	3
Net cash flows from or (used by) operating activities		**1**	10
Net Increase (Decrease) in Cash Held		**1**	10
Cash and cash equivalents at the beginning of the reporting period		**-**	-
Cash from Official Public Account for:			
Appropriation		**20**	13
Cash to Official Public Account for:			
Appropriation		**(19)**	(13)
Cash and cash equivalents at the end of the reporting period	14C	**1**	-

This schedule should be read in conjunction with the accompanying notes.

Notes to and forming part of the financial statements for the year ended 30 June 2009

Index of notes to the financial statements

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 provide for the recognition and protection of native title
- to establish a mechanism for determining claims to native title
- to establish ways in which future dealings affecting native title (future acts) may proceed.

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*
Output 3—*Decisions.*

Notes to and forming part of the financial statements for the year ended 30 June 2009

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 report
The Financial Statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* and are a General Purpose Financial Report.

The Financial Statements and notes have been prepared in accordance with:
- Finance Minister's Orders (or FMOs) or reporting periods ending on or after 1 July 2008, and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, 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 otherwise specified.

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 or a future sacrifice of economic benefits will be required 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 as at the end of the reporting period.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the Income Statement when and only when the flow, 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 and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at Note 1.19.

1.3 Significant accounting judgements and estimates
No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

Notes to and forming part of the financial statements for the year ended 30 June 2009

1.4 Changes in Australian Accounting Standards

Adoption of new Australian Accounting Standard requirements
No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standards and amendments to standards are applicable to the current reporting period:

The following standards and interpretations have been issued but are not applicable to the operations of the Tribunal.

- AASB Interpretation 12 *Service Concession Arrangements* and 2007–2 *Amendments to Australian Accounting Standards arising from AASB Interpretation 12*
- 2007–6 *Amendments to Australian Accounting Standards arising from AASB 123 Borrowing Costs*
- AASB Interpretation 13 *Customer Loyalty Programmes*
- AASB Interpretation 14 *AASB 119—The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction*
- AASB 1049 Whole of Government and General Government Sector Financial Reporting
- AASB 1049 specifies the reporting requirements for the General Government Sector. The FMOs do not apply to this reporting or the consolidated financial statements of the Australian Government
- AASB 1050 Administered Items.

Future Australian Accounting Standard requirements
The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

- AASB 101 *Presentation of Financial Statements and AASB 2007-8 Amendments to Australian Accounting Standards arising from AASB 101* (effective from 1 January 2009)
  The September 2007 revised AASB 101 requires the presentation of a statement of comprehensive income and makes changes to the statement of changes in equity, but will not affect any of the amounts recognised in the financial statements. If an entity has made a prior period adjustment or has reclassified items in the financial statements, it will need to disclose a third balance sheet (statement of financial position), this one being as at the beginning of the comparative period. The Tribunal will apply the revised standard from 1 July 2009.

- AASB 2008-8 *Amendment to IAS 39 Financial Instruments: Recognition and Measurement* (effective 1 July 2009)
  AASB 2008-8 amends AASB 139 Financial Instruments: Recognition and Measurement and must be applied retrospectively in accordance with AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors.* The amendment makes two significant changes. It prohibits designating inflation as a hedgeable component of a fixed rate debt. It also prohibits including time value in the one-sided hedged risk when designating options as hedges. The Tribunal will apply the amended standard from 1 July 2009. It is not expected to have a material impact on the Tribunal's financial statements.

Notes to and forming part of the financial statements for the year ended 30 June 2009

The following standards and interpretations have been issued and are applicable to future accounting periods but are not applicable to the operations of the Tribunal.

- AASB 8 *Operating Segments* and AASB 2007-3 *Amendments to Australian Accounting Standards arising from AASB 8* (effective from 1 January 2009)
- Revised AASB 123 *Borrowing Costs and AASB 2007-6 Amendments to Australian Accounting Standards arising from AASB 123* (effective from 1 January 2009)
- Revised AASB 101 *Presentation of Financial Statements and AASB 2007-8 Amendments to Australian Accounting Standards arising from AASB 101* (effective from 1 January 2009)
- AASB 2008-1 *Amendments to Australian Accounting Standard – Share-based Payments: Vesting Conditions and Cancellations* (effective from 1 January 2009)
- Revised AASB 3 *Business Combinations, AASB 127 Consolidated and Separate Financial Statements* and AASB 2008-3 *Amendments to Australian Accounting Standards arising from AASB 3 and AASB 127* (effective 1 July 2009)
- AASB 2008-6 *Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project* (effective 1 July 2009)
- AASB 2008-7 *Amendments to Australian Accounting Standards—Cost of an Investment in a Subsidiary, Jointly Controlled Entity or Associate* (effective 1 July 2009)
- AASB Interpretation 15 *Agreements for the Construction of Real Estate* (effective 1 January 2009)
- AASB Interpretation 16 *Hedges of a Net Investment in a Foreign Operation* (effective 1 October 2008)
- AASB Interpretation 17 *Distribution of Non-cash Assets to Owners and AASB 2008-13 Amendments to Australian Accounting Standards arising from AASB Interpretation 17.*

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental output appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the agency gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Other types of 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.

Notes to and forming part of the financial statements for the year ended 30 June 2009

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30-day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement.*

1.6 Gains

Other resources received free of charge

Resources 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.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements (refer to Note 1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Sale of assets

Gains from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

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.

