



National  
Native Title  
Tribunal



# Annual Report 2010–2011

*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 (the 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](http://www.nntt.gov.au).

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 Registrar's Directorate on freecall 1800 640 501 or email [enquiries@nntt.gov.au](mailto:enquiries@nntt.gov.au).

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Artist's Country	Clumpy Pye Tjapanangka	President's overview / Accountability
Men's Dreaming at Kankularra	Charlie Egalie Tjapaltjarri	Registrar's report
Sea Turtle	Susan Wanji Wanji	Tribunal overview
Untitled (Waterholes)	Doris Gingingara	Report on performance
'4 Dugongs' Ulakalal	Dennis Nona	Outcome and program performance
Father's County - Selling Stock	Jimmy Pike	Management / Appendices

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National  
Native Title  
Tribunal



30 September 2011

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Dear Attorney

I am pleased to submit to you, for presentation to the Parliament, the annual report of the National Native Title Tribunal for the year ended 30 June 2011.

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

Yours sincerely

Graeme Neate  
President



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# President's overview

## IN THIS SECTION

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Important aspects of native title practice are being consolidated following the 2009 amendments to the Native Title Act.

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Agreement-making continues with an increasing number of determinations of native title made with the consent of the parties, as well as other agreements, such as indigenous land use agreements and future act agreements.

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The Tribunal's budget allocation was reduced further for the reporting period.

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The native title legal landscape is increasingly familiar and stable territory for many of the parties to native title proceedings, but challenges remain.

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## Year in review

### Introduction

The past year was one of consolidation and continuity for various facets of native title law and practice. The implementation of amendments made in 2009 to the *Native Title Act 1993* (Cwlth) (the Act) means that important aspects of practice are being consolidated. Continuity of agreement-making was apparent in the rising number of determinations of native title by consent of the parties, the registration of a record number of indigenous land use agreements (ILUAs) and a range of other agreements or consent determinations about future acts.

Although some features of the legal landscape of native title were subject to reshaping by legislation, judicial decisions and administrative procedures during 2010–2011, 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 often produced by negotiated agreements.

As required by the Act, this annual report relates to the activities of the National Native Title Tribunal (the Tribunal) during 2010–11. Accordingly, it deals with the range of registration, mediation, arbitration, assistance and other statutory functions performed by the Tribunal in the reporting period. It also provides a picture of how native title rights and interests are being recognised alongside other rights and interests.

My overview deals primarily with external factors affecting the Tribunal and its work. A report by the Native Title Registrar (Registrar) 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 Registrar and the employees of the Tribunal during the period covered by this report.

## External factors affecting the Tribunal

For various historical, legal, demographic and political reasons, the native title 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, new regulations, judgments of the Court, and future act determinations by members of the Tribunal.

### Legislation

The *Native Title Amendment Act (No 1) 2010* commenced on 16 December 2010.

This legislation inserted a new subdivision JA in Division 3 of Part 2 of the Act.

In summary, the new subdivision provides 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 ensures 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 future act is valid. The non-extinguishment principle applies to acts covered by the new process, ensuring that native title can revive if the act ceases to have effect. The subdivision provides for compensation for native title holders.

The new subdivision is expressed to operate for 10 years from the date on which the amendments commenced. 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.

If the subdivision is relied upon, it might be used to facilitate future acts that would otherwise be the subject of ILUAs or compulsory acquisition processes. During the reporting period, however, there was little reliance on the subdivision to that effect.

The Native Title (Notices) Amendment Determination 2010 (No.1) (the Amendment Determination) commenced on 16 December 2010, at the same time as the Amendment Act. The Amendment Determination amended the Native Title (Notices) Determination 1998 to set out how notice must be given for acts covered by the new process established by the Amendment Act. On 11 April 2011, the Native Title (Notices) Determination 2011 (No. 1), which repealed the Native Title (Notices) Determination 1998, commenced.

As a result of the *Statute Law Revision Act 2011* (Cwlth), Part 12 of the Act (ss 204–207) was repealed on 22 March 2011. That Part, which provided for the Parliamentary Joint Committee on Native Title and the Land Account, ceased to have effect on 23 March 2006 by operation of the sunset provision in s. 207. Consequently, those amendments had no practical effect on the operation of the Act.

Other minor consequential amendments were made to the Act by the *Acts Interpretation Amendment Act 2011* (Cwlth) and the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* (Cwlth).

The Native Title (Tribunal) Regulations 1993 were amended from 1 July 2010 to increase the fee under r. 7.

**Proposed legislation:** On 21 March 2011, Senator Rachel Siewert (Greens, WA) introduced the Native Title Amendment (Reform) Bill 2011 (the Bill) into the Senate. In summary, the Bill proposes the following amendments to the Act:

- insert an additional object that refers to, and incorporates for certain purposes, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- apply a presumption as to proof of specified factual matters in relation to native title claimant applications
- state that laws acknowledged and customs observed are ‘traditional’ for the purposes of s. 223(1) ‘if they remain identifiable through time’
- state that native title rights and interests of a commercial nature fall within s. 223(1)
- enable any extinguishment of native title rights and interests in relation to any area to be disregarded by agreement between the claimants and the relevant government
- require the effectiveness of heritage protection laws to be examined in future act proceedings before the ‘arbitral body’ (usually the Tribunal)

- apply the non-extinguishment principle to all compulsory acquisitions of native title rights and interests
- apply the right to negotiate to inter-tidal and offshore areas
- create 'stronger incentives for beneficial future act agreements' and 'strike a better balance' in good faith negotiations by inserting criteria for determining whether negotiations in good faith have occurred, and reversing the onus, (i.e. a person asserting they have negotiated in good faith would bear the onus of proving it)
- allow an arbitral body to impose a profit sharing/royalty condition to the doing of a future act that attracts the right to negotiate.

On 12 May 2011, the Bill was referred to the Senate Legal and Constitutional Affairs Committee for inquiry and report. Submissions were to be received by 29 July 2011, and the reporting date was 20 September 2011.

### **Judgments and litigation**

The High Court delivered one judgment in relation to native title issues during the reporting period. The Federal Court delivered about 90 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 made decisions on reconsideration of two applications for registration of native title claims.

Summaries of judicial decisions with significant impact on the operations of the Tribunal are set out in Appendix II Significant decisions, p. 116.

### **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.

**Australian Government:** During the reporting period, the Australian Government was considering submissions made in relation to proposed amendments to the Act and discussion or consultation papers released by it for comment.

**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.

Although submissions on the possible reform closed on 19 March 2010, 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 outlined the interaction between the income tax system and native title, and set out three possible approaches to reform:

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

The paper also discussed how deductible 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 30 November 2010. At the end of the reporting period, the Australian Government had not announced any policy decisions in relation to those options.

**Leading practice agreements:** The Attorney-General and the Minister for Families, Housing, Community Services and Indigenous Affairs released the discussion paper titled *Leading Practice Agreements: Maximising Outcomes from Native Title Benefit* on 3 July 2010. The paper called for public consultation on a possible package of reforms to promote leading practice in native title agreements and the governance of native title payments. At the end of the reporting period, the Australian Government had not announced any policy decisions in relation to those matters.

**National discussions:** Discussions about policy and operational matters continued at a national level. The Tribunal continued to participate in both the Native Title Coordination Committee (NTCC) and the Native Title Consultative Forum (NTCF). 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.

For some years, governments at all levels 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.

Changes in government or government policies can delay the negotiation of outcomes.

**Victoria:** In Victoria, a new government was elected in November 2010. Understandably, the government took time to consider its policy on native title, and it was not clear for some months whether the government would continue with or significantly modify the scheme outlined in the *Traditional Owner Settlement Act 2010* (Vic). As a consequence, there were delays in some negotiations. In June 2011, the state's representatives indicated to parties, the Court and the Tribunal that it was willing to continue specific settlement negotiations consistently with the existing settlement framework.

**New South Wales:** A new government was elected in New South Wales in March 2011. At the end of the reporting period, it was not apparent whether there would be any change in government policy in relation to native title or who would be the minister responsible for native title.

**Western Australia:** In Western Australia, the State Government foreshadowed in October 2010 that it proposed to develop a new approach to the resolution of native title claims, including the negotiation of ILUAs about specific issues prior to a determination of native title. The government's preference was said to be to address those issues as part of consent determination negotiations. In a letter in February 2011 to Justice Barker, the Western Australian Attorney General the Hon. Christian Porter

MP set out the government's commitment 'wherever possible to the timely resolution of native title claims by negotiation. The government sees mediation by the NNTT, under the guidance of the Federal Court, as an important avenue for resolving native title claims in Western Australia'. He also advised that, as part of any mediation, the government 'aims to resolve any issues about the long-term relationship between the rights of different land users in areas that are likely to be the subject of a future native title determination'. The Attorney-General set out a list of the Western Australian Government's primary interests in the post-determination environment for land access and use about which the government would seek 'greater certainty'. The time taken to develop that policy position, and discussions about its implications, led to reduced engagement in Tribunal mediation during the year.

By the end of the reporting period, the government had prepared a template ILUA which addressed the following substantive issues: housing and works future acts, exploration tenements, access to granted tenements, deemed low impact future acts, the conservation estate, and a Government Standard Heritage Agreement. Native title representative bodies were considering the template ILUA.

### **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.

For resource, practical and other reasons, it is not possible for all pending native title cases to be intensively managed and progressed at the same time. The Court has developed a list of 'priority' cases. Numerous factors are taken into account when making decisions about the order in which cases are prioritised. These are published on the Court's website.

**National discussions:** During the reporting period, representatives of the Court, the Tribunal, the Attorney-General's Department and FaHCSIA met twice to discuss the implementation of the amendments to the Act made in 2009, particularly as they affect the Court and the Tribunal. These meetings have enabled the agencies to identify and discuss practical issues, as well as providing a useful informal national forum to raise issues for consideration by the institutions and relevant government departments.

Justice Mansfield, who chairs the Court's National Practice Committee: Native Title, met with Tribunal members and the Registrar at their meeting in Adelaide on

22 March 2011. That was an opportunity for a useful discussion of matters of mutual interest and concern.

**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 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 planning meetings.

In Queensland in late 2010, at the request of the Court, the Tribunal convened a series of regional meetings to which all parties or their representatives were invited, so that recommended priorities could be identified and draft lists compiled by reference to criteria provided by the Court.

**Referral to mediation:** The Act emphasises mediation as the preferred procedure for the resolution or narrowing of issues in relation to native title claims. The Court may 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. The Court has published a list of possible mediators on its website.

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 2011, 178 (or 40 per cent) of current claimant applications had been referred to the Tribunal for mediation, including 14 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 majority of the claims in the states are with the Tribunal. Only in the Northern Territory, where there were 165 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 (2 or 1.2 per cent).

**Court timeframes and negotiated settlements:** As noted last year, the Commonwealth Attorney-General recorded the Australian Government's confidence in the Court's skills to 'actively manage' native title claims in a way that will lead to resolution of claims 'in the shortest possible time frames'.

In a paper titled *Opportunity and responsibility* delivered on 3 June 2011 to the annual native title conference, Chief Justice Keane stated that, 'in negotiations towards a consent determination of native title, the parties should not expect the Court to delay the hearing of the claim simply because arrangements for the accommodation of native title interests have not been concluded.' He reminded parties that native title litigation is subject to the provisions of s. 37M and s. 37N of the *Federal Court of Australia Act 1976* (Cwlth), which makes the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible the overarching purpose of the civil practice and procedure of the Court.

His Honour continued:

The parties to native title proceedings before the Federal Court are obliged to conduct the proceedings consistently with that overarching purpose.

Of course, the Court appreciates the practical reality that all stakeholders will be anxious to resolve land management issues at the same time as they resolve the native title issue.

This does not mean, however, that parties should devote all their energies to resolving issues other than the dispute as to the existence of native title which is the issue before the Court prior to resolving the native title application itself.

One practical question is whether both the objectives of 'broader, more flexible' negotiated settlements and 'quicker' negotiated settlements can be achieved when parties wish to negotiate broader settlements. Some of the reasons for negotiating 'broader, more flexible' settlements are discussed later in this Overview.

**Relationship between the Tribunal and the Court:** The Tribunal continues 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, guidance from the Court about the form and content of specific mediation progress reports is particularly helpful.

Much of the success of regional planning, and the progress of individual claimant applications in Tribunal mediation, 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 other negotiations also benefit from them.

As at 30 June 2011 there were 20 representative body areas with nine representative bodies for eleven of these areas.

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 Australian 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.

### **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 119 registered determinations that native title exists and 73 PBCs registered on the National Native Title Register as Registered Native Title Body Corporates (12 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.

There have been some 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.

The importance of PBCs to the economic circumstances of native title holders was highlighted in the paper titled *Opportunity and responsibility* by Chief Justice Keane referred to earlier in this Overview. His Honour noted that ILUAs have been used as a means of unlocking the economic value of land for Indigenous peoples (whether or not there is a prior determination of native title). However, he referred to the importance of a determination of native title, and looked at the possible alienability of native title for the purpose of commerce or trade (whether by lease or as security for loans or as an item of commerce). In particular, he suggested that the trustee PBC provisions of the Act seem to contemplate the possibility of dealings that involve assigning (in whole or in part) native title rights and interests, thus empowering native title holders to deal with the native title in ways that can 'unlock economic potential' and open up 'the possibility of making native title rights economically meaningful'.

Chief Justice Keane concluded:

Determining who holds native title, in respect of what area and establishing a PBC to deal with this title are one key to Indigenous peoples taking responsibility for their futures and their dealings in land, and for the broader Australian community—it provides certainty and predictability as to how land will be dealt with and who to negotiate with.

Agreeing on what commercial arrangements should be made would be the right and responsibility of native title holders through their PBC.

He also stated that 'it is essential for PBCs to have adequate funding and resources so that they may utilise the determined native title. The sorts of decisions that need to be made require commercial skill as well as prudence'.

The practical implications of native title parties not having such resources were illustrated in the published reasons for two future act determinations delivered by Deputy President Sumner in December 2010 (*Magnesium Resources Pty Limited*;

*Anthony Warren Slater/Puutu Kunti Kurrama and Pinikura People; Puutu Kunti Kurrama and Pinikura People #2/Western Australia* [2011] NNTTA 211 and *Austmin Platinum Mines Pty Ltd and Weld Range Metals Limited/Western Australia/Ike Simpson and Others on behalf of Dajarra Yamatji* [2011] NNTTA 212 (*Austmin Platinum*)). The applications came to the Tribunal because agreement had not been reached between the proposed recipients of particular mining tenements (the grantee parties) and the native title parties about whether the tenements should be granted. The threshold legal issue in each case was whether the grantee party had negotiated in good faith in circumstances where it had not provided financial assistance to the native title party to participate in the negotiations.

Deputy President Sumner noted that, although it has become common practice, at least by large mining companies, to provide support (for example, funding to a native title party for legal or expert assistance or for the cost of holding meetings), there is a clear distinction between the freedom to negotiate about the provision of such funding and the absence of any obligation to provide it. He concluded in each case that the grantee party had negotiated in good faith, but he contended that such cases demonstrate ‘the lack of policy clarity’ between the provisions of the Act (where no obligation is imposed on a grantee party to negotiate about funding a native title party for negotiations) and the funding policies of the Australian Government through FaHCSIA (which encourage representative bodies to recover costs incurred by native title rights holders and their representatives from future act proponents where this is feasible, primarily where the proponent stands to benefit financially from the proposed future act). As a consequence, native title representative bodies have developed cost recovery policies.

He observed in one of those cases:

Self evidently, there is potential for native title parties to be disadvantaged where there is inadequate funding to enable them to engage in negotiations. On the other hand ... representative bodies ... could adapt their processes and advice to their clients to make negotiations more constructive and meaningful: *Austmin Platinum* at [80]

### **Budgetary outlook**

As noted in last year’s annual report, the amount allocated to the Tribunal in the 2009–10 budget was significantly less than the amount appropriated in 2008–09, and in the 2010–11 budget, the allocation to the Tribunal was reduced further to \$26.92 million. That reduction was categorised as \$1.45 million for increased efficiencies, and \$2.05 million for improving access to justice.

The Tribunal continues to work through the implications of these reductions for the next few years, bearing in mind that all costs are likely to rise. The steps taken by the Tribunal to reduce expenditure in the reporting period are outlined in the Registrar's Report, p. 33.

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

Details of the Tribunal's finances for 2010–11 are set out later in this report, starting at p. 51, and in Appendix VI Audit report and notes to the financial statements, starting at p. 130.

## Tribunal membership

During the reporting period:

- Ms Helen Shurven was appointed as a part-time member from November 2010 for 12 months
- Dr Gaye Sculthorpe was reappointed as a full-time member of the Tribunal from February 2011 until February 2013.

At the end of the reporting period there were eight members. Six members were full-time and two were part-time. There will be at least some changes to the composition of the Tribunal in the next reporting period, given that the terms of six of the eight members will expire during that period.

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 from the present level. Strains can and will occur if there are too few members to perform the range of functions in a timely and effective way.

For further information about the Tribunal's membership see p. 39 and Appendix I Human resources, p. 114.

## Trends and challenges

### Performance of statutory functions

Information about:

- 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 Registrar
- future act work of the Tribunal
- the Tribunal's national case flow management scheme

is set out in Overview of current applications, p. 43. For the purpose of this overview it is sufficient to note a few key points.

Contrary to the general trend over the past seven years, the total number of current claimant applications rose during the reporting period, when 60 new claimant applications were filed. Because 47 claimant applications were determined or discontinued, dismissed, struck out or combined with other determinations, the total number of current claimant applications rose by 13 to 443 during the year. The number of determinations that native title exists continues to rise. During the reporting period, 28 determinations of native title were registered (almost three times the number registered in the previous year). Of those, 24 were determinations that native title exists, bringing the total of registered determinations that native title exists to 119.

Another 71 ILUAs were registered (the largest number in a financial year to date), bringing the total number of registered ILUAs at 30 June 2011 to 497. In March 2011, the 500th ILUA was registered since the Act was amended in 1998 to provide for this type of agreement. Some ILUAs have expired, and in the reporting period eight were removed from the Register.

Contrary to the general trend over the past seven years, the total number of current claimant applications rose during the reporting period.

These outcomes can be assessed in quantitative and qualitative terms. The 160 registered determinations of native title (that native title does or does not exist) cover some 1,228,373 sq km (or approximately 16 per cent) of the land mass of Australia, and registered ILUAs cover about 1,234,129 sq km

(or approximately 16 per cent) of the land mass, as well as approximately 5,435 sq km of sea (below the high water mark).

In its future act work, the Tribunal dealt with a 14.6 per cent increase in the number of objections to the use of the expedited procedure under the Act (from 1,278 to 1,464), 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 future act determinations were made by consent.

