National
Native Title
Tribunal

Annual Report 2009–2010

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 Stakeholder Relations team on freecall 1800 640 501 or email enquiries@nntt.gov.au .

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21 September 2010

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 2010.

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

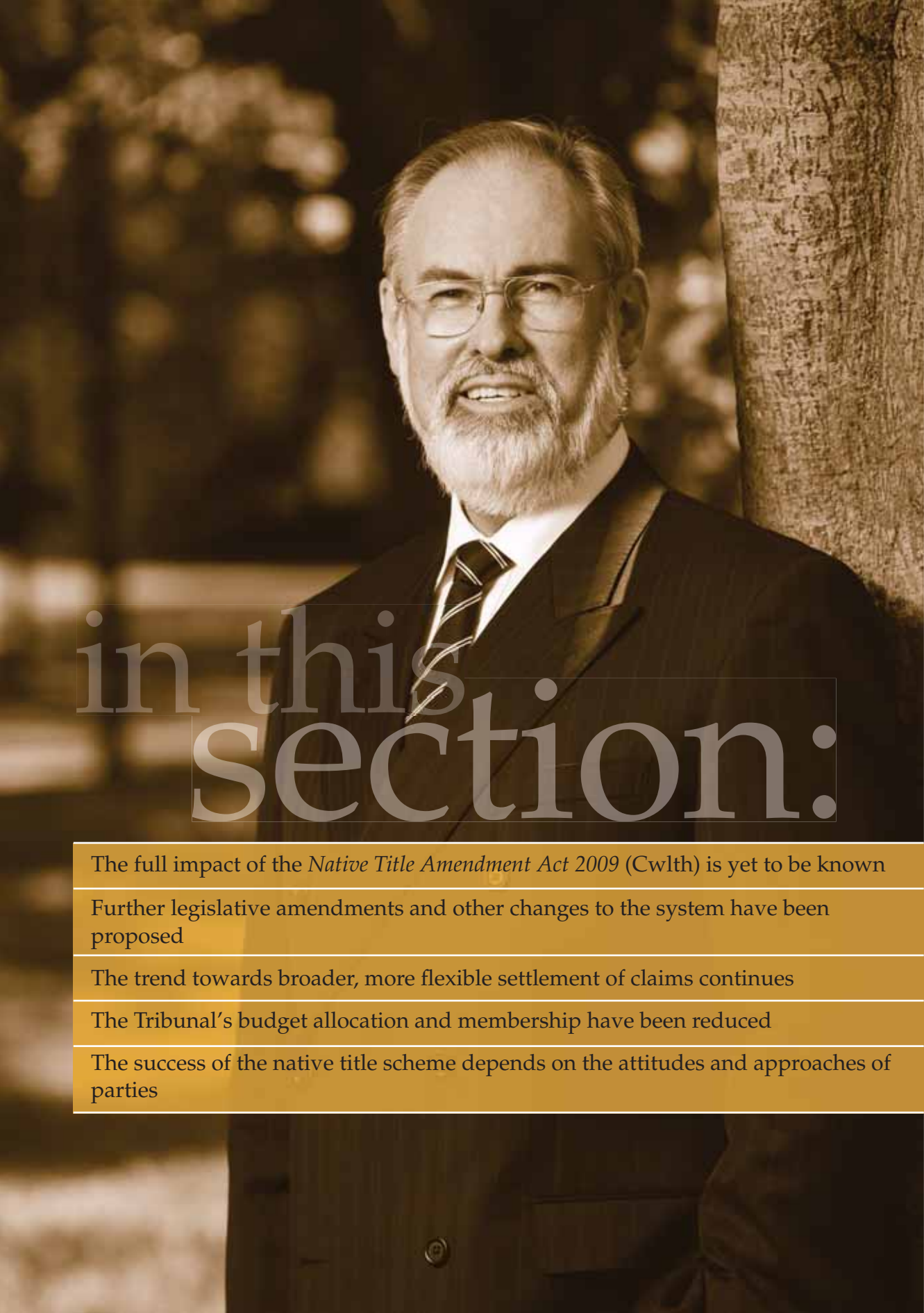
Yours sincerely

Graeme Neate
President

Contents

List of figures

List of tables



in this section:

- The full impact of the *Native Title Amendment Act 2009* (Cwlth) is yet to be known
- Further legislative amendments and other changes to the system have been proposed
- The trend towards broader, more flexible settlement of claims continues
- The Tribunal's budget allocation and membership have been reduced
- The success of the native title scheme depends on the attitudes and approaches of parties

President's overview

Year in review

Introduction

In my overviews to some previous annual reports of the National Native Title Tribunal (the Tribunal), I have referred to change and transition as features of the environment in which the Tribunal operates.

The past year was no exception. Anticipated amendments to the *Native Title Act 1993* (Cwlth) (the Act) commenced in September 2009. Other amendments were introduced, more changes to the Act were foreshadowed by the Australian Government and were published for discussion, and other people requested additional changes.

The legal landscape of native title is subject to reshaping by legislation, judicial decisions and administrative procedures. Much of the public discussion is about aspects of the native title system that are seen as problematic, principally the long period usually taken to resolve native title claims. Publicity surrounds change or the talk of change.

Yet, in many respects, the native title system inhabits increasingly familiar and stable territory. Issues are resolved by reference to known features of law and practice. Outcomes are produced, often by negotiated agreements.

The Tribunal is involved in most aspects of native title. Indeed, 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 and notification of claims, the mediation of claims which have been referred to it, and then the registration of determinations of native title; and by 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 parties and their representatives.

Tribunal President Graeme Neate.

As required by the Act, this annual report relates to the Tribunal's activities during 2009-2010. Accordingly, it deals with the range of registration, mediation, arbitration, assistance and other statutory functions performed by the Tribunal in that year. It also provides a picture of how native title rights and interests are being recognised, often by agreements, alongside other rights and interests.

My overview deals primarily with external factors affecting the Tribunal and its work.

For the first time since 1998, this annual report includes a report by the Native Title Registrar. It focuses on key developments within the Tribunal.

The rest of this annual report includes information about various programs and activities of the Tribunal, as well as 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.

External factors affecting the Tribunal

For various historical, legal, demographic and political reasons, the system operates differently in each Australian jurisdiction.

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; practices, procedures and orders of the Federal Court of Australia (the Court); the roles and capacity of native title representative bodies, native title service providers and prescribed bodies corporate; and budgetary decisions of the Australian Government.

Developments in the law

During the reporting period, the relevant developments in the law comprised amendments to the Act and other legislation, new regulations, judgments of the Court, and future act determinations by members of the Tribunal.

Legislation

Most of the amendments to the Act made by the *Native Title Amendment Act 2009* (Cwlth) commenced on 18 September 2009. Among other things, the amendments:

- enable the Court to determine who will mediate in relation to a native title claim (specifically the Court, the Tribunal, or another 'appropriate person or body')
- extend previous provisions concerning the conduct of mediation by the Tribunal to all mediation in relation to native title applications
- enable the Court to direct the Tribunal to hold a native title application inquiry or

to refer certain native title issues to the Tribunal for review
- enable the Court to rely on a statement of facts agreed between some or all of the parties to make consent determinations of native title (provided the applicant and the principal government party are among those who have reached agreement)
- enable the Court to make consent orders that cover matters other than native title so that parties can resolve a range of related issues at the same time as a determination of native title
- allow amendments made to the *Evidence Act 1995* (Cwlth) by the *Evidence Amendment Act 2008* (Cwlth) (concerning 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 Attorney-General's financial assistance provisions to allow assistance in relation to all mediations
- clarify that the Court is not always required to make a determination as to whether a native title determination is to be held on trust by a prescribed body corporate 'at the same time', but may do so as soon as practicable after it makes a determination that native title exists in relation to an area
- 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.

Speaking on the introduction of the amending legislation, 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.*

Some of the implications of those amendments for the work of the Tribunal, and various outstanding issues in relation to the implementation of those amendments, are discussed later in this overview.

Other amendments and regulations: Other minor amendments to the Act were made by the *Statute Law Revision Act 2010* (Cwlth) and the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Act 2010* (Cwlth) [both through amendment of the *Native Title Amendment (Technical Amendments) Act 2007* (Cwlth) and thus having retrospective effect], as well as the

Disability Discrimination and Other Human Rights Legislation Amendment Act 2009 (Cwlth) and the *Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009* (Cwlth).

On 29 June 2010, the Governor-General made the *Native Title (Tribunal) Amendment Regulations 2010 (No 1)*, the effect of which was to increase, from 1 July 2010, the fee payable for certain applications to the Native Title Registrar or the Tribunal to $719.

Proposed amendments to the Act were introduced, and others were foreshadowed, during the reporting period. They are summarised below.

Second Bill to amend the Act: The Native Title Amendment Bill (No 2) 2009 would establish a new subdivision JA, within the future acts regime (Part 2 Division 3) of the Act.

The new subdivision would provide a process to deal specifically with the construction of public housing and a limited class of public facilities by or on behalf of the Crown, a local government body, or other statutory authority of the Crown in any of its capacities, for Aboriginal people and Torres Strait Islanders in communities on Indigenous held land. The new process would ensure that the representative native title body, and any registered native title claimants and registered native title bodies corporate in relation to the relevant area are notified and afforded an opportunity to comment on acts that affect native title before those acts are done.

Where a future act is covered by the new subdivision and certain procedural requirements are met, the Act would provide that the future act is valid. The non-extinguishment principle would apply to acts covered by the new process, ensuring that native title can revive if the act ceases to have effect. The subdivision would also provide for compensation for native title holders.

The new subdivision would operate for 10 years. That period is designed to match the 10-year funding period under the National Partnership Agreements between the Commonwealth and the states and territories on remote indigenous housing and remote service delivery.

On 29 October 2009, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee for inquiry and report. In its report in February 2010, the committee noted that people making submissions and witnesses 'recognised the need for improved public housing and public infrastructure for Indigenous communities throughout Australia and, on this basis, largely supported the objectives of the Bill. However, this support did not extend to the way in which the Bill seeks to achieve its objectives'.

The committee (by majority) recommended that:

- subdivision JA of the Bill be amended to include the provision of staff housing as part of the new future acts process, and
- subject to that recommendation, the Bill be passed.

In reaching that conclusion, the majority of the committee stated that the measure 'is both necessary and urgent'.

At the end of the reporting period, the Bill was still before the Parliament. It was scheduled to be debated in the winter sitting period, but the Senate rose for the winter recess before the debate took place and the Parliament was then prorogued.

If the Bill is passed, the amendments might result in fewer ILUAs being negotiated, given that the cost and delay of negotiating area agreement ILUAs for these purposes, particularly in Queensland and Western Australia, was said to be one reason for the proposed amendments.

Proposed historical extinguishment amendment: On 14 January 2010, the Commonwealth Attorney-General released draft legislation detailing a proposed amendment to the Act. It would allow, in certain circumstances, government and native title parties to agree to disregard the historical extinguishment of native title in areas of land set aside for the purpose of preserving the natural environment. The reform would not affect any existing interests in the area.

This proposed amendment could provide opportunities for more claims to be made over such areas and settled by negotiation. For example, in Western Australia, the proposed reform could go towards ameliorating the effect of case law that found that some Crown reserves extinguished native title at common law.

Submissions on the possible reform closed on 19 March 2010 and, at the end of the reporting period, the Australian Government had not announced whether it would introduce such legislation.

Possible taxation law reform: On 18 May 2010, the Australian Government issued a consultation paper on the taxation treatment of native title, *Native Title, Indigenous Economic Development and Tax*. The paper looks at the interaction between the income tax system and native title, and sets out three possible approaches to reform:

- a tax exemption for native title payments
- a new tax-exempt vehicle, and
- a native title withholding tax.

The paper also discusses how deductable gift recipient categories could be better adapted to reflect the needs of Indigenous communities.

The Government requested submissions on the issues raised in the paper by 5 August 2010.

Other options for reform: The options just summarised illustrate the nature of reforms being considered by the Australian Government. The Commonwealth Attorney-General invited suggestions for other ways to improve the system. Suggestions have been made by various means and in a range of forums. In his *Native Title Report 2009*, for example, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, made 24 specific recommendations to reform the native title system. Some would involve amending the Act, while others relate to practice. An overarching recommendation was that the Australian Government 'ensure that reforms to the native title system are consistent with the rights affirmed by the Declaration on the Rights of Indigenous Peoples'. For more information about the Commissioner's last Native Title Report, see p. 106.

Judgments and litigation

The Court delivered about 50 written judgments on matters involving native title. Some included reasons for making consent determinations of native title. Most judgments, however, involved other technical issues in relation to the interpretation of the Act and aspects of native title practice and procedure.

Members of the Tribunal were involved in the development of the law as they made future act determinations under the Act and referred a question of law to the Court.

Summaries of the main points of significant judicial decisions and Tribunal determinations are set out in Appendix II Significant decisions, p. 115.

Policies and procedures of governments

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 and negotiating 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. 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.

That willingness to see native title within a broader social, economic and legal context was evident at the meeting on 28 August 2009 of Commonwealth, state and territory Native Title Ministers who discussed progress toward national reforms to the native title system. According to a communiqué issued at the conclusion of that meeting, this reform agenda includes 'the development of innovative policy approaches to native title agreement-making to deliver broader, more practical outcomes to Indigenous Australians'. Ministers committed their governments to taking 'a more flexible view of the ways to achieve the broad range of practical outcomes possible from native title processes — achieving real outcomes for Indigenous people and providing certainty for other land users'.

Ministers endorsed a set of *Guidelines for Best Practice in Flexible and Sustainable Agreement Making* which, among other things, 'emphasise the desirability for government parties to provide broader practical and sustainable benefits attuned to the interests of Indigenous native title claimants'. The *Guidelines* clearly articulate the approach to broader settlements that those governments can be expected to adopt.

The Tribunal continued to participate in both the Native Title Coordination Committee (NTCC) and the Native Title Consultative Forum (NTCF) during the reporting period. Both groups are coordinated by the Attorney-General's Department. The NTCC comprises representatives from that Department, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Court, and the Tribunal. Its purpose is to monitor, regularly review and advise the Australian Government on the native title system.

The NTCF comprises representatives of the same bodies as the NTCC, and also includes representatives from state and territory governments, native title representative bodies, the Australian Human Rights Commission, local government and peak industry bodies. The purpose of the NTCF is to provide a forum for sharing information about the operation of the native title system. Representatives of the Tribunal attended each NTCC and NTCF meeting during the reporting period, and provided reports, including up-to-date statistical data, to those meetings.

Federal Court practice, 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 (by the Tribunal or others) 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.

The 2009 amendments realigned the relationship between the Court and the Tribunal. It remains to be seen what the full practical operational effect will be and to what

extent the effects will depend on the approaches taken by individual judges. In the past year, the Tribunal has engaged in communications with the Court about how the Court will administer aspects of the amended Act, and how the two institutions can work together in the exercise of their respective powers and functions.

National discussions: Since October 2008, soon after the Commonwealth Attorney-General announced the proposed amendments to the Act, representatives of the Court, the Tribunal, the Attorney-General's Department and, on occasions, FaHCSIA have met to discuss the implementation of those amendments, particularly as they affect the Court and the Tribunal. These discussions have enabled the two institutions to identify practical issues for either or both to address, and have provided a useful informal national forum to raise issues for consideration by the institutions and relevant government departments.

After the amendments commenced, the Court convened native title forums in Sydney, Adelaide, Perth, Darwin and Brisbane at which representatives of the Court, the Tribunal and stakeholders considered the implications of the amended scheme. Subsequently, the Court set up five committees in Brisbane and five committees in Perth to develop options in relation to practical issues, including:

- prioritising of cases in the Court
- the role of mediation following the 2009 amendments to the Act
- case management options in the Court
- refining the consent determination process
- resolving overlapping claims.

Each committee is chaired by a judge or senior officer of the Court. During the reporting period, the Tribunal, along with representatives of numerous stakeholders, participated in most of these committees.

Regional planning: Parties, the Court and funding departments have long recognised that claims cannot be managed well in isolation from each other but are best progressed in a regional context, so that the resources of the relevant native title representative body or service provider, the state, the Tribunal and main respondents are coordinated and focused.

During the reporting period, the Tribunal continued with comprehensive regional planning in parts of the country. Representatives of FaHCSIA and the Attorney-General's Department, as the relevant funding agencies, attended the planning meetings.

Regional planning is conducted in different ways in individual states or regions. That might change when the Court publishes its national list of priority native title claims, which list had not been finalised at the end of the reporting period.

An illustration of where the Court's approach to case management might be heading is found in a presentation by Justice Dowsett to the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) native title conference in June 2010. His Honour stated that any case management system 'should be designed to bring all current and future applications to resolution within a timeframe which is acceptable to the Court, the parties and the public'. His Honour described the principles of case management as planning, coordination, identified targets, involvement, communication, commitment, predictability, discipline and flexibility.

Referral to mediation: The amended Act retains its emphasis on mediation as the preferred procedure for the resolution or narrowing of issues in relation to native title claims. Although previously the Court was usually obliged to refer each application to the Tribunal for mediation, the Court may now refer an application to an 'appropriate person or body' for mediation. That expression includes, but is not limited to, the Tribunal and certain officers of the Court.

Most of the claimant applications that had been referred to, and were still with, the Tribunal before the 2009 amendments commenced have remained with the Tribunal. In some cases the Court has directed that Tribunal mediation cease and/or the claim has been listed for hearing by the Court. At 30 June 2010, 202 (or 47 per cent) of current claimant applications had been referred to the Tribunal for mediation, including three referred to it during the reporting period. Although there was a reduction in both the number and proportion of claims in Tribunal mediation compared with one year ago, a large majority of the claims in the states are with the Tribunal. Only in the Northern Territory, where there were 157 current claims at the end of the reporting period and the Court has adopted a different case management approach, does the Tribunal have few claims for mediation (4 or 2.5 per cent).

The Court invited expressions of interest from people who might be appointed as mediators by the Court, but a list of those people had not been published by the end of the reporting period.

Other issues: It is too early to assess the full implications of the 2009 amendments on the Court's case management of native title claims and hence on the Tribunal's operations. Practice to date suggests that, to some extent, case management orders will be developed locally, either by individual judges or in relation to a state or region (e.g. by the Court applying a timetable or making programing orders for the hearing of some claims with the intention of encouraging settlement).

Among the ongoing matters to be dealt with as practice develops are:

- whether the Court will take a narrow or broad view of what 'mediation' might involve

- whether the Court will make detailed orders about the way in which mediation is to be provided
- when the Court will refer matters to mediation (e.g. whether the Court will wait until the connection material is prepared and assessed before referring claims to mediation)
- whether the Court will refer specific issues (i.e. part of a proceeding) rather than applications to mediation
- the extent to which the Court will use the Tribunal's special powers and functions (such as to conduct reviews on whether a native title claim group holds native title rights and interests, or to conduct a native title application inquiry) to assist mediation
- what timeframes the Court might impose for the resolution of claims
- how negotiations toward broader settlements of native title claims will be accommodated in the Court's case management regime
- what orders the Court might make in relation to matters other than native title
- whether parties might seek to resolve some current claim-related issues outside the supervision of the Court.

The responses of individual judges to those matters are likely to affect not only parties to particular proceeding; they also might affect the capacity of others in the same region to proceed to appropriate and broadly acceptable outcomes in relation to different claims.

I will illustrate that point by reference to the potential tensions within the Australian Government's expectation (quoted earlier) that the amendments would 'contribute to broader, more flexible and quicker negotiated settlements of native title claims'. Given that the objective is *negotiated* settlements, it is timely to consider how the amendments might be used to promote broader, more flexible settlements as well as quicker settlements.

'Broader, more flexible ... negotiated settlements': I referred earlier to the trend toward broader settlements of claims that may (but need not) involve a determination of native title. Such an approach is not only borne of the desire of parties to take an interest-based approach to negotiations or the product of governmental policy. It has an explicit and expanding statutory foundation.

Since it was amended in 1998, the Act has provided for, and implicitly encouraged, settlements of claims that involve matters other than native title. Although section 86A(1) lists the purpose of mediation as being to assist the parties to reach agreement on some or all of the matters to be included in a determination of native title, s. 86F provides that some or all of the parties to a proceeding in relation to an application may negotiate with a view to agreeing to action that will result in one or more specified actions being taken. The agreement may involve matters other than native title, and the parties may request assistance from the Tribunal in negotiating the

agreement. The Court may order an adjournment of the proceeding to allow time for the negotiations.

In addition, the ILUA provisions create options for specific types of agreements that might be reached in the settlement of claimant proceedings. Such ILUAs might precede or follow a determination of native title, or might be negotiated in the place of such a determination.

The Act was amended in 2009 to give the Court jurisdiction to make an order that 'gives effect to terms of an agreement that involve matters other than native title' (ss. 87(5) and (6), 87A(5) and (6)). The Court may make such an order if the Court considers that the order would be within its power, and if it would be appropriate to do so.

The Explanatory Memorandum to those provisions gives the following examples of matters other than native title that may be covered by such agreements and orders:

> 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.

The Act provides that 'regulations may specify the kinds of matters other than native title that an order... may give effect to'. No such regulations had been made by the end of the reporting period, and the Explanatory Memorandum is the only guide to the potential scope of the orders. I understand that the Australian Government will monitor the implementation of these amendments before deciding whether to make regulations.

The new power was not invoked during the reporting period, so it remains to be seen:

- whether, and in what circumstances parties will seek such orders, and
- what evidence and submissions the Court will require before being satisfied that it should make orders in the terms sought by the parties.

These new powers might enable the Court to manage the whole process and, with such judicial supervision, parties might be encouraged to resolve a range of related issues at one time, rather than leaving some to be dealt with at a later date.

In some cases, parties might need to note indications in the Act that certain matters must be dealt with under an ILUA (e.g. where the agreement is to provide for consent being given to the doing of future acts). An ILUA might also be required if the parties want to ensure that the non-extinguishment principle applies to an act that would otherwise extinguish native title. These and other issues as to scope of ss. 87 and 87A are yet to be judicially considered.

Court timeframes and 'quicker ... negotiated settlements': Speaking on the introduction of the Native Title Amendment Bill 2009, the Attorney-General recorded the Australian Government's confidence in the Federal Court as the body to advance the resolution of native title claims by coordinating case management. In giving it that role, the Government was 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 timeframes'.

Justice Reeves of the Court has noted that, at about the same time as the 2009 amendments to the Act were being made, the *Federal Court of Australia Act 1976* (Cwlth) was also amended. Those amendments included s. 37M, which created the overarching purpose of civil practice and procedure in the Court, which purpose is 'to facilitate the just resolution of disputes ... according to law; and ... as quickly, inexpensively and efficiently as possible' (s. 37M[1]). According to Justice Reeves, the amendments to the two Acts 'have created an entirely new environment for native title litigation' which includes a 'prescription' that the Court 'dispose of all matters in the Court, including native title applications, as justly, quickly, inexpensively and efficiently as possible'.

Although the precise implications of that are yet to be seen, they are consistent with the Court adopting a more interventionist, closer case management of native title claim proceedings.

The question is whether both the objectives of 'broader, more flexible' negotiated settlements and 'quicker' negotiated settlements will be achieved under the Court's case management regime.

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 broader settlement (whether or not it involves a determination of native title) might be much more satisfactory for all the parties.

Possible bifurcation of proceedings: There is a risk that if parties are keen to negotiate a package of agreements that include (yet are not confined to) a determination of native title, but consider that:

- they do not have sufficient time to negotiate (and possibly register) the agreements within the Court's timetable for resolving the claim, or
- the matter should not be programed for a hearing,

they might seek other procedural options (e.g. discontinuance of the claim) so that negotiations can continue.

Such an approach would mean that the claimant application would no longer be part of the Court's list. However, its discontinuance could have implications for other matters in the Court's list if, for example:

- the parties devoted the same resources to the negotiations as if the matter were on the Court's list
- they request, and are provided with, Tribunal assistance (e.g. to negotiate ILUAs), and
- the use of resources for those matters means that the parties do not have sufficient resources for intensive negotiation and/or preparation for trial of other matters that are in the Court's list (particularly if there is a rolling list).

These responses will pose some planning and case management issues for the parties, the Court, the Tribunal and the funding departments.

That possibility (already evident by recent actions in Queensland) draws into focus the cumulative effects of, and potential tensions between close case management by the Court, and the desire of parties for the broader or alternative settlement of some claims, particularly if native title proceedings are treated like any other litigation and inappropriately short timeframes are set by the Court.

Relationship between the Tribunal and the Court: The Tribunal will continue to work with the Court and the parties to assist parties:

- to reach agreement on relevant matters such as whether native title exists and who holds native title, and
- to negotiate any other forms of agreement that might be conditions of, or associated with, a determination of native title, or
- to negotiate agreements that do not involve a determination of native title.

The Tribunal's work is assisted greatly by clear direction from the Court as to its expectations of progress to be achieved by the parties and reports to be provided by the Tribunal. In respect of the latter, specificity from the Court about the form and content of particular mediation progress reports is helpful. The Tribunal can provide such reports, subject only to the limits flowing from the 'without prejudice' privilege in s. 94D(4), which proscribes what the Tribunal can tell the Court without the agreement of the parties.

Much of the success of regional planning, and the progress of individual claimant applications to date, has resulted from a closely coordinated approach to mediation and related matters between the Court and the Tribunal.

Native title representative bodies and native title service providers

As I have stated in previous annual reports, well functioning native title 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.

As at 30 June 2010, there were 18 representative body areas with eight representative bodies for nine of these areas.

On 25 June 2010, the Minister for Families, Housing, Community Services and Indigenous Affairs recognised four organisations (South West Aboriginal Land and Sea Council Aboriginal Corporation, Cape York Land Council Aboriginal Corporation, Goldfields Land and Sea Council Aboriginal Corporation, and Yamatji Marlpa Aboriginal Corporation) as representative Aboriginal/Torres Strait Islander bodies under the Act for the period 1 July 2010 until 30 June 2013. That recognition brings the recognition periods for all native title representative bodies into alignment.

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 appears not to create practical problems for the native title system.

The 2009–10 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. 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 outcome-focused negotiations.

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 95 registered determinations that native title exists and 72 PBCs registered on the National Native Title Register as Registered

Native Title Body Corporates (13 of these being PBCs for more than one determination). 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 or waters.

There have been concerns about the workability of native title in the absence of adequately resourced and effective structures to support native title holders. There continue to be practical issues about how PBCs 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.

During the reporting period, the Australian Government prepared the *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2010*, which would amend the *Native Title (Prescribed Bodies Corporate) Regulations 1999*. The Amendment Regulations will give effect to amendments made to the Act in 2007 following a report on 'Structures and Processes of Prescribed Bodies Corporate'. In summary, the Amendment Regulations would:

- improve the flexibility of the PBC governance regime by:
  - enabling an existing PBC to be determined as a PBC for subsequent determinations of native title
  - removing the requirement that all members of a PBC are also the native title holders (referred to in the Act as the 'common law holders'), and
  - clarifying that standing authorisations in relation to particular activities of a PBC need only be issued once
- provide for the transfer of PBC functions (probably to the Indigenous Land Corporation) in circumstances where there has been failure to nominate a PBC, where a liquidator is appointed, or where a PBC wishes this to occur, and
- enable PBCs to charge a fee for costs incurred in providing certain services and set out a procedure for review by the Registrar of Indigenous Corporations of a decision by a PBC to charge such a fee.

At the end of the reporting period, the Australian Government was considering submissions in relation to the Amendment Regulations, which will commence on the day after they are registered on the Federal Register of Legislative Instruments, established and maintained under the *Legislative Instruments Act 2003* (Cwlth).

Budgetary outlook

As noted in last year's annual report, the amount allocated to the Tribunal in the 2009–10 budget was $29.68 million, which was $2.48 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 were at similar levels.

In the 2010–11 budget, however, the allocation to the Tribunal was reduced further to $26.92 million, the reduction being categorised as $1.45 million for increased efficiencies, and $2.05 million for improving access to justice. With reductions for both categories in the financial years 2011–2014, the total reductions are $17.11 million.

The Tribunal is working through the implications of these reductions for those years, bearing in mind that all costs are likely to rise. The steps being taken by the Tribunal to reduce expenditure are outlined in the Registrar's Report.

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 some of its statutory functions, such as mediation, and allocates resources, will be influenced by the Court's administration of its native title caseload, 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.

Details of the Tribunal's finances for 2009–10 are set out later in this report, starting at p. 44, and in Appendix VI starting at p. 142.

Tribunal membership

During the reporting period:

- Gaye Sculthorpe was reappointed as a full-time member of the Tribunal for 12 months from February 2010
- Robert Faulkner's term as a part-time member concluded in February 2010
- John Catlin, a full-time member of the Tribunal since October 2003, resigned from 21 May 2010.