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 Employee Benefits) 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 at the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

Notes to and forming part of the financial statements for the year ended 30 June 2009

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 at the estimated salary rates that applied at the time the leave is taken, including the Tribunal's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary as at 30 June 2009. 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 the requirements within the next 12 months.

Superannuation
The majority of employees 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 employees are members of AGEST and SunSuper.

The CSS and PSS are defined benefit schemes for the Australian Government. 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. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Tribunal makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Tribunal's employees. The Tribunal accounts for the contributions as if they were contributions to defined contribution plans.

Contributions to AGEST and SunSuper comply with the requirements of Superannuation Guarantee legislation.

From 1 July 2005, new employees are eligible to join the PSSap scheme.

The liability for superannuation recognised as at 30 June 2009 represents outstanding contributions for the final fortnight of the year as well as superannuation liabilities applicable to the total leave provisions.

Notes to and forming part of the financial statements for the year ended 30 June 2009

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 2009.

1.10 Cash
Cash and cash equivalents includes notes and coins held and any deposits in bank accounts with an original maturity of three months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial assets
Trade and other receivables
Trade and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables' and are included in current assets.

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 receivables, 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.

The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

1.12 Financial liabilities
Supplier and other payables
Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.13 Contingent liabilities and contingent assets
Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

Notes to and forming part of the financial statements for the year ended 30 June 2009

1.14 Financial guarantee contracts
Financial guarantee contracts are accounted for in accordance with AASB139 *Financial Instruments: Recognition and Measurement.* They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB137 *Provisions, Contingent Liabilities and Contingent Assets.*

1.15 Acquisition of assets
Assets are recorded at cost on acquisition except as stated below. 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.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

1.16 Property, plant and equipment
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' recognised.

Revaluations
Fair values for each class of asset are determined as shown below:

Asset Class	Fair value measured at:
Leasehold improvements	Depreciated replacement cost
Infrastructure, plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from 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. The Tribunal did not undertake any asset revaluations during the financial year.

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

Notes to and forming part of the financial statements for the year ended 30 June 2009

operating result. Revaluation decrements for a class of assets are recognised directly through operating result 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.

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:

Asset class	**2009**	2008
Leasehold improvements	**Lease term**	Lease term
Infrastructure, plant and equipment	**3 to 10 years**	3 to 10 years

Impairment
All assets were assessed for impairment at 30 June 2009. 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.

1.17 Intangibles
The Tribunal's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the Tribunal's software is 5 years (2007–08: 5 years).

All software assets were assessed for indications of impairment as at 30 June 2009.

1.18 Taxation competitive neutrality
The Tribunal is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Notes to and forming part of the financial statements for the year ended 30 June 2009

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

1.19 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 Departmental items, including the application of Australian Accounting Standards.

Administered cash transfers to and from the Official Public Account
Revenue collected by the Tribunal for use by the Government rather than the Agency is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. 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 Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 14B. 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 for lodgement of an application with the Tribunal.

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

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 2: Events after the balance sheet date

There have been no events that significantly affect the balances in the accounts.

Note 3: Income

	2009 $'000	2008 $'000
Revenue		
Note 3A: Revenue from Government		
Appropriations:		
Departmental outputs	**32,156**	32,965
Total revenue from Government	**32,156**	32,965
Note 3B: Sale of goods and rendering of services		
Rendering of services - external parties	**65**	79
Total sale of goods and rendering of services	**65**	79
Note 3C: Interest		
On rental deposits	**10**	163
Total interest	**10**	163
Gains		
Note 3D: Sale of assets		
Infrastructure, plant and equipment		
Proceeds from sale	**2**	-
Carrying value of assets sold	**-**	-
Net gain from sale of assets	**2**	-

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 4: Expenses

	2009 $'000	2008 $'000
Note 4A: Employee benefits		
Wages and salaries	**16,885**	14,060
Superannuation:		
Defined contribution plans	**2,413**	2,366
Leave and other entitlements	**46**	3,078
Separation and redundancies	**263**	227
Total employee benefits	**19,607**	19,731
Note 4B: Suppliers		
Provision of goods – external parties	**683**	612
Rendering of services – related entities	**127**	231
Rendering of services – external parties	**6,938**	6,043
Operating lease rentals:		
Minimum lease payments	**3,103**	2,951
Workers compensation premiums	**106**	123
Total supplier expenses	**10,957**	9,960
Note 4C: Depreciation and amortisation		
Depreciation:		
Infrastructure, plant and equipment	**399**	307
Buildings	**47**	61
Total depreciation	**446**	368
Amortisation:		
Intangibles:		
Computer Software	**68**	72
Total amortisation	**68**	72
Total depreciation and amortisation	**514**	440

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 5: Financial Assets

	2009 $'000	2,008 $'000
Note 5A: Cash and cash equivalents		
Cash on hand or on deposit	**805**	595
Total cash and cash equivalents	**805**	595
Note 5B: Trade and other receivables		
Goods and services	**6**	132
Appropriations receivable:		
for additional outputs	**16,366**	15,709
Total appropriations receivable	**16,372**	15,841
GST receivable from the Australian Taxation Office	**172**	152
Total other receivables	**172**	152
Total trade and other receivables (gross)	**16,544**	15,993
Less Allowance for doubtful debts:		
Goods and services	**(3)**	(3)
Total trade and other receivables (net)	**16,541**	15,990
Receivables are represented by:		
Current	**16,541**	15,990
Non-current	**-**	-
Total trade and other receivables (net)	**16,541**	15,990
Receivables are aged as follows:		
Not overdue	**16,541**	15,990
Overdue by:		
Less than 30 days	**3**	3
Total receivables (gross)	**16,544**	15,993
The allowance for doubtful debts is aged as follows:		
Overdue by:		
Less than 30 days	**(3)**	(3)
Total allowance for doubtful debts	**(3)**	(3)