Importantly, all but two 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**

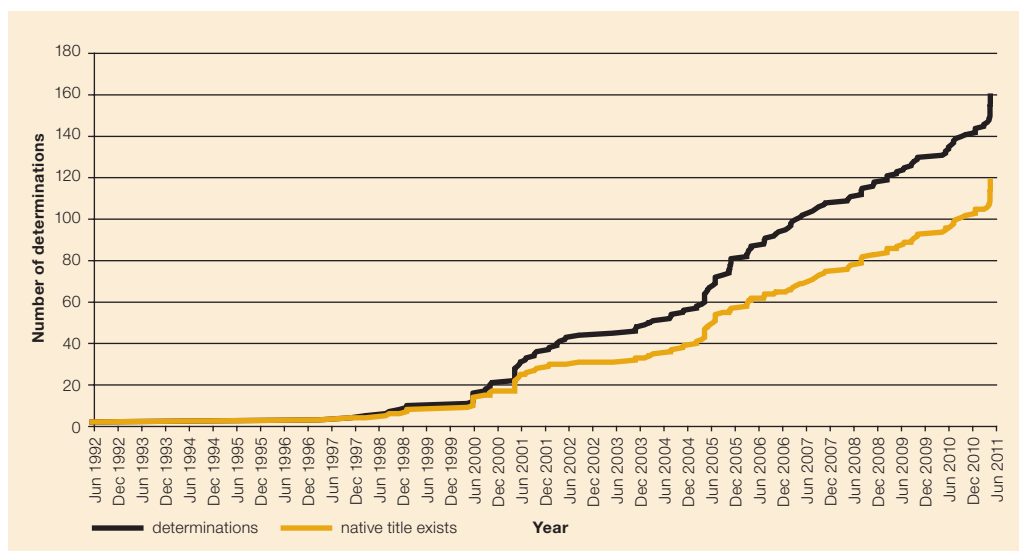
As at 30 June 2011, there were 471 applications in the system, 443 of them claimant applications, as well as 19 non-claimant, eight compensation applications and one revised native title determination application; an increase in the numbers of all but non-claimant applications over the past year.

Most of the claimant applications are in the Northern Territory (165 or 37 per cent), Queensland (107 or 24 per cent) and Western Australia (107 or 24 per cent). Most of the non-claimant applications are in New South Wales (17 or 89 per cent).

As Figure 1 shows, there has been a steady rise in the number of determinations in recent years. There is a clear 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 programming orders for hearing as a case management practice apparently aimed at encouraging timely settlements.

Nonetheless, it usually takes years to resolve claimant applications. Of the 25 claimant applications the subject of determinations registered during the reporting period, seven had been lodged at least 10 years before the determination date.

Figure 1: Cumulative determinations of native title as at 30 June 2011



An analysis of the 154 claimant applications the subject of registered determinations as at 30 June 2011 shows that:

- for the 105 determined by consent, the average time for achieving a determination was 71 months (5 years, 11 months)
- for the 49 litigated determinations, the average time for achieving a determination was 84 months (7 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 443 current claimant applications as at 30 June 2011:

- 112 (or 25 per cent) were lodged in or since 1 July 2006, i.e. within the past five years
- 123 (or 28 per cent) were lodged between 1 July 2001 and 30 June 2006, i.e. between five and 10 years ago
- 208 (or 47 per cent) were lodged earlier, i.e. have been in the system for between 10 and 17.5 years.

The first and third categories increased in number and as a proportion of the total during the reporting period. The first category reflects the effect of 60 new claims lodged during that 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 determination of the Court that native title exists in relation to the Torres Strait regional sea claim was made in August 2010. 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, on p. 49, shows the extensive areas of Western Australia that are subject to determinations of native title.

The challenge remains 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.

**Broad negotiated settlements of native title claims:** In previous annual reports I have referred 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 out of the desire of parties to take an interest-based approach to negotiations or the product of governmental policy, it has an explicit statutory foundation. Sections 86F, 87 and 87A of the Act provide for parties to make agreements involving matters other than native title and give the Court jurisdiction to make an order that ‘gives effect to terms of an agreement that involve matters other than native title’. 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.

It appears that little use of that power was made in the reporting period. In *Brown v South Australia* (2010) 189 FCR 540, 272 ALR 499, [2010] FCA 875, Justice Mansfield discussed the limits of that power. His Honour accepted that it would be inappropriate for a respondent party ‘to endeavour to impede the proper recognition of native title rights and interests by seeking to secure agreement on an unrelated matter’: at [36]. Indeed, if there is ‘no bona fide dispute about issues concerning a proposed consent determination, it would be a breach of any obligation to negotiate in good faith to use the carrot of consent to the determination as leverage to secure agreement on other matters’: at [38]. As part of consent determinations made in May 2011 in relation to areas in the Kimberley region of Western Australia, Justice Gilmour

made orders, at the request of the parties, to formally record in the determinations of native title the parties' agreement to negotiate about specified matters involving the framework for making ILUAs.

The ILUA provisions of the Act create options for specific types of agreements that might be reached in the settlement of claimant proceedings.

In some areas of Australia, local governments have entered into ILUAs as part of settlement packages. On 20 June 2011, the President of the Australian Local Government Association (ALGA) Cr Genia McCaffery and I launched *Developing indigenous land use agreements: A guide for local government*. The publication was a joint initiative of the two organisations in response to local government's needs for targeted information about native title. The guide is focussed on ILUAs, as they are the type of agreement primarily used by local governments to ensure that their actions in relation to land uses that affect native title are done validly under the Act. For more information about the publication see the case study, on p. 63.

ILUAs might precede or follow a determination of native title, or might be negotiated in the place of such a determination.

One practice used in some cases in the reporting period (and in previous years) is for the registration of some consent determinations of native title to be conditional on the registration of one or more ILUAs. To date, no such ILUAs have failed to be registered. Where the ILUAs have been registered, all such conditional determinations have been registered. There is, however, a risk that an objection to the registration of an ILUA will be accepted and as a consequence the determination will not be registered.

There are various examples of settlement 'packages' negotiated in different parts of Australia. For example, the settlement of the Gunaikurnai (Gunai/Kurnai) claim on 22 October 2010 included a determination that native title exists over land and waters in the Gippsland region of Victoria, and a Recognition and Settlement Agreement (an ILUA), the first under the Victorian Traditional Owner Settlement Framework. That agreement includes provision for the grant of Aboriginal title to 10 parks and reserves in Gippsland to be jointly managed by the Gunaikurnai People and the State Government under a joint management plan, which will include increased funding to support joint management and employ Gunaikurnai People to work on country. The \$12 million settlement package comprised \$6 million contributions from each of the Australian and Victorian governments, of which:

- \$10 million will be deposited into an independent trust and invested on behalf of and on the advice of the Gunaikurnai (the investment is expected to provide

annual income to the Gunaikurnai for at least 20 years to meet their settlement obligations and to strengthen their cultural identity and economic strength)

- \$2 million will be paid to the Gunaikurnai once settlement comes into force.

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 (for example, 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. For reasons noted earlier, the challenge for some parties will be to negotiate a settlement package that meets their needs and satisfies their interests while ensuring that the determination of native title is made as quickly, inexpensively and efficiently as possible.

**Changes in emphasis in the Tribunal's work:** 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 any claims that 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 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.

Although the volume of Tribunal work remains relatively high, it is likely that in the longer term the nature of the work will shift away from a focus on claims resolution, to post determination future act negotiations, agreement-making and arbitral decision-making (with attendant registration work for the Registrar). Even when all native title claims are resolved by determination or are disposed of in some other way, there will be substantial ongoing work for the native title system generally and the Tribunal in particular.

For the immediate future:

- the bulk of remaining native title claims are in the Northern Territory, Queensland and Western Australia

- the vast majority of future act determination applications dealt with by the Tribunal are in Western Australia (about 74 per cent over the reporting period), as are objections to the expedited procedure (about 85 per cent) and future act agreements (about 88 per cent); with most of the other future act activity in Queensland, where the volume is increasing
- most of the ILUAs are in Queensland (consistently more than 50 per cent) with (at 30 June 2011) the highest proportion of the other ILUAs being in the Northern Territory, South Australia and Western Australia.

## Conclusion

In the introduction to this overview I suggested that the past year was one of consolidation and continuity, and 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. 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.

As always, the success of the native title scheme will be influenced by, if not dependent on:

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

The Tribunal remains committed to working with the parties, the Court and governments (Commonwealth, state, territory and local) 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



# Registrar's report

## IN THIS SECTION

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The Tribunal continued its commitment to organisational renewal and consolidation during the reporting period.

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The Tribunal adopted an 'East-West' organisational orientation and reformed its management and governance structures.

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A range of savings measures was applied in order to reduce the Tribunal's organisational 'footprint' and to meet budgetary targets.

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A new *Indigenous Employees Strategy* was developed to progress the Tribunal's strategic priorities for Indigenous employees.

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Despite the challenging operating environment, the Tribunal exceeded projected outputs in 12 of the 14 reporting areas.

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During the reporting period the Tribunal continued its commitment to organisational renewal and consolidation. Underpinning this focus was the necessity for the Tribunal to adapt successfully to a significantly reduced budget and to the 2009 amendments to our governing legislation. The Tribunal's guiding concept of *Simplify, Perform and Engage* was an effective driver of the necessary changes.

In that context, the Tribunal's key foci were to:

- consolidate its organisational structure
- broaden its executive management structure
- establish a new, simplified governance structure
- continue to effect wide-ranging savings measures
- negotiate a new enterprise agreement
- implement strategies to attract, retain and develop Indigenous employees
- implement additional measures to enhance organisational effectiveness
- continue to perform strongly in all output areas

Highlights of those focus areas are summarised below.

**Organisational restructure:** on 1 July 2010, following an external structural review, the Tribunal took new steps to reduce its organisational 'footprint'. The Tribunal adopted an 'East-West' structural orientation, with its Western Australian and Queensland registries identified as key operating hubs. In addition, measures were put in place to establish a new South-East and Central (SE&C) Registry, based in Sydney, as and from 1 July 2011. The SE&C Registry would carry out the Tribunal's functions in all states and territories other than Western Australia and Queensland. From 1 July 2011, the Tribunal would also maintain small 'satellite' offices in Melbourne, Adelaide and Cairns.

**Executive management structure:** on 1 July 2010 a 'flatter', more streamlined executive management structure came into effect. Two new executive positions were created: Director, Operations East and Director, Operations West. Recruitment into those key positions occurred in October 2010. A new, broadly-based Management Board, comprising six senior officers and me, replaced the former, four-person Executive.

**Governance:** following an internal review, the Tribunal adopted a new, simplified governance structure. Twelve high-level committees replaced a large number of committees and groups which had been formed within the Tribunal over a number of years. The Tribunal's simplified governance framework aligns closely with its new organisational structure.

**Savings measures:** in order to meet budget targets (occasioned by a 9.3 per cent reduction in appropriation, from \$29.68m in 2009-10 to \$26.92m in 2010-11), a range of savings measures were adopted. Across-the-board cuts in operating expenditure, particularly in discretionary spending and the the salary budget, were achieved. Staffing numbers reduced by 21 per cent, from 202 FTE (225 employees) at 30 June 2010 to 158 FTE (177 employees) at 30 June 2011. Those reductions were largely achieved through natural attrition and voluntary redundancy initiatives.

**Accommodation:** the rationalisation of office accommodation remained a priority, as it had been the previous year. In January 2011, the Western Australia Registry ceased operating in commercial premises and re-located to the Commonwealth Law Courts Building in Perth, where it shares accommodation with Principal Registry. At the end of the reporting period the negotiations to surrender the vacated commercial lease were continuing.

**ICT:** ongoing reductions in information and communications technology (ICT) costs remained a priority. Two major initiatives were the deployment of a Tribunal-wide Voice over Internet Protocol (VoIP) telephony system and a Microsoft Lync office communication system.

**Enterprise bargaining:** negotiations for a new three-year enterprise agreement were successfully concluded in the course of six meetings held during the period April-June 2011. Just prior to the end of the reporting period, a draft enterprise agreement was submitted to the Australian Public Service Commission for approval.

**Workforce planning:** a comprehensive Tribunal-wide workforce planning process commenced in March 2011, with a view to identifying the agency's strategic and operational workforce requirements to 2014. The workforce planning process was well-advanced by the end of the reporting period.

**Indigenous employees:** during 2010 an *Indigenous Employment Strategy 2011-2013* (IES) was developed to progress the Tribunal's goals of attracting, developing and retaining Indigenous employees. The IES provides a wide range of strategies, relating to the recruitment, induction, and learning and development needs of Indigenous employees. Those strategies are supported by the Tribunal's development of a *Reconciliation Action Plan 2011-2013* (RAP). The RAP is the Tribunal's contribution to the Australian Government's objective of 'closing the gap' on Indigenous disadvantage.

**Organisational effectiveness:** a range of other measures designed to increase organisational effectiveness included commencing the development of an Integrated Claim and Future Act Management System; a review of the Tribunal's National Case

Flow Management System; the updating of all financial management policies and procedures; the conduct of fraud and other risk assessments and the development of a new fraud control policy; the establishment of a team charged with ensuring compliance with the Australian Government's Protective Security Policy Framework; and a review, with the objective of simplifying, the Tribunal's operational procedures. A project to improve the Tribunal's website, rendering it more user-friendly and business-focused, was also well under way.

**Outputs:** the reporting period was characterised by high levels of productive work. In particular, claims registration testing, ILUA and future act-related work increased significantly. Ultimately, outputs exceeded projections in 12 of 14 reporting areas: in four reporting areas, projections were exceeded by more than 100 per cent. The summary data is shown in Figure 2 on the opposite page.

**In conclusion:** in the reporting period, as in previous years, the Tribunal has achieved a wide range of important organisational objectives in a changing and challenging environment. This is entirely due to its dedicated, skilled and effective personnel. I thank the President, Deputy Presidents and other members, the Directors, section and registry managers, and all staff for their invaluable contributions to the life and work of the Tribunal.

**Stephanie Fryer-Smith**  
Registrar

**Figure 2: Performance against projected deliverables for the National Native Title Tribunal as contained within the Portfolio Budget Statements 2010-11**

	Deliverable	Estimate	Result
<b>Stakeholder and Community Relations</b>	Capacity-building and strategic / sectoral initiatives	4	<b>14</b>
	Assistance and information	274	<b>409</b>
<b>Agreement-making</b>	Fully concluded ILUA and use and access agreement negotiations	38	<b>49</b>
	Milestones in ILUA negotiation outside NTDAs	53	<b>138</b>
	Milestones in ILUA negotiation within NTDAs	104	<b>106</b>
	Agreements that fully resolve native title applications	14	<b>11</b>
	Milestones on issues, leading towards the resolution of NTDAs	125	<b>191</b>
	Process / framework milestones	129	<b>244</b>
	Agreements that fully resolve future act applications	65	<b>56</b>
	Milestones in future act mediations	86	<b>144</b>
<b>Decisions</b>	Registration of native title claimant applications	29	<b>78</b>
	Registration of ILUAs	60	<b>72</b>
	Future act determinations	45	<b>96</b>
	Objections to the expedited procedure	1030	<b>1464</b>

# Tribunal overview

## IN THIS SECTION

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**The Native Title Act prescribes the numerous powers and functions of the President, Deputy Presidents, Members and Registrar.**

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**At the end of the reporting period, the Tribunal had eight members, including a part-time member appointed during the reporting period.**

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**The Tribunal adopted an amended single outcome for 2010-11.**

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**28 native title determinations were registered during the reporting period: 24 of these were determinations that native title exists.**

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**At 30 June 2011, there were 443 current native title determinations applications; 160 registered determinations of native title (including 119 that native title exists) and 497 registered indigenous land use agreements.**

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**Members of the National Native Title Tribunal (from left): Member Dan O'Dea, Deputy President John Sosso, Member Helen Shurven, Member Gaye Sculthorpe, Member Neville MacPherson, Deputy President Chris Sumner, (seated) President Graeme Neate, Registrar Stephanie Fryer-Smith. Not photographed Member Graham Fletcher.**





## Role and functions

The Tribunal was established in 1994 by the *Native Title Act 1993* (Cwlth). The Act was the Australian Parliament's response to the 1992 decision made by the High Court of Australia in *Mabo v Queensland (No.2)*.

The Act creates an Australia-wide native title scheme, the objectives of which include:

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

The President, Deputy Presidents and other members of the Tribunal have statutory responsibility for:

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

Under the Act, the President is responsible for managing the administrative affairs of the Tribunal, with the assistance of the Registrar. The President may delegate to a member (or members) all or any of the President's powers, and may engage

consultants in relation to any assistance, mediation or review that the Tribunal provides.

The Act gives the Registrar specific responsibilities, including:

- assisting people at any stage of any proceedings under the Act, including in the preparation of applications
- assessing claimant applications for registration against the conditions of the registration test, and registering those applications that 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.

## Tribunal members

Members of the Tribunal are appointed by the Governor-General for specific terms of not longer than five years. They are classified as presidential or non-presidential members and either as a full-time member or as a part-time member. The Act sets out the qualifications for membership and defines in various sections their role.

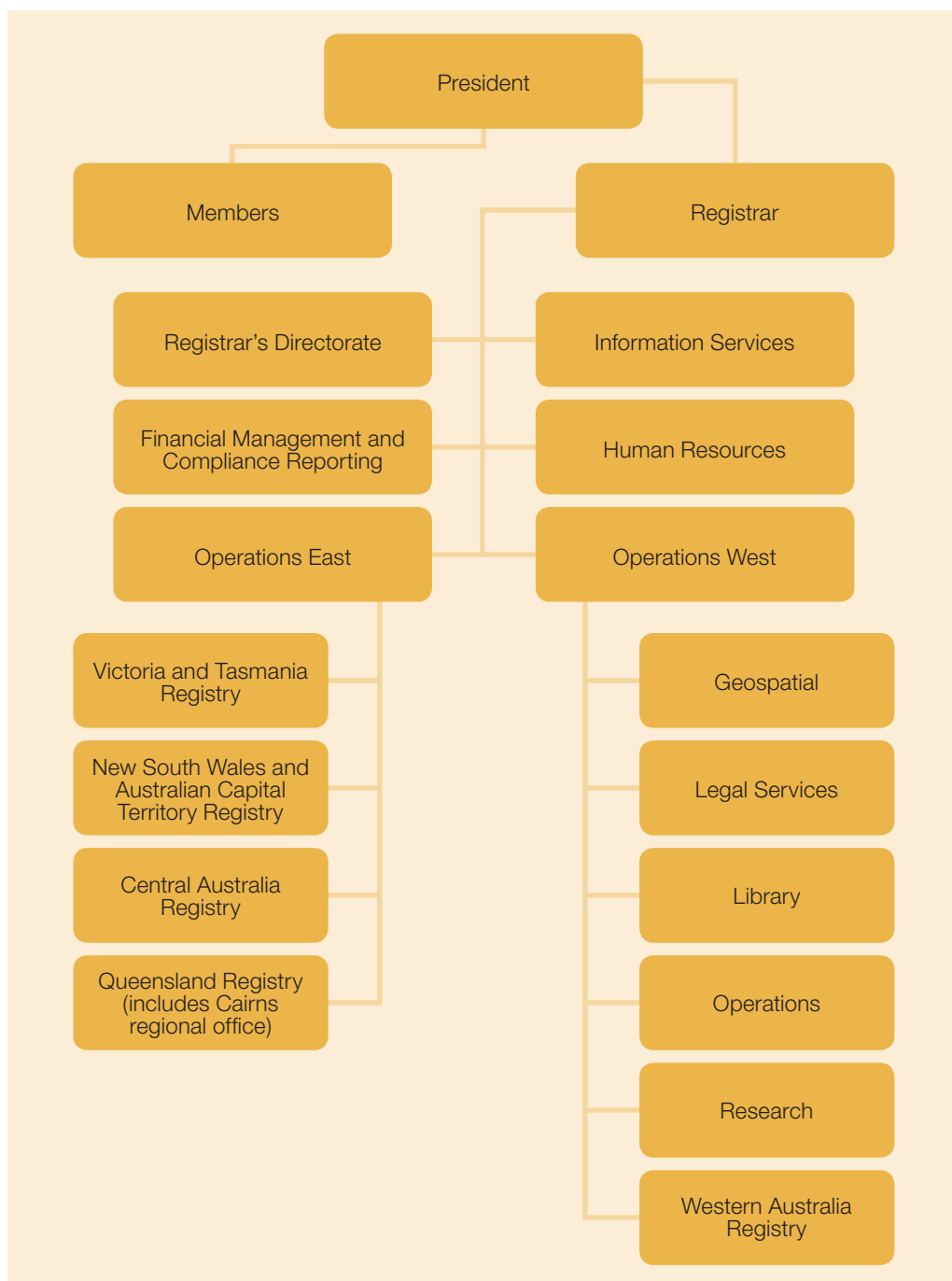
There were eight members of the Tribunal at 30 June 2011, three presidential members (all full-time) and five other members (three full-time and two part-time). For a list of members, their terms of appointment and location see Table 20, p. 114.