A recruitment process for a part-time member in Western Australia for 12 months was commenced. The period for expressions of interest to be received closed on 1 July 2010 and the selection process was not completed during the reporting period.

At the end of the reporting period there were seven members. Six members were full-time and one was part-time. This was the lowest number of members for a full year since the Tribunal was established and continues a decline in member strength over the past five years, from 14 members at 30 June 2005. In order for the Tribunal to continue to perform its statutory functions and deliver its wide range of services it is important that the number of members does not fall further. If there are too few members to do the work 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, a former member (Ruth 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. 113.

Trends and challenges

Performance of statutory functions
Substantial parts of this overview have been devoted to legislative and other changes or proposed changes. That should not detract from, or be thought to diminish the importance of, those areas of native title practice that have produced substantial outcomes in the past years under the existing scheme, including future act agreements and determinations, ILUAs, and consent determinations of native title. Many of those outcomes have involved the Tribunal or the Native Title Registrar performing one or more statutory function. Much of the remainder of this report focuses on those outcomes and the Tribunal's activities in relation to them.

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 on those matters see Overview of current applications, p. 50.
For the purpose of this overview it is sufficient to note a few key points.

The total number of claimant applications continues to decline. Although 21 new claimant applications were filed in the reporting period, the number of current claimant applications dropped by 28 to 430 during the year.

The number of determinations that native title exists continues to rise. During the reporting period, nine determinations that native title exists were registered, bringing the total of registered determinations that native title exists to 95. Another 47 ILUAs were registered, bringing the total number of registered ILUAs to 434.

These outcomes can be assessed in quantitative and qualitative terms. Registered determinations of native title (that native title does or does not exist) cover some 937,049 sq km (or 12.2 per cent) of the land mass of Australia, and registered ILUAs cover about 1,147,956 sq km (or 14.9 per cent) of the land mass, as well as 4,793 sq km of sea.

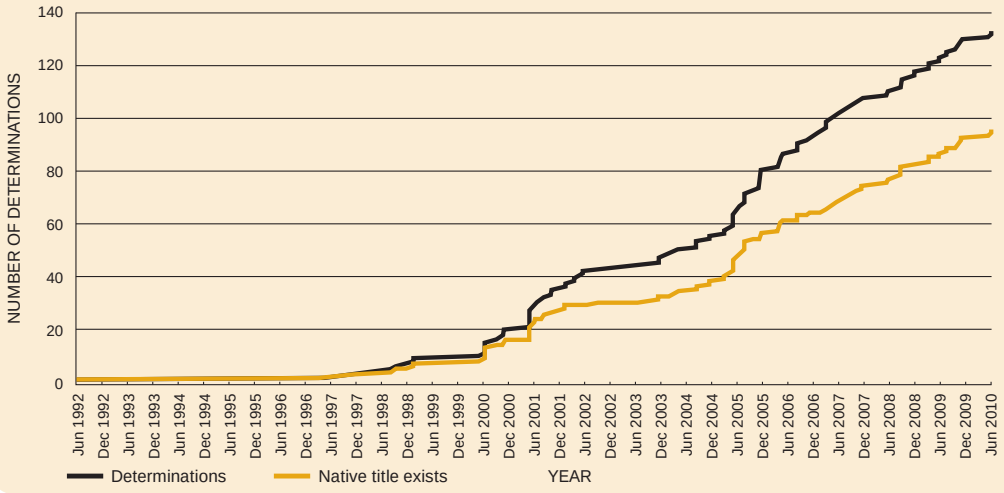
In its future act work the Tribunal dealt with a 36 per cent increase in the number of objections to the use of the expedited procedure under the Act (to 1,806), and numerous applications to make future act determinations. The bulk of the objections and applications were in Western Australia and, as in recent years, most of the objections were resolved by agreement and most determinations were made by consent.

Importantly, all of the determinations that native title exists registered during the reporting period were made by consent of the parties. Those determinations and the ILUAs (some of which were associated with the making of determinations that native title exists), 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.

Forecast for the resolution of native title claims

As at 30 June 2010, there were 457 applications in the system, 430 of them claimant applications, as well as 20 non-claimant and 7 compensation applications; a decline in the numbers of claimant and non-claimant applications over the past year.
Most of the claimant applications are in the Northern Territory (157 or 36 per cent), Queensland (113 or 26 per cent) and Western Australia (99 or 23 per cent). Most of the non-claimant applications (18 or 90 per cent) are in New South Wales.

Figure 1: Cumulative determinations of native title as at 30 June 2010



As Figure 1 shows, there has been a steady rise in the number of determinations in recent years. The legal ground rules having been established, there is now a clearer framework for negotiating outcomes rather than going to a Court hearing. It is rare for parties to request that claims go to a hearing, although the Court is increasingly making programing orders for hearings as a case management practice expressly aimed at encouraging timely settlements.

Nonetheless, it usually takes years to resolve claimant applications. An analysis of the 130 claimant applications that had been determined as at 30 June 2010 shows that:

- for the 82 determined by consent, the average time for achieving a determination was 74 months (6 years, two months)
- for the 48 litigated determinations, the average time for achieving a determination was 84 months (seven years).

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 430 current claimant applications as at 30 June 2010:

- 83 (or 19 per cent) were lodged on or since 1 July 2005, i.e. in the past five years
- 194 (or 45 per cent) were lodged between 1 July 2000 and 30 June 2005, i.e. in the past six to 10 years
- 153 (or 36 per cent) were lodged earlier, i.e. have been in the system for between 10 and 16.5 years.

The third category (unlike the other two) increased in number and as a proportion of the total during the reporting period.

It should also be recognised that, as noted in recent annual reports, many of the claims 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.

However long it takes to deal with those claims (and any new applications), 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 judgment of the Court in relation to the Torres Strait regional sea claim was delivered soon after 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 few years. The map of determinations (p. 55) shows the extensive areas of Western Australia that are subject to determinations of native title.

The challenge is to find ways to deal with each of the remaining claims, and those that are lodged in the future, in as timely and effective a way as practicable, allowing for a range of possible outcomes and tailoring the appropriate one to the circumstances of each case.

Conclusion

In the introduction to this overview I suggested that, although legislative and other changes occur from time to time, the native title legal landscape is increasingly familiar and stable territory for many of the parties to proceedings. That does not mean their journey across the terrain is necessarily easy or quick. Indeed, to quote the prophet Isaiah out of context, some might hope for a day when, metaphorically, 'Every valley shall be raised up, every mountain and hill made low; the rough ground shall become level, the rugged places a plain' (Isaiah 40:4 NIV). Such an aspiration, understandably, motivates the calls for reform.

It might be tempting for some to think that practical problems associated with native title can be resolved legislatively or administratively. However, as outlined earlier, there are numerous factors that delay the resolution of claims, most of which, in my view, will not be met by the 2009 amendments to the Act or some of the amendments being considered. Any improvement to the processes and practices of the Tribunal and the Court might have a negligible effect on the resolution of native title claims by agreement if the parties to the proceedings are unwilling or unable (for resource or other reasons) to participate productively or in a timely manner.

I am not contending against reform. But the need for reform, and arguments about what changes could be made, should not be used as distractions from proceeding to deal with the day-to-day issues at hand. Neither the parties affected nor the Court will accord others that luxury. Perhaps, as the Mexican writer Octavio Paz stated, it is best to proceed on the basis that 'Wisdom lies neither in fixity nor in change, but in the dialectic between the two' (*The Times*, 8 June 1989).

The challenge for all participants is to use the tools available to them and to approach each issue with an open mind and a willingness to negotiate in good faith with other parties.

Some people might need to change the way they think in order to understand, respect and accommodate people with different perceptions of land and waters and their relationship with them. Justice Gummow emphasised years ago that 'ingrained, but misleading, habits of thought and understanding lurk in this area of law' *(Yanner v Eaton (1999)* 201 CLR 351 at 384, 166 ALR at 279). His Honour's observation remains relevant more than a decade later, and can be adapted to all participants in native title proceedings. In essence, we need to ensure that our respective ways of thinking and taken-for-granted assumptions do not become obstacles to meaningful engagement

in what can be intellectually, socially, economically and culturally challenging engagements.

The success of the native title scheme will be influenced by, if not dependent on such factors as:

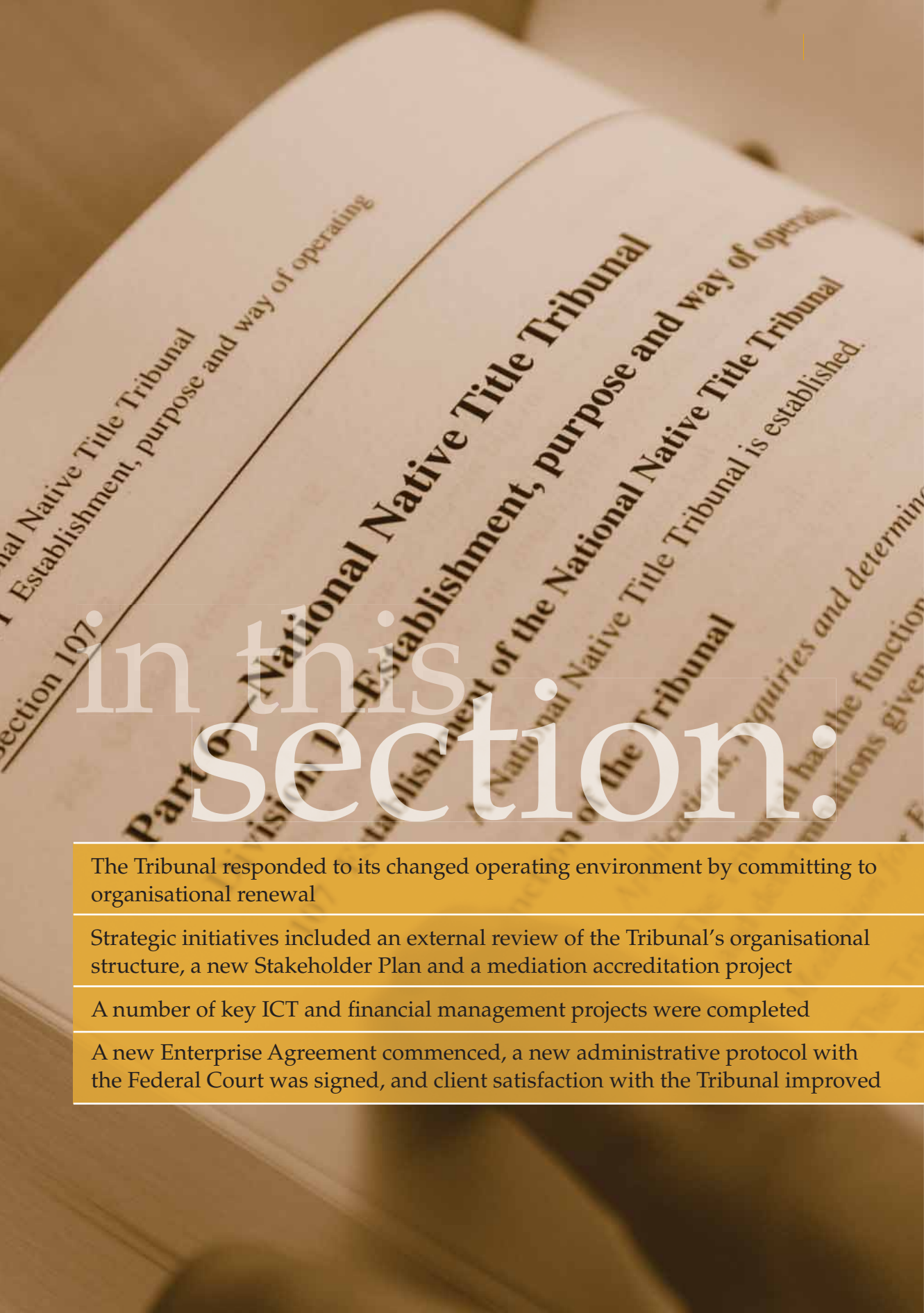
- the resources available to the parties, Court and Tribunal
- the extent of communication, cooperation and coordination within and between the Court, the Tribunal and the policy and funding departments (the Attorney-General's Department and FaHCSIA), and
- primarily, the attitudes of, and approaches taken by, the parties.

As the Commonwealth Attorney-General said, 'Real advances in native title will only come through changes in the behaviour of all parties, rather than legislative overhaul'.

The Tribunal remains committed to working with the parties, the Court and governments to meet and overcome the many challenges we face and to facilitate 'timely, effective native title and related outcomes'.

This report illustrates how those challenges were met and what was achieved in the past year.

Graeme Neate
President



in this section:

The Tribunal responded to its changed operating environment by committing to organisational renewal

Strategic initiatives included an external review of the Tribunal's organisational structure, a new Stakeholder Plan and a mediation accreditation project

A number of key ICT and financial management projects were completed

A new Enterprise Agreement commenced, a new administrative protocol with the Federal Court was signed, and client satisfaction with the Tribunal improved

Registrar's report

During the reporting period, the Tribunal's operating environment differed markedly from that of previous years. The Tribunal's appropriation for the reporting period was $29.68 million, a reduction of $2.48 million (7.7 per cent) from the previous year. Further reductions in appropriations were foreshadowed in 2010-11 to 2013-14.

In addition, and as noted in the President's Overview, in September 2009 the *Native Title Amendment Act 2009* (Cwlth) came into operation. The amending legislation had potentially far-reaching implications for the Tribunal's operations and in particular for its mediation function.

The Tribunal responded to those challenges by committing to organisational renewal, the context and the driver for which were the Tribunal's *Strategic Plan 2009–2011*. The Tribunal's strategic priorities were to engage more effectively with clients and stakeholders, to excel in service delivery, to improve workplace culture and to increase accountability for our work. Those priorities underpin the Tribunal's mission of facilitating timely and effective outcomes in the native title system.

We undertook a range of projects designed to progress those priorities, including:

- an external review of the Tribunal's organisational structure, the principal aim of which was to enable the Tribunal to optimise its organisational efficiency, flexibility and responsiveness. A consultative group, which included representatives from the Attorney-General's Department, the Court and the Tribunal, provided input and feedback to the review. The Tribunal has adopted the consultants' recommended 'flatter' structural model, which features an 'east/west' orientation. Preparations were made for the new structure to be put in place on 1 July 2010

- a suite of projects, collectively described as the Strategic Program. These included a review of the Tribunal's workforce and employees' workloads; the development of a new Stakeholder Plan; a revision of the Client Service Charter; a review of organisational principles for agreement-making; a mediation accreditation project (pursuant to which seven case managers have attained accredited mediator status); and a new Indigenous employment, retention and development plan

- a number of major information, communications and technology (ICT) initiatives featuring a new ILUA application and database (including an online Register of Indigenous Land Use Agreements which is available for public search); the development of a new intranet environment; the introduction of e-Recruit, an online employment recruitment system; and an upgrade of the Electronic Document and Records Management System. In addition, refinements were made to the Tribunal's National Case Flow Management System

- a review of the Tribunal's governance arrangements. A simplified governance model, consistent with the new organisational structure, is being developed.

Other timely projects included the re-drafting of the Chief Executive's Instructions, the revision of the financial delegations and the development of a new Chart of Accounts.

The Tribunal's budget was of central importance throughout the reporting period. Savings measures commenced in July 2009 and included reductions in discretionary travel, meetings, training, publications and consultancies. The area of floorspace leased in Queensland Registry's Brisbane office was reduced. The Victoria/Tasmania Registry relocated to the Commonwealth Law Courts Building in Melbourne. Substantial savings in salary costs were achieved through natural attrition (the number of employees fell from 247 at 30 June 2009 to 225 at 30 June 2010) and through recruitment constraints.

In the May 2010 Budget, further future reductions in appropriations were announced. In 2010-11, the appropriation will be $26.92 million (a reduction of 9.3 per cent from 2009-10), and further reductions will occur in the years to 2013-14.

Reductions of such magnitude require stringent savings measures. A voluntary redundancy scheme was initiated, the results of which would be known in August 2010. Steps were taken to close the Tribunal's Northern Territory Registry by 30 July 2010. From 2 August 2010, a new Central Australia Registry based in Adelaide would provide services to both South Australia and the Northern Territory. Further reductions in registry rental would be pursued in other states.

Other key events in the reporting period included:

- an Enterprise Agreement was successfully negotiated with employees during the latter part of 2009 and came into effect on 17 March 2010

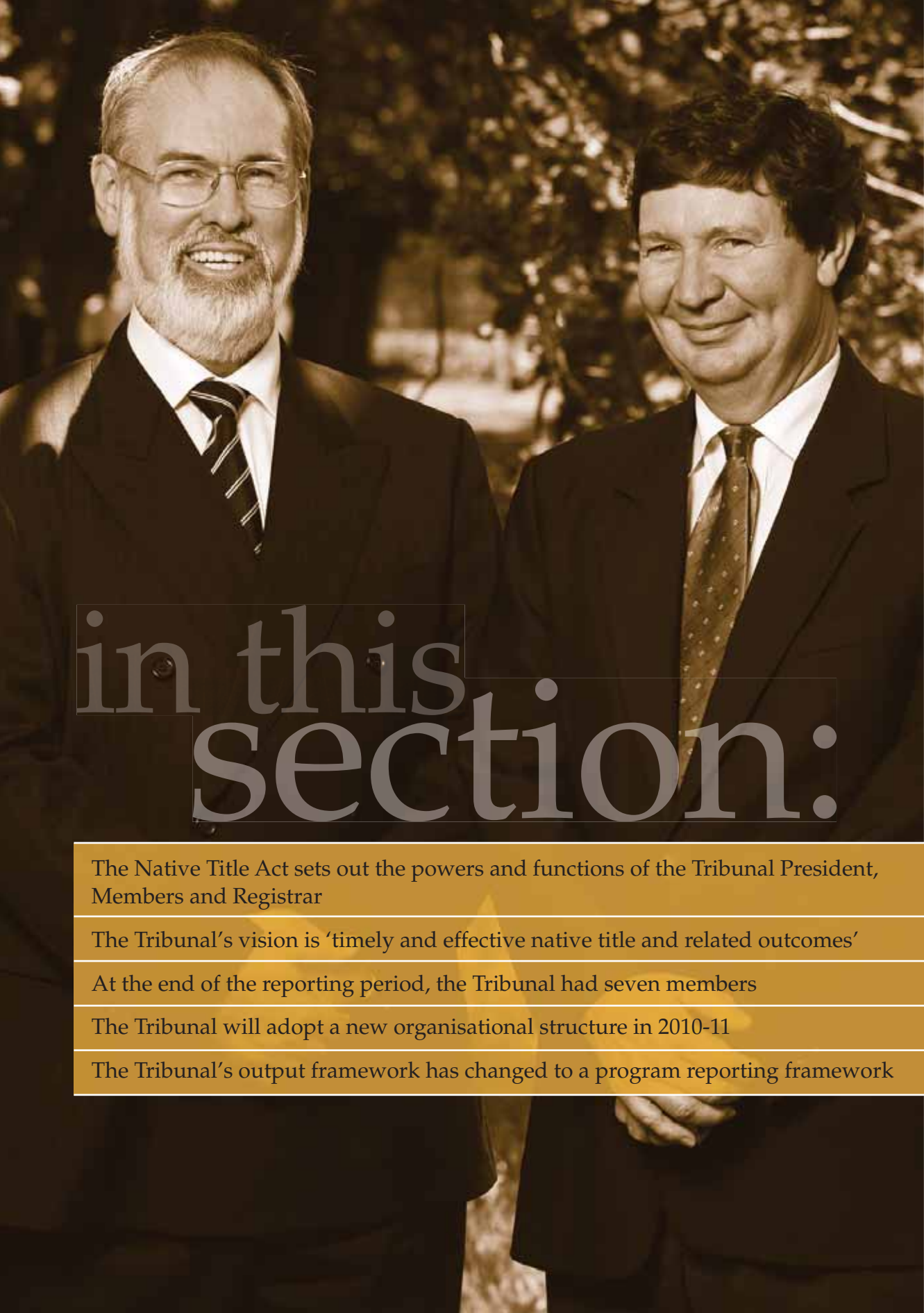
- in January 2010, the Registrar of the Federal Court of Australia and I signed a new administrative protocol, designed to simplify and to streamline the administrative arrangements between the Court and the Tribunal

- a national case management practice workshop was held in June 2010 (which adopted a *Simplify, Perform, Engage* theme). Participants considered the strategic, legal and operational aspects of their work and identified priorities for future best practice
- the Tribunal achieved greater than expected results in a number of its key performance indicators by the year's end
- overall client satisfaction rating with the Tribunal in 2010 rose to an average of 7.47 out of 10, compared with 7.15 out of 10 in 2008.

Many of the administrative measures taken in 2009-10 were difficult, and many more challenges lie ahead. However, considerable progress in all of the Tribunal's strategic priorities has been achieved and will continue to be achieved.

I thank the President, Deputy Presidents and other members for their support in 2009-10. I am grateful to the directors, section and registry managers, and all employees for their hard work, adaptability, resilience and good spirit during the course of the year.

Stephanie Fryer-Smith
Registrar



in this section:

The Native Title Act sets out the powers and functions of the Tribunal President, Members and Registrar

The Tribunal's vision is 'timely and effective native title and related outcomes'

At the end of the reporting period, the Tribunal had seven members

The Tribunal will adopt a new organisational structure in 2010-11

The Tribunal's output framework has changed to a program reporting framework

Tribunal overview

Role and functions

The 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 referred by the Court
- 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.

President Graeme Neate and Deputy President John Sosso.

The Act gives the Registrar specific responsibilities, including:

- assisting people at any stage of any proceedings under the Act, such as 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 may delegate all or any of her powers under the Act to Tribunal employees, and may also engage consultants. The Registrar also 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.

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 Program 1.2.2—Native title agreements and related agreements, p. 64 in the Report on Performance.

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 Program 1.2.3—Future act agreements, p. 71, Program 1.3.3—Future act determinations and decisions whether negotiations were undertaken in good faith p. 81 and Program 1.3.4—Finalised objections to expedited procedure, p. 83.

Tribunal members

The Governor-General appoints Tribunal members 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 p. 35.

Some members are appointed full-time and some on a part-time basis. A biographical note on each member is available on the Tribunal's website.

At the end of the reporting period, there were seven members, comprising three presidential members (all full-time) and four other members (three full-time and one part-time). During the reporting period, one part-time member's appointment expired and one full-time member resigned. The process to appoint a new part-time member began in June 2010 which, if completed, will bring the total number of members to eight. For a list of members, their terms of appointment and locations see Appendix 1.

The members are geographically widely dispersed. Members usually meet each year to consider a range of strategic, practice and administrative matters. Subcommittees of members, or members who work in the same state or territory, also meet as required, often by teleconference.

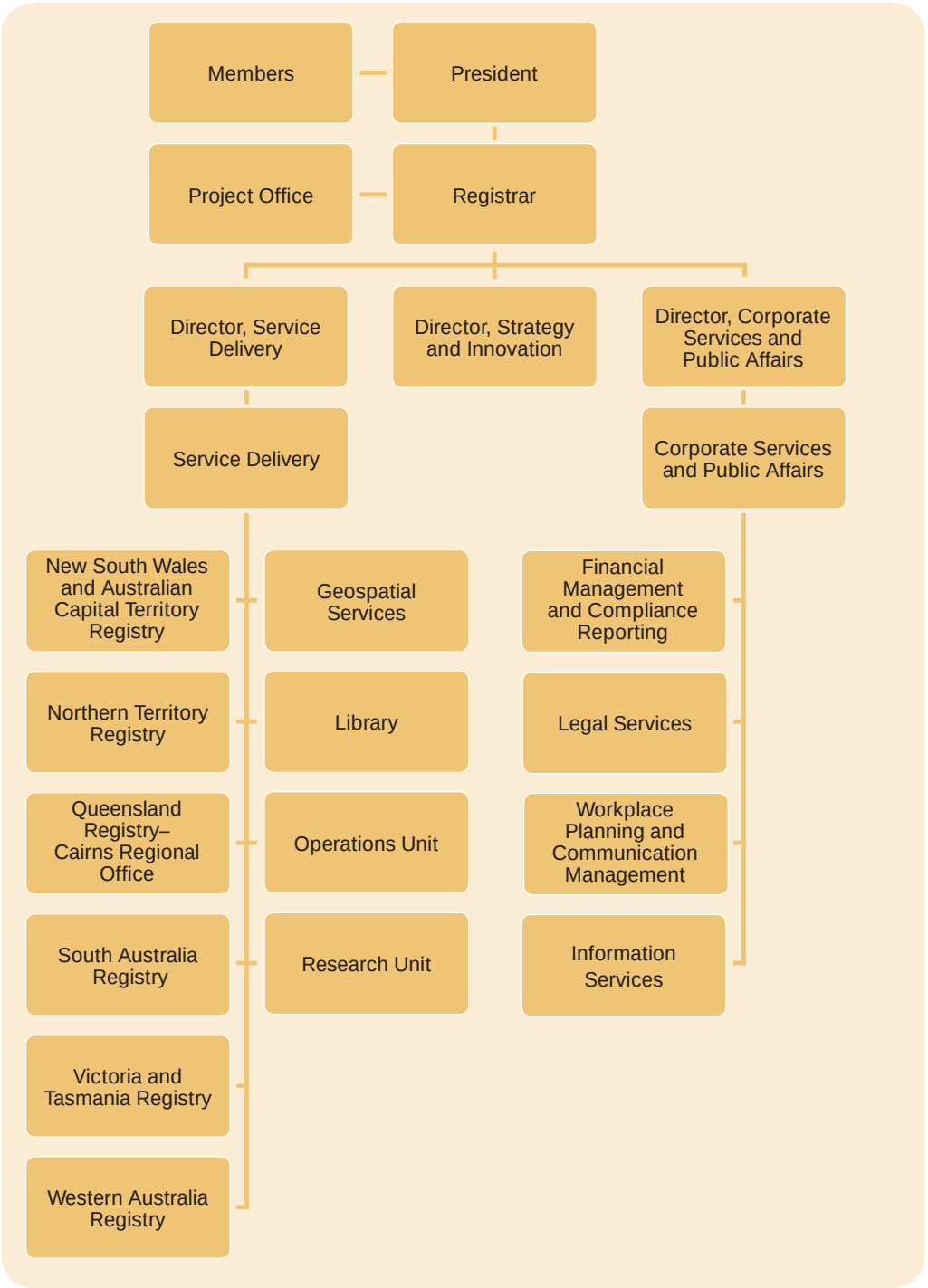
Members of the National Native Title Tribunal (left to right), Deputy President Chris Sumner, Member Dan O'Dea, Member Neville MacPherson, Member Gaye Sculthorpe, President Graeme Neate, Deputy President John Sosso, Registrar Stephanie Fryer-Smith, Member Graham Fletcher, Member John Catlin.

Organisational structure

As outlined in the Registrar's Report and on page 96, the Tribunal undertook a structural review in 2009–10. One of the outcomes was the adoption of a new structure to take effect from the start of the next reporting period.

During this reporting period, the Tribunal had two divisions, the Service Delivery division and the Corporate Services and Public Affairs division. The Director of Service Delivery was Hugh Chevis and the Director of Corporate Services and Public Affairs was Franklin Gaffney. The position of Director, Strategy and Innovation was held by Frank Russo, NSW Registry, during the reporting period. The appointment of the Director, Strategy and Innovation in 2009 was intended to assist the President and Registrar in implementing the Tribunal's *Strategic Plan 2009-11* and to respond to challenges in the native title system, including those created by the 2009 amendments to the Act and budgetary constraints.

Figure 2: National Native Title Tribunal organisational structure, 30 June 2010



Outcome and program structure

Outcomes are the intended results, impacts or consequences of actions by the Australian Government—in this case, through its agency, the Tribunal—on the Australian community. Agencies deliver programs, which are the government actions taken to deliver the stated outcomes.

Because the 2009–10 Budget required all general Australian Government sector entities to report on a program basis, the Tribunal changed its output framework to a program-reporting framework. The Tribunal's program structure for 2009-10 is the same as its output group structure in 2008–09: output group 1 is now program 1.1, output group 2 is now program 1.2, and output group 3 is now program 1.3. These changes are set out in the transition table opposite.