Reconciliation of the allowance for doubtful debts:

	Goods and services	Total
Movements in relation to 2009		
Opening balance	**3**	3
Amounts recovered and reversed	**(3)**	(3)
Increase/decrease recognised in net surplus	**3**	3
Closing balance	**3**	3
Movements in relation to 2008		
Opening balance	**3**	3
Amounts recovered and reversed	**(3)**	(3)
Increase/decrease recognised in net surplus	**3**	3
Closing balance	**3**	3

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 6: Non-Financial Assets

	2009 $'000	2008 $'000
Note 6A: Land and buildings		
Leasehold improvements		
– work in progress	**50**	-
– fair value	**5,420**	4,590
– accumulated depreciation	**(4,538)**	(4,491)
Total leasehold improvements	**932**	99
Total land and buildings (non-current)	**932**	99

No indicators of impairment were found for land and buildings.

Note 6B: Infrastructure, plant and equipment		
Infrastructure, plant and equipment:		
– gross carrying value (at fair value)	**2,910**	3,156
– accumulated depreciation	**(1,856)**	(2,315)
Total infrastructure, plant and equipment	**1,054**	841
Total infrastructure, plant and equipment (non-current)	**1,054**	841

No indicators of impairment were found for infrastructure, plant and equipment.

Note 6C: Intangibles		
Computer software at cost:		
Internally developed – in use	**452**	1,342
Total Computer Software	**452**	1,342
Accumulated amortisation	**(436)**	(1,258)
Total intangibles (non-current)	**16**	84

No indicators of impairment were found for intangible assets.

Note 6D: Other non-financial assets		
Prepayments	**353**	978
Total other non-financial assets	**353**	978

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 2009

Note 6: Non-Financial Assets

Note 6E: Analysis of property, plant and equipment

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2008-09)

Item	Buildings $'000	Other IP & E $'000	Total $'000
As at 1 July 2008			
Gross book value	4,590	3,156	**7,746**
Accumulated depreciation/amortisation and impairment	(4,491)	(2,315)	**(6,806)**
Net book value 1 July 2008	99	841	**940**
Additions:			
by purchase	831	619	**1,450**
Work in progress	50	-	**50**
Depreciation/amortisation expense	(48)	(398)	**(446)**
Other movements			
Write off during the year	-	(645)	**(645)**
Amortisation on Write off	-	637	**637**
Disposals:			
Other disposals	-	220	**220**
Amortisation on disposal	-	(220)	**(220)**
Net book value 30 June 2009	932	1,054	**1,986**
Net book value as of 30 June 2009 represented by:			
Gross book value	5,470	2,910	**8,380**
Accumulated depreciation/amortisation and impairment	(4,538)	(1,856)	**(6,394)**
	932	1,054	**1,986**

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2007-08)

Item	Buildings $'000	Other IP & E $'000	Total $'000
As at 1 July 2007			
Gross book value	4,542	2,585	**7,127**
Accumulated depreciation/amortisation and impairment	(4,400)	(2,037)	**(6,437)**
Net book value 1 July 2007	142	548	**690**
Additions:			
by purchase	48	570	**618**
Depreciation/amortisation expense	(91)	(277)	**(368)**
Other movements	-	-	**-**
Net book value 30 June 2008	99	841	**940**
Net book value as of 30 June 2008 represented by:			
Gross book value	4,590	3,156	**7,746**
Accumulated depreciation/amortisation and impairment	(4,491)	(2,315)	**(6,806)**
	99	841	**940**

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 6F: Intangibles

Table B: Reconciliation of the opening and closing balances of intangibles (2008-09)

Item	Computer software internally developed $'000	Total $'000
As at 1 July 2008		
Gross book value	1,342	**1,342**
Accumulated depreciation/amortisation and impairment	(1,258)	**(1,258)**
Net book value 1 July 2008	84	**84**
Additions:		
by purchase or internally developed	-	**-**
Amortisation	(68)	**(68)**
Other movements		
Write off during the year	(890)	**(890)**
Amortisation on Write off	890	**890**
Net book value 30 June 2009	16	**16**
Net book value as of 30 June 2009 represented by:		
Gross book value	452	**452**
Accumulated depreciation/amortisation and impairment	(436)	**(436)**
	16	**16**

Table B: Reconciliation of the opening and closing balances of intangibles (2007-08).

Item	Computer software internally developed $'000	Total $'000
As at 1 July 2007		
Gross book value	1,321	**1,321**
Accumulated depreciation/amortisation and impairment	(1,186)	**(1,186)**
Net book value 1 July 2007	135	**135**
Additions:		
by purchase or internally developed	21	**21**
Amortisation	(72)	**(72)**
Other movements	-	**-**
Net book value 30 June 2008	84	**84**
Net book value as of 30 June 2008 represented by:		
Gross book value	1,342	**1,342**
Accumulated depreciation/amortisation and impairment	(1,258)	**(1,258)**
	84	**84**

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 7: Payables

	2009 $'000	2008 $'000
Note 7A: Suppliers		
Trade creditors	**468**	404
Operating lease rentals	**-**	-
Total supplier payables	**468**	404
Supplier payables are represented by:		
Current	**468**	404
Non-current	**-**	-
Total supplier payables	**468**	404

Settlement is usually made net 30 days.