## Organisational structure

As outlined in the Registrar's Report, the Tribunal made significant changes to its organisational structure during the reporting period, following an external review conducted during the previous reporting period. The key changes commenced on 1 July 2010 and included the creation of a more broadly-based senior leadership team. The Tribunal adopted an 'East-West' structural orientation, with its Perth and Brisbane-based registries being designated as key operational hubs. Those changes were included in a new organisational structure (Figure 3) that came into effect on 1 July 2010.

During the course of the year, a second phase of the restructure was planned: in particular, the establishment of a new South-East and Central (SE&C) Registry as from 1 July 2011. In this second phase of organisational consolidation, the SE&C Registry, based in Sydney, would change to carry out the Tribunal's functions in New South Wales, the Australian Capital Territory, Victoria, South Australia and the Northern Territory. From 1 July 2011, the Tribunal would maintain small 'satellite' offices of the SE&C Registry in Melbourne and Adelaide, complementing the existing regional office in Cairns.

Figure 3: National Native Title Tribunal organisational structure as at 30 June 2011



## 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.

The Tribunal reviewed its outcome in 2009–10 and adopted an amended single outcome for 2010–11:

*Facilitation of native title determinations, agreements and the disposition of related matters for claimants and others with interests in land and waters through mediation, agreement-making and administrative decisions.*

The Tribunal has a single program with three key components:

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

The three key performance indicators of the components are:

- stakeholder and community relations: improvement in the quality of native title and related agreement-making
- agreement-making:
  - improvement in the quality of native title and related 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 ILUA and future act agreement-making as alternatives to arbitration
- decisions: less than 5 per cent of decisions successfully appealed or reviewed.

Details of the Tribunal's performance and costs in accordance with this framework are provided in Outcome and program performance, p. 58.

## 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 2011.

**Table 1: Overview of public registers maintained by the Native Title Registrar as at 30 June 2011**

Register	Number
National Native Title Register—approved native title determinations	160 (119 where native title does exist and 41 where native title does not exist)
Register of Native Title Claims—native title determination applications that have met the requirements for registration	355
Register of Indigenous Land Use Agreements—ILUAs accepted for registration	497

**Table 2: Current applications as at 30 June 2011**

Native title applications		Future act applications		Indigenous land use agreements	
Claimant	443	FA determinations (s. 35)*	16	Lodged	7
Compensation	8	FA mediation (s. 31)	74	Accepted for notification	7
Non-claimant	19	FA objection*	1,073	In notification	26
Revised Native Title Determination	1			Notification ended	2
<b>Total</b>	<b>471</b>		<b>1163</b>		<b>42</b>

\* 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; in particular, registration testing of claimant applications, notification and mediation. These functions involve the Registrar, employees and members of the Tribunal.

At 30 June 2011, there were 443 claimant applications at some stage between filing and disposition. This is an increase of 13 compared to the number of current claimant applications at 30 June 2010.

Sixty new claimant applications were filed in the reporting period, compared with 21 in 2009–10. During this reporting period, 47 claimant applications were discontinued, dismissed, struck-out, combined with other applications, or were the subject of native title determinations. As a result, 1128 (or 72 per cent) of the claimant applications made since the Act commenced have been determined, dismissed or otherwise finalised.

### **Registration**

In the period covered by this report 78 registration test decisions were made, compared with 37 decisions made in the previous year. This total includes 20 registration tests made on applications for the second, third, fourth or fifth time.

When the Act was amended in 2007 it made provision for an applicant to request an internal reconsideration of a registration test decision if their application failed to meet one or more of the conditions of the test. Tribunal members reconsider these claims.

Only five requests for reconsideration have been received by the Tribunal since the 2007 amendments, with three of those requests made during this reporting period. In one matter the Tribunal member decided not to accept the claim for registration, and in another the Tribunal member decided to accept the claim for registration. The third request for reconsideration was received on 14 May 2011 and a decision was not made within this reporting period.

The 2007 amendments to the Act also provide under s. 190F(6) for the Court to dismiss an application that had failed the registration test if the Court was satisfied that the application was not likely to be amended in such a way that would lead to a different outcome once considered by the Native Title Registrar. Three applications were dismissed under s. 190F(6) during this reporting period because they had failed the merit conditions for registration and the avenues for review or reconsideration had been exhausted. At 30 June 2011, a total of 29 applications had been dismissed by the Court under this provision.

For further information about the registration testing carried out by the Tribunal, see *Performance: Registration of native title claimant applications*, p. 77.

### **Notification**

The number of notifications increased considerably in 2010–11, with 47 claimant applications notified, compared with 17 in the previous year. Eleven non-claimant applications were notified. No compensation applications were notified during the reporting period. Some 418 (94 per cent) of current claimant applications had been notified by 30 June 2011.

### **Mediation**

At 30 June 2011, 178 matters were with the Tribunal for mediation, including 14 matters that were referred to it during the reporting period. This is a decrease from the 202 matters that were with the Tribunal for mediation as at 30 June 2010.

Having regard to the numerous factors that affect the progress of mediation, the Tribunal worked with parties to narrow issues in dispute (for example, 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 also in response to directions of the Court, enabled clear timetables to be set to progress the 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 at any stage in matters related to a native title proceeding, and help them to negotiate agreements such as ILUAs. The types of assistance the Tribunal has provided to parties on a case-by-case basis, and to stakeholders on a sectoral basis, is reflected in the program structure as Performance: Capacity-building and strategic/sectoral initiatives, p. 59 and Performance: 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 can vary significantly over time, as well as between individual states and territories. Various factors, including the number and nature of requests for assistance and the negotiating positions and interests of parties, make it difficult to predict accurately the forms of assistance to be provided.

### **Indigenous land use agreements**

The Act provides for the negotiation and registration of ILUAs made between a native title group and others about the use and management of land and waters.

These agreements allow people to negotiate flexible, pragmatic agreements to suit their particular circumstances.

An ILUA can be negotiated over areas where native title has, or has not yet, been determined to exist. An ILUA can be negotiated along with a native title determination, or be entered into separately from a native title claim. When registered with the Tribunal, ILUAs bind all parties and all relevant native title holders to the terms of the agreement.

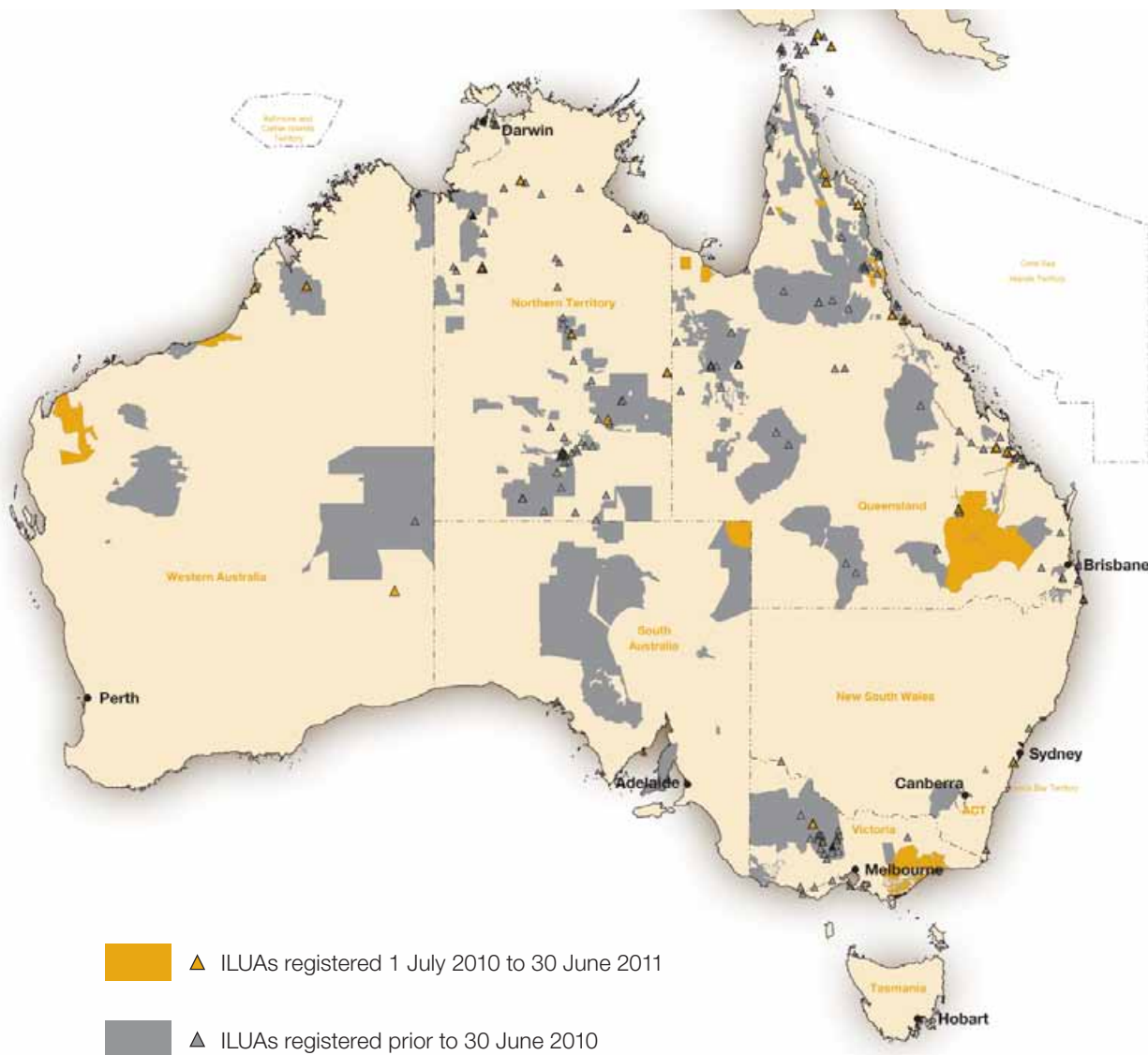
During the reporting period, 71 new ILUAs were registered, bringing the total number of ILUAs on the Register of ILUAs as at 30 June 2011 to 497. Registered ILUAs covered about 1,234,129 sq km or approximately 16 per cent of the land mass of Australia and approximately 5,435 sq km of sea (below the high water mark).

The Act also provides that ILUAs can be removed from the register once the agreement has expired or if the parties advise that they wish to terminate the agreement. During 2010–2011 eight ILUAs were removed from the Register. Seven of these were Northern Territory ILUAs, the other was a Queensland ILUA.

At 30 June 2011, 42 new agreements were in various stages of the process towards possible registration.

For further information about the level of ILUA activity, see Performance: Indigenous land use agreements, p. 66.

Figure 4: Map of indigenous land use agreements as at 30 June 2011



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.

### **Determinations of native title**

During the reporting period the Registrar registered 28 determinations of native title, 13 of which were in the Northern Territory. This was almost triple the number of determinations registered in 2009–10. Twenty four of these determinations found that native title exists in relation to specific areas of land or waters. The four determinations that native title does not exist were made in respect of non-claimant applications.

These determinations are recorded in the National Native Title Register and are available through the Tribunal's website under the heading '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.

Twenty-two of the determinations that native title exists were made by consent of the parties. This reflects 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.

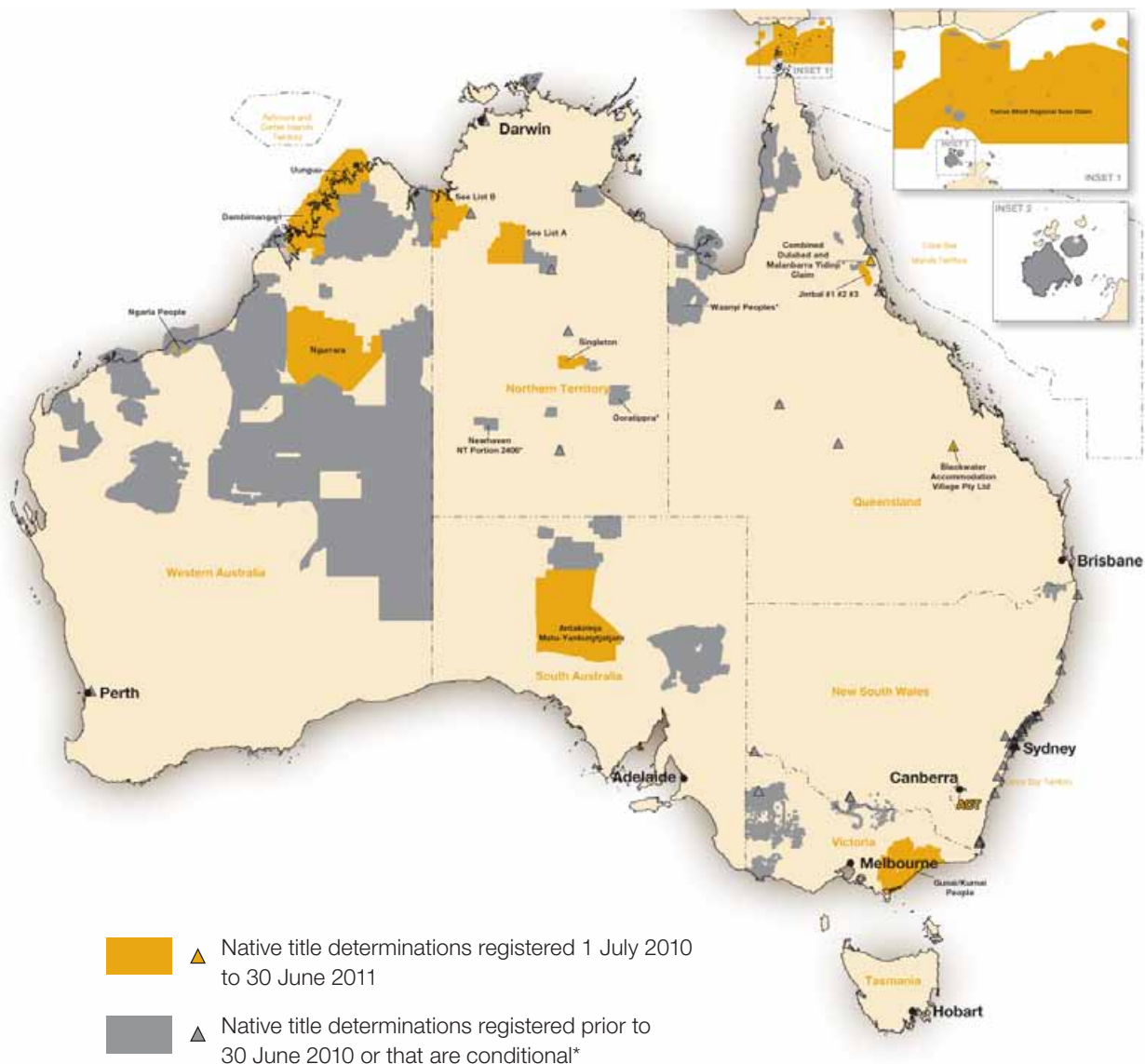
At 30 June 2011, there were 160 registered determinations of native title, including 119 determinations that native title exists. The determinations covered a total area of about 1,228,373 sq km or approximately 16 per cent of the land mass of Australia. A further three conditional determinations, all that native title exists, have also been made. These will increase the area to about 1,253,161 sq km or 16.3 per cent.

### **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 Performance: Future act agreements, p. 75, Performance: Future act determinations and decisions whether negotiations were undertaken in good faith, p. 81, and Performance: Finalised objections to expedited procedure, p. 83.

Nationally there has been a very slight decrease in the number of objections to the use of the expedited procedure under the Act. The number of objections lodged reduced from 1,805 in the previous reporting period to 1,795 in this reporting period. As in previous years, most of those objections were in Western Australia. For further information see Table 14: Objection application outcomes by tenement, p. 85.

Figure 5: Map of native title determinations as at 30 June 2011



\* Registration of some determinations is conditional on some future event occurring, for example, the registration of an indigenous land use agreement or the establishment and registration of a prescribed body corporate (PBC).

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.

# Report on performance

## IN THIS SECTION

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The Tribunal's expenditure for the reporting period was \$31.24 million and the Tribunal finished the year with an operating deficit of \$4.11 million.

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The Tribunal's operating deficit is attributable to costs incurred in undertaking savings measures, such as staff redundancies and payments for early termination of lease obligations.

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The Tribunal achieved consistently high results against its key performance indicators.

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This report on performance addresses the outcome and performance information set out for the Tribunal in the Portfolio Budget Statements 2010–11 for the Attorney-General's portfolio.

The resources made available to the Tribunal to achieve this outcome are set out in Table 3: Agency resource statement, p. 52.

## Financial performance

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 2010–11 are detailed in Performance overview, p. 55. Table 4 (p. 53) identifies the price of the program during the reporting period against the full-year budget and quantifies any variation.