Figure 3: Transition Table from 2009-10 Portfolio Budget Statement

2008–09 Budget year	2009–10 Budget year
Outcome 1: Resolution of native title issues over land and waters	**Outcome 1: Resolution of native title issues over land and waters**
Output Group 1.1 : Stakeholder and community relations	Program 1.1: Stakeholder and community relations
Departmental outputs:	Departmental items:
Output 1.1 Capacity building and strategic/ sectoral initiatives	1.1.1 Capacity building and strategic/sectoral initiatives
Output 1.2 Assistance and Information	1.1.2 Assistance and Information
Output Group 2: Agreement-making	Program 1.2: Agreement-making
Departmental outputs:	Departmental items:
Output 2.1: Indigenous land use agreements negotiated with the assistance of the NNTT	1.2.1: Indigenous land use agreements negotiated with the assistance of the NNTT
Output 2.2 Native title agreements and related milestones agreements—agreements on native title determination applications (claimant, non-claimant, compensation and revised applications) mediated with the assistance of the NNTT	1.2.2 Native title agreements and related milestones agreements—agreements on native title determination applications (claimant, non-claimant, compensation and revised applications) mediated with the assistance of the NNTT
Output 2.3: Future act agreements—agreements mediated with the assistance of the NNTT that a proposed activity or acquisition may or may not proceed	1.2.3: Future act agreements—agreements mediated with the assistance of the NNTT that a proposed activity or acquisition may or may not proceed
Output Group 3: Decisions	Program 1.3: Decisions
Departmental outputs:	Departmental items:
Output 3.1: Registration of native title claimant applications	1.3.1: Registration of native title claimant applications
Output 3.2: Registration of Indigenous land use agreements	1.3.2: Registration of indigenous land use agreements
Output 3.3: Future act determinations	1.3.3: Future act determinations
Output 3.4: Finalised objections to the expedited procedure	1.3.4: Finalised objections to the expedited procedure

For the reporting period, the Tribunal's outcome was 'Resolution of native title issues over land and waters' and three key programs are applicable. The Tribunal's programs 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 program performance', p. 43.

in this section:

The Tribunal's outcome remained 'Resolution of native title issues over land and waters'

The Tribunal's expenditure was $30.48 million

The Tribunal met its key performance indicators

10 native title determinations were registered: 9 of these were determinations that native title exists

The Tribunal concluded negotiations for 29 indigenous land use agreements (ILUAs) and 72 future act agreements

At 30 June 2010, there were: 132 registered determinations of native title (95 of which are that native title exists), 434 registered ILUAs and 430 current native title determination applications

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 deliverables) at a quantity, quality and price endorsed by government. The Tribunal's deliverables for 2009-10 are detailed in Table 1: Budgeted expenses and resources for Outcome 1, p. 44.

The current four-year funding cycle concluded on 30 June 2010.

Outcome and program performance

The Tribunal publishes detailed financial forecasts each year as part of the Australian Government's Budget Papers.

The estimation model

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

- in March/April of each year the Portfolio Budget Statement (PBS) is prepared for the following financial year
- in July, the deliverable 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 deliverable data for the current financial year is reviewed. This process may include revising the PBS and revising the estimated numbers of deliverables. Any changes are reported to Parliament through the additional estimates process.

The estimation process in 2009–10

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

Table 1 identifies the price of each program and deliverables during the reporting period against the full-year budget and quantifies any variation.

Table 1: Budgeted expenses and resources for Outcome 1		
Outcome 1: Resolution of native title issues over land and waters	**2009–10 Actual expenses ($'000)**	**2009–10 Estimated expenses ($'000)**
Program 1.1: Stakeholder and community relations		
Departmental expenses		
Ordinary annual services (Appropriation Bill No. 1)	3,769	4,082
Revenues from independent sources (Section 31)	11	12
Total for Program 1.1	**3,758**	**4,070**
Program 1.2: Agreement-making		
Departmental expenses		
Ordinary annual services (Appropriation Bill No. 1)	18,864	18,449
Revenues from independent sources (Section 31)	54	52
Total for Program 1.2	**18,810**	**18,397**
Program 1.3: Decisions		
Departmental expenses		
Ordinary annual services (Appropriation Bill No. 1)	7,843	7,151
Revenues from independent sources (Section 31)	23	20
Total for Program 1.3	**7,820**	**7,131**
Total expenses for Outcome 1	**30,388**	**29,598**
		2009–10
Average staffing level (number)	**210**	**236**

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

Table 2: Agency Resource Statement			
Agency Resource Statement—2009-10			
	Actual available appropriations for 2009-2010 $'000 (a)	**Payments made $'000 (b)**	**Balance remaining $'000 (a-b)**
Ordinary annual services[1] Departmental appropriation			
Estimate of resources	17,447		
Less cash and cash equivalents included in estimate of resources	(1,081)		
Prior year departmental appropriation restated as at 1 July 2009	16,366		
Departmental appropriation	29,682	(31,176)	
Appropriations to take account of recoverable GST (FMA section 30A)	839		
Annotations to 'net appropriations' (FMA section 31)	81		
GST recoverable	(233)		
Cash held not appropriated	442		
Total ordinary annual services —closing balance	**47,177**	**(31,176)**	**16,001**
Special Accounts			
Opening balance	-		
Non-appropriation receipts to Special Accounts	17		
Payments made		17	
Special Accounts—closing balance	**17**	**17**	**-**
Total resourcing and payments	**47,194**	**(31,159)**	

[1] Appropriation Bill (No.1) 2009-10

Key results in 2009-10

Key results for Tribunal departmental resources included:

- Operating deficit: the Tribunal had an operating deficit of $0.71 million, as it took measures to respond to the reduction of $2.48 million in its appropriation during the reporting period. As a result of the operating deficit, the Tribunal's net equity reduced to $13.69 million from last year's net equity of $14.39 million. Part of the operating deficit can be attributed to costs associated with the measures taken by the Tribunal to reduce costs
- The Tribunal received an unqualified audit report on its 2009–10 financial statements from the Australian National Audit Office.

Tribunal finances

The Tribunal received an appropriation of $29.68 million in 2009–10, $2.48 million less than it had received in 2009-10. The Tribunal's expenditure for the 2009–10 reporting period was $30.48 million, and consequently the Tribunal finished the year with an operating deficit of $0.71 million.

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

- expenses decreased in comparison to 2008–09. Savings in supplier expenses were offset marginally by increases in employee-related costs, resulting in a net underspend of $0.60 million
- liabilities increased by $0.53 million, largely due to an increase in 'making good' expenses under property lease obligations,
- the decrease in net assets of $0.70 million was attributable to an increase in liabilities.

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

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

Trends in departmental finances		(1) 2008–09 $m	(2) 2009–10 $m	(2)–(1) Change from last year $m
Revenue from Government		32.16	29.68	(2.48)
Other revenues		0.07	0.09	0.02
Total income		**32.23**	**29.77**	**(2.46)**
Employee expenses		19.61	20.30	(0.69)
Supplier expenses		10.96	9.46	1.50
Other expenses		0.51	0.72	(0.21)
Total expenses		**31.08**	**30.48**	**0.60**
Operating result		**1.15**	**(0.71)**	**(1.86)**
Financial assets	A	17.35	16.87	(0.48)
Non-financial assets	B	2.35	2.66	0.31
Liabilities	C	5.31	5.84	(0.53)
Net assets = A+B-C		**14.39**	**13.69**	**(0.70)**

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 the Tribunal used it
- 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. 110)
- consultancies (see Consultancies, p. 140)
- payments for market research and advertising (see p. 139).

Full details are available in Appendix VI Audit report and notes to the financial statements, p. 142.

Performance overview

Price

The total price for the Tribunal's deliverables was $30.48 million. The price for each deliverable is set out in the Performance at a Glance tables in the following sections. Detailed information is provided in Tribunal finances, p. 142.

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 deliverables, and research is undertaken every two years. Research was undertaken during the reporting period. For further information, see Client satisfaction, p. 107.

Performance against key performance indicators

The Tribunal's outcome and program structure includes key performance indicators for each of its three programs.

As noted earlier, the Tribunal's program structure for 2009-10 is the same as its output group structure in 2008-09: output group 1 is now program 1.1, output group 2 is now program 1.2, and output group 3 is now program 1.3.

In 2009-10, the Tribunal had a single outcome ('Resolution of native title issues over land and waters') comprising three key programs with a key performance indicator for each program as set out below:

Table 4: Key Performance Indicators

Program	Key Performance Indicator
1. Stakeholder and community relations	Improvement in the quality of native title and related agreement-making
2. Agreement-making	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. Decisions	Less than five per cent of decisions successfully appealed or reviewed.

The key performance indicators were previously reported as the effectiveness indicators for the various output groups.

The client satisfaction research report informs reporting and benchmarking against the first key performance indicator. The results for the second and third key performance indicators are drawn from quantitative outcomes achieved in the reporting period

Results

The first key performance indicator is informed by the client satisfaction research which was undertaken during the reporting period. The research indicated an overall satisfaction rating of 7.47 out of 10 (compared with 7.15 in 2008 and 6.77 in 2005). This equates to a score of 88 per cent of clients satisfied with Tribunal services. Specifically, mediation and agreement-making received a score of 7.29 out of 10. For more information, see Accountability to clients, p. 107.

The Tribunal's second performance indicator requires an increase in agreement-making as an alternative to litigated or arbitrated outcomes. It comprises two parts – the first is measured by the number of determinations that native title exists that are made with the consent of the parties, compared with litigated determinations that native title exists. The second part is measured by the number of concluded agreements (ILUAs and future act agreements) compared with the number of arbitrated future act determination applications. The results for the current reporting

period and the previous two reporting periods are set out in the table below and indicate consistently high results against the performance indicators.

Table 5: Results against Key Performance Indicators

	2007-08	2008-09	2009-10
Number of determinations that native title exists made with the consent of the parties	8	9	9
Number of determinations that native title exists that were litigated outcomes	1	0	0
Percentage made by consent	**88%**	**100%**	**100%**
Number of concluded agreements (ILUAs and future act)	93 (21 ILUA, 72 future act)	72 (19 ILUA, 53 future act)	101 (29 ILUA, 72 future act)
Number of arbitrated future act determination applications	1	1	5
Percentage of outcomes by agreement	**99%**	**98%**	**95%**

Applications for appeal or review were made in relation to seven Tribunal decisions. At the end of the reporting period, three applications were awaiting outcome and four applications had been either dismissed or discontinued. No Tribunal decisions were successfully appealed or reviewed within the reporting period (the performance indicator is less than five per cent). In the previous two reporting periods, less than one per cent of decisions were successfully appealed or reviewed.

Table 6: Decisions

Decision type	Number of decisions made	Number appealed/ reviewed	Outcome*	Number
Registration of claimant applications	36	2	1 dismissed 1 discontinued	–
Registration of indigenous land use agreements	47	3	Process pending	–
Future act determinations	60	1	Appeal dismissed	–
Finalised objections to the expedited procedure	328	1	Discontinued	–

* See Appendix II for further details

Overview of current applications

The tables below 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 2010.

Table 7: Overview of public registers maintained by the Native Title Registrar as at 30 June 2010

Register	Number
National Native Title Register—approved native title determinations	132 (95 where native title does exist and 37 where native title does not exist)
Register of Native Title Claims—native title determination applications that have met the requirements for registration	371
Register of Indigenous Land Use Agreements—ILUAs accepted for registration	434

Table 8: Current applications as at 30 June 2010

Native title applications		Future act applications		Indigenous land use agreements	
Claimant	430	FA determinations (s. 35)*	18	Lodged	20
Compensation	7	FA mediation (s. 31)	87	Accepted for notification	4
Non-claimant	20	FA objection*	1072	In notification	12
				Notification ended	3
Total	**457**		**1177**		**39**

* 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 program structure, notification of specified people, organisations and governments of native title applications and applications for the registration of ILUAs is not reported. Nevertheless, it is an indicator of the number of applications that might be referred to the Tribunal for mediation.

At 30 June 2010, there were 430 claimant applications at some stage between filing and disposition. The total was lower than the 458 current claimant applications at 30 June 2009. In the reporting period, 49 claimant applications were discontinued, dismissed, struck-out, combined with other applications or were the subject of native

title determinations. As a result, 1081 (or 72 per cent) of the claimant applications made since the Act commenced have been finalised. Twenty-one new claimant applications were filed in the reporting period, compared with 23 in 2008–09.

Registration: In the period covered by this report 36 registration test decisions were made, compared with 40 decisions made in the previous year. This total includes 23 registration tests made on applications for the second, third, fourth or fifth time. For further information about the registration testing carried out by the Tribunal, see 1.3.1—Registration of native title claimant applications, p. 73.

Notification: The level of notifications decreased slightly in 2009–10, with 17 claimant applications notified, compared with 19 in the previous year. Six non-claimant applications were notified. No compensation applications were notified during the reporting period. Some 405 (94 per cent) of current claimant applications had been notified by 30 June 2010.

Mediation: At 30 June 2009, 246 current matters were with the Tribunal for mediation. At 30 June 2010, 202 current claimant applications had been referred to the Tribunal for mediation, including three matters that were referred to it during the reporting period.

Although 47 per cent of current applications have been referred to the Tribunal for mediation, the Tribunal experienced difficulty in actively mediating a significant number of them. Typically this was because parties lack the resources, or were unable to prepare, to engage in a mediation.

Having regard to the numerous factors that affected the progress of mediation, the Tribunal worked with parties to narrow issues in dispute (e.g. the resolution of tenure issues, examining connection issues, and exploring non-native title related outcomes) to assist in reaching agreement to resolve native title determination applications. The development of mediation work plans with parties, informed by regional planning meetings and in response to directions of the Court, enabled clear timetables to be set to progress resolution of some matters.

Forms of assistance offered by the Tribunal

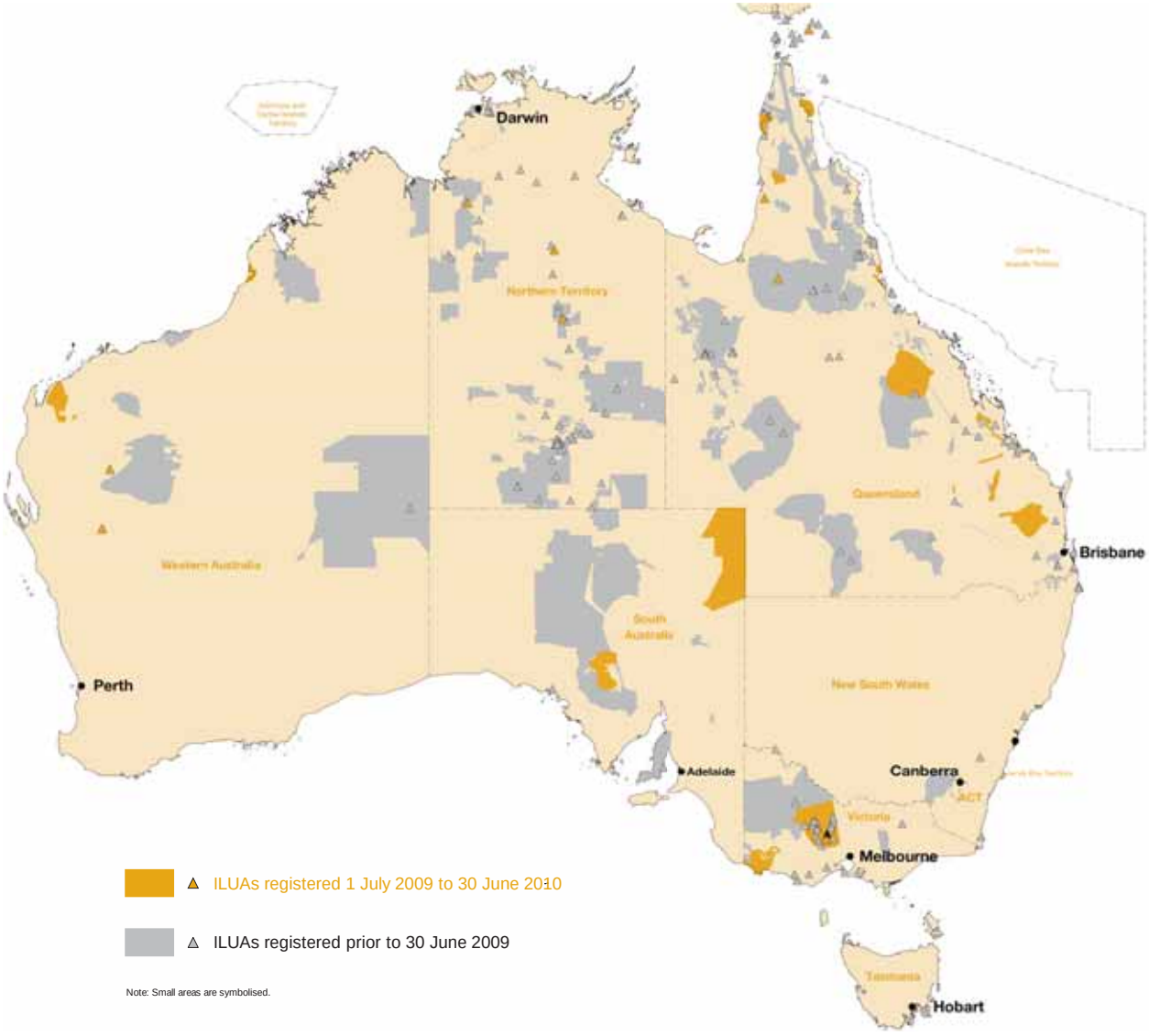
Under the Act, the Tribunal may provide various forms of assistance to help people on a case-by-case basis to prepare applications, or help them at any stage in matters related to a native title proceeding, and help them to negotiate agreements such as ILUAs. The emphasis on assistance the Tribunal may give parties on a case-by-case basis, and to stakeholders on a sectoral basis, is reflected in the program structure at 1.1.1—Capacity-building and strategic/sectoral initiatives, p. 59 and 1.1.2—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 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 a further 47 ILUAs were registered, bringing the total number of ILUAs on the Register of ILUAs as at 30 June 2010 to 434. Registered ILUAs covered about 1,147,956 sq km, or 14.9 per cent, of the land mass of Australia and approximately 4,793 sq km of sea. At 30 June 2010, 39 other agreements were in various stages of the process toward possible registration.

More ILUA outputs were generated by agreements that resolve detailed practical issues in conjunction with claimant applications determinations rather than through stand-alone ILUA negotiations. That continued a trend identified in last year's annual report. For further information about the level of ILUA activity, see '1.2.1—Indigenous Land Use Agreements', p. 62.

Figure 4: Map of indigenous land use agreements at 30 June 2010



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

Determinations of native title

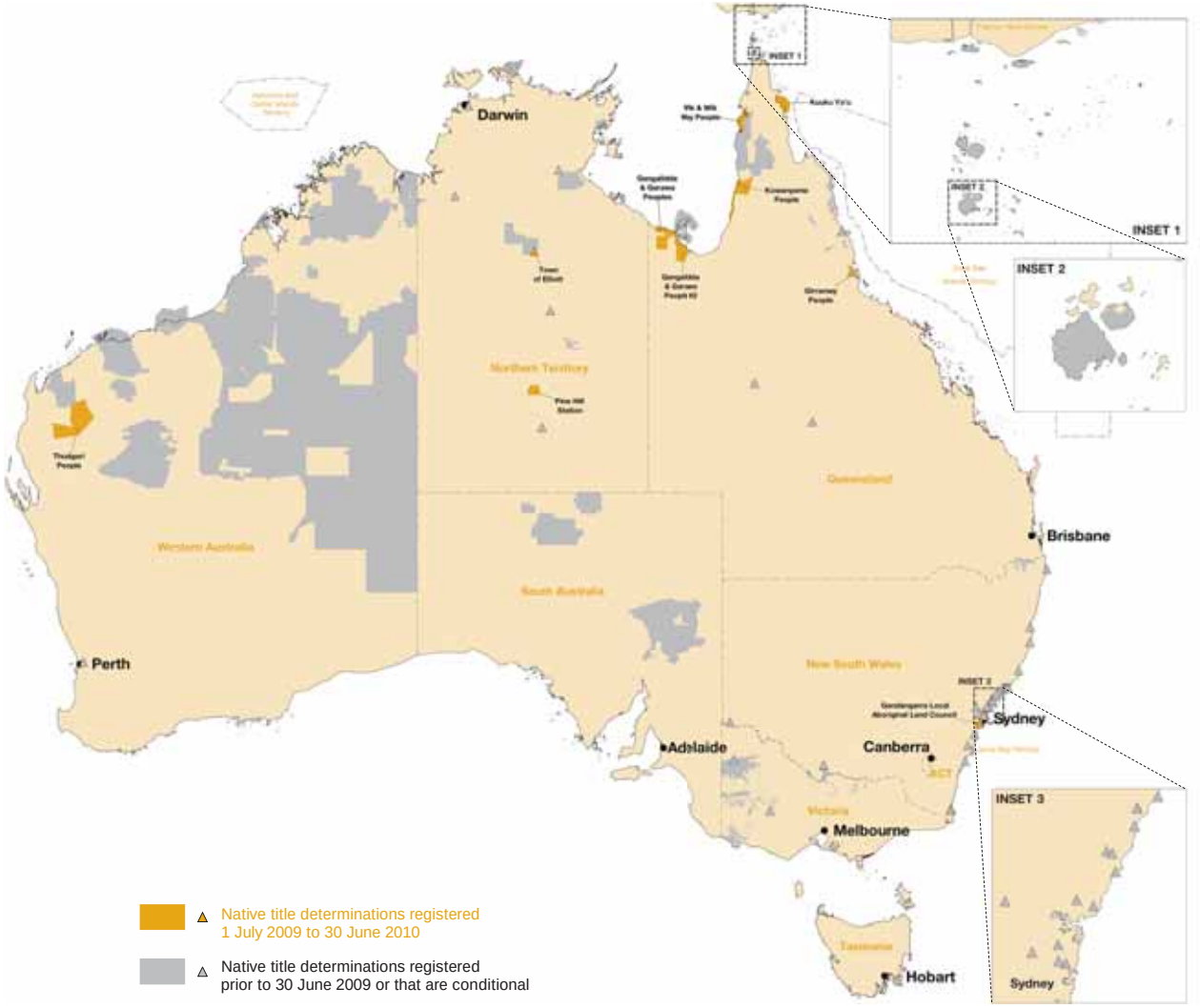
During the reporting period the Native Title Registrar registered 10 determinations of native title, nine of them that native title exists in relation to specific areas of land or waters. This was two fewer than the number of determinations registered in 2008–09.

These determinations are on the public record held by the Tribunal in the National Native Title Register and are available through the Tribunal's website under Applications and determinations. The determinations set out 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, and identify who the native title holders are.

All nine determinations that native title exists were made by consent of the parties. The one determination that native title does not exist was the result of a non-claimant application. 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.

At 30 June 2010 there were 132 registered determinations of native title, including 95 determinations that native title exists. The determinations covered a total area of about 937, 049 sq km or 12.2 per cent of the land mass of Australia.

Figure 5: Map of native title determinations at 30 June 2010



Note: Small areas are symbolised.

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

Performing the additional functions of the Native Title Registrar

Future act related applications: 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'.

Under s. 66C, the Registrar may report to the Court in relation to such applications and in each case it is open to the Court to dismiss the application if certain criteria are satisfied.

During the reporting period, two native title determination applications were identified as meeting the requirements for providing advice under s. 66C and advice in that regard was provided to the Court. Subsequently, both matters were discontinued.

Registration testing: Since the Act was amended in 2007, under the *Native Title Amendment Act 2007* (Cwlth) and the *Native Title Amendment (Technical Amendments) Act 2007* (Cwlth), the Registrar was required to use best endeavours, within one year, to apply the registration test to claims made in 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. In this reporting period one decision was made on the last remaining application to be tested. The claim made in the application was not tested within the year envisaged under the Transitional Provisions, as it was subject to Federal Court review proceedings which were not finalised until this reporting period.

At 30 June 2010, 26 applications had been dismissed by the 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 their application fails to meet one or more of the conditions of the test. The reconsideration is to be made by a Tribunal member.

Only two requests for reconsideration have been received by the Tribunal since the Act was amended, with the first received late in the last reporting period and the second request made during this reporting period. The decisions on both reconsideration

requests were made in this reporting period. In both matters, the Tribunal member decided not to accept the claim for registration.

Future act work

Another important function of the Tribunal is the resolution by mediation or arbitration of issues involving proposed future acts of specific types (primarily the grant of exploration and mining tenements) on land where native title has been determined to exist or might exist. Details of the future act work are set out later in this report, see 1.2.3–Future act agreements, p. 71.

Nationally there has been an increase in the number of objections to the use of the expedited procedure under the Act. The number of objections increased by 36 per cent from 1,330 in the previous reporting period to 1,806 in this reporting period. As in previous years, most of those objections were in Western Australia. For further information see Table 25: 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 our 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, or

- 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 Court orders that the Tribunal not mediate; and applications that are the subject of a determination that native title exists and are awaiting the registration of a prescribed body corporate.

As a result of the 2009 amendments to the Act, the Tribunal commenced a review of the scheme. Findings from the review will be used to consider possible changes to the scheme ensuring the criteria for the Tribunal's allocation lists are closely aligned to matters on the Court's priority list of native title cases, which had not been published before the end of the reporting period.

Procedural Direction No. 9 issued by the President was reviewed and updated during the reporting period, and sets out actions to be taken by members and employees in relation to applications referred to the Tribunal for mediation. Procedural Directions are published to 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. As at 30 June 2010, the lists were made up as follows:

Table 9: Lists

Lists	No.	Application type
Substantive list	59	59 claimant
Regional list—advanced development	27	27 claimant
Regional list—less advanced development	111	108 claimant, 2 non-claimant, 1 compensation
Regional list—mediation in abeyance	8	7 claimant, 1 compensation
Registrar's list (not in mediation)	250	228 claimant, 17 non-claimant, 5 compensation

Program 1.1—Stakeholder and community relations

1.1.1–Capacity-building and strategic/sectoral initiatives

Description
Initiatives in this program item 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 role to inform stakeholders about, and assist them with, the native title processes and to further relationships with, and between, stakeholders.

Performance
Measures 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.

Table 10: 1.1.1 performance at a glance

Measure	Estimate	Result
Quantity	7 projects and initiatives	16 projects and initiatives
Quality	80% of respondents are satisfied with the initiative	88% of stakeholders were satisfied with the initiative
Total price for 1.1.1	**$ 763,000**	**$ 749,284**

Comment on performance
In the reporting period, the Queensland Registry facilitated a meeting of the Queensland Native Title Liaison Committee, which comprises representatives from Australian, state and local governments, native title representative bodies and service providers, and other key stakeholders. The meeting provides opportunity for attendees to present an update on progress of claims and ILUAs, discuss current issues and report on trends and workloads.

The Queensland Registry also convened several regional planning meetings in North Queensland and Cape York, including the representative bodies, state government representatives, other applicant representatives and key stakeholder representatives.

In New South Wales, the Tribunal convened regional planning meetings with the native title service provider, state government representatives, other applicant

representatives and key stakeholder representatives to discuss prioritisation and strategic approaches to the resolution of applications. The registry also convened a series of meetings with the service provider and state government representatives to advance applications in the state and develop work-plan timetables for provision to the Court.

The Western Australian Registry provided intensive training to native title stakeholders on future act processes and a broad overview of the native title process. Feedback on the initial series of sessions resulted in subsequent workshops with local government stakeholders and independently represented native title groups to broaden and consolidate their understanding of native title and future act processes.

Biannual regional planning was also initiated by the Western Australia Registry in the Goldfields, Central Desert and South West regions and involved the representative bodies, state government representatives, active respondent parties, the Attorney-General's Department and the Court.

1.1.2—Assistance and information

Description
This program item 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
Measures 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.

Table 11: 1.1.2 performance at a glance

Measure	Estimate	Result
Quantity	345	392
Quality	80% of respondents are satisfied with services	84% of stakeholders were satisfied with services
Total price for 1.1.2	**$ 3,331,000**	**$ 3,019,742**

Comment on performance
There were more requests for assistance and information in the reporting period than during the previous year (378).

Requests for geospatial products, including ILUA-related 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.

More than 30 information sessions were provided to stakeholders and other interested groups around the country. The Tribunal also assisted parties in preparing ILUA applications for registration by providing preliminary comments on draft ILUAs.

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. The Tribunal also released its National Report to government, stakeholders and the public in September 2009 and March 2010. Produced every six months, the Report is a status report on the native title system. It focuses primarily on the progress of native title claimant applications.

In late 2009, the Tribunal released a new DVD titled *Mining and Native Title,* which explains some of the legal requirements and processes involved in relation to exploration and mining in areas where native title exists or might exist. The DVD was translated into Mandarin and has been widely distributed to mining companies, government departments, native title representative bodies, lawyers and consultants.

Talking Native Title and *Native Title Hot Spots* continued to be valued sources of information about native title news and recent judgments involving native title.

The Tribunal published two hard-copy issues of the *Talking Native Title* newsletter in the reporting period, before it was converted to an electronic newsletter in December 2009. *Talking Native Title* is now only available online, and was emailed to subscribers and published to the website seven times during the reporting period. Several electronic newsletters, focused on region-specific issues, were also produced.

Two 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.

An edition of the *Indigenous Fishing Bulletin* provided an update on significant issues relating to Indigenous fishing interests. These newsletters are also available via the website or subscription.