Note 7B: Other payables		
Unearned Revenue	**-**	-
GST payable to ATO	**-**	-
FBT payable to ATO	**31**	40
Total Other Payables	**31**	40

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 8: Provisions

	2009 $'000	2008 $'000
Note 8A: Employee provisions		
Salaries and wages	**311**	202
Leave	**3,841**	3,655
Superannuation	**200**	592
Total employee provisions	**4,352**	4,449
Employee provisions are represented by:		
Current	**4,000**	3,398
Non-current	**352**	1,051
Total employee provisions	**4,352**	4,449

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date are $3,161,000 (2008: $2,673,000), and in excess of one year $839,000 (2008: $725,000).

	2009 $'000	2008 $'000
Note 8B: Other provisions		
Restoration obligations	**457**	457
Total other provisions	**457**	457
Other provisions are represented by:		
Current	**-**	-
Non-current	**457**	457
Total other provisions	**457**	457

	Provision for restoration $'000	Total $'000
Carrying amount 1 July 2008	**457**	457
Movements during the year	**-**	-
Closing balance 2009	**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.

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 9: Cash Flow Reconciliation

	2009 $'000	2008 $'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	**805**	595
Balance Sheet	**805**	595
Difference	**-**	-
Reconciliation of operating result to net cash from operating activities:		
Operating result	**1,155**	3,077
Depreciation /amortisation	**514**	440
Net write down of non-financial assets	**8**	-
Gain on disposal of assets	**(2)**	-
(Increase) / decrease in net receivables	**(551)**	(3,072)
(Increase) / decrease in prepayments	**625**	151
Increase / (decrease) in employee provisions	**(97)**	232
Increase / (decrease) in supplier payables	**101**	(50)
Adjustment for error	**-**	(1)
Net cash from / (used by) operating activities	**1,753**	777

Note 10: Contingent liabilities and assets

Quantifiable and unquantifiable contingencies
The Tribunal has no quantifiable or unquantifiable contingencies as at 30 June 2009.

Remote contingencies
The Tribunal on behalf of the Commonwealth has indemnified 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 2009, 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 2009

Note 11: Senior Executive Remuneration

	2009	2008
The number of senior executives who received or were due to receive total remuneration of $130,000 or more:		
$160 000 to $174 999	**-**	1
$175 000 to $189 999	**-**	1
$190 000 to $204 999	**1**	-
$205 000 to $219 999	**1**	-
Total	**2**	2
The aggregate amount of total remuneration of senior executives shown above.	**413,942**	323,966
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.	**-**	-

Note 12: Remuneration of Auditors

	2009 $'000	2008 $'000
Financial statement audit services are provided free of charge to the agency.		
The fair value of the audit services provided	**25**	23
	25	23

No other services were provided by the Auditor-General.

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 13: Financial Instruments

	Notes	2009 $'000	2008 $'000
13A Categories of financial instruments			
Financial Assets			
Loans and receivables financial assets			
Cash at Bank	5A	**805**	595
Receivables for goods and services	5B	**6**	132
Allowance for doubtful debts	5B	**(3)**	(3)
		808	724
Carrying amount of financial assets		**808**	724
Financial Liabilities			
At amortised cost			
Trade creditors	7A	**468**	404
Other Payables	7B	**31**	40
		499	444
Carrying amount of financial liabilities		**499**	444
13B Net income and expense from financial assets			
Loans and receivables			
Interest revenue	3C	**10**	163
Gain/loss on disposal		**-**	-
Net gain/(loss) from financial assets		**10**	163

The average rate of interest for the year was 5.73% (2008: 6.72%).
The net income/expense from financial assets not at fair value from profit and loss is Nil.

13C Fair value of financial instruments

	Notes	Carrying amount 2009 $'000	Fair value 2009 $'000	Carrying amount 2008 $'000	Fair value 2008 $'000
FINANCIAL ASSETS					
Cash at Bank	5A	**805**	**805**	595	595
Receivables for goods and services	5B	**3**	**3**	129	129
Total	13A	**808**	**808**	724	724
FINANCIAL LIABILITIES					
Trade creditors	7A	**468**	**468**	404	404
Other Payables	7B	**31**	**31**	40	40
Total	13A	**499**	**499**	444	444

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 14: Income Administered on Behalf of Government

	2009 $'000	2008 $'000
Revenue		
Non-taxation revenue		
Note 14A: Fees and fines		
Other fees from regulatory services	**20**	13
Total fees and fines	**20**	13
Note 14B: Administered Reconciliation Table		
Opening administered assets less administered liabilities as at 1 July	**-**	-
Adjusted opening administered assets less administered liabilities		
Plus: Administered income	**20**	13
Transfers to OPA	**(20)**	(13)
Closing administered assets less administered liabilities as at 30 June	**-**	-
Assets Administered on Behalf of Government		
Note 14C: Cash and Cash Equivalents		
Cash on hand or on deposits	**1**	-
Liabilities Administered on Behalf of Government		
Note 14D: Other Payables		
Other	**1**	-