**Table 3: Agency Resource Statement**

<b>Agency Resource Statement : 2010–11</b>	<b>Actual available appropriation for 2010–11 \$'000 (a)</b>	<b>Payments made 2010–11 \$'000 (b)</b>	<b>Balance remaining 2010–11 (a)-(b)</b>
<b>Ordinary annual services<sup>1</sup></b>			
Estimate of resources	9,555		
Departmental appropriation <sup>2</sup>	27,351	(30,117)	
Appropriations to take account of recoverable GST (FMA section 30A)	998		
Annotations to 'net appropriations' (FMA section 31)	112		
GST recoverable	(129)		
Cash in hand at year end	1,034		
Add back depreciation and amortisation expenses	1,054		
Add back appropriation held not used as payments not yet made	4,086		
<b>Total ordinary annual services</b>	<b>44,061</b>	<b>(30,117)</b>	<b>13,994</b>
<b>Departmental non-operating</b>			
Equity injections	270	(251)	19
Previous year's outputs			
<b>Total</b>	<b>44,331</b>	<b>(30,368)</b>	<b>13,963</b>
<b>Special accounts<sup>3</sup></b>			
Opening balance			
Non-appropriation receipts to Special Accounts	10		
Payments made		(10)	
<b>Total Special accounts</b>	<b>10</b>	<b>(10)</b>	<b>–</b>
<b>Total net resourcing</b>	<b>44,341</b>	<b>(30,378)</b>	<b>13,963</b>

<sup>1</sup> Appropriation Bill (No.1) 2010–11 and Appropriation Bill (No.3) 2010–11. This includes Prior Year departmental appropriation and s. 31 relevant agency receipts.

<sup>2</sup> Includes an amount of \$0.426m in 2010–11 for the Departmental Capital Budget. For accounting purposes this amount has been designated as 'contributions by owners'.

<sup>3</sup> Does not include 'Special Public Money' held in accounts like Other Trust Monies accounts (OTM).

**Table 4: Expenses and resources for outcome**

<b>Outcome 1: Facilitation of native title determinations, agreements and the disposition of related matters for claimants and others with interests in land and waters through mediation, agreement-making and administrative decisions</b>	<b>Budget</b>	<b>Actual</b>	<b>Variation</b>
	<b>2010–11</b>	<b>2010–11</b>	<b>2010–11</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Program 1.1: National Native Title Tribunal			
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1)	26,925	26,925	–
Revenues from independent sources (Section 31)	88	207	(119)
Expenses not requiring appropriation in the Budget year	967	4,109	(3,142)
<b>Total expenses for Outcome 1</b>	<b>27,980</b>	<b>31,241</b>	<b>(3,261)</b>
	<b>2009–10</b>	<b>2010–11</b>	
Average staffing level (number)	210	175	35

**Key results in 2010–11**

Key results for Tribunal departmental resources included:

- an operating deficit of \$4.11 million, as it took measures to respond to the reduction of \$2.76 million in its appropriation during the reporting period. As a result of the operating deficit, the Tribunal's net equity reduced to \$10.27 million from last year's net equity of \$13.69 million. The operating deficit can be attributed to costs associated with the measures taken by the Tribunal to operate within appropriation reduction constraints
- an unqualified audit report on the 2010–11 financial statements from the Australian National Audit Office.

**Tribunal finances**

The Tribunal received an appropriation of \$26.92 million in 2010–11, \$2.76 million less than it had received in 2009–10. The Tribunal's expenditure for the 2010–11 reporting period was \$31.24 million, and consequently the Tribunal finished the year with an operating deficit of \$4.11 million.

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

- expenses increased in comparison to 2009–10 due to savings measures that included staff redundancies and provision for forward years' lease obligations arising from early termination of office accommodation. These measures were responsible for a net overspend of \$0.76 million
- liabilities increased by \$1.93 million due to provisions for a contract relating to lease obligations amounting to \$2.2 million
- equity contributions increased due to additional capital funding provided by the Commonwealth of \$0.70 million
- net assets decreased by \$3.42 million which was attributable to an increase in liabilities.

Details of trends in Tribunal finances are included in Table 5 below.

Table 5: Comparison of income, expenses assets and liabilities			
Trends in departmental finances		(1)	(2)
		2009–10	2010–11
		\$m	\$m
			(2)–(1) Change from last year \$m
Revenue from Government		29.68	26.92
Other revenues		0.09	0.21
<b>Total income</b>		<b>29.77</b>	<b>27.13</b>
Employee expenses		20.30	19.56
Supplier expenses		9.46	10.62
Other expenses		0.72	1.06
<b>Total expenses</b>		<b>30.48</b>	<b>31.24</b>
<b>Operating result</b>		<b>(0.71)</b>	<b>(4.11)</b>
Financial assets	A	16.87	15.16
Non-financial assets	B	2.66	2.88
Liabilities	C	5.84	7.77
<b>Net assets = A+B-C</b>		<b>13.69</b>	<b>10.27</b>

## Performance overview

### Price

The total price for the Tribunal's deliverables was \$31.24 million. Detailed information is provided in Tribunal finances, p. 53.

### Client satisfaction

The Tribunal, as part of its corporate performance management, is required to identify clients' needs and monitor its performance in delivering services. Client satisfaction is one of the accountability measures attached to the Tribunal's deliverables and research is undertaken every two years. A client satisfaction survey was undertaken in 2010, and further client-based research will be undertaken in 2011–12.

### Performance against key performance indicators

The Tribunal's outcome and program structure includes key performance indicators for each of the components of the single program.

In 2010–11, the three components of the program and the related key performance indicators were as follows:

Component	Key performance indicator
Stakeholder and community relations	Improvement in the quality of native title and related agreement-making
Agreement-making	<p>Improvement in the quality of native title and related agreement-making</p> <p>Increase in the proportion of native title and related agreements by:</p> <ul style="list-style-type: none"> <li>• increase in agreement-making as an alternative to litigated outcomes</li> <li>• increase in indigenous land use and future act agreement-making as alternatives to arbitration</li> </ul>
Decisions	Less than five per cent of decisions successfully appealed or reviewed.

The client satisfaction research report informs reporting and benchmarking against the first key performance indicator and part of the second key performance indicator, which are qualitative in nature. The results for the remainder of the second key

performance indicator and the third key performance indicator are drawn from quantitative outcomes achieved in the reporting period.

## Results

As noted above, client satisfaction research is undertaken every two years, and is due to be undertaken in 2011–12. Research was last undertaken at the beginning of 2010. Accordingly during the reporting period there were no results to report against the first key performance indicator and part of the second key performance indicator.

The remainder of the Tribunal's second key 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 6 and indicate consistently high percentage results against the key performance indicators, although a reduction in overall results. More detailed information about agreement-making trends and challenges is included in the President's overview from p. 23.

**Table 6: Results against key performance indicators: Agreement-making**

	2008–09	2009–10	2010–11
Number of registered determinations that native title exists made with the consent of the parties	9	9	22
Number of registered determinations that native title exists that were litigated outcomes	-	-	2
<b>Percentage made by consent</b>	<b>100%</b>	<b>100%</b>	<b>92%</b>
Number of concluded agreements (ILUAs and future act)	72 (19 ILUA, 53 future act)	101 (29 ILUA, 72 future act)	105 (49 ILUA, 56 future act)
Number of arbitrated future act determination applications *	1	7**	21
<b>Percentage of outcomes by agreement</b>	<b>98%</b>	<b>94%</b>	<b>83%</b>

\* Counted by application, not tenement

\*\* This figure was shown incorrectly as 5 in the Tribunal's Annual Report for 2009–10

Requests for appeal or review were made in relation to six Tribunal decisions. This figure includes three requests for reconsideration in relation to registration of claimant application decisions. The outcomes also include two matters that commenced in the previous reporting period but were not finalised until this reporting period. At the end of the reporting period, four applications were awaiting outcome, one application was unsuccessful, one application was discontinued and two applications were successful. This meets the performance indicator of less than five per cent of decisions successfully appealed or reviewed, which has also been met in the previous reporting periods.

**Table 7: Results against key performance indicators: Decisions**

Decision type	Number of decisions made	Number appealed/ reviewed	Outcome	Number successfully appealed/ reviewed
Registration of claimant applications	78	3	1 – successful 1 – not successful 1 – pending	1
Registration of indigenous land use agreements	72	1	1 – decision set aside* 1 - pending	1
Future act determinations***	96	1	1 – decision pending 1 – Full Court decision pending**	-
Finalised objections to the expedited procedure (decisions)***	571	1	1 – discontinued	-

\* Original application made in previous reporting period, but proceedings determined in current reporting period

\*\* Appeal dismissed in previous reporting period, Full Court appeal decision pending

\*\*\* Counted by tenement

# Outcome and program performance

## IN THIS SECTION

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The Tribunal exceeded its estimates in most areas related to agreement-making.

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Future act activity also increased from the previous year, with significantly higher number of results in future act outcomes than estimated.

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The Tribunal assisted in the conclusion of negotiations for 49 indigenous land use agreements and 56 future act agreements.

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The Tribunal received more requests for assistance and information in the reporting period than in the previous year.

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As outlined in Outcome and program structure, p. 42, the Tribunal has a single outcome and program. Its outcome is the:

*Facilitation of native title determinations, agreements and the disposition of related matters for claimants and others with interests in land and waters through mediation, agreement-making and administrative decisions.*

The Tribunal has a single program with three key components:

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

Details of each of the components and the Tribunal's performance follow.

## Stakeholder and community relations

### Description

The Tribunal is empowered under the Act to assist native title applicants and other persons with the preparation of applications, and to help people at any stage of a proceeding. The Tribunal aims to provide a wide range of services in this regard, through the provision of register information, maps, tenure information, research reports and information about native title and agreement-making processes.

In addition, the Tribunal builds the capacity of parties to be effective participants in the native title process by facilitating forums, workshops and planning meetings, often in partnership with other organisations. Those roles and functions enhance stakeholder and community relationships and facilitate the efficient and effective operation of the native title system.

### Performance: Capacity-building and strategic/sectoral initiatives

Measures for capacity-building and strategic/sectoral initiatives are:

- quantity—the number of initiatives, projects and activities (including strategic planning of native title-related activities with stakeholders) completed in the reporting period
- quality—80 per cent of respondents to client surveys are satisfied with the quality of the initiative.

Performance at a glance		
Measure	Estimate	Result
Quantity	4 projects and initiatives	14 projects and initiatives
Quality	80% of respondents are satisfied with the initiative	Client satisfaction research not undertaken in reporting year. See p. 108

#### *Comment on performance*

During the reporting period, the Queensland Registry facilitated four meetings to assist with the prioritisation of claims by the Federal Court for the North Queensland, Queensland South and Cape York Regions.

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

In New South Wales, the Tribunal convened a regional planning meeting with the native title service provider, state government representatives, a Federal Court representative, other applicant representatives and key stakeholder representatives to discuss prioritisation and strategic approaches to the resolution of applications.

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

### **Performance: Assistance and information**

Measures for assistance and information are:

- quantity—the number of assistance events, products or services
- quality—80 per cent of respondents to client surveys are satisfied with the assistance, service or product.

Performance at a glance		
Measure	Estimate	Result
Quantity	274	409
Quality	80% of respondents are satisfied with services	Client satisfaction research not undertaken in reporting year. See p. 108

*Comment on performance*

There were more requests for assistance and information in the reporting period than during the previous year. However, the Tribunal is becoming more selective about where assistance is provided as a result of decreasing budget and staff resources.

There was a strong demand for geospatial products (including ILUA related products and geometric data), particularly as the Tribunal directed more attention to reducing the number of parties to applications by identifying their interests in relation to the land subject to claim and its underlying tenure. The Tribunal provided significant geospatial mapping assistance in relation to claimant applications, future act mediations and ILUAs.

The Tribunal also undertook a range of native title related research projects and produced an issue-based report. 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](http://www.nntt.gov.au).

... the Tribunal directed more attention to reducing the number of parties to applications by identifying their interests in relation to the land subject to claim and its underlying tenure.

Thirty-two information sessions were provided to stakeholders and other interested groups around the country. These information sessions varied in content and audience. For example, sessions included presentations for various state government agencies on topics related to future act processes, the notification of native title determination applications and ILUA registration processes. The Tribunal also assisted parties prepare 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 2010 and

February 2011. 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.

Two issues of the Tribunal's *Native Title Hot Spots* were produced during the reporting period. *Native Title Hot Spots*, which is written largely for legal practitioners, provides summaries of the latest developments in native title case law and related matters.

In June 2011, the Tribunal and the Australian Local Government Association launched *Developing indigenous land use agreements: A guide for local government*. The guide promotes local government's understanding of native title laws and agreement-making principles, providing practical guidance on a number of processes that underpin the various steps for entering into agreements over land use. It is available online at [www.nntt.gov.au](http://www.nntt.gov.au) under the heading 'Publications, maps and research', then 'booklets'.

# Case study

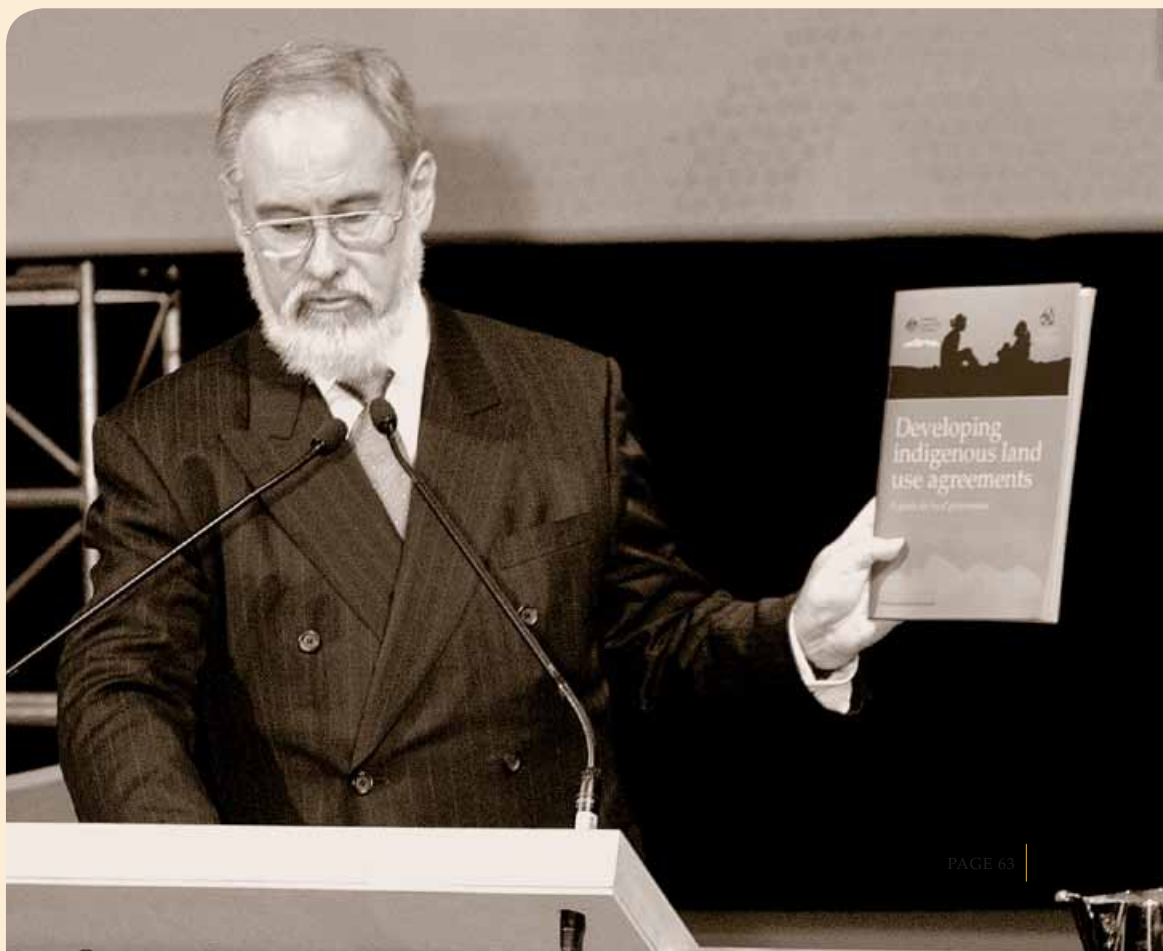
## Productive partnership with local government continues

*Developing indigenous land use agreements: A guide for local government* was launched on 20 June 2011 by the President of the Australian Local Government Association (ALGA), Cr Genia McCaffery, and Tribunal President, Graeme Neate.

The publication was a joint initiative of the two organisations in response to local government's need for targeted information about native title. The guide is focussed on indigenous land use agreements (ILUAs), as they are the type of agreement primarily used by local governments to ensure that their actions in relation to land uses that affect native title are done validly under the Native Title Act and to enhance relationships between local government and their traditional owner constituents.

For more than 14 years, the Tribunal and ALGA have teamed up to produce publications and provide workshops.

*Tribunal President Graeme Neate at the launch of the publication **Developing indigenous land use agreements: A guide for local government** at the 2011 National General Assembly of Local Government in Canberra.*



In 1997–98, two major joint publications were produced (the Tribunal’s *Local Government Information Kit* and ALGA’s *Native Title Agreements Kit*) and approximately 30 joint Tribunal/ALGA workshops and seminars were conducted for local government and other professional bodies, such as social planners and regional developers. Since then, the collaboration has produced *Working out Agreements: A Practical guide to agreements between Local Government and Indigenous Australians* launched in 1998, *Working with native title: a practical guide for local government* launched in 1999, and *Working with native title: linking native title and local government processes*, now in its third edition. This guide, which is available online at [www.nntt.gov.au](http://www.nntt.gov.au), replaces *Working with native title: a practical guide for local government*.

From the Tribunal’s perspective, this partnership with local government’s peak body provides a way of reaching an important stakeholder group in native title mediation with accurate information and advice. It is another means of demonstrating our mission of facilitating the achievement of timely and effective outcomes.

# Agreement-making

## Description

The Tribunal works with participants in native title proceedings to reach timely and effective native title and native title-related outcomes. The native title scheme created by the Act expressly anticipates and supports the resolution of native title issues by agreement.

Accordingly, through the delivery of a wide range of services, the Tribunal facilitates the making of agreements by parties to native title proceedings.

In particular:

- the Tribunal must mediate applications for determination of native title and compensation applications that are referred to it by the Federal Court
- parties wishing to make an ILUA or a statutory access agreement may request the Tribunal to assist them in negotiating the agreement
- parties wishing to reach an agreement about whether or how certain future acts affecting native title may be done can ask the Tribunal to mediate.

The deliverables are as follows:

- ILUAs negotiated with the assistance of the Tribunal:
  - fully concluded agreements
  - milestones in ILUA negotiations outside the mediation of native title determination applications
  - milestones in ILUA negotiations within the mediation of native title determination applications.
- Native title agreements and related milestone agreements—agreements on native title determination applications (claimant, non-claimant, compensation and revised applications) mediated with the assistance of the Tribunal:
  - agreements that fully resolve native title applications
  - milestones on issues, leading towards the resolution of native title applications
  - process and framework milestones.
- Future act agreements—agreements mediated with the assistance of the Tribunal that a proposed activity or acquisition may or may not proceed, either:
  - agreements that fully resolve future act applications, or
  - milestones in future act mediations.