Program 1.2—Agreement-making

1.2.1—Indigenous land use agreements

Description
This program item covers finalised ILUA negotiations and milestone agreements leading to a final agreement, where the Tribunal provided negotiation assistance.

ILUAs are agreements 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 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. An alternative procedure agreement cannot be made, however, if there are registered native title bodies corporate in relation to all of the land and waters in the 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 and are an effective tool to support negotiation of broader land settlements.

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

Performance
The measures for ILUAs are:

- Quantity—number of 1.2.1a), 1.2.1b) and 1.2.1c) agreements
- Quality—clients' perception of the quality of the agreement-making process
- Resource usage—average price per unit and total price.

Table 12: 1.2.1 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	1.2.1a) 52 1.2.1b) 31 1.2.1c) 175	1.2.1a) 29 1.2.1b) 79 1.2.1c) 113
Total	258	221
Quality*	Clients' perception of the quality of the agreement-making process	The Tribunal rated 7.67 out of 10 for the quality of its service
Total price for 1.2.1	**$ 5,894,000**	**$ 5,734,417**

* Note: Clients' perception of quality was measured against agreement-making processes.

Table 13: Number of ILUAs achieved by state and territory									
Type of agreement	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
1.2.1a) Fully concluded ILUA and use and access agreement negotiations	-	-	-	11	3	-	-	15	29
1.2.1b) Milestone agreements in ILUA negotiation outside NTDAs*	-	-	-	75	-	-	4	-	79
1.2.1c) Milestone agreements in ILUA negotiation within NTDAs*	-	3	-	57	52	-	-	1	113
Total	**-**	**3**	**-**	**143**	**55**	**-**	**4**	**16**	**221**

*Native title determination applications.

Comment on performance

1.2.1a) Fully concluded ILUA and use and access agreement negotiations

During the reporting period, the Tribunal concluded negotiations for 29 ILUAs. All but one of the concluded ILUAs for which the Tribunal provided negotiation assistance were negotiated within the context of native title determination application mediation.

As in previous years, the highest level of ILUA activity was in Queensland, where 11 ILUA negotiations were concluded in conjunction with 132 negotiated milestone agreements. Most of the ILUA activity has occurred in far north Queensland, with a significant increase in activity outside claimant applications.

ILUA activity increased significantly in Western Australia during the reporting period, with 15 body corporate ILUA negotiations being concluded in relation to the Thudgari People's native title claimant application (WC97/95).

In South Australia, the progressing of consent determinations, rather than ILUAs, continues to be prioritised with ongoing reduction of governmental funds to support the negotiation of ILUAs.

1.2.1b) Milestones in ILUA negotiation outside the mediation of native title determination applications

There were 79 milestones in ILUA negotiation outside claimant mediation.
A significant increase in such activity was experienced in Queensland, with 71 milestones being achieved in far north Queensland—49 relating to continued progress of the proposed Cape Alumina mining ILUA. Two milestones were achieved in the negotiation of ILUAs in Victoria.

1.2.1c) Milestones in ILUA negotiation inside the mediation of native title determination applications

There were 113 milestones as part of mediating claimant applications. Of the 57 achieved in Queensland, 15 milestones were the result of negotiations in the Tableland Yidinji and Tablelands Regional Council ILUA and 25 from the Jirrbal People ILUAs. There were 52 milestones in South Australia, with 32 relating to the Antakirinja Matu-Yankunytjatjara People ILUAs.

1.2.2—Native title agreements and related agreements

Description

This program item 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 1.2.2a), 1.2.2b) and 1.2.2c) agreements
- Quality—clients' perception of the quality of the agreement-making process
- Resource usage—average price per unit and total price.

Table 14: 1.2.2 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	1.2.2a) 17 1.2.2b) 166 1.2.2c) 147	1.2.2a) 4 1.2.2b) 145 1.2.2c) 193
Total	330	342
Quality*	Clients' perception of the agreement-making process	The Tribunal rated 7.29 out of 10 for the quality of its service
Total price for the output	**$ 10,265,000**	**$ 10,533,361**

* Note: Clients' perception of quality was measured against agreement-making processes.

Comment on performance

Although fewer consent determinations and fewer milestones on issues were achieved than had been anticipated, the number of process or framework milestones was higher than projected. The latter result reflects the fact that, across the country, the Tribunal continued to work closely with parties in regional planning processes and in developing strategies and setting priorities for claims.

Table 15: Number of agreements by state and territory									
Type of agreement	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
1.2.2a) Agreements that fully resolve NTDAs*	-	-	-	4	-	-	-	-	4
1.2.2b) Agreements on issues, leading towards the resolution of native title determination applications	-	14	-	72	8	-	-	51	145
1.2.2c) Process/ framework agreements	-	15	16	104	25	-	4	29	193
Total	**-**	**29**	**16**	**180**	**33**	**-**	**4**	**80**	**342**

* Native title determination applications.

1.2.2a) Consent determination and any other agreement which fully resolves the native title determination application

In this reporting period, four agreements were reached to fully resolve native title determination applications. Performance for this output was less than the expected projections, due to overall activity being slower than forecast. Across the country, a variety of factors impacted upon the achievement of projected outputs. Delays between parties in finalising terms of consent determinations, delays in connection processes and an increase in litigation in some regions were some of the reasons that forecast consent determinations were not achieved.

In Queensland, however, output performance for agreements that fully resolve a native title determination application exceeded projected outputs, with four agreements being achieved. Just south of Cairns, the Dulabed and Malanbarra Yidinji reached agreement with governments and other parties about their traditional land and water. The consent determination recognised the groups' native title rights over 16,460 ha of land and waters, and is conditional upon the registration (after the reporting period) of four related ILUAs. Three agreements were reached about the alternative resolution of the native title determination applications. Subject to registration of related ILUAs, two native title groups agreed to discontinue their applications, and a third native title group agreed to the uncontested dismissal of their application.

In South Australia, the Tribunal continues to work closely with parties to progress a number of consent determinations, which are scheduled for late 2010 and early 2011. In New South Wales, substantial progress was made in the mediation and progress of a number of applications and the Tribunal continues to work with parties towards achieving consent determinations and ILUAs in several matters.

Justice Spender presents the determination to Dulabed woman Lorraine Muckan.

1.2.2b) 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. Across the country, agreement was reached on 145 outputs in relation to milestones on issues (2.2b).

In New South Wales, a significant agreement was reached in mediation in which the state government agreed to negotiate a consent determination and related ILUAs for two applications on the far north coast. Other milestones achieved in New South Wales include the resolution of a number of respondent party issues, which led to the withdrawal of those respondents from the proceedings.

In Queensland, 72 milestone agreements were reached on a variety of matters. Seventeen agreements were reached which led to the withdrawal of respondent parties, and 30 agreements on resolution of overlaps or tenure issues. Continued exploration of connection issues in a number of applications led to 14 agreements being reached regarding important issues, including agreements on shared areas of land, and agreements on additional ancestors. Alternative resolution agreements were also made, with parties electing to explore non-native title related outcomes in order to settle claims, for example, by conducting parallel ILUA negotiations within claimant application mediation. In-principle agreement to consent determinations or partial consent determinations was reached on seven applications.

In Western Australia, 51 milestone agreements were reached with three leading to the resolution of tenure issues. Several overlapping claims were resolved, leading to agreements on boundary changes and agreements to combine applications. The Tribunal worked with a number of native title parties and the Western Australian Fishing Industry Council (WAFIC) to explore issues surrounding natural resources in the context of the South West alternative settlement. Agreement was reached on the recognition of customary use of resources, including fishing, and WAFIC agreed to assist with policy development.

As reported in last year's annual report, in June 2009 the Victorian Government announced its commitment to the development and implementation of a Victorian Native Title Settlement Framework. The framework outlines the State's preferred method for settling native title matters, sets out core principles and provides a framework for how agreements will be negotiated. Work on implementing the framework dominated the agreement-making environment in Victoria during the reporting period. This work impacted on the timeframes for the mediation of some claimant applications, as certain aspects of those negotiations depended on the implementation of the framework. As a result, the milestone agreements anticipated to occur in 2009–10 were not achieved despite significant work being undertaken to advance those negotiations.

1.2.2c) Process/framework milestones

In this reporting period, more process and framework milestones (2.2c) were achieved than had been anticipated, with most registries exceeding targets. A total of 193 agreements were reached, exceeding the 147 projected agreements.

Across the country, the Tribunal worked closely with claimants' representatives and state and territory governments to develop 89 mediation work programs that were agreed to by parties and submitted to the Court. Other 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, enables the Tribunal to allocate resources strategically and to apply appropriate mediation strategies.

In New South Wales, a series of meetings was held with the state government and native title service provider representatives, which led to the development of mediation timetables on eight high-priority applications that were then provided to the Court. A significant agreement was also reached in the Gumbaynggirr People (Warrell Creek) application, where the applicants' representative and the state government's representatives agreed to engage in an innovative process for the resolution of connection evidence. That involved a Tribunal-convened on-country mediation conference for collecting evidence from claim group witnesses (see the case study).

In Western Australia, 29 process milestones were reached to enable parties to settle inter-Indigenous issues, including the resolution of overlaps, access to land, joint heritage management processes and progress towards single claimant applications.

Case study

On-country mediation breaks a connection stalemate

Between 20 and 22 October 2009, the Tribunal convened an on-country mediation conference in Nambucca Heads (near Coffs Harbour, northern NSW) to allow the representatives of the State of NSW (the State) to hear and record final evidence from key claim group elders in the Gumbaynggirr People (Warrell Creek) application.

Background

The claim was lodged in 1996. Its resolution had been drawn out by an overlapping land claim under the *Aboriginal Land Rights Act 1983* (NSW), which was resolved through an agreement to create a national park over the area to be jointly managed by the traditional owners and NSW National Parks (Department of Conservation and Climate Change).

The applicant submitted connection material to the State from 1999 onwards, and finally in 2008. The State's preliminary assessment was that, to reach a standard sufficient for it to agree to a consent determination, further evidence was required.

The State proposed that an on-country conference be convened by the Tribunal so that it could meet and question key claim group witnesses to elicit specific information. The State made it clear that it would prefer to hear evidence directly from the claim group.

The native title service provider for NSW, NTSCORP, was initially concerned about the proposed approach of 'cross-examining' witnesses based on previous early evidence Court hearings. The State, however, indicated a willingness to be flexible about location, style, and method of the questioning in order to facilitate the claim group being able to give its best evidence.

The parties then agreed to participate in a mediation conference for this purpose and Tribunal member, Deputy President John Sosso, was requested to convene it.

Preparation

A significant amount of preparation was carried out by the State and NTSCORP in subsequent discussions about the nature of the mediation, the questions to be asked and the logistics of the meetings. NTSCORP put in a substantial effort to prepare the claim group, and to ensure they were comfortable and familiar with the proposed process.

Conduct of mediation conference

The on-country mediation conference incorporated a day of meet and greet activities, and a community barbecue, so that the claim group and witnesses could meet the State and its counsel in an informal setting, before the formal taking of evidence commenced.

Evidence was taken over two and a half days in a Tribunal-convened mediation. This included visits to different locations and the taking of evidence on-site, as well as in a more formal, conference room setting.

The Tribunal convened the informal mediation by taking care of any specific needs and cultural appropriateness. The State's questioning was designed to elicit key details and information needed to support a consent determination.

The hearings were both audio and video-taped.

Outcomes
The on-country mediation was highly effective in obtaining the further evidence required by the State. The exercise was highly resource-intensive for all parties. The mediation broke a deadlock in the exchange of connection material and eliminated the potential for further delays while the applicants sought to provide further material.

Victor "Bully" Buchanan and Larry Kelly give evidence on country.

1.2.3—Future act agreements

Description

This program item includes agreements that allow certain types of future act (such as the grant 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 some 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

Measures for future act agreements are:

- Quantity—number of 1.2.3a) and 1.2.3b) agreements
- Quality—clients' perception of the quality of the agreement-making process
- Resource usage—average price per unit and total price.

Table 16: 1.2.3 performance at a glance

Measure	Estimate	Result
Quantity	1.2.3a) 65 1.2.3b) 100	1.2.3a) 72 1.2.3b) 69
Total	165	141
Quality*	Clients' perception of the agreement-making process	The Tribunal rated 7.82 out of 10 for the quality of its service
Total price for 1.2.3	**$ 2,342,000**	**$ 2,596,190**

* Note: Clients' perception of quality was measured against agreement-making processes.

Table 17: Number of future act agreements by state and territory									
Type of agreement	**ACT**	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
1.2.3a) Agreements that fully resolve future act applications	-	-	1	2	-	-	-	69	72
1.2.3b) Milestones in future act mediations	-	-	15	2	-	-	-	52	69
Total	**-**	**-**	**16**	**4**	**-**	**-**	**-**	**121**	**141**

Comment on performance

1.2.3a) Agreements that fully resolve future acts
Both the Western Australian and Queensland registries saw an increase in the number of applications for s. 31 mediation assistance in this reporting period.

In particular, there was a marked increase in Western Australia, with s. 150 directed conferences to assist parties to overcome issues relevant to the arbitral inquiry. Overall, the Western Australian Registry exceeded its projected number of finalised s. 31(1)(b) agreements.

1.2.3b) Milestones in future act mediations
The Tribunal did not reach its estimated milestones for this financial year, with Western Australia, Queensland and the Northern Territory under their projected numbers. In Western Australia, this is explained in part by the state government taking a more proactive approach and requiring grantee parties to conduct negotiations within shorter timeframes.

Program group 1.3—Decisions

1.3.1—Registration of native title claimant applications

Description
This program item relates to the Native Title Registrar's decisions about whether to register details of 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 statutory 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 comprising 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, the 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 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 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
Measures 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.

Table 18: 1.3.1 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	29	37
Quality	70% of decisions completed within 6 months of receipt of the original or amended application submitted for registration	89% of decisions completed within 6 months of receipt of the original or amended application submitted for registration*
Total price for 1.3.1	**$ 2,473,000**	**$ 2,768,414**

* Note: One decision was made under the Native Title Amendment (Technical Amendments) Act 2007, and two decisions were made under s.190E reconsideration, and are therefore not included in the performance assessment.

Comment on performance

There were fewer registration test decisions in the current reporting period than in the previous reporting period.

Of the 37 registration test decisions made in the reporting period, nine amended claims were accepted for registration following the more limited test pursuant to s. 190A(6A). Seventeen of the 28 claims that had the full registration test applied were accepted for registration. This represents a slight decline in the number of claims accepted for registration from the previous reporting period.

One application for review of a registration test decision pursuant to s. 190F was made to the Court in the reporting period; however, the proceedings were discontinued.

Table 19: Number of registration test decisions by state and territory				
State	**Accepted**	**Accepted—s. 190A(6A)**	**Not accepted**	**Total**
ACT	-	-	-	-
NSW	3	-	2	5
NT	-	-	1	1
Qld	10	4	1	15
SA	1	4	-	5
Tas	-	-	-	-
Vic	-	-	1	1
WA	2	1	7	10
Total	**16**	**9**	**12**	**37**

Timeliness of decisions

The six-month performance timeframe did not apply to the decision made in respect of the Gudjala People #2 application as it was tested pursuant to the transitional provisions to the 2007 amendments to the Act.

Eighty-nine per cent of the remaining 36 decisions were tested within the six-month performance timeframe, representing an improvement on performance reported in the previous reporting period. The average time taken to test claims was less than three months.

1.3.2—Registration of indigenous land use agreements

Description
This program item 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, 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
Measures 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.

Table 20: 1.3.2 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	54	47
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	100% of decisions completed within 6 months of receipt of the application submitted for registration, where there is no objection or other bar to registration
Total price for 1.3.2	**$ 2,169,000**	**$ 2,386,509**

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

Table 21: Number of ILUAs lodged or registered by state and territory									
	ACT	**NSW**	**NT**	**Qld**	**SA**	**Tas**	**Vic**	**WA**	**Total**
ILUAs lodged	0	0	3	40	9	0	4	25	81
ILUAs registered	0	0	3	23	8	0	4	9	47

Comment on performance

During the reporting period 47 ILUAs were registered. The most significant amount of ILUA activity occurred in Queensland, as a result of which 23 ILUAs were registered.

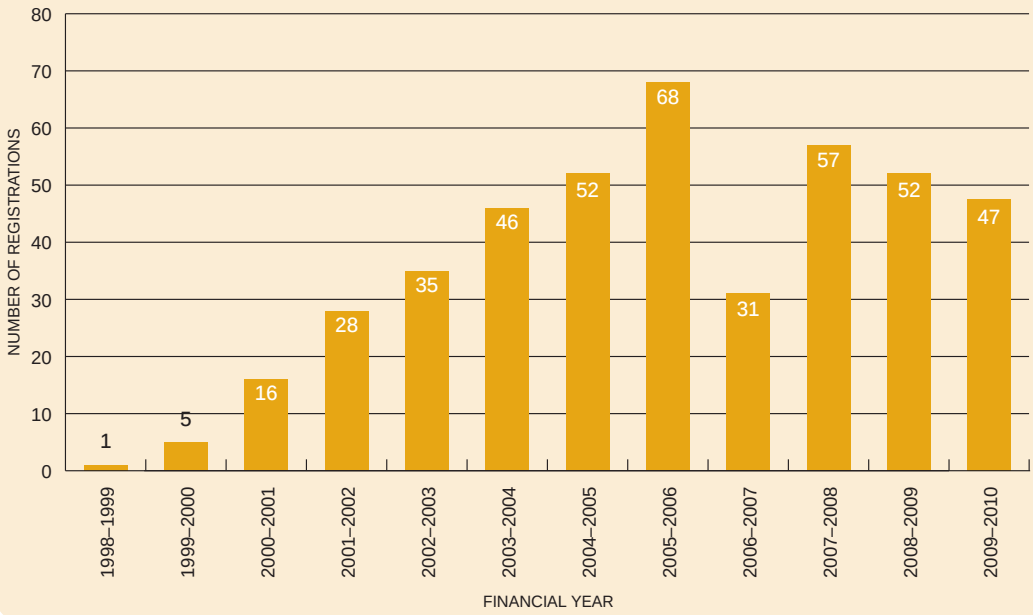
Of the total number of ILUAs registered, 11 were body corporate agreements and 36 were area agreements. To date, the Tribunal has not received any applications to register an alternative procedure agreement.

An application for review of the decision of the delegate of the Registrar not to notify (and therefore not to register) the Iman People 2 and QGC Limited ILUA was filed in the Court (*QGC Pty Limited v Bygrave* [2010] FCA 659) during the reporting period. The Agreement was not notified because the delegate determined that it was not an ILUA as defined in s. 24CA of the Act. The Court has heard the application but a decision was not handed down in the reporting period. Two other applications for review have also been filed by the same party on the same basis in relation to two other agreements. Those proceedings are in abeyance pending the outcome of the first review application.

Timeliness of decisions

During the reporting period, an objection or adverse information was received in respect of four of the 47 ILUAs which were tested for registration. Of the remaining 43 applications, 100 per cent of the registration decisions were made within six months, meeting our performance target.

Figure 6: Number of ILUA registrations per reporting period



Case study

Final agreement in the Yawuru People's native title journey

The Yawuru People of the Broome region in Western Australia have experienced a long and eventful journey on their road to resolving their native title claims since they submitted their first claim in 1994.

In those 16 years there have been determinations of native title for the Rubibi #6 (2001) and Rubibi Community (2006) applications. Matters following these determinations were resolved when the Yawuru People and the State Government signed two indigenous land use agreements (ILUAs) on 25 February 2010.

A body corporate ILUA between the Yawuru People, the State Government and the Broome Shire Council was registered by the Tribunal on 24 May 2010. The ILUA allows for the future development of Broome while also recognising and protecting Indigenous heritage and the environment, as well as providing compensation to the Yawuru community for the loss and impairment of their native title rights and interests.

This agreement, and the associated area agreement ILUA, includes a $196 million package comprising land and money for the Yawuru People. The Yawuru People's area agreement ILUA was still in the notification stage during the reporting period—this was to conclude in August 2010.

The two ILUAs resolve all native title and compensation issues over about 5,300 sq km of land in and around Broome. The State Government allocated $10.2 million of its 2010-2011 State Budget to implement the Yawuru agreement—described as Australia's largest native title agreement.

Since the people's claims were first lodged, the Tribunal has provided mediation, research and geospatial assistance; registration of the native title applications and determinations; and pre-lodgement comments and geospatial assistance to the draft ILUAs signed in February 2010.

Tribunal Member Daniel O'Dea and former Member Fred Chaney both contributed to the mediation of the Yawuru People's native title claims—Mr Chaney up until 2003 and Mr O'Dea from 2003 to 2006.

The Tribunal convened about 25 meetings for the Rubibi claims from 2001 to 2005. Parties involved in the meetings included the Kimberley Land Council, the Office of Native Title, the State Solicitor's office and legal representatives for the other respondent parties to the claim.

Member O'Dea said that with the resolution of native title matters, the Yawuru People can now progress their plans for land management, care and development in the Broome area.

"The Rubibi claims have been complex and it has taken many years of patience and hard work by all parties to see this outcome," he said.

"The Yawuru People can now move on knowing their stake in this land is recognised and their place in Broome's future assured."

Stepping stones

1994 First claim—First native title application from Broome's Yawuru People (the Rubibi 1 native title application) was lodged on 31 October 1994.

1998 Overlapping claims—The applications related to 7 sq km at Fishermen's Bend, near Broome. The first application was lodged on 28 July 1995 by the Kimberley Land Council for the Yawuru traditional owners. The second application was lodged on 10 August 1995 by Jack Lee for the Yawuru People's Leregon clan. Mediation conducted by the Tribunal over two years was unsuccessful between the

overlapping Rubibi (WC95/28) and Leregon (WC95/43) native title applications. As a result, the Tribunal referred these applications to the Federal Court (the Court) for direction.

1999 Claims combined—The Court ordered on 21 September 1999 that eight underlying claims be combined. The lead application which was the amended combined application, was accepted for registration by the Tribunal on 24 September 1999. Each claim's Tribunal file number, name and lodgement date are:

- WC94/1 Yawuru, 2 Feb1994
- WC94/9 Rubibi #1, 31 Oct 1994
- WC95/4 Rubibi #2, 11 Jan 1995
- WC95/5 Rubibi #3, 11 Jan 1995
- WC95/6 Rubibi #4, 11 Jan 1995
- WC95/7 Rubibi #5, 11 Jan 1995
- WC95/50 Rubibi #8, 26 Sept 1995
- WC97/102 Rubibi #16, 1 Dec 1997

2001 Rubibi 6 determined—The Rubibi #6 determination that native title exists is made. This determination area covers 1.2 sq km. The claim area covers the Kunin law ground in Broome, within the larger Rubibi combined application.

2002 Tribunal mediation begins—Tribunal involvement in ILUA negotiations begins, mediating ILUA development and terms for the consent determination.

2004 Call for interests in claim area—Tribunal advertises the combined Rubibi claim on 1 December 2004 over 2,934 sq km so that people with interests in the area have the chance to take part in talks about the claim.

The application is for land in the Shire of Broome and includes land in the Broome town and the Roebuck Plains Pastoral Lease. The advertising follows Court orders about this application on 29 September 2004.

2004 Native title application amended—Justice Merkel allows a further amendment to the combined application, 29 September. This was accepted for registration on 12 May 2005.

2005 Mediation changes—Tribunal ceases mediation and the matter is referred to Court Deputy Registrar Efthim to take over the conduct of the mediation. The Tribunal continues to help deal with ancillary matters including the negotiation of ILUAs and pastoral access agreements which are part of the overall resolution of the claim.

2006 Native title determined—Native title recognition for the Yawuru People in Broome, 28 April 2006, by Justice Merkel.

The judgment on Broome's Town Beach recognises the Yawuru People as the rightful native title holders, showing they successfully maintained their traditional laws and customs in relation to the land and waters covered by the Rubibi application. The area includes pockets of land in and around the town of Broome and two pastoral stations, one of which is held by the Indigenous Land Corporation.

2006 Registration of 'no native title' determination—Claim is registered on the National Native Title Register on 3 May 2006, to the extent that native title was determined not to exist, that is, native title does not exist in relation to the land and waters described in schedule 3 of the determination.

2008 Appeal decided—Outcome of an appeal to the Full Court of the Federal Court handed down on 2 May 2008: see *Western Australia v Sebastian* (2008) 248 ALR 61.

Two competing claims are made for a determination of native title in respect of land and waters in and around Broome.

The first claim, referred to as the Yawuru claim, is made by 12 people for the Yawuru community. This is for communal native title rights and interests in respect of land and waters in the area. The competing claim, the Walman Yawuru (WY) claim, is made by three people for an area within the

Yawuru community's claim area. The WY claimants oppose the Yawuru claim on the basis that native title in the Yawuru claim area is for clan rather than communal native title. The WY people claim group native title rights and interests for their claim area on behalf of their clan.

2008 **July** Appeal orders made—Orders giving effect to the reasons for the judgment of 2 May 2008 are delivered on 18 July 2008, finalising the appeal of the Rubibi proceedings. The State's appeal and the WY cross-appeal are dismissed, the Rubibi cross-appeal is allowed in part and the determination of native title made on 28 April 2006 is varied to reflect the Court's findings on the appeal.

2008 **August** State appeals—The State files an application for special leave to appeal to the High Court against findings made in *Western Australia v Sebastian* (2008) 248 ALR 61 that Reserve 631 was not validly created and that Reserve 1647 was not vested in trustees under the *Cemeteries Act 1897 (WA)*. This application was discontinued on 31 July 2009.

2008 **September** Determination registered—The remainder of the determination area where native title was determined to exist is entered on the National Native Title Register, 11 September 2008.

Yawuru Native Title Holders Aboriginal Corporation is nominated as the Trustee Prescribed Body Corporate prescribed body.

2010 Broome's Yawuru agreement—An agreement between the Yawuru People, the State Government and the Broome Shire Council for a $196 million native title settlement is signed in Broome on 25 February.

The ILUAs resolve all native title and compensation issues over about 5,300 sq km of land in and around Broome, where native title had previously been determined. The ILUAs aim to resolve all heritage issues affecting land required for future development and provide financial security for the Yawuru community.

The Yawuru community is to receive land valued at about $140 million for development, cultural and social welfare, and about $56 million for capacity building for the local Indigenous community, preservation of culture and heritage, economic development, social housing and joint management of a proposed conservation estate.

Yawuru man Pat Dodson and WA Attorney-General Christian Porter sign ILUAs at a ceremony in Broome, February 2010.

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

Description

This program item 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 22: 1.3.3 performance at a glance

Measure	Estimate	Result
Quantity	37	60
Quality*	80% of future act determination applications finalised within 6 months of the application being made	88% of future act determination applications finalised within 6 months of the application being made
Total price for the output	**$ 491,000**	**$ 543,712**

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

Comment on performance

During the reporting period the number of future act determination applications filed with the Tribunal was higher than last year. The Western Australia Registry experienced the largest increase in applications, receiving more than double the number filed in the previous financial year. Victoria and New South Wales each had one application filed, while Queensland received 11 applications in this reporting period.

Tribunal members made three decisions (affecting three tenements) relating to the statutory requirement that parties negotiate in good faith.

Table 23: Future act determination application outcomes by tenement				
Tenement outcome	**NSW**	**QLD**	**WA**	**Total**
Application withdrawn*	-	2	31	33
Consent determination—future act can be done	-	2	42	44
Consent determination—future act can be done subject to conditions	-	2	2	4
Determination—future act can be done	1	-	1	2
Determination—future act can be done subject to conditions	-	-	7	7
Total	**1**	**6**	**83**	**90**

*Note: Not counted for output reporting purposes.

Two decisions in relation to Western Australian applications involved one mining lease and one compulsory acquisition of land. In both cases, good-faith negotiations were found to have occurred and, therefore, that the Tribunal had the power to hear and determine the matters. One decision in New South Wales involved one mining lease, with good-faith negotiations found to have occurred and, therefore, the Tribunal had the power to hear and determine the matter.

Despite most determinations in this reporting period being made with the consent of parties, in Western Australia five contested determinations were also made in relation to six mining titles, and one land acquisition. In each case the Tribunal found that the proposed future act could be done subject to certain conditions to be complied with by the grantee party or the Government proposing the act.

On 24 December 2009, Deputy President Sosso made a determination by consent that the act, being the grant of a mining lease, could be done. In making this determination, DP Sosso finalised the long-running application made by Fortescue Metals Group Pilbara in 2007. As reported in the previous annual report, this application had been the subject of a good-faith challenge which was upheld by the member, subsequently overturned by the Full Federal Court, and then the subject of an application for special leave to appeal to the High Court. The High Court refused to grant special leave on 14 October 2009. Subsequent to that decision, FMG and the Wintawari Guruma and Puutu Kunti Kurrama Pinikura peoples reached agreement that the mining lease could be granted.