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 15: Appropriations

Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Administered Expenses		Departmental Outputs		Total	
	2009 $'000	2008 $'000	2009 $'000	2008 $'000	2009 $'000	2008 $'000
Balance brought forward from previous period	**-**	-	**16,392**	13,267	**16,392**	13,267
Adjustment to prior year disclosures	**-**	-	**-**	-	**-**	-
Departmental adjustments by Finance Minister (Appropriation Acts)	**-**	-	**-**	-	**-**	-
Total prior year adjustments	**-**	-	**-**	-	**-**	-
Adjusted prior year balance	**-**	-	**16,392**	13,267	**16,392**	13,267
Appropriation Act:						
Appropriation Act (No.1) 2008/09	**-**	-	**32,156**	32,965	**32,156**	32,965
FMA Act:						
Appropriations to take account of recoverable GST (FMA section 30A)	**-**	-	**1,046**	824	**1,046**	824
Annotations to 'net appropriations' (FMA section 31)	**-**	-	**267**	79	**267**	79
Total appropriation available for payments	**-**	-	**49,861**	47,135	**49,861**	47,135
Cash payments made during the year (GST inclusive)	**-**	-	**(32,603)**	(30,743)	**(32,603)**	(30,743)
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	**-**	-	**17,258**	16,392	**17,258**	16,392
Represented by						
Cash at bank and on hand	**-**	-	**805**	552	**805**	552
Departmental appropriations receivable	**-**	-	**16,366**	15,709	**16,366**	15,709
Cash held not appropriated	**-**	-	**(85)**	(21)	**(85)**	(21)
GST recoverable	**-**	-	**172**	152	**172**	152
Total	**-**	-	**17,258**	16,392	**17,258**	16,392

Notes to and forming part of the financial statements for the year ended 30 June 2009

Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations

Particulars	Operating Outcome 1		Total	
	2009	2008	2009	2008
	$'000	$'000	$'000	$'000
Balance brought forward from previous period	**43**	43	**43**	43
Appropriation Act	**-**	-	**-**	-
FMA Act:				
Refunds credited (FMA section 30)	**-**	-	**-**	-
Appropriations to take account of recoverable GST (FMA section 30A)	**-**	-	**-**	-
Adjustment of appropriations on change of entity function (FMA section 32)	**-**	-	**-**	-
Total appropriations available for payments	**43**	43	**43**	43
Cash payments made during the year (GST inclusive)	**(43)**	-	**(43)**	-
Balance of Authority to draw cash from the Consolidated Revenue Fund for other than ordinary annual services appropriations	**-**	43	**-**	43
Represented by:				
Cash at bank and on hand	**-**	43	**-**	43
Total	**-**	43	**-**	43

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 16: Special Accounts

Other Trust Moneys 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.

	2009 $'000	2008 $'000
Balance carried from previous period	**-**	20
Appropriation for reporting period	**-**	-
Other receipts	**5**	18
Total credits	**5**	38
Payments made	**(5)**	(38)
Total debits	**(5)**	(38)
Balance carried to next period	**-**	-
Represented by:		
Cash–transferred to the Official Public Account	**-**	-
Cash–held by the Agency	**-**	-
Total balance carried to the next period	**-**	-

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 17: 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 table below is consistent with the basis used for the 2008-9 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 Registration of indigenous land use agreements
3.3 Future act determinations
3.4 Finalise objections to the expedited procedure

Note 17A: Net Cost of Outcome Delivery

	Outcome 1		Total	
	2009	2008	2009	2008
	$'000	$'000	$'000	$'000
Expenses				
Administered	**-**	-	**-**	-
Departmental	**31,078**	30,131	**31,078**	30,131
Total expenses	**31,078**	30,131	**31,078**	30,131
Costs recovered from provision of goods and services to the non government sector				
Administered	**-**	-	**-**	-
Departmental	**77**	243	**77**	243
Total costs recovered	**77**	243	**77**	243
Other external revenues				
Administered	**-**	-	**-**	-
Departmental	**-**	-	**-**	-
Total other external revenues	**-**	-	**-**	-
Net cost/(contribution) of outcome	**31,001**	29,888	**31,001**	29,888

Notes to and forming part of the financial statements for the year ended 30 June 2009

Note 17B: Major Classes of Departmental Revenues and Expenses by Output Groups and Outputs

Output Group 1	Output 1.1		Output 1.2		Total Output 1	
	2009	2008	2009	2008	2009	2008
	$'000	$'000	$'000	$'000	$'000	$'000
Departmental expenses						
Employees	**512**	469	**2,678**	2190	**3,190**	2,659
Suppliers	**287**	237	**1,496**	1105	**1,783**	1,342
Depreciation and amortisation	**13**	10	**70**	49	**83**	59
Total departmental expenses	**812**	716	**4,244**	3,344	**5,056**	4,060
Funded by:						
Revenues from government	**840**	782	**4,391**	3660	**5,231**	4,442
Sale of goods and services	**2**	2	**9**	9	**11**	11
Other non-taxation revenues	**0**	4	**2**	18	**2**	22
Total departmental revenues	**842**	788	**4,402**	3,687	**5,244**	4,475