The qualitative measure for this deliverable is the clients' perception of the quality of the agreement-making process.

## Performance: Indigenous land use agreements

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

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.

The measures for ILUAs are:

- quantity—number of agreements (fully concluded, milestones – outside mediation, and milestones – within mediation)
- quality—clients' perception of the quality of the agreement-making process.

### Performance at a glance

Measure	Estimate	Result
Quantity	(fully concluded) 38	49
	(milestone—outside NTDA* mediation) 53	138
	(milestone—inside NTDA* mediation) 104	106
Total	195	293
Quality	Clients' perception of the quality of the agreement-making process	Client satisfaction research not undertaken in reporting year. See p. 108

\* Native title determination applications

**Table 8: Number of ILUAs achieved by state and territory**

Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Fully concluded ILUA and use and access agreement negotiations	-	1	-	14	34	-	-	-	<b>49</b>
Milestone agreements in ILUA negotiation outside NTDA*	-	-	-	134	3	-	1	-	<b>138</b>
Milestone agreements in ILUA negotiation within NTDA*	-	6	-	69	29	-	-	2	<b>106</b>

\* Native title determination applications

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.

#### *Comment on performance*

##### **Fully concluded ILUA and use and access agreement negotiations**

During the reporting period, the Tribunal assisted parties to conclude negotiations for 48 ILUAs within the context of native title determination application mediation. In addition, the Tribunal provided negotiation assistance in relation to the Gawler Ranges-Ironclad Mining Agreement, which was negotiated under the South Australian future act regime.

ILUA activity increased significantly in South Australia during the reporting period, largely due to the conclusion of a number of pastoral ILUAs in relation to the Antakirinja Matu-Yankunytjatjara native title claimant application.

# Case study

## Antakirinja Matu-Yankunytjatjara People

Sixteen years after first lodging a claim, the Antakirinja Matu-Yankunytjatjara People were recognised as native title holders of 78,672 sq km of land and waters in the north west of South Australia at a special sitting of the Federal Court in Coober Pedy on 11 May 2011.

The consent determination finalised the Antakirinja Matu-Yankunytjatjara Peoples' claim that was lodged in 1995. The outcome was the culmination of many years of careful negotiation, perseverance and goodwill by all parties, including the resolution by mediation of some overlapping native title claims.

Of particular significance in relation to the overlap mediation was the Central West SA Mediation Strategy at Spear Creek near Port Augusta in 2004, which was a joint exercise between the Tribunal and the representative body (then Aboriginal Legal Rights Movement Inc. and now South Australian Native Title Services). This involved approximately 350 people comprising members of the nine participating claim groups, including the Antakirinja Matu-Yankunytjatjara, close to 100 senior people from the Anangu Pitjantjatjara lands, Tjuntjuntjara, Oak Valley and Yalata, the Aboriginal Legal Rights Movement, Tribunal members and staff, claimants' legal representatives, experts and interpreters. For more information about the Spear Creek meeting and its outcomes see the Tribunal's 2003–2004 annual report, p. 65, and the 2004–2005 annual report, p. 66.

As a direct consequence of the meeting at Spear Creek, the overlaps with Ted Roberts and Kokotha Munta were resolved, and the Antakirinja Matu-Yankunytjatjara People and Kuyani agreed a structure to jointly manage their overlap area. The Kuyani overlap was subsequently removed and the remaining overlap with the Arabunna was resolved by mediation in 2010.

On the path to finalising the claim, extensive work was done by the parties on negotiating a variety of agreements in relation to the following:

**Minerals:** a minerals exploration indigenous land use agreement was finalised in 2004. The agreement provided for an alternative framework to the *South Australia Mining Act 1971* in respect of negotiations between native title claimants and mineral explorers including heritage protection processes.

**Pastoral:** a number of indigenous land use agreements have been entered into that set out the terms of the ongoing relationship between the pastoralists and the Antakirinja

Matu-Yankunytjatjara People. The Todmorden Pastoral indigenous land use agreement was finalised some several years prior in 2005.

**Reserves:** the parties are expected to sign indigenous land use agreements shortly in relation to the Tallaringa Conservation Park and the Breakaways Reserve. The emphasis by the parties in relation to the Breakaways Reserve has been on ensuring the reserve, which is widely regarded as an outback icon, would continue to be enjoyed by local people and tourists for its ecology, cultural heritage and natural beauty.

**Local government:** there have been discussions over several years in relation to the District Council of Coober Pedy area with significant progress made. It is expected that an indigenous land use agreement will be entered into by the parties at the same time the whole of claim compensation negotiations are finalised.

It remains for the parties to lodge some of those indigenous land use agreements referred to above with the Tribunal for registration.

From left Jean Wood (seated), Deputy President Christopher Sumner, Ian Crombie, Bill Lennon, David Brown and Justice John Mansfield following the Federal Court hearing that recognised the Antakirinja Matu-Yankunytjatjara People as native title holders.



It has been a lengthy process and all of the parties have shown a willingness to work together to achieve a fair result through carefully considering the issues and cultivating understanding of one another's perspectives.

It is important to note in particular that the Antakirinja Matu-Yankunytjatjara People, past and present, along with their representatives have worked with dedication and commitment to achieve these advances.

The Tribunal is pleased to have played a role in progressing the claim towards a positive resolution and acknowledges the contributions of Deputy President Chris Sumner, and former Members Bardy McFarlane and Deputy President Fred Chaney.

Tribunal Deputy President Chris Sumner paid special tribute at the consent determination to all of the people involved in negotiating the claim towards final resolution.

'This determination is a further example of what can be achieved when all those involved in the native title process—the Federal Court, the Tribunal, South Australian Native Title Services, the SA Government and legal and anthropological advisors—work together in a cooperative way, which is a strong feature of native title negotiations in South Australia,' Deputy President Sumner said. 'More determinations—achieved through the Court's case management, the Tribunal's mediation and the active cooperation of all parties—are expected to be made by consent in the not-too-distant future.'

In Queensland 14 ILUA negotiations were concluded in conjunction with 203 negotiated milestone agreements. A significant level of ILUA negotiation assistance was provided by the Tribunal during the reporting period under s. 24CF of the Act.

ILUA negotiation activity reduced significantly in Western Australia in 2010–11. It is noted that during this period the State Government was in the process of developing a post-determination land management framework.

### **Milestones in ILUA negotiation outside the mediation of native title determination applications**

There were 138 milestones in ILUA negotiation achieved outside claimant mediation. A significant increase in such activity occurred in Queensland, with 134 milestones being achieved in north Queensland. A number of these related to 13 ILUAs associated with the Yarrabah native title determination application cluster.

### **Milestones in ILUA negotiation inside the mediation of native title determination applications**

There were 106 milestones that were achieved as part of mediating claimant applications. Of the 69 achieved in Queensland, a substantial number were the result of negotiations in the Quandamooka ILUA. Twenty-nine were achieved in South Australia.

### **Performance: Native title agreements and related agreements**

This component item includes a range of agreements related to native title applications (claimant, non-claimant, compensation and revised applications) mediated with the assistance of the Tribunal.

The range of agreements includes:

- agreements that fully resolve native title applications
- milestones on issues, leading towards the resolution of native title applications
- process and framework milestones.

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

- quantity—number of fully resolved, milestones on issues and process/framework milestones
- quality—clients' perception of the quality of the agreement-making process.

Performance at a glance		
Measure	Estimate	Result
Quantity	(fully resolved) 14	11
	(milestone— issues) 125	191
	(milestone—process/framework) 129	244
Total	268	446
Quality	Clients' perception of the agreement-making process	Client satisfaction research not undertaken in reporting year. See p. 108

### *Comment on performance*

Although slightly fewer consent determinations were achieved than had been anticipated, the number of process or framework milestones was significantly 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 resolving claims.

### **Consent determination and any other agreement that fully resolves the native title determination application**

In this reporting period, 11 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. In Western Australia, outputs were significantly below forecast as a result of the shift in government policy regarding post-determination land management. Parties did not substantively engage in Tribunal mediation over this period, and in instances where mediation was convened, parties generally did not agree on process or issues.

In Queensland, however, output performance for agreements that fully resolve a native title determination application exceeded projected outputs, with six agreements being achieved. Three Jirrbal People native title determination applications were resolved as were two Quandamooka claims and the Birri Gubba claim. On 11 May 2011, the Antakirinja Matu-Yankunytjatjara People became recognised as native title holders of 78, 672 sq km of land and waters in the north west of South Australia. A number of pastoral lease ILUAs were concluded in relation to the claimant application.

In South Australia, the Federal Court has maintained a strong approach to progressing issues leading to the resolution of claims, particularly with respect to connection issues. In New South Wales, the registration of the Cubbitch-Barta Clan of the Dharawal People ILUA resulted in the satisfactory conclusion of the proceedings. In Victoria, several years of Tribunal mediation (and in more recent years, a high level of geospatial assistance) of the Gunai/Kurnai #1 matter helped contribute to a consent determination.

**Table 9: Number of agreements by state and territory**

Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Agreements that fully resolve NTDA <sup>*</sup>	-	2	-	6	-	-	1	2	<b>11</b>
Agreements on issues, leading towards the resolution of native title determination applications	-	12	-	146	13	-	-	20	<b>191</b>
Process/ framework agreements	-	18	4	126	20	-	9	67	<b>244</b>

\* Native title determination applications

### **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, 191 milestone agreements on issues were reached.

In New South Wales, more than the anticipated number of milestone agreements were reached, including the resolution of key issues in relation to the Gundungurra applications.

In South Australia, the Tribunal assisted in the resolution of an overlap between the Barngarla and Nauo native title claimant applications.

In Queensland, 146 milestone agreements were reached on a variety of matters. Seventeen agreements were reached that led to the withdrawal of some respondent parties, and 30 agreements were reached 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 genealogical issues. 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, 20 milestone agreements were reached, significantly fewer than expected for that region. As noted earlier, the hiatus in substantive mediation caused by the State Government's development of a post-determination land management strategy affected this output state-wide.

No milestones were recorded in Victoria due to a change in government in November 2010, and subsequent delays associated with the development of the new government's settlement policy.

### **Process/framework milestones**

In this reporting period, there were significantly more process and framework milestones than had been anticipated, with most registries exceeding targets. A total of 244 such agreements were reached, exceeding the 129 projected.

In Queensland, the Tribunal worked closely with claimants' representatives and the State Government to develop 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, enabled the Tribunal to allocate resources strategically and to apply appropriate mediation strategies.

In New South Wales, more process and framework milestones were achieved than had been anticipated. This reflects the Tribunal's active involvement in the exchange of connection material between the primary parties (namely, the native title party and the State Government), the development of agreed mediation progress timetables and the commencement of substantial negotiations in the two Bandjalang People's matters.

In Western Australia, 67 process milestones were reached; well up from the anticipated 37 milestones, which enabled parties to settle inter-indigenous issues, including the resolution of overlaps, access to land, joint heritage management processes and progress towards single claimant applications. Advances in process milestones continued despite the delays in obtaining consent determinations and issues milestone agreements noted above.

Performance: Future act agreements

This component 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:

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

Measures for future act agreements are:

- quantity—number of agreements that fully resolve future acts and milestones in future act mediations
- quality—clients’ perception of the quality of the agreement-making process.

Performance at a glance		
Measure	Estimate	Result
Quantity	(fully resolved) 65	56
	(milestone) 86	144
Total	151	200
Quality	Clients’ perception of the agreement-making process	Client satisfaction research not undertaken in reporting year. See p. 108

Comment on performance

Agreements that fully resolve future acts

The Tribunal did not reach its estimated number of agreements (65) for this financial year. Both the Western Australian and Queensland registries saw a reduction in the number of applications for s. 31 mediation assistance during the reporting period. In Western Australia, the Department of Mines and Petroleum reduced the number of s. 31 referrals despite a large number of mining leases in the right to negotiate stream.

### Milestones in future act mediations

The Tribunal exceeded its estimated milestones (86) for this reporting period, mainly due to activity in Queensland. However, in Western Australia the number of milestones was less than projected. A lack of funding for native title working group negotiation meetings accounted for some of the delay in agreement-making.

**Table 10: Number of future act agreements by state and territory**

Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Agreements that fully resolve future act applications	-	-	6	1	-	-	-	49	<b>56</b>
Milestones in future act mediations	-	-	11	96	-	-	-	37	<b>144</b>

## Decisions

### Description

This component relates to decisions made by the Registrar and the Tribunal. The objective is to make timely and legally sustainable decisions in performance of the Tribunal's registration and arbitration functions, including:

- decisions made by the Registrar, and reconsideration decisions by Tribunal members, when considering native title claimant applications for registration on the Register of Native Title Claims
- the Registrar's decisions whether to register agreements on the Register of Indigenous Land Use Agreements
- determinations made by the Tribunal that a future act may or must not be done (and, if the future act may be done, as to whether it is to be done subject to conditions or not), as well as decisions whether negotiations to reach agreement about future act determination applications were undertaken in good faith
- the processing, and finalisation, by the Tribunal of objections to the inclusion of the expedited procedure statement in certain future act notices.

The deliverables are as follows:

- registration of native title claimant applications
- registration of ILUAs
- determinations made by the Tribunal that a future act may or must not be done and decisions as to whether negotiations to reach agreement about future act determination applications have occurred in good faith
- finalised objections to the expedited procedure.

The qualitative measures for this component are:

- 70 per cent of decisions for the registration of native title claimant applications are completed within six months of receipt of the original or amended application submitted for registration
- 90 per cent of decisions for the registration of ILUAs are completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration
- 80 per cent of future act determinations are finalised within six months of the application being made
- 80 per cent of objections to the expedited procedure resolved other than by agreement are finalised within nine months of the s. 29 notice closing date
- 70 per cent of objections to the expedited procedure resolved by agreement are finalised within nine months of acceptance.

### **Performance: Registration of native title claimant applications**

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 comprised of a series of merit and procedural conditions for registration. In some circumstances, however, the registration test will not be applied to claims made in an amended application (see s. 190A(1A)). In other circumstances, claims made in an amended application will have a more limited test applied to them (see s. 190A(6A)).

If the Registrar decides that the claim does not meet all the conditions for registration, 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.

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.

Performance at a glance		
Measure	Estimate	Result
Quantity	29	78
Quality	70% of decisions completed within six months of receipt of the original or amended application submitted for registration	97% of decisions completed within six months of receipt of the original or amended application submitted for registration*

\* Six decisions were made pursuant to s. 190A(6A), and are therefore not included in the performance assessment.

#### *Comment on performance*

There were more registration test decisions in the reporting period than in the previous reporting period, largely due to the number of new claims lodged over pastoral leases in the Northern Territory.

Of the 78 registration test decisions made in the reporting period, six amended claims were accepted for registration following the more limited test pursuant to s. 190A(6A). Twenty-six of the 72 claims that had the full registration test applied were accepted for registration.

**Table 11: Number of registration test decisions by state and territory**

Outcome of decision	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Accepted	-	1	5	9	1	-	-	10	<b>26</b>
Accepted—s. 190A(6A)	-	2	-	1	-	-	-	3	<b>6</b>
Not accepted	-	1	27	2	3	-	-	13	<b>46</b>

Excluding s. 190A(6A) decisions, 97 per cent of the remaining 72 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.

### Performance: Registration 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 (where the application for registration has been certified) or an alternative procedure agreement. In some circumstances, the Tribunal can inquire into an objection to the registration of an alternative procedure agreement. During the reporting period there were no applications for the registration of alternative procedure agreements.

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

Performance at a glance		
Measure	Estimate	Result
Quantity	60	72
Quality	90% of decisions completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration	97% of decisions completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration

Note: Thirteen applications received an objection/bar to registration. Because the legal and practical steps to deal with an objection/bar take additional time, those applications were therefore not included in the performance assessment.

**Table 12: Number of ILUAs lodged and/or registered by state and territory**

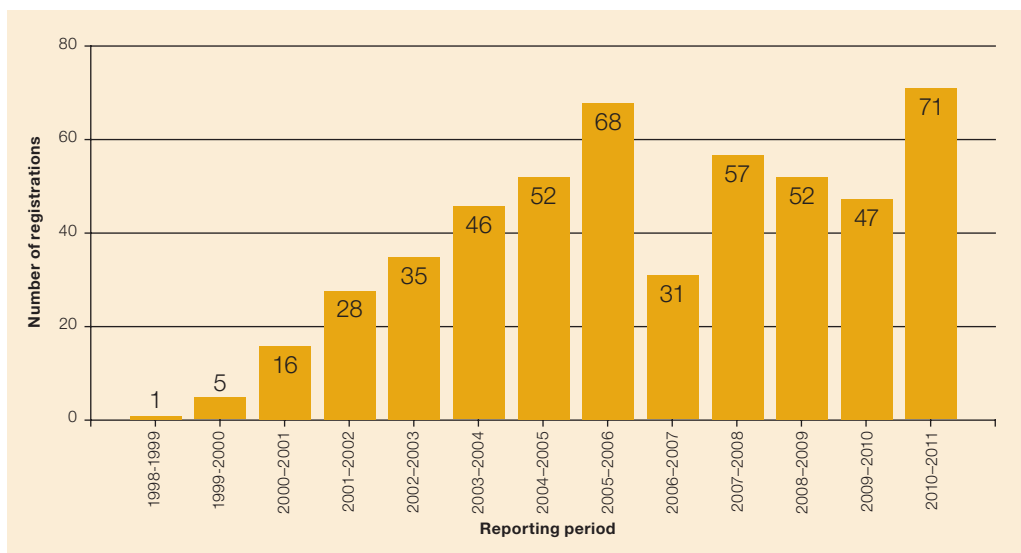
ILUAs	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Lodged	-	1	6	49	1	0	4	14	<b>75</b>
Registered	-	1	6	38	1	0	2	23	<b>71</b>

*Comment on performance*

During the reporting period decisions were made in respect of 72 ILUAs and 71 were registered. The most significant volume of ILUA activity occurred in Queensland, as a result of which 38 ILUAs were registered.

In July 2010, the Tribunal registered the Northern Territory's 100th ILUA. Almost a quarter of the registered ILUAs in Australia are in the Northern Territory. In March 2011 the 500<sup>th</sup> ILUA was registered. As noted in the President's overview, some ILUAs have expired, and in the reporting period eight were removed from the Register.

Of the total number of ILUAs registered in this reporting period, 27 were body corporate agreements and 44 were area agreements.

**Figure 6: Number of ILUA registrations per reporting period as at 30 June 2011**

During the reporting period, an objection or adverse information was received in respect of 13 of the 72 ILUAs that were tested for registration. Of the remaining 59 applications, 97 per cent of the registration decisions were made within six months, exceeding our performance target.

### **Performance: Future act determinations and decisions whether negotiations were undertaken in good faith**

This component 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 occurred in good faith, in which case it has power to proceed with the substantive inquiry.