In July and August 2009, Member Daniel O'Dea handed down four determinations that five proposed mining leases could be granted to FMG Pilbara or associated companies, subject to conditions relating to access restrictions and notice to be given to the native title parties in certain circumstances. The Yindjibarndi People appealed the Tribunal's decision and a Court judgment was pending at the end of the reporting period.

1.3.4—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 24: 1.3.4 performance at a glance		
Measure	**Estimate**	**Result**
Quantity	852	1,278
Quality	80% of objections resolved other than by agreement finalised within 9 months of the s. 29 closing date	86% 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	74% of objections resolved by agreement finalised within 9 months of acceptance
Total price for the output	**$ 2,038,000**	**$ 2,143,800**

Note: 72 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

Figures for this financial year show an increase of 36 per cent in the number of notices asserting the expedited procedure published compared to the previous reporting period. This increase in notification of proposed future acts consequently increased the number of objections to the expedited procedure statement being lodged nationally.

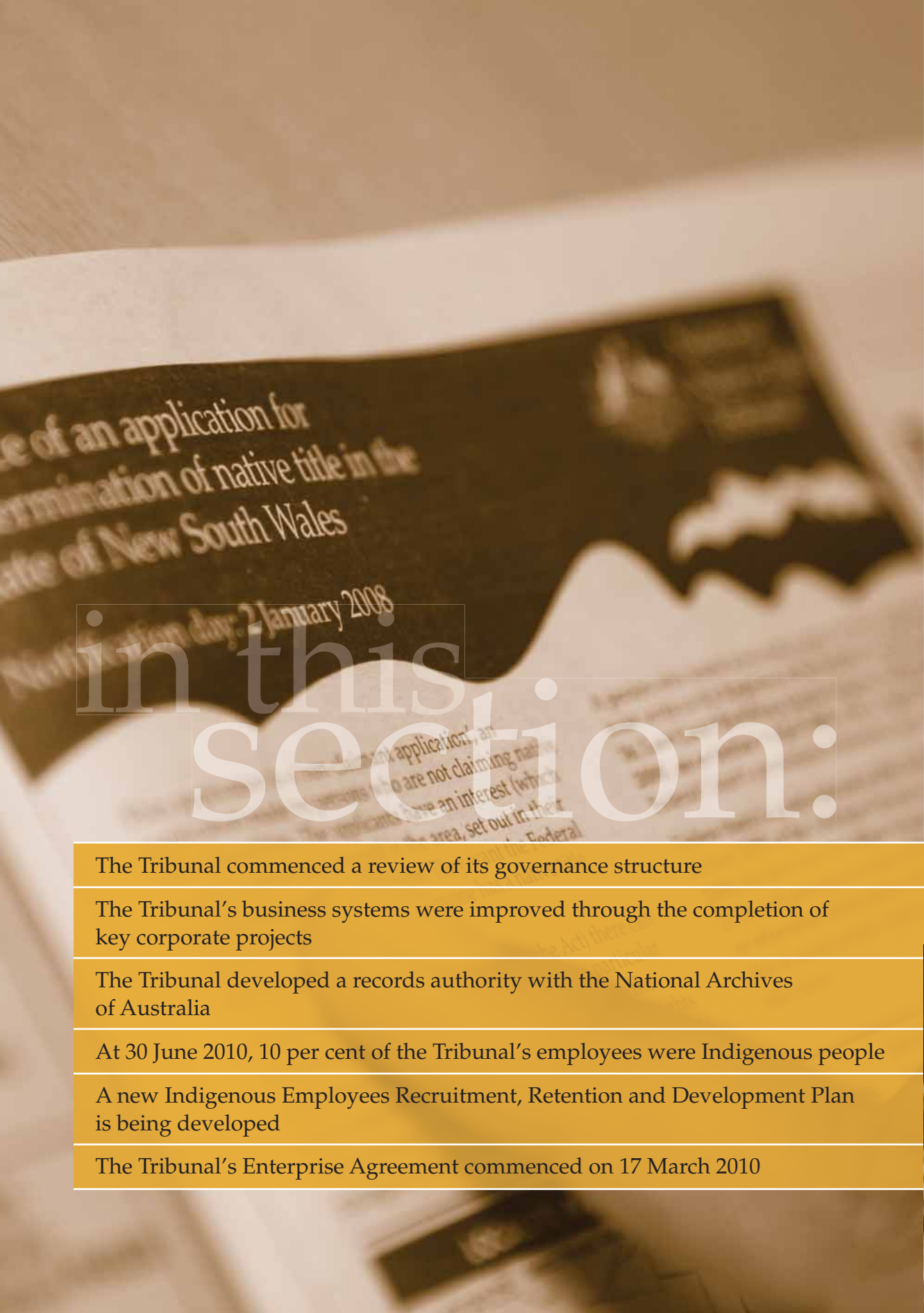
Table 25: Objection application outcomes by tenement			
Tenement outcome	**Qld**	**WA**	**Total**
Consent determination—expedited procedure applies	-	6	6
Consent determination—expedited procedure does not apply	-	1	1
Determination—expedited procedure applies	-	14	14
Determination—expedited procedure does not apply	-	20	20
Dismissed—s. 148(a) no jurisdiction*	37	23	60
Dismissed—s. 148(a) tenement withdrawn*	9	175	184
Dismissed—s. 148(b)	10	273	283
Expedited procedure statement withdrawn—s. 31 agreement lodged	65	-	65
Objection not accepted	9	2	11
Objection withdrawn—agreement	26	700	727
Objection withdrawn—external factors	-	4	4
Objection withdrawn—no agreement	45	46	91
Objection withdrawn prior to acceptance	-	57	57
Total	**201**	**1,321**	**1,522**

* Note: Not counted for output reporting purposes.

The Tribunal exceeded its national projected outputs for the resolution of objection applications made against the inclusion of expedited procedure statement in s. 29 notices.

The Western Australian Government remains committed to its robust approach to moving tenement applications through the system and a higher number of objection inquiries have resulted, with 20 determinations that the expedited procedure applies. Twenty-one determinations that the expedited procedure did not apply were made in Western Australia, resulting in parties being moved into the full right to negotiate process to continue negotiations. Native title parties have demonstrated most success in achieving determinations in their favour in culturally significant areas in the Kimberley and Mid-West (Weld Range and Mt Yagahong).

Notwithstanding the increase in referrals to inquiry, 53 per cent of objections in Western Australia are still resolved by agreement.



in this section:

- The Tribunal commenced a review of its governance structure
- The Tribunal's business systems were improved through the completion of key corporate projects
- The Tribunal developed a records authority with the National Archives of Australia
- At 30 June 2010, 10 per cent of the Tribunal's employees were Indigenous people
- A new Indigenous Employees Recruitment, Retention and Development Plan is being developed
- The Tribunal's Enterprise Agreement commenced on 17 March 2010

Management

Tribunal Executive

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. The Registrar may delegate all or any of her powers under the Act to Tribunal employees. The Registrar, who has the powers of the Secretary of a Department under the *Public Service Act 1999* (Cwlth) and the *Financial Management and Accountability Act 1999* (Cwlth), also has a range of responsibilities under other Commonwealth legislation.

The Registrar and the Directors of the two divisions, the Service Delivery division and the Corporate Services and Public Affairs division, together with the Director, Strategy and Innovation, comprise the Executive Team. The Chief Financial Officer attends the Executive Team meetings to advise the Registrar and directors.

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. A description of the qualifications and background of the Tribunal's Executive Team is available on the Tribunal's website.

Members of the Executive Team during 2009-2010 included (L-R) Registrar Stephanie Fryer-Smith; Franklin Gaffney, Director, Corporate Services and Public Affairs; Hugh Chevis, Director, Service Delivery; Frank Russo, Director, Strategy and Innovation; and Hardip Bhabra, Chief Financial Officer.

Corporate Governance

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

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

For more information see 'Corporate and operational planning and performance monitoring', p. 91.

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 include controls established under the financial management framework, such as the Chief Executive's Instructions and supporting guidelines, business continuity planning and reporting on legislative compliance. During the reporting period, the Tribunal also commenced a review of its governance structure, that is, its advisory and other groups and committees. That review will conclude in the next reporting period.

Members' meetings

The President and members held one meeting in Melbourne during February 2010. A range of issues was discussed at the meeting with a particular focus on the Tribunal's strategic direction and current operating environment. Those issues included:

- practice development issues and trends
- implementation of the 2009 amendments to the Act
- liaison with the Court
- updates from various Tribunal strategy groups.

Strategic Planning Advisory Group / Expenditure Review Committee

The Strategic Planning Advisory Group is a key forum in the governance of the Tribunal under the authority of the President and Registrar. It comprises the President,

Deputy Presidents Christopher Sumner and John Sosso, ILUA Member Coordinator Graham Fletcher, Chair of the Resources Coordination Group Daniel O'Dea, Agreement-making Liaison Group Member Dr Gaye Sculthorpe, the Registrar and the directors. It met in August 2009.

A newly formed Expenditure Review Committee, comprising the President, Deputy Presidents, Registrar and directors, is a committee of the Strategic Planning Advisory Group, formed to address the budgetary challenges in 2009. It met three times during the reporting period.

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, Dr Gaye Sculthorpe and Graham Fletcher, the Director of 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 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 monitored the impact of the 2009 amendments to the Act on the Tribunal's agreement-making practice. The group continued to identify and implement various measures to meet the National Mediator Accreditation System (NMAS). In the reporting period, seven Tribunal employees gained accreditation to the NMAS, and discussions continued around the best way for the Tribunal to utilise these skills. The Agreement-making Liaison Group considered the *Guidelines for Best Practice in Flexible and Sustainable Agreement Making*, adopted by Commonwealth, state and territory Native Title Ministers on 28 August 2009, to monitor the implementation and its effect on native title agreement-making. The group also prepared two Tribunal submissions for the National Alternative Dispute Resolution Advisory Council regarding the integrity of Alternative Dispute Resolution processes and Key National Principles for Resolution of Disputes.

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 and Daniel O'Dea, as well as the Registrar, the Director Service Delivery and senior staff involved in future act work.

The group meets quarterly by teleconference, to consider future act practice and legal issues. During the reporting period, the group:

- undertook a review of future act information products, as well as future act procedures including mediation protocol and operational manuals
- monitored organisational performance against projections
- monitored significant decisions to assess the impact of these on future act practice
- considered the issue of who funds NTRBs to participate in the future act process, and initiated discussion with NTRBs, State and Commonwealth agencies.

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 of Service Delivery and other senior managers including a senior delegate of the Registrar and representatives from Legal Services and Geospatial Services.

During the reporting period, the group continued to monitor the development and implementation of a new internal ILUA system (database) to process and capture information in relation to ILUA assistance requests and applications for registration of ILUAs. The new ILUA system also provides improved reporting and capture of statistical data and facilitates inspection of the Register of Indigenous Land Use Agreements by members of the public via the Tribunal's website.

In addition, the group:

- continued to monitor and review internal procedures and processes with a view to achieving greater efficiencies
- provided input into the development of ILUA information products (e.g. a local government guide to ILUAs, produced collaboratively by the Australian Local Government Association and the Tribunal's Public Affairs section)
- responded to the Department of Families, Housing, Community Services and Indigenous Affairs discussion paper 'Possible Housing and Infrastructure Native Title Amendments'.

- continued to monitor organisational performance against projections.

The group met four times by teleconference in the reporting period.

Senior managers' forums

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 of 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 convened monthly meetings by videoconference with registry and section managers around the country, which meetings were also attended by the directors.

In addition to monthly meetings by video conference, the Registry and Section Managers Group also has an annual in-person meeting in Perth. The Registry and Section Managers Group met for two days in May 2010 with a meeting theme of *Looking Forward: the Tribunal in 2010–11 and beyond.* The meeting provided an opportunity to reflect on achievements in 2009–10 and to develop responses to the structural and budgetary challenges in 2010–11.

Corporate and operational planning and performance monitoring

The Tribunal's *Strategic Plan 2009-2011* 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 of Corporate Services and Public Affairs, nominated senior managers from each division, Member 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 continue to embed risk management practices into the Tribunal's work environment, practices and decision-making. A key initiative in the reporting period was the commencement of the development of a Business Continuity Framework for the Tribunal.

Through participation in Comcover's 2010 Benchmarking Survey, the Tribunal registered further improvement in its risk management status by attaining a Benchmarking overall score of 6.8. The score places the Tribunal within the average result for all agencies. Commenting on this overall score, Comcover stated that 'this overall score reflects that the agency demonstrates a high level of competency in implementing an enterprise-wide risk management framework'.

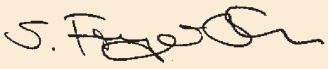
In recognition of this continuous improvement in risk management, the Tribunal received a discount of 6.8 per cent on its 2009–10 premium.

Figure 7: Certification of Tribunal fraud control arrangements

I, Stephanie Fryer-Smith, certify that:

- annual fraud data has been collected and reported in compliance with the *Commonwealth Fraud Guidelines 2002* (Guidelines) and that
- the Tribunal has in place a fraud control plan (dated July 2008) and maintains a risk register. In addition, the Tribunal has developed a risk management policy statement, a risk management plan and risk management guidelines.

Those documents need to be upgraded and updated in order to be fully compliant with the Guidelines, and this will occur in 2010-11.



Stephanie Fryer-Smith
Registrar
20 September 2010

Information and technology management

Since the last reporting period when work had just commenced on consolidating the Tribunal's information management environment, the Information Services section has made significant ongoing progress in redeveloping and improving the Tribunal's business systems.

New projects delivered or soon to be launched into the standard operating environment, include:

- application and database migration for ILUA management and registration (incorporating a new web-based online register of ILUAs)
- migration of legacy Active Server Pages intranet environment to SharePoint 2007 (the staff intranet Tribunal 2.0 project)
- geospatial data migration into a relational database
- a redesigned Chart of Accounts system (via the Finance 1 platform)
- upgrade of the Electronic Document and Records Management System (EDRMS) to latest stable software version. The second phase of this project will be to integrate the EDRMS platform (eDOCS) with the 'Tribunal 2.0' intranet (funded via a business-as-usual reinvestment grant of $70,000)
- implementation of the electronic recruitment system e-Recruit
- upgrade of Chris21 payroll system
- migration of all regional data storage into a centralised storage array, with off-site mirror and archive-to-tape function.

During the reporting period the Tribunal also became the second Commonwealth agency to sign an agreed records authority with the National Archives of Australia. This records authority identifies information held by the Tribunal of national historical and cultural value, and commits this to long-term storage by the National Archives for access by future generations.

Tribunal records contribute to Australia's history

The Tribunal's work in native title is now more firmly established in the documentation of Australia's history after working with National Archives of Australia (NAA) to develop a records authority which was finished in the reporting period. This sets out the requirements and guidelines for retaining core business records, and ensures that significant records are kept for historical, cultural and educational reasons.

The process to prepare a records authority is complex—agencies have to do an extensive analysis of their work and decide how long they must keep different types of records. NAA recognised the process was time-consuming and recently simplified it to allow agencies to focus on one or two business activities and to complete the process in a one-step submission.

The project has helped the Tribunal comply with legal and regulatory requirements, applicable government standards and policies; better manage resources; improve work accountability practices; and preserve records significant in Australian history. The project has also brought practical business benefits—a new archiving program is being introduced and a review of Tribunal records management is under way.

Tribunal records include information about native title parties and stakeholders; the resolution of native title applications, maps and other geospatial documents; and historical, anthropological and linguistic research that provides important background to claims.

A large number of Tribunal records have been identified as 'retain as national archives', including many stories about native title that have emerged since the High Court's historic *Mabo* judgments. Archived records include material about well-known native title cases, such as the Yorta Yorta People's claim in Victoria and New South Wales, which was launched in early 1994—one of the first claims under the Native Title Act.

The records also track the Tribunal's role in the native title system and the processes it has devised and followed as law and practice changed and matured.

Some Tribunal records have already been transferred. Under the *Archives Act 1983* (Cwlth), these records will be available for public access after they have been held for 30 years provided they do not fall into certain exemption categories as defined in s. 33 of the Archives Act.

Geraldine Merrigan, the Tribunal's Corporate Information Services manager: applying the records authority to its work encouraged the Tribunal to become more strategic in the management of records.

A trial of real-time desktop video conferencing, using the Tribunal's Wide Area Network, was expanded recently to seek efficiencies in communication, both in terms of cost and effectiveness. This has been well received by staff, and the system has been used in recent interstate teleconferences for training and general meetings.

During this year an ongoing process of negotiating Service Level Agreements (SLAs) with identified business process stewards was undertaken, resulting in a list of 41 agreed services supported via the ICT Service Desk. These SLAs provide information on the urgency, cost and availability requirements of core functions required by the business to ensure the Tribunal's work can be transacted in a timely and effective manner. The SLA list is also being used to inform a Tribunal-wide business continuity and risk management plan.

Information Services has also responded on behalf of the Tribunal to several all-of-government projects specifically aimed at improved ICT financial, security and staff management:

- participated in the IPv6 preparedness survey by the Australian Government Information Management Office (AGIMO)
- participated in the second year of the ICT efficiency and effectiveness benchmarking undertaken by the Department of Finance and Deregulation (via AGIMO) — with indicative performance figures published in February 2010 alongside 26 other medium ICT-spend ($2 million – $20 million) agencies
- developed a new teleworking policy for ICT staff (part of the Commonwealth's three-year ICT Workforce Plan)
- completed the ICT Customisation and Bespoke Development Policy survey undertaken by the Business Process Transformation team at AGIMO
- as detailed above, the Tribunal applied for, and was awarded, two grants totalling $270,000 via the Department of Finance's business-as-usual reinvestment fund.

In addition, Information Services carried out the ICT reconfiguration and de-commissioning work required for the relocation of the Victoria/Tasmania Registry in Melbourne, the closure of the Northern Territory Registry in Darwin and the creation of the new Central Australia Registry, located in Adelaide.

Management of human resources

Recruitment, workforce planning and structure

During the reporting period, the Tribunal's focus was on reducing employee numbers, while recruiting new employees to key positions when required. This strategy was initiated by the Executive with a view to reducing the Tribunal's salary budget, and in response to the $2.48 million reduction in the Tribunal's appropriation for 2009-10.

As at 30 June 2010, there were 22 fewer employees in the Tribunal than at 30 June 2009. The reduction in employee numbers occurred entirely through natural attrition. The aggregate turnover rate for the year was 25 per cent, higher than the 16 per cent turnover rate experienced in 2008-09.

Also as at 30 June 2010, the Tribunal had commenced a voluntary redundancy scheme, to meet the additional budgetary constraints which will apply in 2010-11 and beyond. It is expected this initiative will result in 20 employees accepting voluntary redundancies.

In January 2010, the President and Registrar sought expressions of interest to undertake a review of the Tribunal's organisational structure. The key objective of the review was for the external consultants to recommend an organisational structure (or options for an organisational structure) which would enable the Tribunal to:

- optimise its organisational efficiency, flexibility and responsiveness
- operate effectively and efficiently within its budgetary appropriations
- achieve its strategic priorities under its *Strategic Plan 2009-2011*.

The review commenced in February 2010 and the consultants visited the Principal Registry and all state and territory registries. The consultants conducted workshops with staff and held individual interviews with members, managers and staff. Interviews with a number of external stakeholders were held to gain their perspectives of the operations of the Tribunal.

A consultative group was formed comprising Katherine Jones (First Assistant Secretary, Social Inclusion Division, Attorney-General's Department), Warwick Soden (Registrar and Chief Executive of the Court) and the Registrar. An internal reference group was constituted to operate as a sounding board for the consultants and to provide additional information if required.

The consultants submitted their final report on 7 June 2010. It contained a range of findings, 38 recommendations and proposed three structural options for the Tribunal.

The key themes of the report were:

- the creation of a broader executive leadership team, including greater direct operational input, in order to provide a wider range of input into decision making, improve organisational communications and ensure better support for the Registrar
- the development of a regional focus for the Tribunal's operations in order to provide more flexibility in planning and deployment of resources to meet changing demands
- the provision of better support for the operations of the Tribunal through deployment of more resources to the state and territory registries

- the provision of resources to enable the Tribunal to respond to further changes in its operating environment
- the flexible deployment of resources and better support for the operations of the Tribunal's registries in order to ensure that the Tribunal is better able to meet changing priorities from the Australian Government, the Court and the Attorney-General's Department.

The consultants' preferred structural option was one which provided for the Registrar's direct leadership focus on key finance, human resources and ICT functions. That option included the creation of an Agreement Making and Arbitration Support unit comprising the Tribunal's legal, research, geospatial, operations and library services.

After consultation with members and staff, the President and Registrar endorsed that preferred structural option, and announced that the new organisational structure would commence on 1 July 2010.

During the reporting year, a project team was developing a revised Indigenous Employees Recruitment, Retention and Development Plan. The implementation of this plan, scheduled for the 2010-2011 reporting year, is consistent with the Tribunal's strategic priority of recruiting, developing and retaining Indigenous employees, thereby rendering the Tribunal an organisation of choice for Indigenous employees.

Our workforce profile

At 30 June 2010, the Tribunal had eight holders of public office (President, Registrar and Members) and 225 people employed under the *Public Service Act 1999* (Cwlth). As noted earlier, this represents a reduction of 22 employees from the same time last year.

The Tribunal recognises the value of interdepartmental transfers and in the reporting year three employees of the Tribunal accepted a fixed-term appointment with another government agency.

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

In July 2009, the Tribunal undertook a workload and workforce review. The review was undertaken with a view to ensuring that the Tribunal's workforce was equipped to respond to the changes in the operating environment and to effectively implement its new strategic direction, as set out in the *Strategic Plan 2009-2011*.

Table 26: Tribunal employees by registry as at 30 June 2010

Classification	Location/registry							
	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Traineeship								
Cadet								
APS level 1								
APS level 2	10	20		9	3	1	1	44
APS level 3	20	3	4				1	28
APS level 4	14	12	1	10	1	2	1	41
APS level 5	10							10
APS level 6	22	11	8	7	2	2		52
Legal 1	5			1				6
Legal 2	1							1
Media 1	2							2
Media 2								0
Library 1	1			1				2
Library 2				1				1
Executive level 1	13	3	5	3	1			25
Executive level 2	7	1	1		1		1	11
Senior executive	2							2
Total employees	**107**	**50**	**19**	**32**	**8**	**5**	**4**	**225**

Note: Numbers of outposted staff are shown in the Principal Registry column and not the registry in which they are physically located. The table above shows employees' substantive levels, not any acting arrangements.

Table 27: Employees by equal employment opportunity group participation and type of employment

Employees	At 30 June 2009	At 30 June 2010
Female	175	153
Indigenous	24	22
Linguistically diverse background	15	17
People with a disability	5	5
Ongoing	196	169
Part-time	55	44

Indigenous employees
At 30 June 2010, the percentage of Indigenous employees within the Tribunal was 10 per cent. Exit data shows that most of the Indigenous employees who 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 2010 is set out in Table 28 below.

Table 28: Indigenous employees by division and location as at 30 June 2010

Classification	Location/registry							
	Principal	WA	NSW	Qld	Vic	SA	NT	Total
Traineeship								
Cadet								
APS level 1								
APS level 2	4	1		1	1		1	8
APS level 3		1	3	1				5
APS level 4		2		2	1			5
APS level 5								0
APS level 6		1		1				2
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	**4**	**6**	**3**	**6**	**2**	**0**	**1**	**22**

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

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
- assist them to gain tertiary qualifications to increase their career prospects within the Tribunal and the APS, and
- assist the Tribunal by increasing the number of graduate Indigenous employees better able to compete for middle level and senior employee positions.

In 2010, the Undergraduate Award was presented to one Indigenous employee to study at university on a full-time basis in a course of study relevant to the Tribunal or the APS.

Enterprise Bargaining and individual workplace agreements

During the reporting year, the Tribunal successfully negotiated a new Enterprise Agreement with its employees. The agreement was lodged with Fair Work Australia for approval in December 2009, and became operational on 17 March 2010. It will expire on 30 June 2011 in line with current Government policy.

The Tribunal's Enterprise Agreement was one of the first APS agreements to be reached under the new *Fair Work Act 2009* (Cwlth).

While most Tribunal employees are covered by the Enterprise Agreement, at the end of June 2010, some employees were working under the following employment instruments:

- seven employees were employed under Australian Workplace Agreements (AWA) (including one SES employee), with AWAs now being phased out
- four were on Individual Flexibility Agreements.

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 Rewards and Recognition Program to recognise such employees.

During the reporting year, the Tribunal recognised six individuals and one team (a total of 28 employees) who had shown exceptional dedication, innovation and commitment to their work and the Tribunal.

The Tribunal continues to recognise the service of those employees who have given more than 10 years' service to the Tribunal and marks this by presenting them with a gift. The Tribunal will continue this practice. In the reporting year, the Tribunal acknowledged more employees for reaching that milestone of service.

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 employees with their career development, and
- 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.

Mediation Accreditation

During the reporting period, seven Tribunal employees (at least one in each State/Territory) were supported in seeking, and maintaining, accreditation as mediators under the National Mediation Accreditation System, which was introduced on 1 January 2008.

National Case Management Conference

The Tribunal convened a National Case Management Conference in Melbourne in June 2010. This biennial event brought together Tribunal members and relevant employees from across Australia to workshop and share knowledge about native title and agreement-making. Presentations were made by senior representatives of the Court and the Attorney General's Department. The theme of the workshop was that adopted by registry and section managers at their May 2010 conference in Perth: *Simplify, Perform and Engage.*

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 provided assistance to a total of 18 (8 per cent) employees under this program.

Occupational health and safety performance

The Occupational Health and Safety (OH&S) Coordinator and representatives provided regular reports to the Tribunal's Consultative Forum and National Health and Safety Management committee.

During the reporting period, one accident was 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 OH&S assistance (e.g. workstation assessments and ergonomic assessments)
- Employee Assistance Program (independent, confidential and professional counselling service)
- national OHS and harassment audit
- health and safety representatives were provided with additional certification training in the areas of Comcare Code of Practice, roles, responsibilities and ergonomic workstation assessment
- influenza vaccination program.

A range of health initiatives was undertaken to assist employees maintain a healthy lifestyle and a safe work environment. These included information sessions by Nutrition Australia, Wellbeing information sessions, participation in National Health and Fitness Week, Men's Health Week promotion, information about how to correctly lift and move objects, a session on understanding your spine and World Blood Donor Day.

Commonwealth Disability Strategy

The Tribunal reports on its performance under the Commonwealth Disability Strategy in the roles of employer and provider. The Tribunal's response regarding its employer role has been reported in the *Australian Public Service State of the Service Report.* The Tribunal's response regarding its provider role is set out opposite.

Table 29: Performance against Commonwealth Disability Strategy

Performance indicator	Performance measures	Performance for 2009–10
Providers have established mechanisms for quality improvement and assurance.	Evidence of quality improvement and assurance systems in operation.	The Tribunal conducts regular client satisfaction research which includes consideration of ease of contact and accessibility.
Providers have an established service charter that specifies the roles of the provider and consumer and service standards which address accessibility for people with disabilities.	Established service charter that adequately reflects the needs of people with disabilities in operation.	The Tribunal has a Client Service Charter which was reviewed during the reporting period. The revised Client Service Charter is due to be released in the next reporting period and will continue the Tribunal's commitment to treat all clients fairly and to provide access to clients with a disability. The Client Service Charter is available in leaflet form and on the Tribunal's website. The Tribunal meets wider Commonwealth service standards, including AGIMO standards for access to the web-based information and recruitment support for people with disabilities.
Complaints/grievance mechanism, including access to external mechanisms, in place to address issues and concerns raised about performance.	Established complaints/ grievance mechanisms, including access to external mechanisms, in operation.	The Tribunal has complaint-handling procedures in place which are set out in the Client Service Charter and on the Tribunal's website.

in this section:

Client satisfaction research showed an increase in the Tribunal's overall client satisfaction rating since 2008

Improvements were made to the Tribunal's website

Four new consultancy contracts were entered into during the reporting period

Accountability

Ethical standards and accountability

The Tribunal encourages employees to maintain 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 APS Code of Conduct are detailed through examples of performance indicators in the Tribunal's Capability Framework and are 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, there were no formal investigations into complaints of alleged breaches of the APS Code of Conduct.

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. Tribunal members are not subject to the APS Code of Conduct, except where 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, there were no complaints under either document.

Ecologically sustainable development and environmental performance

The Environmental Management Group met regularly during the reporting period. Most improvements in environmental practice have been done at the local level rather than through major national projects.

The Tribunal has successfully upgraded all low-traffic areas to sensor lighting and replaced all lighting points with energy-efficient lamps. This has had a major impact on the overall energy usage in each registry. Recycle bins placed at each desk are a daily reminder to staff of the need to be environmentally aware.