Output Group 2	Output 2.1		Output 2.2		Output 2.3		Total Output 2	
	2009	2008	2009	2008	2009	2008	2009	2008
	$'000	$'000	$'000	$'000	$'000	$'000	$'000	$'000
Departmental expenses								
Employees	**2,818**	2,247	**7,462**	7,273	**1,370**	1,257	**11,650**	10,777
Suppliers	**1,575**	1,134	**4,170**	3,672	**766**	634	**6,511**	5,440
Depreciation and amortisation	**74**	50	**196**	162	**35**	28	**305**	240
Total departmental expenses	**4,467**	3,431	**11,828**	11,107	**2,171**	1,919	**18,466**	16,457
Funded by:								
Revenues from government	**4,622**	3,781	**12,237**	12,063	**2,246**	2,161	**19,105**	18,005
Sale of goods and services	**9**	9	**25**	29	**5**	5	**39**	43
Other non-taxation revenues	**2**	19	**5**	60	**1**	11	**8**	90
Total departmental revenues	**4,633**	3,809	**12,267**	12,152	**2,252**	2,177	**19,152**	18,138

Notes to and forming part of the financial statements for the year ended 30 June 2009

Output Group 3	Output 3.1		Output 3.2		Output 3.3		Output 3.4		Total Output 3	
	2009	2008	2009	2008	2009	2008	2009	2008	2009	2008
	$'000	$'000	$'000	$'000	$'000	$'000	$'000	$'000	$'000	$'000
Departmental expenses										
Employees	**2,062**	2,461	**1,096**	1,591	**308**	366	**1,300**	1,877	**4,766**	6,295
Suppliers	**1,153**	1,243	**613**	803	**172**	185	**727**	948	**2,665**	3,179
Depreciation and amortisation	**54**	55	**29**	35	**8**	8	**34**	42	**125**	140
Total departmental expenses	**3,269**	3,759	**1,738**	2,429	**488**	559	**2,061**	2,867	**7,556**	9,614
Funded by:										
Revenues from government	**3,382**	4,102	**1,797**	2,630	**505**	631	**2,133**	3,155	**7,817**	10,518
Sale of goods and services	**7**	10	**4**	6	**1**	2	**4**	8	**16**	26
Other non-taxation revenues	**1**	20	**1**	13	**0**	3	**1**	16	**3**	52
Total departmental revenues	**3,390**	4,132	**1,802**	2,649	**506**	636	**2,138**	3,179	**7,836**	10,596

Note 17C: Major classes of administered revenues and expenses by outcomes

	Outcome 1		Total	
	2009	2008	2009	2008
	$'000	$'000	$'000	$'000
Administered Income				
Sale of goods and services	**20**	13	**20**	13
Total administered income	**20**	13	**20**	13
Administered Expenses				
Refund of fees	**20**	3	**20**	3
Total Administered Expenses	**20**	3	**20**	3

Appendix VII Strategic Plan 2009–2011

Introduction

The National Native Title Tribunal was established in 1994 by the *Native Title Act 1993* (Cwlth) (the Act). The Preamble to the Act describes it as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders (Indigenous Australians). The Act is intended to further advance the process of reconciliation among all Australians.

The Act creates an Australia-wide native title scheme, the objectives of which include:

a) to provide for the recognition and protection of native title
b) to establish a mechanism for determining claims to native title
c) to establish ways in which future dealings affecting native title (future acts) may proceed.

To facilitate the achievement of those objectives, the Act gives the Tribunal wide-ranging responsibilities which include:

- testing claimant applications for registration purposes
- providing assistance to parties (including geospatial information and historical, anthropological, and linguistic research services)
- assisting with the negotiation of indigenous land use agreements (ILUAs) and assessing them for registration
- conducting reviews and inquiries about native title issues
- mediating various types of applications
- mediating, arbitrating and conducting inquiries about certain future acts
- maintaining registers of claims, determinations of native title and ILUAs.

The Act establishes the Tribunal as an independent, professional body which, in carrying out its functions, may take account of the cultural and customary concerns of Indigenous Australians.

The Tribunal is uniquely placed to:

- *offer a whole-of-process perspective*: the Tribunal has a role in each stage of native title proceedings from providing pre-claim assistance through to registering native title determinations and some agreements
- *provide a national view*: the Tribunal operates throughout Australia and deals with parties in different jurisdictions
- *facilitate agreement-making*: the Tribunal maximises opportunities for parties to reach enduring agreements with one another.

Vision
Timely, effective native title and related outcomes.

Mission
The Tribunal's mission is to:
- facilitate the achievement of timely and effective outcomes
- carry out our functions in a fair, just, economical, informal and prompt way.

Values
The Tribunal affirms the values of the Australian Public Service which include professionalism, integrity, impartiality and responsive service. We recognise and respect cultural and other diversity. In particular, we acknowledge the richness of Indigenous cultures and their importance to Australian society.

In addition, the Tribunal values:
- excellence
- fairness
- collegiality
- collaboration.

Strategic Priorities

Clients and stakeholders
- Engage effectively with our clients and stakeholders
- Develop innovative ways of enhancing our value to clients and stakeholders

Services
- Continuously strive for excellence in our services
- Deliver high-quality mediation and agreement-making services

Workplace culture
- Foster a culture of achievement and high performance
- Create an environment that attracts and retains employees

Accountability
- Manage our resources strategically and effectively
- Account for our work

Clients and stakeholders

1. Engage effectively with our clients and stakeholders

Strategies	Targets
1.1 Optimise the use of our functions and powers	• We exercise our functions and powers appropriately and effectively • We continually monitor, review and improve the ways in which we exercise our functions and powers
1.2 Promote the full range of our services, with particular focus on our functions, powers and expertise	• Clients and stakeholders increasingly understand our role and are satisfied with our services • Our web site is current, describes our services fully and meets our clients' and stakeholders' information needs
1.3 Seek and respond to client feedback about our processes and services	• We consider issues identified in client feedback and address them promptly and effectively • We annually publish measures taken in response to client feedback