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 of future act determinations are finalised within six months of the application being made.

Performance at a glance		
Measure	Estimate	Result
Quantity*	45	96
Quality**	80% of future act determination applications finalised within six months of the application being made	89% of future act determination applications finalised within six months of the application being made

\* Counted by tenement

\*\* Decisions in respect of 14 tenements related to whether negotiation in good faith requirements were satisfied and were therefore not included in the six month qualitative performance assessment

### *Comment on performance*

During the reporting period the number of future act determinations and decisions made by the Tribunal was higher than last year (60). Western Australia had almost double the number of anticipated determinations and decisions for that region. The numbers of determinations and decisions in other states during the reporting period were 17 in Queensland, two in Victoria and two in New South Wales.

Tribunal members made six decisions (affecting 14 tenements) relating to the statutory requirement that parties negotiate in good faith.

**Table 13: Future act determination application outcomes by tenement**

<b>Outcomes of Future act determination applications</b>	<b>NSW</b>	<b>Qld</b>	<b>Vic</b>	<b>WA</b>	<b>Total</b>
Application not accepted*	-	1	-	-	<b>1</b>
Application withdrawn*	-	21	-	47	<b>68</b>
Consent determination—future act can be done	-	-	1	54	<b>55</b>
Determination—future act can be done	1	2	-	1	<b>4</b>
Determination—future act can be done subject to conditions	-	15	-	7	<b>22</b>
Determination—future act cannot be done	-	-	-	1	<b>1</b>
Dismissed—s. 148(a) no jurisdiction*	-	-	-	8	<b>8</b>
<b>Total</b>	<b>1</b>	<b>39</b>	<b>1</b>	<b>118</b>	<b>159</b>

\* Not counted for output reporting purposes

In the previous reporting period, the Yindjibarndi People appealed the Tribunal's decision in relation to 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 Tribunal's decision was upheld by McKerracher J, and an appeal was made to the Full Court of the Federal Court. Its decision had not been delivered before the end of the reporting period.

## Performance: Finalised objections to expedited procedure

This component covers 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.

The performance indicators for objections to the expedited procedure are:

- quantity—number of objections resolved
- quality—80 per cent of objections resolved other than by agreement are finalised within nine months of the s. 29 closing date, 70 per cent of objections resolved by agreement are finalised within nine months of acceptance.

### Performance at a glance

Measure	Estimate	Result
Quantity	1,030	1,464
Quality	80% of objections resolved other than by agreement finalised within nine months of the s. 29 closing date	74% of objections resolved other than by agreement finalised within nine months of the s. 29 closing date
	70% of objections resolved by agreement finalised within nine months of acceptance	81% of objections resolved by agreement finalised within nine months of acceptance

Note: One hundred and nine objections were resolved by other processes and were therefore not included in the performance assessment. Other processes include non-acceptance of the objection application, 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 a reduction by almost 11 per cent in the number of notices asserting the expedited procedure compared to the previous reporting period. Despite this reduction in notification of proposed future acts, the number of objections to the expedited procedure statement being lodged nationally only reduced by less than one per cent.

Western Australia met the performance criteria by resolving 81 per cent of objections other than by agreement within nine months of the s. 29 closing date. In Queensland, despite the assertion of the expedited procedure, the State Government prefers matters to be resolved by agreement where possible. In these circumstances, it is the government's practice to support a maximum time period for the grantee and native title parties to reach an agreement. This necessarily affects the periods for resolution of expedited procedure inquiries.

To date, no expedited procedure matter has proceeded to a finalised inquiry in Queensland.

**Table 14: Objection application outcomes by tenement**

<b>Outcomes of objection applications</b>	<b>Qld</b>	<b>WA</b>	<b>Total</b>
Consent determination—expedited procedure does not apply	-	5	<b>5</b>
Determination—expedited procedure applies	-	33	<b>33</b>
Determination—expedited procedure does not apply	-	19	<b>19</b>
Dismissed—s. 148(a) no jurisdiction*	23	20	<b>43</b>
Dismissed—s. 148(a) tenement withdrawn*	12	175	<b>187</b>
Dismissed—s. 148(b)	6	272	<b>278</b>
Expedited procedure statement withdrawn—s. 31 agreement lodged	86	-	<b>86</b>
Objection not accepted	-	6	<b>6</b>
Objection withdrawn—agreement	78	714	<b>792</b>
Objection withdrawn—external factors	-	56	<b>56</b>
Objection withdrawn—no agreement	49	93	<b>142</b>
Objection withdrawn prior to acceptance	-	47	<b>47</b>
Tenement withdrawn*	-	2	<b>2</b>
Tenement withdrawn prior to objection acceptance*	-	1	<b>1</b>
<b>Total</b>	<b>254</b>	<b>1,443</b>	<b>1,697</b>

\* Not counted for output reporting purposes.

# Management

## IN THIS REPORT

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During the reporting period, the Tribunal completed a review of its governance structure and streamlined governance arrangements.

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The Tribunal continued its focus on reducing staff numbers, with a reduction of 21% of the number of employees.

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The Tribunal developed an *Indigenous Employment Strategy* and *Reconciliation Action Plan*.

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In March 2011, the Tribunal received a Workplace Health & Safety Award from CRS Australia.

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At 30 June 2011, the percentage of Indigenous employees within the Tribunal was 8 per cent.

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The Tribunal's *Enterprise Agreement 2011-2014* was negotiated.

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Key Tribunal executives (from left) Director, Operations East Frank Russo, Registrar Stephanie Fryer-Smith, and Director, Operations West June Eaton.



# Corporate governance

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 has the powers of the Secretary of a Department under the *Public Service Act 1999* (Cwlth) and the *Financial Management and Accountability Act 1997* (Cwlth) and also a range of responsibilities under other Commonwealth legislation.

The Registrar, the Director, Operations West and the Director, Operations East are the key executives in the Tribunal. Information relating to their qualifications and background is available on the Tribunal's website.

The Tribunal's strategic direction is embodied in its *Strategic Plan 2009–2011*, which sets out 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 structure enables the Tribunal to meet its vision of timely, effective native title and related outcomes.

The President and Registrar, in making decisions about the administration of the Tribunal, are assisted by the Director, Operations East, the Director, Operations West, the Chief Financial Officer, the Chief Information Officer, the Director, Human Resources and the Manager of the Registrar's Directorate. The President's and Registrar's decision-making is supported and informed by comprehensive corporate governance arrangements and practices. These are administered by a number of management groups and committees as described later in this chapter.

The governance arrangements include controls established under the Commonwealth's financial management framework such as, the *Chief Executive's Instructions* and supporting guidelines, the protective security and information security frameworks, business continuity planning, and compliance. In November 2010, the Tribunal completed a review of its governance structure, that is, over 50 advisory and other groups and committees. The report of the governance review

proposed new, simplified and streamlined governance arrangements, which came into effect on 1 January 2011. As a result of these changes, some of the groups and committees were subsumed into other groups and others were discontinued.

Twelve high-level committees now form the Tribunal's core governance structure, most of which have revised or new terms of reference. Those committees or groups include:

- Strategic and Expenditure Advisory Group
- Strategic Practice Group
- Management Board
- Senior managers' forums
- Audit Committee.

### **Members' meetings**

The President and members held one meeting in Adelaide during March 2011. 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, trends and training
- current operating environment
- liaison with the Court
- updates from the Tribunal's Strategic Practice Group.

### **Strategic and Expenditure Advisory Group**

The Strategic and Expenditure Advisory Group came into existence on 1 January 2011 and subsumed the functions of both the Strategic Planning Advisory Group and the Expenditure Review Committee. It is a key forum in the governance of the Tribunal under the authority of the President and Registrar. Its functions include providing advice in respect of forward planning and the development of strategic objectives, budgetary matters, and monitoring outputs and results. It comprises the President as Chair, the Deputy Presidents, the Registrar and Director, Operations West and Director, Operations East. The group meets quarterly or as required, and met twice since its creation.

### **Strategic Practice Group**

The Strategic Practice Group came into existence on 1 January 2011 and subsumed the functions of the Tribunal's previous strategy groups, namely the Agreement-making Liaison Group, External Relations Working Group, National Future Act Liaison Group, ILUA Strategy Group and the Resources Coordination Group. The functions of the Strategic Practice Group are to maintain a national and state/territory overview of practices, issues and trends in relation to agreement-making, ILUAs and future acts. The Strategic Practice Group also makes recommendations to the President and

members, the Registrar, the Management Board or other relevant forums in relation to agreement-making, ILUA and future act practice.

The Strategic Practice Group is chaired by the President, and also includes the Deputy Presidents, ILUA coordinator member, Registrar, Director, Operations West and Director, Operations East and two registry managers. The group meets four times a year.

### **Management Board**

The Management Board is chaired by the Registrar and meets every three weeks to consider strategic, operational, financial and administrative matters relating to the Tribunal. The Management Board is the main forum in which the Registrar, Directors and corporate managers discuss and decide a wide range of business matters.

The functions of the Management Board include providing high-level advice to the Registrar, developing and reviewing budgets, addressing policy and operational matters and other key responsibilities.

### **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 Registrar convened monthly Registry and Section Managers' meetings by web-enabled videoconference, which were also attended by the Director, Operations West and the Director, Operations East
- the National Operations Managers' 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, Operations West and Director, Operations East, and other senior staff according to the issues at the time.

In addition to its monthly web-enabled videoconference meetings, if finances permit, the Registry and Section Managers' group meets in Perth once a year. In June 2011, the Registry and Section Managers' group met for two days with the meeting theme *Strategically Engaging the Future*. The meeting provided an opportunity to consider current and future trends affecting the Tribunal and to discuss priorities for the Tribunal in coming years.

## 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 are 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 Audit Committee was established in December 2010 to replace the Risk Management and Audit Committee. In accordance with its terms of reference, the Audit Committee is comprised of a chairperson, a representative for Operations East, a representative for Operations West, a Tribunal employee with accounting or related management experience (including an understanding of auditing standards in a public sector environment) and a Tribunal employee with information and communications technology experience. If required, the committee accesses independent external advice to assist with its work.

The committee met twice during the reporting period. A major focus was to obtain expert external advice and to oversee the conduct of a fraud risk assessment, the development of the Tribunal's fraud risk register and the drafting of a *Fraud Risk Control Plan 2011–2013*. A draft strategic *Internal Audit Plan 2011–2013*, with an enhanced risk register, was also developed during the reporting period. The updated fraud risk register and the *Fraud Risk Control Plan 2011–2013* were adopted in June 2011.

The Tribunal participated in Comcover's 2011 Benchmarking Survey, achieving a benchmarking overall score of 6.1. That score places the Tribunal within the average result for all agencies. In recognition of its continuous improvement in risk management, the Tribunal received a discount of 6.1 per cent on its 2011–12 premium.

Figure 6: Certification of Tribunal fraud control arrangements

I, Stephanie Fryer-Smith, certify that:

- the Tribunal has prepared fraud risk assessments and fraud control plans
- the Tribunal has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency and comply with the Commonwealth Fraud Control Guidelines.



Stephanie Fryer-Smith  
Registrar  
13 September 2011

## Information and technology management

Since the last reporting period, the Information Services section has made significant ongoing progress in redeveloping and improving the Tribunal's business systems and network infrastructure.

### Software upgrades

During the reporting period a number of upgrades were undertaken to the Tribunal's human resources, finance and records management systems to ensure ongoing support and maintenance. These comprised:

- the upgrade of the Chris21 payroll system
- the upgrade of Finance1 and the introduction of a travel module
- integration with SharePoint and Electronic Document and Records Management system.

In addition to improving corporate systems, a number of upgrades and configuration activities took place within the Tribunal's operating environment. These were:

- the upgrade of Microsoft Exchange 2007 to 2010
- configuration and implementation of server environment monitoring tools
- implementation of real time desktop and video conferencing using Microsoft Lync.

### Telephony and hardware replacement

The Tribunal's telephony system was replaced with a Voice over Internet Protocol (VoIP) solution, which was rolled out to all registries. VoIP was a major project that was partially funded by the Commonwealth's ICT BAU Reinvestment fund. A number of network improvements were also needed in order to support VoIP. These included the:

- upgrade and implementation of a dedicated private wide area network
- configuration of voice packet prioritisation over the Tribunal network
- replacement of Tribunal core network switches and routers for all registries.

### Compliance

The Information Services section is undertaking a number of initiatives in support of compliance requirements, which include protective security, environmental sustainability and records management.

### Environmental

The Tribunal is pursuing various strategies to minimise the effect of climate change and to engage in more sustainable practices. In the area of ICT initiatives include:

- the continuation of the replacement of existing physical server environment with Hyper-V virtual servers; since April 2010 the physical server fleet has been reduced from 53 to 26 servers
- an audit for power consumption of the server room to assist in the development of an Energy Management Plan, as required by the *Australian Government ICT Sustainability Plan 2010–15*.

### Protective security

A comprehensive review and audit of the Tribunal's current controls for the Commonwealth's protective security requirements were conducted during the reporting period. Protective security officers appointed during this period, to be supervised by the Director, Operations West, included the Agency Security Adviser and the Information Technology Security Adviser.

### Records Management

A review of the records management environment, including the development and implementation of a revised Tribunal-wide records management policy and records awareness program, was undertaken during the reporting period.

### External reporting

Information Services has responded on behalf of the Tribunal to several all-of-government projects specifically aimed at improving ICT financial, security, and staff management, which entail the drafting and submission of some 22 reports to the

Australian Government Information Management Office, the Department of Finance and the Deregulation and the Australian Public Service Commission (APSC).

### **Business as usual activities**

In addition to project work undertaken through the year and business as usual activities, the Information Services team carried out a range of office ICT commissioning and de-commissioning activities. These were essential to ensure that the closure or re-location of certain registries proceeded smoothly. They included the closure of the Northern Territory Registry and the re-location of the Western Australia Registry into the Commonwealth Law Courts Building in Perth. All required significant technical and records management support.

## Human resources

### **Overview**

During the reporting period the Tribunal had to remain focused on reducing overall employee numbers, while recruiting new employees to key positions when required. This involved using a variety of strategies: internal transfer of staff; voluntary redundancy initiatives; permitting non-ongoing contracts to expire without renewal; and a limited number of involuntary redundancies.

In late April 2011, negotiations for a new enterprise agreement commenced. Six negotiation meetings were held over a nine-week period, resulting in agreement as to the terms of a new enterprise agreement. A draft agreement was submitted to the APSC for approval in late June 2011.

During the reporting period staff numbers decreased by 21 per cent: from 225 employees (202 full-time equivalent or FTE) at 1 July 2010 to 177 employees (158 FTE) at 30 June 2011. The aggregate turnover rate for the year of 42 per cent was largely due to the high number of voluntary and the limited number of involuntary redundancies, and the expiry of many employment contracts. Recruitment processes were updated, incorporating the use of the system eRecruit.

During the reporting year the Tribunal developed a detailed *Indigenous Employment Strategy 2011–2013*, which focuses on the attraction, retention and development of Aboriginal and Torres Strait Islander employees. The implementation of the strategy commenced in May 2011 following the biennial Indigenous Employees' Workshop, which was attended by almost all Indigenous staff. The strategy aims, in addition, to render the Tribunal as an employer of choice for Indigenous persons across Australia.

An Employee Survey, conducted in November 2010, provided valuable feedback on employees' experience of the workplace and identified a number of areas for improvement, including internal communications, leadership and staff development.

Health and Safety Representatives carried out inspections, coordinated follow-up activities, found solutions for occupational health and safety (OH&S) hazards and risks, and supported the National Health and Safety Committee. A number of proactive safety initiatives were launched, including a Healthy Eating Advisory Day and introduction of updated ergonomic assessment processes. Occupational health and safety consultation courses were conducted for staff representatives and National Health and Safety Committee members. Continuation of warden training and first aid courses should ensure that the Tribunal has adequately trained staff to respond to an emergency. In March 2011, the Tribunal was awarded the Workplace Health & Safety Award for Western Australia by CRS Australia in recognition of the Tribunal's injury prevention and maintenance of a safe and healthy workplace.

Human Resources work with staff across the Tribunal to promote non-discriminatory and non-harassing behaviour and to raise awareness of the need to ensure socially-inclusive workplaces. This includes the provision of confidential advice to all staff on how to deal with grievances, as well as facilitating the efficient, effective and timely resolution of any grievances.

### **Our workforce profile**

At 30 June 2011, the Tribunal had nine Holders of Public Office (President, Registrar and Members) and, as noted above, 177 (or 158 FTE) people employed under the *Public Service Act 1999* (Cwlth). The average head count of Tribunal employees for the year was 191.

The Tribunal recognises the value of inter-agency 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 number of non-ongoing employees, as a percentage of the workforce, decreased. This was a strategy designed to bring greater stability to a reduced staff cohort.

To achieve greater efficiency within its reduced workforce, the Tribunal commissioned a partly internal, partly external review of the Tribunal's workforce needs to 2014. The key objective of the review was to develop a workforce plan, which was highly-focused and would optimise the Tribunal's organisational efficiency, flexibility and responsiveness.

**Table 15: Employees by equal employment opportunity group participation and type of employment**

Employees	At 30 June 2010	At 30 June 2011
Female	153	118
Indigenous	22	14
Linguistically diverse background	17	16
People with a disability	5	4
Ongoing	169	136
Part-time	44	25

### Indigenous employees

At 30 June 2011, Indigenous employees comprised eight per cent of the Tribunal's employees. Exit data shows that most of the Indigenous employees who have left the Tribunal have done so to take up other opportunities outside the Australian Public Service (APS).

The composition of the Tribunals' Indigenous employees as at 30 June 2011 is set out in Table 17.

### Indigenous Employee Study Award

Each year the Tribunal awards a scholarship to one or more of its Indigenous 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 advance their careers more effectively within the Tribunal and the APS
- assist them to gain tertiary qualifications to increase their career prospects within the Tribunal and the APS
- assist the Tribunal by increasing the number of graduate Indigenous employees able to better compete for middle level and senior employee positions.

In 2011 the Undergraduate Award was presented for semester 1 to one Indigenous employee to study at university on a full-time basis in a course of study relevant to the Tribunal or APS.

**Table 16: Tribunal employees by location as at 30 June 2011**

Classification	Office location						Totals
	Principal	WA	NSW	Qld	Vic	SA	
APS level 1	-	-	-	-	-	-	-
APS level 2	7	19		8	2	2	<b>38</b>
APS level 3	10	1	2	1	-		<b>14</b>
APS level 4	8	9	3	10	-	1	<b>31</b>
APS level 5	14	-		1	-	-	<b>15</b>
APS level 6	16	9	5	6	2	3	<b>41</b>
Legal 1	3	-	-	-	-	-	<b>3</b>
Legal 2	1	-	-	-	-	-	<b>1</b>
Media 1	-	-	-	-	-	-	-
Media 2	-	-	-	-	-	-	-
Library 1	-	-	-	-	-	-	-
Library 2	1	-	-	-	-	-	<b>1</b>
Executive level 1	10	4	4	2	1	1	<b>22</b>
Executive level 2	7	1	-	1	-	-	<b>9</b>
Senior executive	1	-	1	-	-	-	<b>2</b>
<b>Total employees</b>	<b>77</b>	<b>43</b>	<b>15</b>	<b>30</b>	<b>5</b>	<b>7</b>	<b>177</b>

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.