Air-conditioning and other major plant and equipment have been maintained to ensure maximum efficiency whilst reducing power consumption.

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 a significant number of judgments, some of which involved decisions of the Registrar. For further information see Appendix II Significant decisions, p. 115.

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. 134.

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 2009* was tabled in Parliament on 20 January 2010.

In addition to providing a comprehensive review of developments in native title law and policy from 1 July 2008 to 30 June 2009, the report also considered principles and

standards to guide a new approach to native title. The Commissioner commended the Victorian Native Title Settlement Framework announced by the State Attorney-General and the Australian Government for the reforms undertaken during the year.

The report made 24 specific recommendations for significant improvements to the native title system in a number of key areas, such as shifting the burden of proof, more flexible approaches to connection evidence and promoting broader, more flexible native title settlement packages.

Other scrutiny
There were no reports into the Tribunal's operations by the Australian National Audit Office, 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 undertaken in 2009–10.

A total of 200 clients were surveyed by an independent research company in compliance with AS ISO 20252:2007 requirements.

Overall, the 2010 client satisfaction study showed many improvements in clients' opinion of the Tribunal and the services it offers. The overall satisfaction rating for the Tribunal continued to rise in 2010, to an average of 7.47 out of 10, compared with 7.15 in 2008 and 6.77 in 2005. The percentage of respondents who rated the Tribunal 8 or higher out of 10 was 57 per cent in 2010 – an increase of 20 per cent from 2008.

The study identified aspects of the Tribunal's work that should be considered, and information from the research is used in output reports and to inform the Tribunal in its continuous improvement and other initiatives.

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 peoples and Torres Strait Islanders.

It is important for all parties to native title proceedings to understand the processes involved in reaching agreements and facilitating native title and related 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 Program 1.1—Stakeholder and community relations, p. 59 and Documents available free of charge, p. 136.

The Tribunal recognises the benefits to Indigenous Australians which arise from negotiated agreements about native title and related matters. For further information, see Program 1.2—Agreement-making, p. 62.

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

The Tribunal maintains a website at www.nntt.gov.au. Ongoing improvements are regularly made to the site, including the introduction of managed subscriptions and improved searching in specific areas, including the Tribunal's native title case-law newsletter, *Native Title Hot Spots*.

In the reporting period, there was a review of current information and the addition of new information following the amendments to the Act.

The Tribunal is also trialling region-specific information pages to allow stakeholders to access key information on their area. The pages allow searching of native title registers and access to maps and claim statistics.

Figure 8: An example of the South West of WA region-specific web page

Performance against purchasing policies

Procurement

The Tribunal's policy and procedures on procurement are communicated through the Chief Executive's Instructions to assist employees comply 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 Commonwealth Procurement 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 our 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.

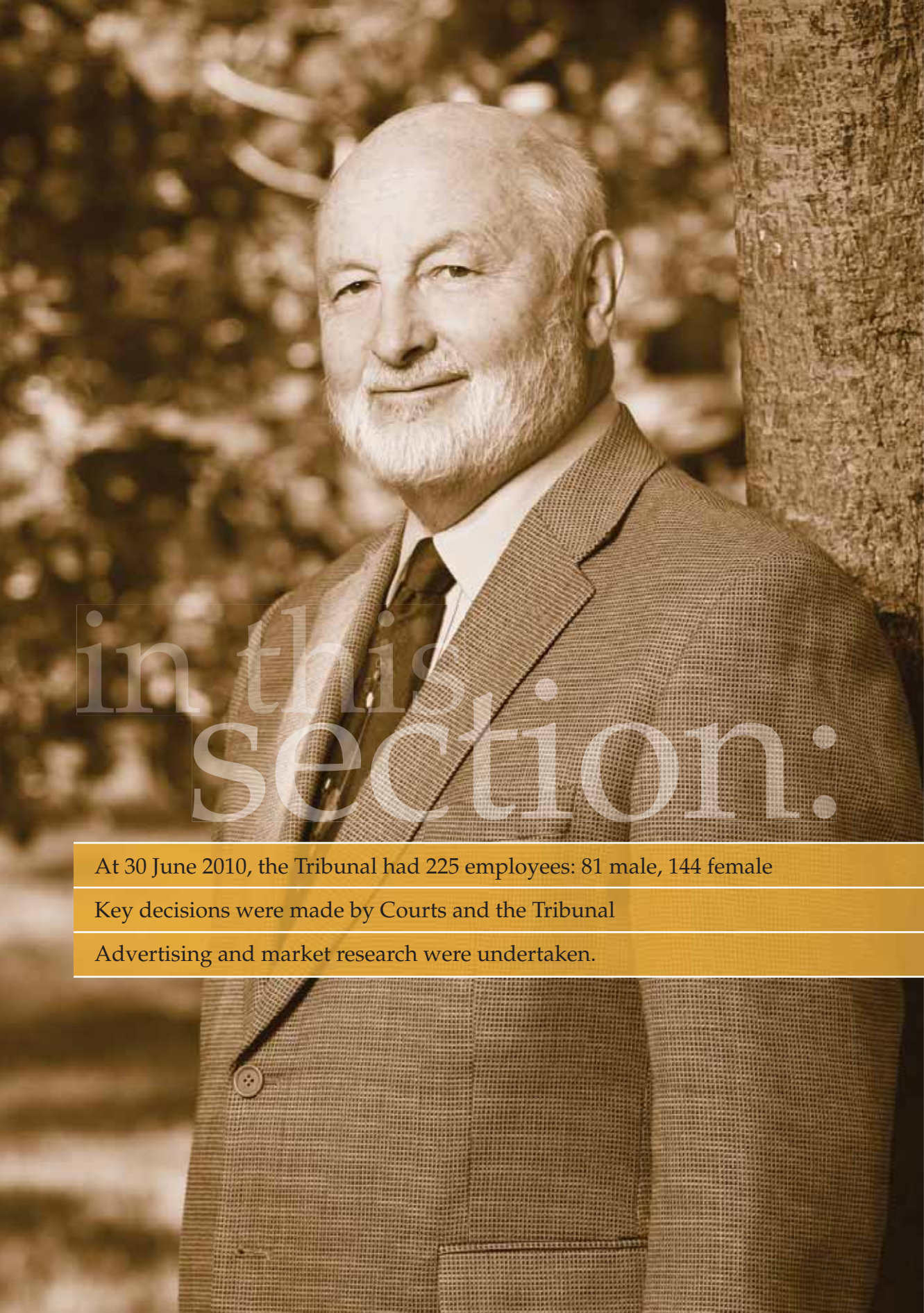
Consultancies

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, four new consultancy contracts were entered into involving a total actual expenditure of $209,353. In addition, one ongoing consultancy contract was active during the 2009–10 year, involving total actual expenditure of $54,410. 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. 140.

Table 30: Expenditure on consultancies	
Division / section	**Expenditure**
Registrar's Office / President / Executive	$ 201,772
Corporate Services and Public Affairs	$ 61,991
Service Delivery	$ –
Total	**$ 263,763**



in this section:

At 30 June 2010, the Tribunal had 225 employees: 81 male, 144 female

Key decisions were made by Courts and the Tribunal

Advertising and market research were undertaken.

Appendices

Appendix I Human resources

The average number of employees for 2009-2010 was 225. This is a head count figure (based on substantive positions) not a full-time equivalent figure and does not include holders of public office (President, members or Registrar).

Table 31: Employees by classification, ocation and gender as at 30 June 2010

Classification	Salary Ranges	Male								Female							
		Location/Registry								Location/Registry							
		Principal	WA	NSW	QLD	Vic	SA	NT	Totals	Principal	WA	NSW	QLD	Vic	SA	NT	Totals
Traineeship	$11,558 - $30,822																
APS level 1 and Cadet rates	$23,117 - $42,584																
APS level 2	$43,603 - $48,352	2	1		9	1	1		**14**	8	19			2		1	**30**
APS level 3	$49,667 - $53,605	5		1					**6**	15	3	3				1	**22**
APS level 4	$55,356 - $60,102	5	3						**8**	9	9	1	10	1	2	1	**33**
APS level 5	$61,743 - $65,468	6							**6**	4							**4**
APS level 6	$66,684 - $76,601	15	5	2	1		1		**24**	7	6	6	6	2	1		**28**
Legal 1	$51,173 - $102,257				1				**1**	5							**5**
Legal 2	$113,552 - $118,472	1							**1**								**-**
Media 1	$69,461 - $78,930								**-**	2							**2**
Media 2	$89,925 - $102,257								**-**								**-**
Library 1	$49,667 - $65,468								**-**	1			1				**2**
Library 2	$66,684 - $76,601								**-**				1				**1**
Executive level 1	$85,487 - $92,308	7	1	1	2				**11**	6	2	4	1	1			**14**
Executive level 2	$98,597 - $115,518	5		1		1		1	**8**	2	1						**3**
Senior Executive	From $149,075	2							**2**								**-**
Total employees	**225**	**48**	**10**	**5**	**13**	**2**	**2**	**1**	**81**	**59**	**40**	**14**	**19**	**6**	**3**	**3**	**144**

Table 32: Holders of public office of the National Native Title Tribunal as at 30 June 2010

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 18 April 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 28 Feb 2003 28 Feb 2007[3]	Three years Reappointed for a further four years Appointed as a Deputy President for five years	Brisbane
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	Brisbane
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 2 Feb 2003 2 Feb 2004[4] 2 Feb 2008 2 Aug 2008 3 Feb 2009 3 Feb 2010	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 Reappointed for a further year	Melbourne
Neville MacPherson	Part-time member	1 Sep 2003 1 Sep 2006[5]	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 Reappointed from full-time member to part-time member.

Table 33 : Performance pay

Classification	Number of employees	Aggregated amount ($)	Average ($)	Minimum ($)	Maximum ($)
EL2 / EL1	5	50,850	10,170	8,850	12,000

Appendix II Significant decisions

During the reporting period, the following decisions of the Federal Court (the 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) (Act) unless stated otherwise.

High Court

There were no significant decisions handed down by the High Court with regard to the Act during the reporting period.

Federal Court —Full Court

Referral of a Question of Law – Mining Leases
James v Western Australia [2010] FCAFC 77, Sundberg, Stone and Barker JJ, 29 June 2010.

This matter concerned a question of law that was referred to the Court for determination by a presiding member of the Tribunal pursuant to s. 136D of the Act. The provision allows the member to refer a question of fact or law to the Court if the member considers that it would expedite the reaching of an agreement on any matter the subject of mediation.

Section 136D was repealed by the *Native Title Amendment Act 2009* (Cwlth) on 18 September 2009, and was replaced by s. 94H, a provision with similar effect. The parties in this matter agreed that the Full Court should treat the referral as if made under s. 94H.

On 27 September 2002, his Honour Justice French made a determination of native title by consent in *James on behalf of the Martu People v Western Australia* [2002] FCA 1208 in relation to part of the land or waters covered by an application lodged by the Martu People. The remainder of the application area (the referral area) is undetermined. The effect on native title of granting of various mining and general-purpose leases in the referral area is the only outstanding issue in mediation.

The questions of law referred to the Court were in relation to each lease:

- Is the grant of the lease a past act, as defined in s. 228 of the Act for the purposes of part 2 of the *Titles (Validation) Act and Native Title (Effect of Past Acts) Act 1995 (WA)* (TVA)?

- If the answer to the question is yes, into which of the four categories of past act, as defined in ss. 229-232 of the Act for the purposes of Part 2 of the TVA, does the lease fall?

If the grants are category C past acts as defined in the Act, when they were validated by state legislation, the non-extinguishment principle would have applied to the acts. When the leases come to an end, the native title rights and interests that were suppressed during the period of the grants can again be exercised. If the grants are not past acts, then at least some native title rights and interests are extinguished permanently. The applicant argued that the acts were category C past acts for the above reason.

Usually, such acts are only past acts if the grants were made before 1 January 1994 and were invalid to any extent because of the existence of native title. The leases were granted before 1 January 1994 and were 'acts' as defined in s. 228 of the Act.

Essentially, the question before the Court was whether any or all of the leases were invalid to any extent because of the existence of native title. The parties agreed that the leases would be invalid only if s. 10(1) of the *Racial Discrimination Act 1975* (Cwlth) (RDA) brought about that result.

Section 10 of the RDA operates in two different ways. First, where a State law fails to make the enjoyment of rights universal, the State law is not invalidated by s. 10 as the section is intended to confer a right which is complementary to the right created by the state law. Second, where the state law, however:

- imposes a prohibition forbidding the enjoyment of a human right or fundamental freedom enjoyed by persons of another race, or
- deprives those persons of a right or freedom previously enjoyed by all regardless of race,

s. 10 confers a right on the persons prohibited or deprived. This results in an inconsistency between s. 10 and the state law, so that s. 109 of the Constitution operates to invalidate the state law to the extent of the inconsistency.

It was agreed that, before the grant of the leases in question, the native title holders had exclusive native title rights and interests in relation to the areas affected by the grants. It had been previously held by the High Court in *Western Australia v Ward* (2002) 213 CLR 1 (Ward) that the grant of such leases partially extinguished exclusive native title rights and interests—that is, the right to control access to the land or waters is removed as it is inconsistent with the right of access arising under a mining lease.

In *Ward* the High Court found that the grant of a mining lease was not a past act because the grant was not invalid to any extent because of the existence of native title. In appropriate circumstances s. 10 of the RDA merely gave rise to a right to

compensation. However, the High Court's consideration of the issue in *Ward* was in circumstances where the native title right to control access had already been extinguished by the prior grant of pastoral leases over the relevant area. The Full Court distinguished the *Ward* case on that basis.

In the case of non-native title interest holders, the grant of a mining lease over their land did not extinguish their title. However, where exclusive native title rights existed, the grant of a mining lease would have had the effect of extinguishing the right to control access to their land. This extinguishment would not have been undone when the mining lease expired. Compensation under the *Mining Act 1978* (WA) was not compensation for extinguishment of native title rights.

The Court indicated that subsection 10(1) of the RDA has the effect of conferring on native title holders 'the right to own and inherit property (including the right to be immune from the arbitrary deprivation of property) to the same extent as enjoyed by any other landholder'. This right is inconsistent with the extinguishing effect of the Mining Act. Even if compensation provided by the Mining Act extended to cover the extinguishing effect of the grant of a mining lease, the availability of that compensation would not avoid the consequence that the extinguishing effect itself is a discriminatory burden falling only on native title holders.

Thus their Honours found that the grant of each lease was invalid through operation of the RDA and was validated as a category C past act as defined in s. 288 of the Act.

Appeal succeeds – society question and native title to the sea
Sampi on behalf of the Bardi and Jawi People v Western Australia (2010) 266 ALR 537, [2010] FCAFC 26, North and Mansfield JJ, 18 March 2010 (one of the members of the Court retired before the decision was handed down).

The main issue in this matter was whether the Bardi and Jawi people constituted one society or two at sovereignty. The Full Court found the primary judge, Justice French (as he then was), should have inferred there was one society at sovereignty and so upheld the appeal on this ground. The extent of native title rights and interests recognised in the intertidal zone and offshore was also in issue. Most of these grounds of appeal were also successful.

French J took over this matter when the judge hearing the matter, Beaumont J, became ill. Both he and the Full Court relied principally on the transcript of evidence taken by Beaumont J.

Subsection 223(1) of the Act was central to the primary judge's consideration of the legal framework surrounding the critical issue, i.e. the one society or two question.

French J was of the view that determining that issue required making two enquiries:

- whether there is a society of the requisite kind in existence today; and
- whether that society can be said to have existed since sovereignty—*Sampi No 1* at [968].

The Full Court noted that the primary judge concluded there was a present-day Bardi society which, at sovereignty, could receive into its membership people from the Jawi community —broadly the Bardi and Jawi society. Only the land and waters in which the Bardi people held rights and interests at sovereignty, however, could be the subject of a native title determination. In doing so, French J rejected the contention of the applicant that an inference could be drawn from the evidence that Bardi and Jawi people constituted one society at sovereignty.

It was the reasoning leading to this conclusion that was examined on appeal. The Full Court found that French J was wrong in 'failing to draw the inference from the evidence that the Bardi and Jawi people formed a single society at sovereignty'. Their Honours first noted that:

- whether the group concerned acknowledged the same body of laws and customs relating to rights and interests in land and waters is central to the consideration of whether a group of people constitute a society in the *Yorta Yorta* sense
- the primary judge held that the Bardi people as a group acknowledged the same body of laws and customs relating to rights in land and waters but was not able to infer from the evidence that the Jawi people also acknowledged those laws and customs.

According to their Honours, there was 'a wealth of detail of a highly complex system of land holding and social interaction before the primary judge which was explained by the Aboriginal witnesses and, at length, by anthropologist Mr Bagshaw', with the latter's evidence going to 'the depth and detail of the legal code involved'. This included evidence that:

- Bardi and Jawi primarily inherit country and associated rights in country by way of patrifiliation
- each individual becomes a member of an exogamic kin-aggregate or patrifilial group which is identified with, and responsible for, a specific mythologically inscribed estate or buru and its associated religious resources
- individual estate-affiliates are 'gamelid' (a person who, together with his or her father, is from a particular country), which 'conveys the sense of an individual who is known to the country itself' and that country is 'conceived of as an active physical and metaphysical entity'
- continuing responsibility exercised in respect of deceased or vacant burus supported the view that the estate rights fell within an overarching system of traditional law and custom defining the connection of the people to their land and waters.

The Full Court did not agree with French J that Mr Bagshaw's description of the system was based on the premise that the Bardi and Jawi people constituted a single society. Rather, their Honours read Mr Bagshaw's evidence as being 'descriptive of a system which, as a matter of fact, rather than assumption, both the Bardi and Jawi people shared'. Accepting this view, that system was equally the system of the Jawi people as it was of the Bardi people.

After pointing out that each native title case turned on its facts, the Court noted decisions from which 'certain lines have emerged between the characteristics of those groups which fall within the requirements laid down in *Yorta Yorta* and those which do not'.

The Full Court's conclusion was therefore that, as there was one society, the determination should include Jawi territory.

French J had excluded islands to the immediate north of the Dampier Peninsula from the determination because, in his opinion, those islands were not part of Bardi country. Since their Honours had found there was one Bardi and Jawi society at sovereignty, it was 'necessary to revisit that conclusion'. North and Mansfield JJ were satisfied that this was an area over which native title rights and interests exist and there was:

> [A]mple evidence to support the tentative view of the primary judge that the land and waters north and east of the Dampier Peninsula mainland to Hadley Passage were part of the Bardi and Jawi peoples' land (the step of finding the one society at sovereignty having been taken)—at [83].

Therefore, the determination of native title rights and interests was amended to include this area.

Other questions regarding tidal movements and the existence of native title were also considered. At first instance, French J had drawn some conclusions which the Full Court was obliged to consider, including

- With regard to a proviso in the determination *Sampi v Western Australia* [2005] FCA 1567, on appeal the Bardi and Jawi people characterised this as a temporal limitation (regarding rights and interest exercisable, seaward of the mean low-water mark, on any reef exposed to low tide only when that reef is exposed or covered by water to a depth not more than two metres) and it was decided that the determination should be amended to omit the proviso
- With regard to the seaward extent of recognition, the application area generally extended to the three nautical mile limit. French J had found quite limited rights in relation to this area. As he had incorrectly approached this issue on the basis of the Bardi people rather than the Bardi and Jawi society, the Full Court had to determine for itself whether the evidence established that the Bardi and Jawi people have native title rights or interests in the sea claim area on the basis of the evidence led in the first and second trials. The Full Court then found that French J was wrong

and, as none of the respondents contended otherwise, the three nautical mile limit was determined to be an appropriate outer boundary line to mark the extent of the native title rights and interests in the sea
- The claimed right to protect in the offshore areas generally. On this matter, the Full Court held that French J was correct in excluding the claimed 'right to protect'. The applicant had not established an evidentiary basis for such a right
- The claimed right to protect Alarm Shoals and Lalariny. In both instances the Full Court found in favour of the applicant
- The status of native title over a number of islets within the claim area, the Full Court found for the applicant in that the same exclusive rights should be recognised in respect of the islets as were recognised in respect of mainland areas.

The Bardi and Jawi people claimed the right to 'possession, occupation, use and enjoyment' in relation to the land above mean high-water mark. French J had refused to include the phrase 'use and enjoyment' because he thought it was 'too widely stated and could pick up a variety of rights not contemplated by traditional law and custom'. On appeal, the Bardi and Jawi people contended the determination should have included reference to use and enjoyment because the formula 'possession, occupation, use and enjoyment' had been used in most native title cases in those circumstances. They pointed to 11 cases in which such a right had been recognised. The Full Court agreed that the cases established that it was a usual practice to use the composite expression 'possession, occupation, use and enjoyment' to express the nature of the native title rights flowing from a finding that Aboriginal people are entitled to exclusivity in relation to land and so found that 'use and enjoyment' should be included.

Finally, a cross-appeal was lodged by the Western Australian Fishing Industry Council (WAFIC), supported by the Commonwealth. It argued that the right to fish recognised in the determination should be limited to non-commercial purposes because no claim was made for commercial fishing rights. As there was 'no settled practice', the Full Court could not conclude that the primary judge was wrong. WAFIC's argument that including reference to the non-commercial nature of the rights and interests would give greater clarity to the determination was rejected.

In conclusion, the Full Court decided to allow the Bardi and Jawi people's appeal on the issues of the one society or two, exclusivity and 'use and enjoyment', the islands south-west of Hadley Passage, tidal movements and the existence of native title, islets and the seaward extent of native title. The appeal was allowed in part on the issue of the right to protect Alarm Shoals and Lalariny but otherwise dismissed. The cross appeals by the state and WAFIC were dismissed.

Appeal against non-claimant determination dismissed
Worimi v Worimi Local Aboriginal Land Council (2010) 181 FCR 320; [2010] FCAFC 3, Moore, Mansfield and Perram JJ, 2 February 2010.

This case dealt with the issue of the onus of proof and in particular whether the Full Court should overturn a determination by the primary judge that native title did not exist over an area of land held in fee simple by the Worimi Local Aboriginal Land Council (the land council) under s. 36(9) of the *Aboriginal Land Rights Act 1983* (NSW) (the ALRA).

The Court at first instance made a determination that native title did not exist over the area: *Worimi Local Aboriginal Land Council v Minister for Land for New South Wales (No 2)* (2008) 181 FCR 300; [2008] FCA 1929, Bennett J.

Worimi appealed from that judgment on the grounds that the primary judge erred in concluding that:

- there was evidence upon which an inference was capable of being drawn that there was no native title in relation to the land, and
- the land council bore no onus to demonstrate the nature and content of the pre-sovereignty native title rights and interests in relation to the land, and
- where the formal requirements for a non-claimant application for a determination of the absence of native title had been met, then in the absence of any evidence as to the existence of native title in relation to the land, the land council would be entitled to the determination it sought.

Justices Moore, Mansfield and Perram held that, in reaching her conclusion, the primary judge did not divert from her (correct) view that the onus of proof of the negative proposition – that no native title rights and interests existed in relation to the land – remained throughout on the land council.

The Court held that the approach contended for by Worimi would involve a 'roving inquiry' into whether any person, and if so who, held any, and if so what, native title rights and interests in the land and waters at settlement, and chronologically to the time of the application. The Court considered that such an approach was expressly rejected by the Full Court in *Jango v Northern Territory* (2007) 159 FCR 531.

It further held that no circumstances were identified by counsel for Worimi to show that the approach of the primary judge in this matter was incorrect. It also held that the ground of appeal that there was an entitlement to a determination if formal requirements were met, was misconceived. This endorsed the primary judge's finding that it did not necessarily follow automatically that, without more, the Court will make a declaration that native title does not exist where all formal requirements are met.

Finally the Full Court thought it desirable to note (among other things) that it is 'self-evident' that:

- an Aboriginal community or group may have an ongoing connection with land, 'even though their access to, or use of, that land is restricted or spasmodic'

- such a connection may be mainly spiritual rather than physical and may have evolved over time to a less specific use of all or many parts of that land
- it may not involve physical access to each and every part of the land.

The appeal was dismissed with costs against Worimi.

Summary dismissal — issue estoppel
Quall v Northern Territory [2009] FCAFC 157, Moore, Lindgren and Stone JJ, 11 November 2009.

Tibby Quall, on behalf Dangalaba and Kulumbiringin People, appealed against the summary dismissal of their claimant application pursuant to O 20 r 4 of the Federal Court Rules. The appeal was dismissed because it was held that the judge at first instance was correct to dismiss the proceedings because an issue estoppel arose that was fatal to the application.

It was found that the primary judge's decision in relation to Area A in *Risk v Northern Territory* [2006] FCA 404 gave rise to an issue estoppel that prevented Mr Quall from pursuing the claim in relation to the second of the two areas, Area B. This is because of certain findings made in Risk, a proceeding to which both the Quall claimants and the territory were parties, which were:

- the land in Part B, as in Part A, is Larrakia land
- the Larrakia peoples are the relevant Aboriginal society for Larrakia lands, and
- the laws and customs acknowledged and observed by the Larrakia peoples at sovereignty have been subject to substantial interruption between that time and the present day.

First instance —selected decisions

Dismissal of application for review of registration test decision — insufficient factual basis
Gudjala People #2 v Native Title Registrar (2009) 182 FCR 63; [2009] FCA 1572
Dowsett J, 23 December 2009

On remittal from the Full Court, Dowsett J considered whether or not the claim made in the Gudjala People #2 claimant application satisfied the conditions of the registration test found in ss. 190B(5), 190B(6) and 190B(7) of the Act. It was found that the claim did not meet these conditions, essentially because the factual basis provided was insufficient. Therefore, the application for review of the registration test decision was dismissed.

The Gudjala People #2 claim was made in 2006 over an area in central Queensland. In November 2006, a delegate of the Native Title Registrar decided the claim must not be

accepted for registration because it did not meet all of the conditions of the registration test as required by s. 190A(6). Subsequently, the applicant filed a claim registration application pursuant to ss. 69(1) and 190D(2) (as it was then – now, see s. 190F) seeking review of the delegate's decision. In August 2007, Dowsett J found that the claim 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 (Gudjala).

In November 2007, an application for leave to appeal out of time was filed on behalf of the Gudjala People. Leave was granted in May 2008 when the matter was heard. The Full Court set aside Dowsett J's order dismissing the application for review and remitted it to his Honour for reconsideration: see *Gudjala People #2 v Native Title Registrar* (2008) 171 FCR 317; [2008] FCAFC 157 *(Gudjala FC)*.

One of the provisions relevant to this case was s. 62, the proper construction of which led Dowsett J to consider the purpose of a claimant application 'as contemplated' by the Act. Determining the proper construction of the provisions which 'regulate the registration of claims made by application' (i.e. ss. 190A, 190B and 190C) involved 'consideration of the purpose of registration'. In doing so, his Honour noted that:

- the Act 'prescribes a judicial procedure for determining whether an identified claim group holds native title rights and interests' and confers jurisdiction on the Court to 'make determinations as to the existence of native title'
- section 60A 'regulates the making of applications ... for such determinations and other applications'
- Pt 3, Div 1 of the Act 'sets out the process by which the jurisdiction of the Court is to be engaged for the purpose of deciding whether or not there should be a determination as to the existence of native title'
- pursuant to s. 62, which is found in Div 1, a claimant application must contain specified details.

One purpose the application serves is to assist people, who become aware of it via notification under ss. 66 or 66A, to decide whether or not to be joined as respondents.

After noting that it was of particular importance in this case that ss. 62 and 190B(5) both refer to 'traditional laws' and 'traditional customs', his Honour set out s. 223(1), which provides that native title rights and interests claimed under the Act must be possessed under 'traditional' laws and customs. The findings in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 at [45] to [47], [50] and [186] as to the meaning of that term in the context of s. 223(1) were also set out.

The application for review was dismissed. Among other things, his Honour could not accept that there was 'a factual basis for the assertion that those laws and customs are traditional'. Therefore, s. 190B(5)(b) was not satisfied. Given that finding, it followed

that s. 190B(5)(c) was not satisfied because it requires that the factual basis be sufficient to support the assertion that the native title claim group have 'continued to hold native title in accordance with traditional laws and customs'. It also followed that s. 190B(6) was not met. This requires the Registrar to 'consider that, prima facie, at least some of the native title rights and interests can be established'.

This judgment does not significantly affect the Registrar's current practice with respect to the application of the registration test. However, it does draw attention to the fundamental problem Dowsett J faced, which was the distinction between using *assertions* to support assertions as opposed to providing a *factual basis* to support the requisite assertions for the purposes of s. 190B(5). His Honour concluded that the applicants had merely re-stated their claim without having provided a sufficient factual basis to support the assertions made under s. 190B(5).

Interests held in DOGIT area
Combined Gunggandji People v Queensland (2009) 179 FCR 187, [2009] FCA 979, Dowsett J, 31 August 2009.