2. Develop innovative ways of enhancing our value to clients and stakeholders

Strategies	Targets
2.1 Monitor the native title system and contribute to strategic discussions and forums at national and state/territory levels	• We provide a comprehensive national report card on the native title system twice each year • Our data and analysis informs strategic discussions across the country
2.2 Provide targeted assistance to key client groups	• Key client groups are equipped to participate effectively in the native title system
2.3 Enhance our role in the post-determination environment	• We develop a national action plan to strengthen our role in the post-determination environment

Services

3. Continuously strive for excellence in our services

Strategies	Targets
3.1 Anticipate change to our operating environment and equip ourselves to respond to current and emerging needs	• We respond to change effectively and in a timely manner
3.2 Maintain or improve the quality and timeliness of all our services	• We regularly assess our products and services, and improve them as required • Clients and stakeholders are satisfied with the quality and timeliness of our services
3.3 Ensure our equipment, resources and corporate support enable effective service delivery to our clients	• At least 80 per cent of employees agree that they have the tools and resources needed to deliver effective services to clients

4. Deliver high-quality mediation and agreement-making services

Strategies	Targets
4.1 Work with parties to develop timely and effective native title and related outcomes	• We identify and help parties secure high-quality, innovative solutions and effective results
4.2 Use our cross-cultural mediation experience and our geospatial, research and other specialist expertise to deliver effective services	• Our agreement-making teams operate effectively throughout Australia, and services are tailored as required
4.3 Use the national case flow management scheme (NCFMS) to improve the efficient resolution of claims	• We use an NCFMS-based project management approach to facilitate high-quality agreement-making

Workplace culture

5. Foster a culture of achievement and high performance

Strategies	Targets
5.1 Develop a dynamic learning culture through sharing knowledge and experience	• At least 70 per cent of employees agree that we share knowledge with others in the Tribunal
5.2 Support members and employees to do their best work	• Members and employees are equipped and motivated to achieve high-quality results
5.3 Anticipate and address our skill and knowledge requirements	• We review and revise our development and performance management framework and undertake effective workforce planning • We deliver effective induction and cultural awareness training • Indigenous employees increasingly take up the developmental opportunities that we offer

6. Create an environment that attracts and retains employees

Strategies	Targets
6.1 Demonstrate strong leadership and good governance throughout the Tribunal	• Decisions are appropriate, timely and communicated clearly • Employees are highly motivated and engaged in their work • Results of employee surveys are considered promptly and actioned appropriately
6.2 Foster a safe, collegial and supportive work environment	• We consistently demonstrate collegial behaviour towards one another • Employees are satisfied that their work is recognised and acknowledged • Employees feel supported and safe within the workplace
6.3 Implement effective initiatives for recruiting Indigenous employees and developing and utilising their unique skills and knowledge	• At least 10 per cent of employees are Indigenous Australians

Accountability

7. Manage our resources strategically and effectively

Strategies	Targets
7.1 Use our resources in a targeted, efficient and effective way	• We consistently meet our strategic, operational and other performance objectives within available resources
7.2 Achieve increased efficiencies and cost-effective practices and processes	• We identify, plan and implement efficiencies in all our work
7.3 Continue to integrate risk management processes into business operations and decision-making	• We ensure that effective risk and project management approaches are standard work practice across the Tribunal

8. Account for our work

Strategies	Targets
8.1 Ensure that roles, responsibilities and accountabilities are clear and well understood within the Tribunal	• We act consistently with our respective roles, responsibilities and accountabilities • We meet agreed and other time frames for all lines of business
8.2 Apply, monitor and review our policies and procedures	• We implement our policies and procedures consistently, and revise or develop them as required
8.3 Apply ethical standards to all our work practices	• Our decision-making and other work practices demonstrate ethical standards

Glossary

Access agreement: an agreement between native title holders and non-native title holders about access to areas of land and waters where native title may exist or has been recognised.

AIATSIS: Australian Institute of Aboriginal and Torres Strait Islander Studies.

Alternative procedure agreement: a type of indigenous land use agreement.

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.

Authorisation: the process native title holders must use to give permission for an area agreement (a type of indigenous land use agreement) to be made on their behalf, or an application for a determination of native title or compensation application to be made on their behalf and to give the applicant the power to deal with matters arising in relation to the application.

Body corporate agreement: a type of indigenous land use agreement.

Claimant application/claim: see native title claimant application/claim.

Compensation application: an application made by Indigenous Australians seeking compensation for loss or impairment of their native title.

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.

Consolidated Revenue Fund; Reserved Money Fund; Loan Fund; Commercial Activities Fund: these funds comprise the Commonwealth Public Account.

Consultancy: one particular type of service delivered under a contract for services. A consultant is an entity—whether an individual, a partnership or a corporation—engaged to provide professional, independent and expert advice or services.

Corporate governance: the process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.

CPA: Commonwealth Public Account, the Commonwealth's official bank account kept at the Reserve Bank. It reflects the operations of the Consolidated Revenue Fund, the Loan Funds, the Reserved Money Fund and the Commercial Activities Fund.

Current assets: cash or other assets that would, in the ordinary course of operations, be readily consumed or convertible to cash within 12 months after the end of the financial year being reported.