### Indigenous Advisory Group

Since 2003 the Tribunal has maintained a dedicated working group comprising its Indigenous employees which is known as the Indigenous Advisory Group (IAG). All Indigenous employees are encouraged to join the IAG, which, through a steering committee, progresses matters relevant to Indigenous employees within the Tribunal.

The meetings of the IAG are chaired by the Registrar and often non-Indigenous employees attend as observers for particular purposes.

The IAG held its biennial Indigenous Employees conference in Brisbane from 24–26 May 2011. The conference gave Indigenous staff the opportunity to discuss a range of issues affecting indigenous employment in the Tribunal and wider APS, to hear guest speakers and to undertake training where relevant.

The focus of the conference was to develop an action plan for the implementation of the *Indigenous Employment Strategy*. The group met to deliver a range of strategies to assist the Tribunal to deliver outcomes in the key areas of the strategy including:

- recruitment strategies that will attract more Indigenous employees
- retention strategies that support the Tribunal's goal to retain skilled Indigenous employees
- workplace environment strategies that address ways in which the Tribunal supports Indigenous employees and promotes cultural understanding and communication within the Tribunal.

Indigenous employees and Tribunal President Graeme Neate at the biennial conference in Brisbane. From left Karrell Ross, Andrew Bowen, Rachelle Christian, Ashley Williams, Colleen Burfitt, President Graeme Neate, Andrea Williams, Paul Willaway, Kimberley Wilson and Victor Lovett.



# Case study

## Promoting respect, relationships and opportunities—the Tribunal’s Reconciliation Action Plan

The Tribunal is committed to creating an environment that attracts and retains Indigenous employees.

As part of that commitment, the Tribunal’s support for Indigenous employees includes recognition of cultural obligations through specific leave provisions in the Enterprise Agreement 2009–2011, providing a workplace free from harassment, bullying and discrimination, the implementation of an *Indigenous Employment Strategy 2011–2013* and the development of a *Reconciliation Action Plan 2011– 2013* (RAP) during the reporting period.

By adopting a formal RAP, the Tribunal is setting out its commitment, intentions and specific goals for supporting Aboriginal and Torres Strait Islander people and communities, including employees and stakeholders.

The Tribunal’s RAP, endorsed by Reconciliation Australia, was launched in May 2011 to coincide with the biennial Indigenous Employees Conference in Brisbane.

In launching the RAP, Tribunal President, Graeme Neate, said much of the work of the Tribunal is driven towards reconciliation—working to bring native title parties together to reach enduring outcomes and to create new and improved relationships between Aboriginal and Torres Strait Islander peoples and other Australians.

‘The Tribunal is in a unique position to assist reconciliation as we facilitate agreements that can deliver real benefits to Aboriginal and Torres Strait Islander communities. The Tribunal also has a key role in employing Aboriginal and Torres Strait Islander peoples and developing and utilising their unique skills and knowledge in delivering a range of Tribunal services,’ the President said.

The Tribunal’s RAP identifies actions and targets around relationships, respect and opportunities.

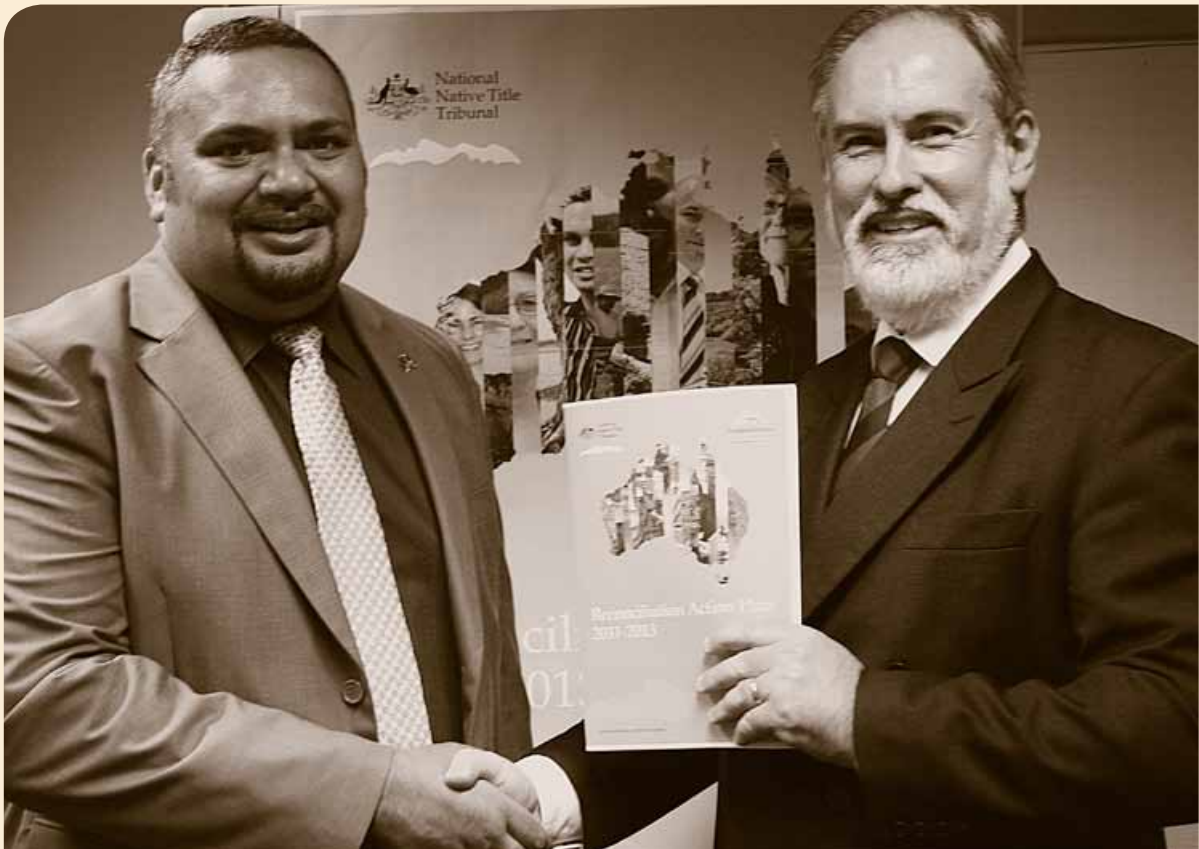
**Relationships:** We believe relationships are critical to the work of the Tribunal because it is respectful, working relationships that enable the Tribunal to facilitate lasting and effective outcomes.

**Respect:** We think respect is important to the Tribunal because we acknowledge the richness and diversity of Aboriginal and Torres Strait Islander cultures and the strong connections to land and waters held by Aboriginal and Torres Strait Islander peoples.

**Opportunities:** We consider opportunities a key part of the Tribunal's RAP and are strongly supported by the Tribunal's Indigenous Employment Strategy and strategies within the Strategic Plan. The Tribunal is committed to a diverse workforce and to ensuring that we use the unique skills, perspective and knowledge of Indigenous employees.

In finalising our RAP, the Tribunal joins a long list of organisations, government agencies, businesses, sporting groups and many others who have completed a RAP.

Reconciliation Australia Representative Grant Paulson (left) with President Graeme Neate at the launch of the Tribunal's Reconciliation Action Plan.



**Table 17: Indigenous employees by location as at 30 June 2011**

Classification	Office location						
	Principal	WA	NSW	Qld	Vic	SA	Total
APS level 1	-	-	-	-	-	-	0
APS level 2	1	-	-	2	1	-	4
APS level 3	1	-	1	-	-	-	2
APS level 4	-	1	1	3	-	-	5
APS level 5	-	-	-	-	-	-	0
APS level 6	-	1	-	1	-	-	2
Legal 1	-	-	-	-	-	-	0
Legal 2	-	-	-	-	-	-	0
Media 1	-	-	-	-	-	-	0
Media 2	-	-	-	-	-	-	0
Library 1	-	-	-	-	-	-	0
Library 2	-	-	-	-	-	-	0
Executive level 1	-	-	-	1	-	-	1
Executive level 2	-	-	-	-	-	-	0
Senior executive	-	-	-	-	-	-	0
<b>Total</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>14</b>

### Individual flexibility arrangements

While most employees are covered by the Tribunal's enterprise agreement, at the end of the reporting period eight employees were working under individual flexibility arrangements. These arrangements covered conditions such as overtime rates, penalty rates, allowances, remuneration and leave.

### Reward and recognition

The Tribunal greatly values the work and commitment 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. The Tribunal makes provision under its Reward and Recognition program to recognise such employees.

During the reporting year the Tribunal recognised seven individuals and one team who had shown exceptional dedication, innovation and commitment to their work and the Tribunal.

The Tribunal continues to acknowledge employees who have given more than 10 years of service to the Tribunal. The Tribunal recognises this milestone by presenting the employee with a plaque and their name is placed on the 10 Year Honour Board on the Tribunal's intranet. In this reporting year 16 people were honoured with the award.

Case Manager Paul Willaway's ten years of service is recognised with the presentation of a plaque by Tribunal President, Graeme Neate.



## Learning and development

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

- satisfy the need for skills and knowledge to increase the Tribunal's capacity to achieve its corporate goals, manage change and extend organisational competence
- provide trained employees for specific current and future workplace requirements
- assist an employee with their career development
- improve current and future job performance.

To meet this goal, the Tribunal continues to provide opportunities, internally and externally, 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 this reporting period the Tribunal continued to support employees to seek and maintain LEADR accreditation as mediators. The Tribunal has four members and seven employees who are accredited under this program.

### **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 approved 20 applications under this program.

### **Occupational health and safety performance**

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

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

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

- preventative OH&S assistance (for example, workstation assessments and ergonomic assessments)
- Employee Assistance Program (an independent, confidential and professional counselling service)
- National OHS and Harassment Audit
- additional certification training in the areas of Comcare Code of Practice, roles, responsibilities, and ergonomic workstation assessment for Health and Safety Representatives
- influenza vaccination program.

A range of health initiatives was undertaken to assist employees in maintaining a healthy lifestyle and a safe work environment, for example, information sessions by Nutrition Australia, Wellbeing information sessions, participation in National Health and Fitness Week, and awareness of Men's Health Week. As mentioned earlier, the Tribunal was also awarded a Workplace Health & Safety Award by CRS Australia in recognition of the Tribunal's injury prevention and maintenance of a safe and healthy workplace.

## Commitment to workplace health and safety recognised

In March 2011, the Tribunal's commitment to workplace health and safety was recognised at CRS Australia's WA Employer Awards.

The Award for Workplace Health & Safety recognised the Tribunal's excellence in preventing injury in the workplace.

Peter Davies, WA Divisional Manager, CRS Australia, said, 'The National Native Title Tribunal ... was determined not just to meet its OHS obligations, but to move well beyond that in a very proactive manner'.

David Brown, Senior Human Resources Advisor who represented the Tribunal at the awards said, 'We consider CRS Australia services to be integral to the way we provide assistance to our employees when addressing existing or potential health and safety matters.'

CRS Australia has given us the ability to focus on prevention of injuries rather than rehabilitation by assisting us to reduce new compensation claims to zero in the last two years. This has significantly improved our insurance premium costs.'

From left: Peter Davies, WA Divisional Manager, CRS Australia presents David Brown, Senior Human Resources Advisor with the award.



## Disability reporting

### Changes to disability reporting in annual reports

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au) . From 2010–11, departments and agencies are no longer required to report on these functions.

The Commonwealth Disability Strategy has been replaced by a new National Disability Strategy, which sets out a 10-year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disabilities at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au) . The Social Inclusion Measurement and Reporting Strategy agreed by the government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency Annual Reports. More detail on social inclusion matters can be found at [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au) .

# Accountability

## IN THIS SECTION

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No formal requests for access to documents under the *Freedom of Information Act 1982* (Cwlth) were made.

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There were no formal investigations into complaints of alleged breaches of the APS Code of Conduct.

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Five new consultancy contracts were entered into during the reporting period.

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## 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

Energy efficiency initiatives have been included in all refits and national projects.

The Tribunal has successfully upgraded all lighting and replaced all lighting points with energy efficient lamps. All water taps and shower areas have been fitted with water saving devices to ensure environmental impact continuity. Recycle bins placed at each desk continue to be a reminder to staff of the need to be environmentally friendly and aware.

Air conditioning and other major plant and equipment have been maintained to ensure maximum efficiency while continuing to reduce power consumption.

Environmental management initiatives by Information Services are described on p. 93.

## External scrutiny

### Judicial decisions

One judgment relating to native title was handed down by the High Court during the reporting period. The Federal Court delivered a small number of decisions that may have a significant impact on the operations of the Tribunal. For further information see Appendix II Significant decisions, p. 116.

### 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. 121.

### Other scrutiny

#### Australian Human Rights Commission

Under s. 209 of the Act, the Aboriginal and Torres Strait Islander Social Justice Commissioner must 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 2010* (the Report) was tabled in Parliament on 10 February 2011. The Report reviews developments in native title law and policy from 1 July 2009 to 30 June 2010 but does not scrutinise the operations of the Tribunal.

### Other reports

There were no reports on the Tribunal's operations by the Auditor-General (other than the report on financial statements), any Parliamentary committee, the Commonwealth Ombudsman or Privacy Commissioner during the reporting period.

## Accountability to clients

### Client satisfaction

As noted earlier, every two years the Tribunal commissions research into the satisfaction of its clients and stakeholders with its delivery of native title related services. Research was undertaken in 2009–10. In the current reporting period, the

Tribunal used feedback and information gained from the 2009–10 client satisfaction report to inform continuous improvement 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.

### **Online services**

The Tribunal maintains a website at [www.nntt.gov.au](http://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 the Tribunal commenced a review of its website, and also made the necessary changes to ensure compliance with the Information Publication Scheme.

## Performance against purchasing policies

### Procurement

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

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

### 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, five new consultancy contracts were entered into involving a total expenditure of \$177,033. In addition, two ongoing consultancy contracts were active during the 2010–11 year, involving a total expenditure of \$92,083.

Detailed information on consultancy contracts with a value greater than \$10,000 is available in Appendix V Consultancy contract details, p. 128.

Table 18: Expenditure on consultancy contracts	
Type of contract	Expenditure
New	\$177,033
Ongoing	\$92,083
<b>Total</b>	<b>\$269,116</b>

# Appendices

## IN THIS SECTION

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At 30 June 2011, the Tribunal had 177 employees:  
59 male, 118 female.

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A small number of key legal decisions were made that  
impacted on the Tribunal's operations.

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The Tribunal published information as part of the  
Information Publication Scheme and as required by  
amendments to the *Freedom of Information Act 1982*.

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## Appendix I Human resources

The average number of employees for 2010–2011 was 191. This is a headcount figure (based on substantive positions) not a full-time equivalent figure and does not include holders of public office (President, members or Registrar).

**Table 19: Employees by classification, location and gender as at 30 June 2011**

Classifications	Salary Ranges	Male								Female							
		Location/Registry								Location/Registry							
		Principal	WA	NSW	Qld	Vic	SA	NT	Totals	Principal	WA	NSW	Qld	Vic	SA	NT	Totals
APS level 1	\$23,452–\$43,201	-	-	-	-	-	-	-	0	-	-	-	-	-	-	-	0 0
APS level 2	\$44,235–\$49,053	2	3	-	-	1	1	-	7	5	16	-	8	1	1	-	31 38
APS level 3	\$50,387–\$54,382	5	-	-	-	-	-	-	5	5	1	2	1	-	-	-	9 14
APS level 4	\$56,159–\$60,973	2	2	1	-	-	-	-	5	6	7	2	10	-	1	-	26 31
APS level 5	\$62,638–\$66,417	6	-	-	-	-	-	-	6	8	-	-	1	-	-	-	9 15
APS level 6	\$67,651–\$77,712	13	2	1	1	-	2	-	19	3	7	4	5	2	1	-	22 41
Legal 1	\$51,915–\$103,740	1	-	-	-	-	-	-	1	2	-	-	-	-	-	-	2 3
Legal 2	\$115,198–\$120,190	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	0 1
Media 1	\$70,468–\$80,074	-	-	-	-	-	-	-	0	-	-	-	-	-	-	-	0 0
Media 2	\$91,229–\$103,740	-	-	-	-	-	-	-	0	-	-	-	-	-	-	-	0 0
Library 1	\$50,387–\$66,417	-	-	-	-	-	-	-	0	-	-	-	1	-	-	-	1 1
Library 2	\$67,651–\$77,712	-	-	-	-	-	-	-	0	-	-	-	-	-	-	-	0 0
Executive Level 1	\$86,727–\$93,646	6	2	1	1	-	-	-	10	4	2	3	1	1	1	-	12 22
Executive Level 2	\$100,027–\$117,193	4	-	-	-	-	-	-	4	3	1	-	1	-	-	-	5 9
Senior Executive Level	From \$165,000	-	-	1	-	-	-	-	1	1	-	-	-	-	-	-	1 2
<b>Total</b>		<b>40</b>	<b>9</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>59</b>	<b>37</b>	<b>34</b>	<b>11</b>	<b>28</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>118 177</b>

**Table 20: Holders of public office of the National Native Title Tribunal as at 30 June 2011**

<b>Name</b>	<b>Title</b>	<b>Appointed</b>	<b>Term</b>	<b>Location</b>
Graeme Neate	President	1 Mar 1999 <sup>1</sup>	Five years	Brisbane
		1 Mar 2004	Reappointed for a further three years	
		1 Mar 2007	Reappointed for a further five years	
Christopher Sumner	Full-time Deputy President	18 Apr 2000 <sup>2</sup>	Three years	Adelaide
		18 Apr 2003	Reappointed for a further four years	
		12 Apr 2007	Reappointed for a further five years	
John Sosso	Full-time Deputy President	28 Feb 2000	Three years	Brisbane
		28 Feb 2003	Reappointed for a further four years	
		28 Feb 2007 <sup>3</sup>	Appointed as a Deputy President for five years	
Graham Fletcher	Full-time member	20 Mar 2000	Three years	Brisbane
		20 Mar 2003	Reappointed for a further four years	
		20 Mar 2007	Reappointed for a further five years	
Daniel O'Dea	Full-time member	9 Dec 2002	Three years	Perth
		9 Dec 2005	Reappointed for a further two years	
		9 Dec 2007	Reappointed for a further five years	
Gaye Sculthorpe	Full-time member	2 Feb 2000	Three years	Melbourne
		2 Feb 2003	Reappointed for a further three years	
		2 Feb 2004 <sup>4</sup>	Reappointed as full-time for four years	
		2 Feb 2008	Reappointed for a further six months	
		2 Aug 2008	Reappointed for a further six months	
		3 Feb 2009	Reappointed for a further year	
		3 Feb 2010	Reappointed for a further year	
		3 Feb 2011	Reappointed for a further three months or until reappointed for a full-term	
Neville MacPherson	Part-time member	9 Feb 2011	Reappointed until 2 February 2013	Melbourne
		1 Sep 2003	Three years	
		1 Sep 2006 <sup>5</sup>	Reappointed for a further five years	
Helen Shurven	Part-time member	29 Nov 2010	One year	Perth
Stephanie Fryer-Smith	Registrar	20 Oct 2008	Five years	Perth

<sup>1</sup> Reappointed from part-time member to President

<sup>2</sup> Reappointed from full-time member to Deputy President

<sup>3</sup> Reappointed from full-time member to Deputy President

<sup>4</sup> Reappointed from part-time member to full-time member

<sup>5</sup> Reappointed from full-time member to part-time member

Information about Performance based pay is set out in Table 21 below.