The main issue in this case was whether a person who built improvements on part of an area later subject to a deed of grant in trust (DOGIT) was entitled to a lease under the repealed *Land Act 1962* (Qld) (the 1962 Act). The person concerned was found to be so entitled.

In October 1986, an area subject to a reserve for the benefit of Aboriginal and Torres Strait Islander people was vested in the Yarrabah Aboriginal Shire Council (the council) under a DOGIT. The area subject to the DOGIT was covered by the Combined Gunggandji People's native title claimant application. A block of land known as the Bukki block was included in the DOGIT area. The block holder was Harry Ludwick, an Aboriginal person who did not claim to be either a member of the Combined Gunggandji People's claim group or a traditional owner of any part of the claim area.

Mr Ludwick claimed he was entitled to either a lease of the Bukki block or a licence to occupy it pursuant to ss. 361A or 452A of the 1962 Act respectively. On the evidence, it was found (among other things) that, prior to 27 October 1986 (the date of the DOGIT), Mr Ludwick:

- built two small huts on a concrete slab on the Bukki block (in or around 1974)
- made other improvements to the block, including establishing gardens and building fences and a pit lavatory.

Dowsett J was satisfied that Mr Ludwick's occupation of the block was 'tolerated by the relevant authorities', i.e. the council and the responsible state government department. It was also found on the evidence that Mr Ludwick had lived on the

Bukki block from the early 1980s until sometime late in 1986 or 1987, when he left, intending to return. He returned to live permanently in 1990.

The Court noted that s. 361A of the 1962 Act empowered someone other than the Crown to own improvements situated on Crown land. Both the state and the council were satisfied that two sheds stood on the area concerned as at the date of the DOGIT and that Mr Ludwick owned those improvements. Pursuant to s. 361A(1), ownership of such improvements at the time of issue of a DOGIT was preserved, with s. 361A(2) addressing the question of the grant of a lease of the area on which the improvements were located. The owner of those improvements was entitled to a grant of such a lease and the trustee (the council in this case) was empowered to apply to the relevant minister for the grant of that lease.

Pursuant to s. 520(b) of the *Land Act 1994* (the 1994 Act), the repeal of s. 361A was expressly limited so that it 'continues to apply to deeds of grant in trust granted before' the 1994 Act commenced, including the one considered in this case. However, there was a dispute as to which of the other provisions were relevant, i.e. those found in the 1962 Act or those found in the 1994 Act.

It was found that the effect of s. 361A of the 1962 Act was to confer a right upon the owner of improvements that was subject only to the satisfactory investigation of the question of ownership. Before the repeal of the 1962 Act, the right held by an owner pursuant to s. 361A was a right to a lease in accordance with that Act.

Dowsett J concluded that the owner of the improvements (Mr Ludwick) was not required to 'take any step for the purposes of s. 361A'. Rather, the legislature apparently assumed the council or the minister would make the necessary inquiries to regularise the 'position as to ownership and occupancy' of improvements as at the date of the DOGIT.

Dowsett J rejected the state's submission that s. 361A required that the improvements exist both at the date of the DOGIT and the date of the grant of the lease; s. 361A was to be construed as creating an entitlement to a lease as at the date of the deed of grant. Subsequent removal of the improvements was, in his Honour's opinion, irrelevant.

In relation to improvements used as a residence, s. 361A(2) provides that the leased area is to be a 'reasonable area of land, being the immediate environs of the improvement'. Dowsett J gave a non-exhaustive list of some 'relevant considerations' which included the size of other blocks in the area and the area needed for use for residential purposes, including conditions peculiar to the local community.

It was also noted that, among other things, s. 452A(1) of the 1994 Act provided that a person who occupied 'any building or structure as the person's residence, as an

authorised resident on the land' at the time the DOGIT was granted under the 1962 Act was 'entitled to continue' in occupation 'upon the same terms and conditions' until:

- the trustee of the land determined otherwise and terminated the person's right to occupy the building or structure or,
- the trustee of the land and that person agree to new terms and conditions for the person's occupation of the building or structure.

It was therefore clear that Mr Ludwick was residing lawfully on the Bukki block prior to the grant of the DOGIT with at least tacit acceptance by the relevant authorities, including the council, and his Honour was prepared to infer Mr Ludwick was occupying the Bukki block as his residence in October 1986.

Dismissal of respondent parties
Butterworth on behalf of the Wiri Core Country Claim v Queensland [2010] FCA 325
Logan J, 26 March 2010.

The issue before the Court was whether to remove as respondents to a claimant application people who were acknowledged as included in the native title claim group for the Wiri Core Country Claim and who were also parties as of right to that application. The Court's consideration of the relationship between 'the applicant' and the claim group is of particular interest.

An amended claimant application was filed on behalf of the Wiri Core Country Claim in April 2009. Notice of the amended application was given as required by the Act. On 8 February 2010, within the three-month notification period specified in the Act, the Court received a letter from Norman Johnson enclosing Form 5 applications for Mr Johnson and others who sought to be joined as respondents. Mr Johnson was asked by the Deputy Registrar of the Court to show cause why he and those other persons should become respondents.

It was expressly acknowledged in open Court by the applicant for the Wiri Core Country Claim that Mr Johnson had standing as a Wiri man. It was also acknowledged that 'the applicant' for a claimant application which is brought on behalf of a native title claim group, has 'responsibilities ... from time to time to consult with' that group.

According to Logan J:

> to consult with a native title claim group means to extend an opportunity to that group to be heard on appropriate occasions. It does not mean that a single member or group of members in a native title claim group can presume to dictate the decisions which a native title claim group might have from time to time to make as a way of giving guidance to an applicant in respect of the carriage of a native title application.

While there were circumstances that may arise where it would be appropriate to join 'what have been termed in earlier cases dissentients', it seemed to the Court that, 'in the ordinary course of events' the scheme of the Act was that the claim group authorise particular persons to act on that group's behalf in the management of an application.

Ultimately Logan J held that:

- while Mr Johnson and the other people concerned were joined as of right, s. 84(8) indicated it did not follow that they must necessarily remain respondents, and
- to take a contrary view would, in effect, be 'subversive to the very reason for the existence of an applicant'.

Mr Johnson and the other persons concerned were then dismissed as parties with no order as to costs, because Logan J was of the view that 'it was very important that Mr Johnson and the other persons be heard ... and that the applicant ... acknowledge its role in terms of representing all members of a native title claim group'.

They were given liberty to apply in respect of joinder.

Amendment to reduce claim area — authorisation, effect on s. 190F(6)
Champion v Western Australia [2009] FCA 1141, McKerracher J, 7 October 2009.

The issues in this case included whether the applicant was authorised to exercise the right [available under s. 64(1A) of the Act] to substantially reduce the area covered by a claimant application and, in any case, whether the application should be dismissed pursuant to s. 190F(6). It also considered the issue of consultation between the native title claim group (in particular the elders) and those persons comprising the applicant.

Under s. 64(1A), a claimant application can be amended at any time to reduce the area of land or waters it covers. By notice of motion, the applicant sought leave to exercise this right in relation to the Kalamaia Kabu(d)n People's application (which relates to an area of the central Goldfields region in Western Australia) by filing a Form 19. The only proposed amendment would result in a reduction of the area covered by the application by around 90 per cent. McKerracher J sought written submissions to clarify that the applicant was authorised by the native title claim group to make the amendment.

The Court noted (among other things) that the extent of an applicant's authority pursuant to s. 62A was considered in *Drury v Western Australia* (2000) 97 FCR 169; [2000] FCA 132.

The evidence in this case was that the applicant was authorised [pursuant to s. 251B(a)] at a meeting of the adult members of the claim group in November 2000.

There was no evidence to suggest any departure from the mode of decision-making described in the application, which was that 'senior members meet to discuss issues affecting the group and communicate decisions reached to each of their respective families or sub-families'.

The applicant for an overlapping claimant application (Ngadju) sought to have the amendment deferred because mediation was under way. His Honour declined to do so, noting that: 'The amendment is a ... considerable geographic reduction. ... Viewed from the perspective of other interests, the making of the proposed amendment would reduce the number of overlapping applications in the Central West area'.

Because the claim was not on the Register of Native Title Claims and the amended application would have to go through the registration test following referral by the Court to the Native Title Registrar under s. 64(4), the Court was of the view that the amendment would not prejudice any other party.

As the claim was currently unregistered, the most recent application of the registration test (in August 2007) was triggered when item 90 of the transitional provisions to the *Native Title Amendment Act 2007* (Cwlth) commenced. It resulted in the Registrar's delegate determining the application did not meet the requirements of the test. In particular, it did not meet all of the conditions found in s. 190B. No application for review of the delegate's decision by the Court had been made [see s. 190F(5)].

At the time the Court was considering the application, it had not been amended and so s. 190F(6) applied. McKerracher J took the view that there was no evidence before the Court as to whether the proposed amendment was likely to lead to a different outcome. As his Honour gave leave for application to be amended pursuant to s. 64(1A) by the filing of a Form 19, the question of dismissal under s. 190F(6) fell away.

Extinguishment — mineral lease
Brown (on behalf of the Ngarla People) v Western Australia (No 2) [2010] FCA 498, Bennett J, 21 May 2010.

The questions before the Court were, essentially, whether mineral leases granted pursuant to an agreement ratified by statute conferred a right of exclusive possession and, if not, the extent (if any) to which those leases extinguished non-exclusive native title rights and interests. It was found that the leases did not confer a right of exclusive possession. However, native title was found to be wholly extinguished over the mined areas and areas where infrastructure and a town had been constructed.

Referral of question of law — Full Court to hear
James v Western Australia [2009] FCA 1262, McKerracher J, 5 November 2009.

The Tribunal referred a question of law to the Court, i.e. were the grants of certain mining leases 'past acts'. Answering that question would involve determining whether the decision in *Western Australia v Ward* (2002) 213 CLR 1, as to the effect of the mining leases on native title, can be distinguished. The question was referred to the Full Court: see *James and Ors v Western Australia* [2010] FCAFC 77, summarised earlier in this report.

Evidence —'without prejudice' material
Pinot Nominees Pty Ltd v Commissioner of Taxation (2009) 181 FCR 392; [2009] FCA 1508 Siopis J, 15 December 2009.

The interaction of 'without prejudice' provisions in the *Federal Court of Australia Act 1976* (Cwlth) (FCA) and the *Evidence Act 1995* (Cwlth) (Evidence Act) was considered in this case, with the question being whether the bar found in s. 53B of FCA on giving evidence of things said at a mediation conference convened pursuant to the FCA was lifted by the Evidence Act, which allows for the admission of evidence of 'without prejudice' communications in a hearing as to costs. This case provides useful context for considering the interaction of those same provisions of the Evidence Act with s. 94D(4) of the Act.

Pinot Nominees Pty Ltd (the company) appealed to the Court against the Commissioner of Taxation's decision to disallow its objection to certain tax assessments. The Court referred the parties to mediation pursuant to s. 53A(1)(b) of the FCA and a mediation conference was held, but no settlement was reached. When the trial commenced, the company advised the Court no case would be argued and it sought to lead evidence only as to costs. It contended the Commissioner acted unreasonably in rejecting three offers of compromise, two made during the course of the mediation conference and a third in a 'without prejudice' letter, and sought orders to pay the Commissioner's costs only up to a certain date (i.e. before the offers to compromise). It relied on an affidavit setting out details of the offers of settlement, including a description of what happened at the mediation conference. The Commissioner objected, contending this evidence was inadmissible because s. 53B of the FCA 'precluded the admission into evidence of anything said during the course of a mediation conference' ordered by the Court.

Section 53B of the FCA provides that evidence of anything said, or of any admission made, at a conference conducted by a mediator in the course of mediating anything referred under s. 53A is not admissible in any Court (whether exercising federal jurisdiction or not) or in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

Subsection 131(1) of the Evidence Act provides that evidence is not to be adduced of:

- a communication that is made between persons in dispute, or between one or more persons in dispute and a third party, in connection with an attempt to negotiate a settlement of the dispute, or

- a document (whether delivered or not) that has been prepared in connection with an attempt to negotiate a settlement of a dispute.

However, s. 131(2)(h) provides that s. 131(1) does not apply if 'the communication or document is relevant to determining liability for costs'.

Since this case concerned a mediation conference convened pursuant to an order made under s. 53A(1), it followed that s. 53B of the FCA applied and that 'anything said during the course of that conference is inadmissible in this proceeding'. Therefore, the only evidence as to the offer to compromise that was admissible was the 'without prejudice' letter. His Honour reconciled s. 53B of the FCA with s. 131(2)(h) of the Evidence Act on the basis that s. 131(2)(h) applied to 'without prejudice' communications *other than* communications made during the course of a mediation conference to which s. 53B applied.

Subsection 94D(4) of the Act provides that: 'In a proceeding before the Court, unless the parties otherwise agree, evidence may not be given, and statements may not be made, concerning any word spoken or act done at a conference'. It is not in the same terms as s. 53B of the FCA.

However, despite these differences, it seems s. 131(2) of the Evidence Act would not apply to statements about, or evidence of, things said and done at a mediation conference convened under s. 94D(1) of the Act as a result of a referral under s. 86B, assuming s. 94D(4) was otherwise attracted. Support for this proposition comes from Dowsett J's comments in *Walden on behalf of the Waanyi People v Queensland* [2009] FCA 1179 (see below).

Further, by way of comment, the wording of s. 94D(4) of the Act is relatively narrow, i.e. it relates to 'any word spoken or act done at a conference'. So, for example, the act of tabling a document, and any word spoken about its contents during the conference, are covered but the document itself may not be.

Mediation conference — 'without prejudice' privilege
Waanyi People v Queensland [2009] FCA 1179, Dowsett J, 24 August 2009.

The Court was considering whether the descendents of a person called Minnie are, in fact, members of the native title claim group described in the Waanyi People's claimant application. The question raised here was whether the *Evidence Act 1995* (Cwlth) applied so as to allow evidence otherwise subject to a 'without prejudice' privilege to be led. The evidence was not admitted. The Court commented that s. 131 of the Evidence Act should not be read into s. 136A (now s. 94D) of the Act so as to qualify the privilege found therein.

Summary dismissal — issue estoppel
Dale v Western Australia (2009) 261 ALR 21, [2009] FCA 1201, McKerracher J, 23 October 2009

This case concerned an application for the summary dismissal pursuant to Order 20 rule 4 of the Federal Court Rules (FCR) of a claimant application made on behalf of the Wong-Goo-TT-OO people. The State of Western Australia argued that a conclusion reached in earlier related proceedings that the native title claim group in that application was not, and had never been, a 'society' for the purposes of s. 223(1) of the Act raised an issue estoppel. The motion for summary dismissal was allowed and the Wong-Goo-TT-OO application was dismissed.

With regard to policy considerations, his Honour thought it 'doubtful' there was 'room for any discretionary factor' to operate in relation to issue estoppel. However, if there was, then the doctrine underlying issue estoppel was relevant in this case. Wong-Goo-TT-OO's assertion that they formed the requisite society had been 'exhaustively and extensively ventilated' in previous hearings. Accordingly, the State's motion for summary dismissal was allowed and the Wong-Goo-TT-OO application was dismissed with no order as to costs.

Summary dismissal— issue estoppel
Holborow v Western Australia [2009] FCA 1200, McKerracher J, 23 October 2009

The State of Western Australia sought to have the Yaburara/Mardudhunera claimant application dismissed to the extent it related to two town sites pursuant to Order 20 Rule 4 of the Federal Court Rules (FCR) on the basis that no reasonable cause of action was disclosed. It was argued that findings in an earlier related decision gave rise to an issue estoppel. The motion for summary dismissal was allowed on that basis. Given the Court's conclusions on the issue estoppel argument, it was not necessary to rule on the alternative arguments the state raised.

His Honour stated that 'an issue estoppel is created in relation to any issue of fact or law that is legally indispensable to a prior decision involving the same parties'. It was noted that it only applies if the following requirements are met:

- the same question has been judicially decided in earlier proceedings
- the judicial decision said to create the estoppel was final and
- the parties to the judicial decision (or their privies) were the same persons as the parties to the proceedings in which the estoppel is raised.

McKerracher J was satisfied the findings in *Daniel v Western Australia* [2003] FCA 666 (supported by *Moses v Western Australia* [2007] FCAFC 78; (2007) 160 FCR 148) were necessarily negative to the native title claim made by the Yaburara/Mardudhunera.

To the extent that those findings were based on the failure to be satisfied by their evidence, the Yaburara/Mardudhunera were estopped by the findings that:

- they do not hold native title in the area, and
- any use and enjoyment of resources and protection of important places they engaged in did not have the required continuity back to sovereignty and was thus not traditional.

While exceptional caution was required before the power to dismiss on a summary basis was exercised, in this case McKerracher J had 'no doubt that the Yaburara/Mardudhunera are estopped in the manner asserted' by the state and so allowed the motion for dismissal. Pursuant to s. 85A of the Act, there was no order as to costs.

Tribunal decisions

Western Desert Lands Aboriginal Corporation (Jamukurnu–Yapalikunu)/Western Australia/Holocene Pty Ltd (2009) 232 FLR 169.

In the *Annual Report 2008-09* it was reported that this matter came before the Tribunal and it was determined that the future act in this matter (i.e. the grant of a mining lease) must not be done. This was the first such determination made by the Tribunal.

Rather than have the matter reviewed under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) the respondents chose to seek to have the decision overruled by the Attorney-General. However, he refused to do so. Thus the Tribunal's decision stands and the native title party's management, use and control of the area have been given greater weight than potential economic benefit or public interest.

Future act — negotiation in good faith

Australian Manganese Pty Ltd/Western Australia/Stock [2010] NNTTA 53 DP Sumner, 16 April 2010

The issue was whether Australian Manganese Pty Ltd (the grantee party) had negotiated in good faith as required by the Act before making a future act determination application (FADA) under s. 35 of the Act to the Tribunal.

The grantee party had lodged a FADA on the basis that negotiation parties had been unable to reach agreement. The native title party (the registered native title claimant for the Nyiyaparli People's claimant application) contended the grantee party had not negotiated 'in good faith with a view to obtaining the agreement' of the native title party to the grant of a mining lease (the lease) as required under ss. 31(1)(b) and 36(2) of the Act.

The lease area is in the eastern Pilbara in Western Australia. It is situated wholly within the area covered by the Nyiyaparli People's registered native title claim. The lease area is part of the grantee party's Davidson Creek Iron Ore Project. Some of the members

of the Nyiyaparli People's native title claim group are also members of the Jigalong Community based at Reserve 41265 for the use and benefit of Aborigines (the Jigalong reserve). Earlier negotiations between the parties leading to an agreement about the related Robertson Range Iron Ore Project provided the background to the dispute between the parties in this case.

The grantee asserted the agreement reached in the earlier negotiations applied to all future acts in the native title party's claim area. The native title party contended:

- the agreement was confined to tenements on the Jigalong Reserve
- the grantee adopted a rigid non-negotiable position for a whole of project or tripartite agreement and would not negotiate specifically about the lease
- because the lease area was outside the Jigalong reserve, negotiations should not have involved the Jigalong community.

The Tribunal held:

- earlier negotiations demonstrated that the grantee party made genuine efforts to negotiate with the native title party to obtain agreement on other tenements in the grantee's projects
- the evidence supported the grantee party having negotiated for a land access agreement (LAA) that included the lease
- the fact that the grantee party was prepared to consider a separate agreement on the lease was indicative of negotiating in good faith
- the LAA terms, and correspondence related to it, were evidence the grantee party proposed a substantial agreement in the negotiations, the lease was a subject of those negotiations and the grantee party was prepared to reach agreement about the lease once a counter proposal was received from the native title party
- there was no impediment to making a finding that negotiation in good faith had occurred in relation to a particular tenement where negotiations about it were conducted in the context of a broader project
- there was no breach, or absence, of good faith 'such as deliberate delay, sharp practice, misleading negotiating or other unsatisfactory or unconscionable conduct' by the grantee party
- therefore, the requirements of s. 31(1) had been met and the Tribunal had the power to conduct an inquiry and make a future act determination.

The Tribunal noted that the records of the meeting in which the earlier agreement was made were ambiguous and that, if the Tribunal had not found there was subsequent evidence to satisfy good faith negotiation obligations, oral evidence would have been required to clarify the intentions of the parties.

While there was some dispute over the scope of the earlier agreement, the Tribunal held the grantee party negotiated in good faith in the subsequent negotiations and during Tribunal mediation over the proposed grant.

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 2010 and 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.

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) (Native Title Act), as amended, under which the Tribunal was established.

Native Title Registrar

Under the Native Title 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 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 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 more information see Client Service Charter, p. 107.

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, that is including those that have failed the registration test, and new or amended

claimant applications that have not yet been through the registration test; non-claimant applications; and compensation applications filed with the Federal Court, and referred to the Native Title Registrar.

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

- Register of Native Title Claims—a register containing information about each native title determination application that has satisfied the conditions for registration in s. 190A of the Native Title Act
- National Native Title Register—a register containing information about each native title determination that has been determined by the Federal Court, High Court or other recognised body (s. 192 of the Native Title Act)
- Register of Indigenous Land Use Agreements—a register of ILUAs that have been accepted for registration (s. 199A of the Native Title 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 and South Australia
- *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 Title Tribunal's Registers*
- *Native title claimant applications: a guide to understanding the requirements of the registration test*
- *Annual Report 2008-2009*
- 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) are also available from the Tribunal.

Inquiries regarding freedom of information may be made at the Principal Registry and the various regional registries or offices. Assistance will be given to applicants to identify the documents they seek. Inquiries concerning access to documents or other matters relating to freedom of information should be directed to the Freedom of Information Contact Officer, Legal Services, Principal Registry.

An application for access pursuant to the Freedom of Information Act must be in writing and should contain sufficient information to identify the relevant documents, together with the prescribed fee ($30) to commence the process. Additional charges are payable (usually set as an hourly rate) for time spent in locating the documents requested and granting access. Charges and fees may be waived in particular circumstances.

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. Inquiries 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 one research organisation during the reporting period. The Tribunal paid $41,916 to GA Research to undertake Client Satisfaction Research (see p. 107).

The Tribunal paid $3,301.61 to external distribution agencies (Quickmail and Australia Post), for labour costs associated with sorting, packaging and mailing of information.

No advertising campaigns were undertaken by the Tribunal during the reporting period. The costs for advertising via a media advertising organisation are in Table 34 below.

Table 34: Expenditure on advertising (via a media advertising organisation)

Type	Expenditure
Notification of applications as required under the Act	$294,139
Staff recruitment	$39,436
Other advertising (for example, tenders and consultants)	$457
Total expenditure on advertising	**$334,032**

The total amount for distribution and advertising was $337,333.61.

Appendix V Consultants

Table 35: Consultancy services of $10,000 or more under s. 132 of the Act

Consultant	Description	Contract price	Other	Selection process*	Justification
Australian Government Solicitor	Legal services	$ 54,410	On-going	Panel	B
Blake Dawson & Waldron	Legal services	$ 70,032	New	Panel	B
Mallesons Stephen Jaques	Legal services	$ 20,075	New	Select tender	B
Fellow Medlock & Associates	Review of organisational structure	$ 77,330	New	Select tender	C
GA Research	Client satisfaction research	$ 41,916	New	Select tender	C
TOTAL		**$ 263,763**			

* 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 businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.

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

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

Panel: An arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements. Tenders are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the consultant offers to supply goods and services for a predetermined length of time, usually at a prearranged 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 2009-10, four new consultancy contracts were entered into, involving total actual expenditure of $209,353. In addition, one ongoing consultancy contract was active during the 2009-10 year, involving total actual expenditure of $54,410.

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 2010, which comprise: a Statement by the Chief Executive and Chief Finance Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Administered Items and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of the Chief Executive for the Financial Statements
The the National Native Title Tribunal Chief Executive is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, 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 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 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 National Native Title Tribunal's 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.

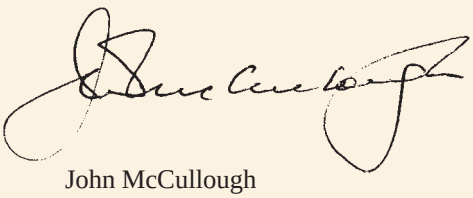
Auditor's Opinion

In my opinion, the financial statements ofthe 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 the National Native Title Tribunal's financial position as at 30 June 2010 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



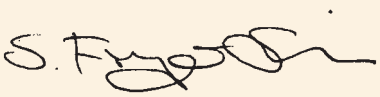
John McCullough
Audit Principal
Delegate of the Auditor-General

Canberra
2 September 2010

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 2010 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

27 August 2010

Statement of comprehensive income for the period ended 30 June 2010

	Notes	2010 $'000	2009 $'000
EXPENSES			
Employee benefits	3A	**20,300**	19,607
Supplier expenses	3B	**9,455**	10,957
Depreciation and amortisation	3C	**719**	514
Losses from asset sales	3D	**2**	-
Total expenses		**30,476**	31,078
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	4A	**61**	65
Interest	4B	**-**	10
Total own-source revenue		**61**	75
Gains			
Sale of assets	4C	**27**	2
Total gains		**27**	2
Total own-source income		**88**	77
Net cost of (contribution by) services		**(30,388)**	(31,001)
Revenue from Government	4D	**29,682**	32,156
Surplus (Deficit) attributable to the Australian Government		**(706)**	1,155

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

Balance sheet as at 30 June 2010

	Notes	2010 $'000	2009 $'000
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	**622**	805
Trade and other receivables	5B	**16,250**	16,541
Total financial assets		**16,872**	17,346
Non-Financial Assets			
Land and buildings	6A	**1,525**	932
Property, plant and equipment	6B	**892**	1,054
Intangibles	6C	**12**	16
Other	6D	**229**	353
Total non-financial assets		**2,658**	2,355
Total Assets		**19,530**	19,701
LIABILITIES			
Payables			
Suppliers	7A	**224**	468
Other	7B	**482**	341
Total payables		**706**	809
Provisions			
Employee provisions	8A	**4,282**	4,042
Other	8B	**855**	457
Total provisions		**5,138**	4,499
Total Liabilities		**5,844**	5,308
Net Assets		**13,687**	14,393
EQUITY			
Parent Entity Interest			
Contributed equity		**2,415**	2,415
Retained surplus (accumulated deficit)		**11,272**	11,978
Total Equity		**13,687**	14,393

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

Statement of changes in equity for the period ended 30 June 2010

	Retained Earnings		Contributed Equity/Capital		Total Equity	
	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000
Opening balance						
Balance carried forward from previous period	**11,978**	10,823	**2,415**	2,415	**14,393**	13,238
Surplus (Deficit) for the period	**(706)**	1,155	**-**	-	**(706)**	1,155
Total comprehensive income	**(706)**	1,155	**-**	-	**(706)**	1,155
of which:						
Attributable to the Australian Government	**(706)**	1,155	**-**	-	**(706)**	1,155
Closing balance attributable to the Australian Government	**11,272**	11,978	**2,415**	2,415	**13,687**	14,393

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

Cash flow statement for the period ended 30 June 2010

	Notes	2010 $'000	2009 $'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		**34**	40
Appropriations		**30,047**	31,500
Interest		**-**	10
Net GST received		**839**	1,046
Other		**47**	215
Total cash received		**30,967**	32,811
Cash used			
Employees		**19,780**	19,677
Suppliers		**10,639**	11,381
Total cash used		**30,419**	31,058
Net cash from (used by) operating activities	9	**548**	1,753
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		**27**	2
Total cash received		**27**	2
Cash used			
Purchase of property, plant and equipment		**(757)**	(1,545)
Total cash used		**(757)**	(1,545)
Net cash from (used by) investing activities		**(730)**	(1,543)
Net increase (decrease) in cash held		**(182)**	210
Cash and cash equivalents at the beginning of the reporting period		**805**	595
Cash and cash equivalents at the end of the reporting period	5A	**622**	805

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

Schedule of commitments as at 30 June 2010

	2010 $'000	2009 $'000
BY TYPE		
Commitments receivable		
GST recoverable on commitments	**(850)**	(868)
Total commitments receivable	**(850)**	(868)
Commitments payable		
Capital commitments		
Property, plant and equipment	**303**	512
Total capital commitments	**303**	512
Other commitments		
Operating leases	**9,017**	8,976
Other	**31**	61
Total other commitments	**9,048**	9,037
Net commitments by type	**8,501**	8,681
BY MATURITY		
Commitments receivable		
Operating lease income		
One year or less	**(253)**	(271)
From one to five years	**(597)**	(597)
Total operating lease income	**(850)**	(868)
Operating lease commitments		
One year or less	**2,452**	2,405
From one to five years	**6,565**	6,571
Over five years	**-**	-
Total operating lease commitments	**9,017**	8,976
Other Commitments		
One year or less	**334**	573
From one to five years	**-**	-
Over five years	**-**	-
Total other commitments	**334**	573
Net commitments by maturity	**8,501**	8,681

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

Schedule of administered items

	Notes	2010 $'000	2009 $'000
Income administered on behalf of Government for the period ended 30 June 2010			
Revenue			
Non-taxation revenue			
Fees and fines	14A	**40**	20
Total income administered on behalf of Government		**40**	20
Assets administered on behalf of Government as at 30 June 2010			
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 2010			
Payables			
Other	14D	**-**	1
Total payables		**-**	1
Total liabilities administered on behalf of Government		**-**	1

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

Schedule of administered items (continued)

	Notes	2010 $'000	2009 $'000
Administered Cash Flows for the period ended 30 June 2010			
OPERATING ACTIVITIES			
Cash received			
Fees		**40**	20
Total cash received		**40**	20
Cash used			
Other : Return of fees		**(41)**	(19)
Total cash used		**(41)**	(19)
Net cash flows from (used by) operating activities		**(1)**	1
Net Increase (Decrease) in Cash Held		**(1)**	1
Cash and cash equivalents at the beginning of the reporting period		**1**	-
Cash administered on behalf of government Official Public Account for:			
-Appropriations		**40**	20
		41	20
Cash sent to Official Public Account for:			
- Appropriations		**(41)**	(19)
		(41)	(19)
Cash and cash equivalents at the end of the reporting period	14C	**-**	1
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement			
Cash and cash equivalents as per:			
Administered Cash flow statement		**-**	1
Assets administered on behalf of Government		**-**	1
Difference		**-**	-

Notes to and forming part of the financial statements for the year ended 30 June 2010

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 2010

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 2009, 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 2010

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
Other New standards, amendments to standards or interpretations that were issued by the Australian Accounting Standards Board prior to the signing of the statement by the chief executive and chief financial officer and are applicable to the future reporting period. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

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

Notes to and forming part of the financial statements for the year ended 30 June 2010

- 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.