Current liabilities: liabilities that would, in the ordinary course of operations, be due and payable within 12 months after the end of the financial year under review.

Determination: a decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

Disposition of native title matters: the rate at which native title applications are determined or otherwise dealt with so that they are no longer in the system.

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* (Cwlth) (FMA Act):** 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.

FaHCSIA: Department of Families, Housing, Community Services and Indigenous Affairs

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).

Future act determination: a decision by the National Native Title Tribunal either that a future act cannot be done, or can be done with or without conditions. In making the determination, the Tribunal takes into account (among other things) the effect of the future act on the enjoyment by the native title party of their registered rights and interests and the economic or other significant impacts of the future act and any public interest in the act being done.

'Good faith' negotiations: all negotiation parties must negotiate in good faith in relation to the doing of future acts to which the right to negotiate applies (*Native Title Act 1993* (Cwlth) s. 31(1)(b)). See the list of indicia put forward by the Tribunal of what may constitute good faith in its *Guide to future act decisions made under the Right to negotiate scheme* (31 October 2008), pp. 83–89, at www.nntt.gov.au . Each party and each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s. 136B(4)).

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.

Milestone agreement: an agreement on issues, such as a process or framework agreement , that leads towards the resolution of a native title matter but does not fully resolve it.

National Native Title Register: 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: representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australia government to provide a variety of functions under the *Native Title Act 1993* (Cwlth). These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for determinations of native title and area agreements (ILUA), resolving intra-indigenous disputes, agreement-making and ensuring that notices given under the NTA are bought to the attention of the relevant people.

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.

Notification: the process by which people, organisations and/or the general public are advised by the relevant government of their intention to do certain acts or by the National Native Title Tribunal that certain applications under the Act have been made.

'On country': description applied to activities that take place on the relevant area of land, for example mediation conferences or Federal Court hearings taking place on or near the area covered by a native title application.

Party: a person or organisation that either enters into an agreement, such as an indigenous land use agreement, with another person or organisation or, is a participant in a legal action or proceeding such as an application for a determination of native title.

PBS: Portfolio Budget Statements.

PBC: prescribed body corporate, a body nominated by native title holders which will represent them and manage their native title rights and interests once a determination that native title exists has been made.

Principal Registry: the central office of the Tribunal. It has a number of functions that relate to the operations of the Tribunal nationwide.

Receipts: the total or gross amount of moneys received by the Commonwealth (i.e. the total inflow of moneys to the Commonwealth Public Account including both 'above the line' and 'below the line' transactions). Every receipt item is classified to one of the economic concepts of revenue, outlays (i.e. offset within outlays) or financing transactions. See also Revenue.

Receivables: amounts that are due to be received by the Tribunal but are uncollected at balance date.

Register of Indigenous Land Use Agreements: a record of all indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

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.

Registered native title claimant: a person or persons whose names(s) appear as 'the applicant' in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.

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* (Cwlth) 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 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 the Australasian Legal Information Institute at www.austlii.edu.au/au/legis/cth/consol_act/nta1993147 .

Section 29 of the Native Title Act: describes how a government must give notice of a proposal to do a future act (usually the grant of a mining tenement or a compulsory acquisition of land).

SES: senior executive service.

Index

Contact the Tribunal

The National Native Title Tribunal has offices in Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth and Sydney. A wide range of information is available at www.nntt.gov.au .

Principal Registry
Level 4, Commonwealth Law Courts Building
1 Victoria Avenue
Perth WA 6000
GPO Box 9973
Perth WA 6848
Telephone (08) 9268 7272
Facsimile (08) 9268 7299

New South Wales and Australian Capital Territory Registry
Level 25, 25 Bligh Street
Sydney NSW 2000
GPO Box 9973
Sydney NSW 2001
Telephone (02) 9235 6300
Facsimile (02) 9233 5613

Northern Territory Registry
Level 5, NT House
22 Mitchell Street
Darwin NT 0800
GPO Box 9973
Darwin NT 0801
Telephone (08) 8936 1600
Facsimile (08) 8981 7982

Queensland Registry
Level 30, 239 George Street
Brisbane Qld 4000
GPO Box 9973
Brisbane Qld 4001
Telephone (07) 3226 8200
Facsimile (07) 3226 8235

Queensland Registry–Cairns Regional Office
Level 14, Cairns Corporate Tower
15 Lake Street
Cairns Qld 4870
PO Box 9973
Cairns Qld 4870
Telephone (07) 4048 1500
Facsimile (07) 4051 3660

South Australia Registry
Level 10, Chesser House
91 Grenfell Street
Adelaide SA 5000
GPO Box 9973
Adelaide SA 5001
Telephone (08) 8306 1230
Facsimile (08) 8224 0939

Victoria and Tasmania Registry
Level 8
310 King Street
Melbourne Vic. 3000
GPO Box 9973
Melbourne Vic. 3001
Telephone (03) 9920 3000
Facsimile (03) 9606 0680

Western Australia Registry
Level 11, East Point Plaza
233 Adelaide Terrace
Perth WA 6000
GPO Box 9973
Perth WA 6848
Telephone (08) 9268 9700
Facsimile (08) 9221 7158

NATIONAL FREECALL NUMBER: 1800 640 501

WEBSITE: www.nntt.gov.au

National Native Title Tribunal office hours:
8.30am–5.00pm
8.00am–4.30pm (Northern Territory)