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.

Notes to and forming part of the financial statements for the year ended 30 June 2010

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.

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 2010. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and redundancy
As at the balance date, provision has been made for separation and redundancy payments for positions identified 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 their own superannuation funds, under the choice of funds legislation.

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.

Notes to and forming part of the financial statements for the year ended 30 June 2010

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 made to employees own superannuation funds 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 2010 represents outstanding contributions for the final fortnight of the year as well as superannuation liabilities applicable to the total leave provisions.

1.9 Leases
A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

The Tribunal had no finance leases in existence at 30 June 2010.

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.

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).

Notes to and forming part of the financial statements for the year ended 30 June 2010

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 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.

Notes to and forming part of the financial statements for the year ended 30 June 2010

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

Asset Class	2010	2009
Leasehold improvements	**Lease term**	Lease term
Plant and equipment	**3 to 10 years**	3 to 10 years

Impairment
All assets were assessed for impairment at 30 June 2010. 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 between 3 to 5 years (2008–09: 3 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2010.

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).

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.

Notes to and forming part of the financial statements for the year ended 30 June 2010

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 2010

Note 2: Events After the Reporting Period

There have been no events that significantly affect the balances in the accounts.

Note 3: Expenses

	2010 $'000	2009 $'000
Note 3A: Employee Benefits		
Wages and salaries	**17,252**	16,885
Superannuation:		
Defined contribution plans	**944**	853
Defined benifit plans	**1,556**	1,560
Leave and other entitlements	**382**	46
Separation and redundancies	**166**	263
Total employee benefits	**20,300**	19,607
Note 3B: Suppliers		
Goods and services		
Consultants	**287**	36
Contractors	**61**	286
Stationery	**174**	184
Other	**4,552**	7,242
Total goods and services	**5,074**	7,748
Goods and services are made up of:		
Provision of goods – external parties	**394**	683
Rendering of services – related entities	**231**	127
Rendering of services – external parties	**4,449**	6,938
Total goods and services	**5,074**	7,748
Other supplier expenses		
Operating lease rentals – related entities:		
Minimum lease payments	**1,899**	903
Operating lease rentals – external parties:		
Minimum lease payments	**2,387**	2,200
Workers compensation expenses	**95**	106
Total other supplier expenses	**4,381**	3,209
Total supplier expenses	**9,455**	10,957
Note 3C: Depreciation and Amortisation		
Depreciation:		
Buildings	**237**	47
Other Property, Plant & Equipment	**478**	399
Total depreciation	**715**	446
Amortisation:		
Intangibles:		
Computer Software	**4**	68
Total amortisation	**4**	68
Total depreciation and amortisation	**719**	514
Note 3D: Losses from Asset Sales		
Property, plant and equipment:		
Proceeds from sale	**7**	-
Carrying value of assets sold	**(9)**	-
Total losses from asset sales	**(2)**	-

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 4: Income

	2010	2009
	$'000	$'000
REVENUE		
Note 4A: Sale of Goods and Rendering of Services		
Rendering of services - external parties	**61**	65
Total sale of goods and rendering of services	**61**	65
Note 4B: Interest		
On Rental Deposits	**-**	10
Total interest	**-**	10
GAINS		
Note 4C: Sale of Assets		
Property, plant and equipment:		
Proceeds from sale	**27**	2
Net gain from sale of assets	**27**	2
REVENUE FROM GOVERNMENT		
Note 4D: Revenue from Government		
Appropriations:		
Departmental outputs	**29,682**	32,156
Total revenue from Government	**29,682**	32,156

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 5: Financial Assets

	2010 $'000	2009 $'000
Note 5A: Cash and Cash Equivalents		
Cash on hand or on deposit	**622**	805
Total cash and cash equivalents	**622**	805
Note 5B: Trade and Other Receivables		
Good and Services:		
Goods and services - external parties	**18**	6
Total receivables for goods and services	**18**	6
Appropriations receivable:		
For existing outputs	**16,001**	16,366
Total appropriations receivable	**16,001**	16,366
Other receivables:		
GST receivable from the Australian Taxation Office	**234**	172
Total other receivables	**234**	172
Total trade and other receivables (gross)	**16,253**	16,544
Less Allowance for doubtful debts:		
Goods and services	**(3)**	(3)
Total allowance for doubtful debts	**(3)**	(3)
Total trade and other receivables (net)	**16,250**	16,541
Receivables are expected to be recovered in:		
No more than 12 months	**249**	175
More than 12 months	**16,001**	16,366
Total trade and other receivables (net)	**16,250**	16,541
The allowance for doubtful debts is aged as follows:		
Overdue by:		
0 to 30 days	**(3)**	(3)
Total allowance for doubtful debts	**(3)**	(3)

Reconciliation of Allowance for doubtful debts :

	Goods and services $'000	Other receivables $'000	Total $'000
Movements in relation to 2010			
Opening balance	(3)	-	**(3)**
Amounts written off	-	-	**-**
Amounts recovered and reversed	-	-	**-**
Increase/decrease recognised in net surplus	-	-	**-**
Closing balance	(3)	-	**(3)**
Movements in relation to 2009			
Opening balance	(3)	-	**(3)**
Amounts written off	3	-	**3**
Amounts recovered and reversed	(3)	-	**(3)**
Increase/decrease recognised in net surplus	-	-	**-**
Closing balance	(3)	-	**(3)**

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 6: Non-Financial Assets

	2010 $'000	2009 $'000
Note 6A: Land and Buildings		
Leasehold improvements:		
Work in progress	**-**	50
Fair value	**6,300**	5,420
Accumulated depreciation	**(4,775)**	(4,538)
Total leasehold improvements	**1,525**	932
Total land and buildings	**1,525**	932

No indicators of impairment were found for land and buildings.

Note 6B: Infrastructure, Plant and Equipment		
Other property, plant and equipment:		
Fair value	**2,568**	2,910
Accumulated depreciation	**(1,676)**	(1,856)
Total other property, plant and equipment	**892**	1,054
Total property, plant and equipment	**892**	1,054

No indicators of impairment were found for infrastructure, plant and equipment.

Note 6C: Intangibles		
Computer software:		
Internally developed – in use	**452**	452
Total computer software (gross)	**452**	452
Accumulated amortisation	**(440)**	(436)
Total intangibles	**12**	16

No indicators of impairment were found for intangible assets.

Note 6D: Other Non-Financial Assets		
Prepayments	**229**	353
Total other non-financial assets	**229**	353

No indicators of impairment were found for other non-financial assets.

Total other non-financial assets - are expected to be recovered in:		
No more than 12 months	**229**	353
More than 12 months	**-**	-
Total other non-financial assets	**229**	353

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 2010

Note 6: Non-Financial Assets (continued)

Note 6E: Analysis of property, plant and equipment

Table A: - Reconciliation of the Opening and Closing Balances of Property, Property, Plant and Equipment (2009-10)

	Buildings	Other property, plant and equipment	Total
	$'000	$'000	$'000
As at 1 July 2009			
Gross book value	5,470	2,910	**8,380**
Accumulated depreciation/amortisation and impairment	(4,538)	(1,856)	**(6,394)**
Net book value 1 July 2009	932	1,054	**1,986**
Additions:			
By purchase	431	326	**757**
Makegood Asset	398	-	**398**
Depreciation/amortisation expense	(236)	(478)	**(714)**
Written off during the year		(539)	**(539)**
Amortisation on write off		539	**539**
Disposals:			
Other Disposals		(128)	**(128)**
Amortisation on disposal		119	**119**
Net book value 30 June 2010	1,525	892	**2,417**
Net book value as of 30 June 2010 represented by:			
Gross book value	6,299	2,568	**8,867**
Accumulated depreciation/amortisation and impairment	(4,774)	(1,676)	**(6,450)**
	1,525	892	**2,417**

Table A: - Reconciliation of the Opening and Closing Balances of Property, Property, Plant and Equipment (2008-9)

	Buildings	Other property, plant and equipment	Total
	$'000	$'000	$'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
Working in Progress	50		50
Depreciation/amortisation expense	(48)	(398)	(446)
Write off during the year		(645)	(645)
Amortisation on write off		637	637
Disposals:			
Other		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

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 6: Non-Financial Assets (continued)

Note 6F: Intangibles

Table B: - Reconciliation of the Opening and Closing Balances of Property, Property, Plant and Equipment (2009-10)

	Computer software internally developed $'000	Total $'000
As at 1 July 2009		
Gross book value	452	**452**
Accumulated amortisation and impairment	(436)	**(436)**
Net book value 1 July 2009	16	**16**
Additions:		
By purchase or internally developed	-	**-**
Amortisation	(4)	**(4)**
Net book value 30 June 2010	12	**12**
Net book value as of 30 June 2010 represented by:		
Gross book value	452	**452**
Accumulated amortisation and impairment	(440)	**(440)**
Accumulated impairment losses	-	**-**
	12	**12**

Table B: - Reconciliation of the Opening and Closing Balances of Property, Property, Plant and Equipment (2008-9)

	Computer software internally developed $'000	Total $'000
As at 1 July 2008		
Gross book value	1,342	1,342
Accumulated 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 amortisation and impairment	(436)	(436)
	16	16

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 6: Non-Financial Assets (continued)

Schedule of Asset Additions for the period ended 30 June 2010

The following non-financial non-current assets were added in 2009-10:

	Buildings	Other property, plant & equipment	Total
	$'000	$'000	$'000
Additions funded in the current year			
By purchase - appropriation ordinary annual services	**431**	**326**	**757**
Total additions funded in the current year	**431**	**326**	**757**
Additions recognised in 2009-10 - to be funded in future years			
Make-good	**398**	**-**	**398**
Total additions funded in future years	**398**	**-**	**398**
Total asset additions	**829**	**326**	**1,155**

The following non-financial non-current assets were added in 2008-09:

	Buildings	Other property, plant & equipment	Total
	$'000	$'000	$'000
By purchase - appropriation ordinary annual services	881	619	1,500
Total additions	881	619	1,500

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 7: Payables

	2010 $'000	2009 $'000
Note 7A: Suppliers		
Trade creditors and accruals	**224**	468
Total supplier payables	**224**	468
Supplier payables expected to be settled within 12 months:		
Related entities	**6**	1
External parties	**218**	467
Total supplier payables	**224**	468
Settlement is usually made within 30 days.		
Note 7B: Other Payables		
Salaries and wages	**321**	269
Superannuation	**49**	41
Separations and redundancies	**84**	-
Other	**28**	31
Total other payables	**482**	341
Total other payables are expected to be settled in:		
No more than 12 months	**482**	341
Total other payables	**482**	341

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 8: Provisions

	2010 $'000	2009 $'000
Note 8A: Employee Provisions		
Leave	**3,895**	3,624
Superannuation	**387**	418
Total employee provisions	**4,282**	4,042
Employee provisions are expected to be settled in:		
No more than 12 months	**3778**	3690
More than 12 months	**504**	352
Total employee provisions	**4,282**	4,042

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 $3,027,000, (2009:$2,851,000) and in excess of one year $751,000 (2009: $839,000).

	2010 $'000	2009 $'000
Note 8B: Other Provisions		
Provision for restoration obligations	**855**	457
Total other provisions	**855**	457
Other provisions are expected to be settled in:		
No more than 12 months	**87**	-
More than 12 months	**768**	457
Total other provisions	**855**	457

	Provision for restoration $'000	Total $'000
Carrying amount 1 July 2009	**457**	**457**
Additional provisions made	**398**	**398**
Closing balance 2010	**855**	**855**

The Agency currently has 7 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 2010

Note 9: Cash Flow Reconciliation

	2010 $'000	2009 $'000
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	**622**	805
Balance sheet	**622**	805
Difference	**-**	-
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	**(30,388)**	(31,001)
Add revenue from Government	**29,682**	32,156
Adjustments for non-cash items		
Depreciation / amortisation	**719**	514
Net write down of non-financial assets	**9**	8
Gain on disposal of assets	**(27)**	(2)
Loss on disposal of assets	**2**	-
Changes in assets / liabilities		
Makegood asset	**(398)**	-
(Increase) / decrease in net receivables	**290**	(551)
(Increase) / decrease in inventories	**-**	-
(Increase) / decrease in prepayments	**124**	625
Increase / (decrease) in prepayments received	**-**	-
Increase / (decrease) in employee provisions	**240**	(97)
Increase / (decrease) in supplier payables	**(244)**	101
Increase / (decrease) in other payable	**141**	-
Increase / (decrease) in other provisions	**398**	-
Net cash from (used by) operating activities	**548**	1,753

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 10: Contingent Liabilities and Assets

Quantifiable
The Tribunal has no quantifiable contingencies as at 30 June 2010.

Unquantifiable contingencies
Due to pending appropriation reductions in 2010-11, in June 2010 a call for expressions of interest from employees in becoming "potentially excess" was made. This was with a view to up to 20 employees being identified for voluntary redundancy, which employees would conclude their employment at the Tribunal in August 2010. Due to the uncertain outcome of this initiative, both in terms of the number of redundancies and the quantum of redundancy payments to be made, the Tribunal is unable to quantify this contingency.

The Tribunal is awaiting the outcome of an application for review of an administrative decision made by the Tribunal. This may result in a cost award against the Registrar. It is difficult to quantify this contingent liability.

Remote contingencies
The Tribunal on behalf of the Commonwealth has indemnified state governments of Western Australia, South Australia, Victoria and Queensland and the Northern Territory Government against, subject to certain exceptions, any action brought against those Governments which results from spatial data provided to the Tribunal by those governments.

At 30 June 2010, the Tribunal has indemnified the lessors of the buildings in which the South Australia, Brisbane 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 or use of the premises by the Tribunal. These indemnities are unlimited.

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 11: Senior Executive Renumeration

Note 11A: Actual Remuneration Paid to Senior Executives

	2010	2009
The number of senior executives who received:		
$160,000 to $174,999*	**1**	-
$175,000 to $189,999	**-**	1
$190,000 to $204,999	**1**	-
$205,000 to $219,999	**1**	1
$235,000 to $249,999	**1**	-
Total	**4**	2

* Excluding acting arrangements and part-year service.

Total expense recognised in relation to Senior Executive employment

	$	$
Short-term employee benefits:		
Salary (including annual leave taken)	**589,155**	302,300
Other[1]	**128,907**	47,679
Total Short-term employee benefits	**718,062**	349,979
Superannuation (post-employment benefits)	**85,970**	41,316
Total	**804,032**	391,295

During the year no amounts were paid as termination benefits to senior executives (2009: $ 0)

Note 11B: Salary Packages for Senior Executives
Average annualised remuneration packages for substantive Senior Executives

	As at 30 June 2010		
	No. SES	Base salary (including annual leave)	Total remuneration package1
Total remuneration:			
$160,000 to $174,999*	**1**	**112,698**	**160,641**
$190,000 to $204,999	**1**	**150,041**	**197,762**
$205,000 to $219,999	**1**	**159,832**	**210,522**
$235,000 to $249,999	**1**	**166,584**	**235,107**
Total	**4**		

	As at 30 June 2009		
Total remuneration:			
$175,000 to $189,999*	1	130,687	172,962
$205,000 to $219,999	1	171,613	218,333
Total	2		

* Excluding acting arrangements and part-year service.

Notes
1. Non-Salary elements available to Senior Executives include:
(a) Motor vehicle allowance
(b) Superannuation

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 12: Remuneration of Auditors

	2010 $'000	2009 $'000
Financial statement audit services were provided free of charge to the Agency.		
The fair value of the services provided was:	**26**	25
	26	25

No other services were provided by the Auditor-General.

Note 13: Financial Instruments

	2010 $'000	2009 $'000
Note 13A: Categories of Financial Instruments		
Financial Assets		
Loans and receivables:		
Cash at Bank	**622**	805
Receivables for goods and services	**18**	6
Allowance for doubtful debts	**(3)**	(3)
Total	**637**	808
Carrying amount of financial assets	**637**	808
Financial Liabilities		
At amortised cost:		
Trade Creditors	**224**	468
Other Payables	**321**	31
Total	**545**	499
Carrying amount of financial liabilities	**545**	499
Note 13B: Net Income and Expense from Financial Assets		
Loans and receivables		
Interest revenue	**-**	10
Net gain/(loss) from financial assets	**-**	10

The average rate of interest for the year was 0% (2009: 5.73%).
The net income/expense from financial assets not at fair value from profit and loss is Nil.

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 13: Financial Instruments (continued)

Note 13E: Fair Value of Financial Instruments

	Carrying amount 2010 $'000	Fair value 2010 $'000	Carrying amount 2009 $'000	Fair value 2009 $'000
Financial Assets				
Cash at Bank	**622**	**622**	805	805
Receivables for goods and services	**15**	**15**	3	3
Total	**637**	**637**	809	809
Financial Liabilities				
Trade Creditors	**224**	**224**	468	468
Other Payables	**321**	**321**	31	31
Total	**545**	**545**	499	499

Note 14: Income Administered on Behalf of the Government

	2009 $'000	2008 $'000
Revenue		
Non-taxation revenue		
Note 14A: Fees and fines		
Other fees from regulatory services	**40**	20
Total fees and fines	**40**	20
Note 14B: Administered Reconciliation Table		
Opening administered assets less administered liabilities as at 1 July	**1**	0
Adjusted opening administered assets less administered liabilities		
Plus: Administered income	**40**	20
Transfers to OPA	**(41)**	(19)
Closing administered assets less administered liabilities as at 30 June	**-**	1
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 2010

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	
	2010 $'000	2009 $'000	2010 $'000	2009 $'000	2010 $'000	2009 $'000
Balance brought forward from previous period	**-**	-	**17,258**	16,392	**17,258**	16,392
Adjustment to prior year disclosures	**-**	-	**-**	-	**-**	-
Departmental adjustments by Finance Minister (Appropriation Acts)	**-**	-	**-**	-	**-**	-
Total prior year adjustments	**-**	-	**-**	-	**-**	-
Adjusted prior year balance	**-**	-	**17,258**	16,392	**17,258**	16,392
Appropriation Act:						
Appropriation Act (No.1) 2009/10	**-**	-	**29,682**	32,156	**29,682**	32,156
FMA Act:						
Appropriations to take account of recoverable GST (FMA section 30A)	**-**	-	**839**	1,046	**839**	1,046
Relevant agency receipts (FMA Act s 31)	**-**	-	**81**	267	**81**	267
Total appropriation available for payments	**-**	-	**47,860**	49,861	**47,860**	49,861
Cash payments made during the year (GST inclusive)	**-**	-	**(31,176)**	(32,603)	**(31,176)**	(32,603)
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	**-**	-	**16,684**	17,258	**16,684**	17,258
Represented by						
Cash at bank and on hand	**-**	-	**622**	805	**622**	805
Departmental appropriations receivable	**-**	-	**16,001**	16,366	**16,001**	16,366
Cash held not appropriated	**-**	-	**(172)**	(84)	**(172)**	(84)
GST recoverable	**-**	-	**233**	171	**233**	171
Total	**-**	-	**16,684**	17,258	**16,684**	17,258

Notes to and forming part of the financial statements for the year ended 30 June 2010

Note 15: Appropriations (continued)

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	
	2010	2009	2010	2009
	$'000	$'000	$'000	$'000
Balance brought forward from previous period	**-**	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
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	**-**	**-**	**-**	**-**
Represented by:				
Cash at bank and on hand	**-**	-	**-**	-
Total	**-**	-	**-**	-

Notes to and forming part of the financial statements for the year ended 30 June 2010

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.

	2010 $'000	2009 $'000
Balance carried from previous period	**-**	-
Appropriation for reporting period	**-**	-
Other receipts	**17**	5
Total credits	**17**	5
Payments made	**(17)**	(5)
Total debits	**(17)**	(5)
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 2010

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).

	Actual 2010	Actual 2009
Output Group 1		
Capacity-building and strategic/sectoral initiatives	**16**	11
Assistance and information	**392**	361
Output Group 2		
Fully concluded indigenous land use agreements	**29**	19
Milestone agreements in indigenous land use agreements negotiations outside NTDA*	**79**	21
Milestone agreements in indigenous land use agreements negotiations within NTDA*	**113**	127
Agreements that fully resolve NTDA's*	**4**	13
Agreements on issues leading towards NTDA*	**145**	168
Process/framework NTDA*	**193**	322
Agreements that fully resolve Future Act applications	**72**	60
Milestone in Future Act mediations	**69**	55
Output Group 3		
Registration of native title claimant applications	**39**	40
Registration of indigenous land use agreements	**47**	52
Future act determinations	**60**	39
Finalise objections to the expedited procedure	**1278**	1184

NTDA* - Native title determination applications

Note 17A: Departmental Net Cost of Outcome Delivery by Outcome

	Outcome 1	
	2010 $'000	2009 $'000
Expenses	**30,476**	31,078
Costs recovered from provision of goods and services to the non government sector	**88**	77
Net cost/(contribution) of outcome	**30,388**	31,001

Note 17B: Administered Net Cost of Outcome Delivery by Outcome

Sale of goods and services	**40**	20
Refund of fees	**40**	20
Net cost/(contribution) of outcome	**-**	-

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 1993* (Cwlth). 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 *Native Title Act 1993* (Cwlth) 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 *Native Title Act 1993* (Cwlth) 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 *Native Title Act 1993* (Cwlth) available online from the Australasian Legal Information Institute at http://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.

Transitional provisions: when an Act is amended there is often a need to provide for the transition of the operation of some sections in the pre-amended Act and the amended Act. These are called transitional provisions. Transitional provisions are included in the *Native Title Amendment Act 1998*, the *Native Title Amendment Act 2007* and the *Native Title Technical Amendments Act 2007* and, among other things, have effect on the application and timing of the s. 190A registration test.

Compliance index

Part of Report	Description	Requirement	Page
	Letter of transmittal	Mandatory	3
	Table of contents	Mandatory	4-6
	Index	Mandatory	188-192
	Glossary	Mandatory	180-184
	Contact officer(s)	Mandatory	2
	Internet home page address and internet address for report	Mandatory	2
Review by Secretary	Review by departmental secretary	Mandatory	31-33
	Summary of significant issues and developments	Suggested	10-23
	Overview of department's performance and financial results	Suggested	23-26, 31-33
	Outlook for following year	Suggested	26-29
	Significant issues and developments – portfolio	Portfolio departments – suggested	N/A
Departmental Overview	Overview description of department	Mandatory	35-39
	Role and functions	Mandatory	35-36
	Organisational structure	Mandatory	38-39
	Outcome and program structure	Mandatory	40-41
	Where outcome and program structures differ from PB Statements/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory	N/A
	Portfolio structure	Portfolio departments – mandatory	N/A
Report on Performance	Review of performance during the year in relation to programs and contribution to outcomes	Mandatory	44-85
	Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory	44-85
	Performance of purchaser/provider arrangements	If applicable, suggested	N/A
	Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory	N/A
	Narrative discussion and analysis of performance	Mandatory	47-85
	Trend information	Mandatory	25-28, 47-49
	Significant changes in nature of principal functions/ services	Suggested	50-52
	Factors, events or trends influencing departmental performance	Suggested	10-11,15-21, 50-52, 44-85
	Contribution of risk management in achieving objectives	Suggested	57-58, 92
	Social justice and equity impacts	Suggested	107-108

	Performance against service charter customer service standards, complaints data, and the department's response to complaints	If applicable, mandatory	107
	Discussion and analysis of the department's financial performance	Mandatory	43-47
	Discussion of any significant changes from the prior year or from budget	Suggested	24, 31-32, 46
	Agency resource statement and summary resource tables by outcomes	Mandatory	44-45
	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future	If applicable, mandatory	32-33
Management Accountability			
Corporate Governance			
	Statement of the main corporate governance practices in place	Mandatory	88-91
	Names of the senior executive and their responsibilities	Suggested	38, 87
	Senior management committees and their roles	Suggested	87-91
	Corporate and operational planning and associated performance reporting and review	Suggested	91-92
	Approach adopted to identifying areas of significant financial or operational risk	Suggested	92
	Agency heads are required to certify that their agency comply with the Commonwealth Fraud Control Guidelines	Mandatory	92
	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	105
	How nature and amount of remuneration for SES officers is determined	Suggested	100, 113
External Scrutiny	Significant developments in external scrutiny	Mandatory	106-107
	Judicial decisions and decisions of administrative tribunals	Mandatory	115-133
	Reports by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman	Mandatory	107
Management of Human Resources	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory	95-102
	Workforce planning, staff turnover and retention	Suggested	95-98
	Impact and features of enterprise or collective agreements, determinations, common law contracts and AWAs	Suggested	100
	Training and development undertaken and its impact	Suggested	101
	Occupational health and safety performance	Suggested	102
	Productivity gains	Suggested	95-97
	Statistics on staffing	Mandatory	98-99, 113
	Enterprise or collective agreements, determinations, common law contracts and AWAs	Mandatory	100
	Performance pay	Mandatory	114

Assets management	Assessment of effectiveness of assets management	If applicable, mandatory	Nil to report
Purchasing	Assessment of purchasing against core policies and principles	Mandatory	110-111
Consultants	The annual report must include a summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST). The annual report must include a statement noting that information on contracts and consultancies is available through the AusTender website.(Additional information as in Attachment D to be available on the internet or published as an appendix to the report. Information must be presented in accordance with the pro forma as set out in Attachment D.)	Mandatory	140-141
Australian National Audit Office Access Clauses	Absence of provisions in contracts allowing access by the Auditor-General	Mandatory	Nil to report
Exempt contracts	Contracts exempt from the AusTender	Mandatory	Nil to report
Commonwealth Disability Strategy	Report on performance in implementing the Commonwealth Disability Strategy	Mandatory	102-103
Financial Statements	Financial Statements	Mandatory	142-175
Other Information			
	Occupational health and safety (section 74 of the *Occupational Health and Safety Act 1991*)	Mandatory	102
	Freedom of Information [subsection 8(1)] of the *Freedom of Information Act 1982)*	Mandatory	134-138
	Advertising and Market Research (Section 311A of the *Commonwealth Electoral Act 1918*) and statement on advertising campaigns	Mandatory	139
	Ecologically sustainable development and environmental performance (Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*)	Mandatory	106
Other	Grant programs	Mandatory	Nil to report
	Correction of material errors in previous annual report	If applicable, mandatory	Nil to report
	List of Requirements	Mandatory	185-187

Index

Contact the Tribunal

The National Native Title Tribunal has offices in Adelaide, Brisbane, Cairns, Melbourne, Perth and Sydney. A wide range of information is available at www.nntt.gov.au .

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Facsimile (08) 9268 7299

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Sydney NSW 2000
GPO Box 9973
Sydney NSW 2001
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Facsimile (02) 9233 5613

Queensland Registry
Level 30, 239 George Street
Brisbane Qld 4000
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Brisbane Qld 4001
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Level 14, Cairns Corporate Tower
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WEBSITE: www.nntt.gov.au

National Native Title Tribunal office hours:
8.30am–5.00pm