**Table 21: Performance based pay**

Classification	No of employees	Aggregated amount	Average	Minimum	Maximum
SES / EL2 / EL1	11	\$100,145	\$9,104.00	\$1,000	\$25,000

## 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. Further information and extensive summaries of decisions, including Tribunal decisions in future act matters, 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.

### Federal Court

*QGC Pty Ltd v Bygrave (No 2)* (2010) 189 FCR 412; [2010] FCA 1019, Reeves J, 17 September 2010

QGC Pty Ltd (QGC) entered into an agreement with the Iman People. It was intended (among other things) to deal with 'future acts' in relation to the development of a natural gas project. The Iman People #2 claim, which is registered, covers the agreement area. The names of nine people appear on the Register of Native Title Claims (the Register) as the 'applicant' for that claim. One of those persons refused to sign the agreement. The application for registration of the agreement as an ILUA (Area Agreement) was certified under s. 203BE by Queensland South Native Title Services Limited, a body funded under s. 203FE to carry out the functions of a representative body.

The Court dealt with two main issues. First, could the Native Title Registrar's delegate decide *not* to give notice of the agreement pursuant to s. 24CH of the Act if the delegate decided it was not an ILUA as defined in s. 24CA of the Act? Second, did the 'registered native title claimant' (RNTC) as defined in s. 253 become a party to the agreement by naming as a party to the agreement any one or more of the nine people named as 'the applicant' in the Register?

In relation to the first issue, Justice Reeves found that the use of the word 'must' in s. 24CH 'indicates in the clearest terms' that the delegate was 'obliged to give notice of the agreement ... without ... giving any consideration to ... whether the agreement could be classified as an ILUA': at [25] to [26].

In relation to the second issue, his Honour concluded that:

- each RNTC 'may be made a party to an area agreement by naming one or more ... of the persons named in that part of the entry in the Register of Native Title Claims which identifies the name and address for service of the applicant', i.e. s. 186(1)(d)

- these persons then ‘act as representative parties for the native title contracting group to allow that group to enter into the ILUA’, with their role being ‘limited’ to being named as a representative party
- the specified party under ss. 24CD(1) and (2) was any one or more of the persons named in the relevant entry in the Register acting in their capacity as representative parties to the ILUA: at [84] to [85].

Therefore, Reeves J held that:

- the delegate had no power to refuse to give notice of the agreement
- naming any one of those persons whose names appear in the Register as the applicant is sufficient to make the ‘registered native title claimant’ a party to an area agreement ILUA.

### **Tribunal’s response**

The Registrar has developed new procedures that govern the process to be applied to applications for the registration of ILUAs in light of the Court’s decision in *QGC Pty Ltd v Bygrave*.

Prior to that decision, applications for registration of an ILUA were assessed against all registration requirements and a failure to comply with any of those requirements meant that notice was not given (after first giving the applicant an opportunity to remedy any deficiencies). The Registrar took the view that there were sound policy reasons not to notify an ILUA that was not capable of being accepted for registration after notification.

Following the Court’s decision, the Registrar has varied the approach to assessing applications for registration. A failure to comply with the requirements of ss. 24CB–24CE will now not prevent an application from being notified.

In some cases, where the a deficiency renders the application invalid in the eyes of the Registrar and incapable of proceeding, a written decision to that effect will be made and provided to the applicant.

*Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690 (2 July 2010) McKerracher J

These proceedings relate to a registered claimant application made on behalf of the Yindjibandi People in the Pilbara region of Western Australia. The applicant was the native title party in right to negotiate proceedings: *FMG Pilbara Pty Ltd/Cheedy/Western Australia* [2009] NNTTA 91 and *FMG Pilbara Pty/Wintawari Guruma Aboriginal Corporation/Cheedy/Western Australia* [2009] NNTTA 99. In each matter, the Tribunal

determined that future acts (the grant of three mining leases) could be done, subject to conditions. Section 38 of the Act provides that the Tribunal must make one of the following future act determinations:

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

Section 39 sets out the matters the Tribunal must take into account when making its determination, which includes the effect of the future act on:

- the enjoyment by the native title parties of their registered native title rights and interests
- the way of life, culture and traditions of any of those parties
- the development of the social, cultural and economic structures of any of those parties
- the freedom of access by any of those parties to the area concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on that area in accordance with their traditions
- any area or site of particular significance to the native title parties in accordance with their traditions on the area concerned.

An appeal under s. 169 of the Act from the Tribunal's determinations was made in each case. The appeals were heard together.

The main issue was what (if any) application s. 116 of the *Commonwealth of Australia Constitution Act 1900* (which deals with religious freedom) and international instruments (such as the *International Covenant on Civil and Political Rights* and the *United Nations Declaration on the Rights of Indigenous Peoples*) had in future act determination proceedings under the Act?

Section 116 of the Constitution provides that:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Justice McKerracher rejected the appellants' argument in relation to s. 116, finding it relied on 'the wrong test for inconsistency' between ss. 38 and 39 of the Act and s. 116 of the Constitution. His Honour wrote:

Section 116 directs attention primarily to the purpose of the impugned law, rather than to its 'effect' or 'result'. It may be that the effect of the law, in some circumstances, could assist in construing its purpose but the effect of the law is not the starting point: at [73].

There was 'no indication at all' that the purpose of ss. 38 or 39 was 'for' prohibiting the free exercise of religion. His Honour noted (among other things) that:

- the expression in s. 116 'for prohibiting the free exercise of any religion' means that it is 'the objective or purpose of the legislation to which attention must be directed', i.e. the end or object the legislation serves
- to the extent that any question of law arose on this issue in this case, the Tribunal's conclusion of law was consistent with the authorities on s. 116 of the Constitution: at [74] to [82], referring to *Kruger v The Commonwealth* (1997) 190 CLR 1 and *The Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120.

There was another problem with the s. 116 argument as put in this case:

Section 116 is directed to the making of Commonwealth laws, not with their administration or with executive acts done pursuant to those laws. Section 116 is not capable of regulating or invalidating the Tribunal's decision. The relevant enquiry is whether the Commonwealth may enact s 38 and s 39 NTA: at [83].

In relation to the relevance of international instruments, it was held the native title party had not identified any ambiguity in the interpretation of the relevant sections of the Act. In absence of any such ambiguity, there was no scope to consider the relevance of international instruments. Further, even if some ambiguity did exist, it was not shown how the Tribunal's interpretation was inconsistent with the relevant international instruments: at [107] to [108].

As to the compulsory acquisition ground of the appeals, McKerracher J confirmed that a future act determination made pursuant to s. 38 has no effect on native title but, rather, provides a mechanism for the relevant government to grant a mining lease. It is not a compulsory acquisition of native title rights and interests and cannot contravene s. 51 (xxxi) of the Constitution because some form of property or property rights must be acquired on other than 'just terms' and there was no acquisition of any kind in this matter.

Therefore, because the native title party failed to establish that the Tribunal erred on any question of law, McKerracher J dismissed both appeals. On 20 July 2010, a notice of appeal to the Full Court was filed in the Federal Court. At the end of the reporting period, judgment was pending.

**High Court**

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

## Appendix III Freedom of information

Section 8 of the *Freedom of Information Act 1982* (Cwlth) (FOI Act) 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.

From 1 May 2011, agencies subject to the FOI Act are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a s. 8 statement in an annual report. An agency plan showing what information is published in accordance with the IPS requirements is accessible from the Tribunal's website.

The Tribunal disclosure log sets out information that has been released in response to an FOI access request. No disclosures have been made in the reporting period.

A summary of Tribunal's statutory obligations under the FOI Act is available on the Tribunal website.

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 FOI Act.

### **Organisation**

An outline of the responsibilities of the Tribunal's executive and senior management committees is provided under Management, p. 89. The Tribunal's organisational structure as at 30 June 2011 is represented in Figure 2, p. 41.

### **Functions and powers**

The broad functions of the Tribunal are discussed in the Tribunal overview section in this report, p. 38. A summary of the information related to the Tribunal's functions and powers to meet the requirements of the FOI Act is detailed in this section.

## **Role**

The Tribunal's role is to assist people in reaching agreements about native title in a spirit of mutual recognition and respect for each other's rights and interests. The Tribunal also arbitrates in certain future act matters. The Tribunal seeks to carry out its functions in a fair, just, economical, informal and prompt way.

## **Authority and legislation**

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

## **Native Title Registrar**

Under the Act, the Native Title Registrar must assist the Tribunal's President in the management of the administrative affairs of the Tribunal. The Registrar may delegate all or any of their powers under the Act to Tribunal officers, and they may also engage consultants to perform services for the Registrar.

The Registrar has powers related to notification of native title applications and ILUAs and in making decisions regarding the registration of claimant applications and ILUAs. The Registrar maintains three statutory registers and makes decisions about the waiver of fees concerning future act applications made to the Tribunal. The Registrar may also provide non-financial assistance to people involved in native title proceedings.

## **National Native Title Tribunal**

Mediation of native title applications by the Tribunal is under the Federal Court's supervision. All or part of an application may be referred to the Tribunal for that purpose. The Tribunal has the function to provide, if asked, assistance to parties negotiating various agreements. The Tribunal also has an arbitral role in relation to right to negotiate future act matters.

## **Avenues for public participation**

The Tribunal actively encourages the general public and those involved in native title processes to contribute their ideas and suggestions on how it could improve its operations. The Tribunal invites public comment from individuals and organisations through its website at [www.nntt.gov.au](http://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 some 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 through which the public can participate.

### **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.

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

- 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 Act.
- National Native Title Register—a register containing information about each native title determination that has been determined by the Federal Court, High Court or other recognised body (s. 192 of the Act).
- Register of Indigenous Land Use Agreements—a register of ILUAs that have been accepted for registration (s. 199A of the Act).

### **Documents available free of charge**

The following documents are available free of charge upon request or from the Tribunal's website:

- brochures and fact sheets
- Client Service Charter
- *Strategic Plan 2009–2011*
- ILUA information
- *Guide to future act decisions made under the Commonwealth right to negotiate scheme*
- Occasional Paper Series (including commissioned and specific issue reports)
- *Talking Native Title* quarterly national newsletter and electronic e-newsletters for the states of Western Australia 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 Tribunal's Registers
- *Native title claimant applications: a guide to understanding the requirements of the registration test*
- annual reports
- applications affected by future act notices
- guide and application forms to instituting a future act determination and objections to an expedited procedure (under s. 75 of the Act)
- guidelines on acceptance of expedited procedure objection applications
- certain procedures of the Tribunal, including member procedural/practice directions
- bibliographies
- Tribunal's portfolio budget statements
- future act determinations made and published by the Tribunal
- edited reasons for decisions in registration test matters.

Additional operational information is also noted on the Tribunal's website.

### 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 that 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 as 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 where the FOI Act and Regulations provide that a charge may be imposed) 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. An applicant will be notified in advance if there is a charge imposed for the cost incurred in accessing, copying or reproducing the information or sending it to you. There will be no charge for the time spent by the Tribunal in processing the request

that led to this information being made available. Charges may be reduced or not imposed in particular circumstances.

The Tribunal must notify the applicant that the request has been received no later than 14 days after the day on which the request is received and make a decision in relation to an FOI request within 30 days of the date of receiving a request. The Tribunal's obligations under the FOI Act and how to access documents under the FOI 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

During the reporting period, no advertising campaigns were undertaken by the Tribunal, nor did the Tribunal use the services of a research organisation or external distribution agency.

The total amount spent for on advertising was \$309,241.

The costs for advertising via a media advertising organisation are detailed in Table 22 below.

Table 22: Expenditure on advertising (via a media advertising organisation)	
Type of advertising	Cost
Notification of applications as required under the Act	\$249,876
Staff recruitment	\$59,119
Other advertising (for example, tenders and consultants)	\$246
Total	\$309,241

## Appendix V Consultancy contract details

During 2010–11, five new consultancy contracts to the value of \$10,000 or more were entered into involving total actual expenditure of \$177,033. In addition, two ongoing consultancy contracts were active during the 2010–11 year, involving total expenditure of \$92,083.

**Table 23: Consultancy services let during 2010–11 of \$10,000 or more**

Consultant	Description	Actual Expenditure	Other	Selection process*	Justification**
Australian Government Solicitor	Legal Services	\$62,819	On-going	Select	C
Blake Dawson & Waldron	Legal Services	\$29,264	On-going	Select	B
Deloitte Touche Tohmatsu	Internal Audit Services	\$26,449	New	Open	B
Fellows Medlock & Associates Pty Ltd	Development of a Workforce Plan and Report	\$ 45,176	New	Select	B
GA Research	Consulting Services	\$62,088	New	Select	C
VSA Property	Provision of advice and services in relation to property lease	\$31,352	New	Direct	C
3D Networks (Australia) Pty Ltd	Network Architecture Review including IP Telephony readiness assessment	\$11,968	New	Direct	B
<b>Total</b>		<b>\$269,116</b>			

\* 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 generally sought from 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 (this includes tenders submitted through Multi Use Lists). This procurement process may only be used under certain defined circumstances.

**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.

**\*\*Justification for decision to use consultancy:**

A: skills currently unavailable within the Tribunal

B: need for specialised or professional skills

C: need for independent research or assessment

## Appendix VI Audit report and notes to the financial statements



### INDEPENDENT AUDITOR'S REPORT

#### To the Attorney-General

I have audited the accompanying financial statements of the National Native Title Tribunal for the year ended 30 June 2011, which comprise: a Statement by the Chief Executive Officer and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Asset Additions; Schedule of Administered Items; and Notes comprising a Summary of Significant Accounting Policies and other explanatory information.

#### Chief Executive Officer's Responsibility for the Financial Statements

The Chief Executive Officer of the National Native Title Tribunal is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as the Chief Executive Officer determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

#### 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 about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the National Native Title Tribunal's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the National Native Title Tribunal's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Chief Executive Officer of the National Native Title Tribunal, 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**

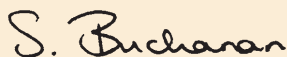
In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

### **Opinion**

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

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the National Native Title Tribunal's financial position as at 30 June 2011 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



Serena Buchanan  
Audit Principal


Delegate of the Auditor-General

Canberra  
28 September 2011

# National Native Title Tribunal

## Statement by the Chief Executive Officer and Chief Financial Officer

In our opinion, the attached financial statements for the year ended 30 June 2011 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 Financial Officer

28 September 2011

## Statement of comprehensive income for the year ended 30 June 2011

	Notes	2011 \$'000	2010 \$'000
<b>EXPENSES</b>			
Employee benefits	3A	<b>19,557</b>	20,300
Supplier	3B	<b>10,626</b>	9,455
Depreciation and amortisation	3C	<b>1,054</b>	719
Losses from asset sales	3D	<b>4</b>	2
<b>Total expenses</b>		<b>31,241</b>	30,476
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
Own-source revenue			
Rendering of services	4A	<b>37</b>	35
Rental income	4B	<b>24</b>	-
<b>Total own-source revenue</b>		<b>61</b>	35
<b>Gains</b>			
Sale of assets	4C	<b>11</b>	27
Reversals of restoration obligations	4D	<b>109</b>	-
Other	4E	<b>26</b>	26
<b>Total gains</b>		<b>146</b>	53
<b>Total own-source income</b>		<b>207</b>	88
<b>Net cost of services</b>		<b>(31,034)</b>	(30,388)
Revenue from Government	4F	<b>26,925</b>	29,682
<b>Surplus (Deficit) attributable to the Australian Government</b>		<b>(4,109)</b>	(706)

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

## Balance sheet as at 30 June 2011

	Notes	2011 \$'000	2010 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	5A	<b>1,034</b>	622
Trade and other receivables	5B	<b>14,129</b>	16,250
<b>Total financial assets</b>		<b>15,163</b>	16,872
<b>Non-Financial Assets</b>			
Land and buildings	6A,C	<b>1,665</b>	1,525
Property, plant and equipment	6B,C	<b>908</b>	892
Intangibles	6D,E	<b>196</b>	12
Other	6F	<b>113</b>	229
<b>Total non-financial assets</b>		<b>2,882</b>	2,658
<b>Total assets</b>		<b>18,045</b>	19,530
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	<b>321</b>	224
Other	7B	<b>399</b>	482
<b>Total payables</b>		<b>720</b>	706
<b>Provisions</b>			
Employee provisions	8A	<b>4,068</b>	4,282
Other	8B	<b>2,983</b>	855
<b>Total provisions</b>		<b>7,051</b>	5,137
<b>Total liabilities</b>		<b>7,771</b>	5,843
<b>Net assets</b>		<b>10,274</b>	13,687
<b>EQUITY</b>			
Parent Entity Interest			
Contributed equity		<b>3,111</b>	2,415
Retained surplus (accumulated deficit)		<b>7,163</b>	11,272
<b>Total parent entity interest</b>		<b>10,274</b>	13,687

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

## Statement of changes in equity for the year ended 30 June 2011

	Retained earnings		Contributed equity/capital		Total equity	
	2011	2010	2011	2010	2011	2010
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening balance</b>						
Balance carried forward from previous period	<b>11,272</b>	11,978	<b>2,415</b>	2,415	<b>13,687</b>	14,393
<b>Comprehensive income</b>						
Surplus (Deficit) for the period	<b>(4,109)</b>	(706)	-	-	<b>(4,109)</b>	(706)
<b>Total comprehensive income</b>	<b>(4,109)</b>	(706)	-	-	<b>(4,109)</b>	(706)
<b>Transactions with owners</b>						
<b>Contributions by owners</b>						
Equity injection - Appropriations	-	-	<b>270</b>	-	<b>270</b>	-
Departmental capital budget	-	-	<b>426</b>	-	<b>426</b>	-
<b>Sub-total transactions with owners</b>	-	-	<b>696</b>	-	<b>696</b>	-
<b>Closing balance as at 30 June 2011</b>	<b>7,163</b>	11,272	<b>3,111</b>	2,415	<b>10,274</b>	13,687
<b>Closing balance attributable to the Australian Government</b>	<b>7,163</b>	11,272	<b>3,111</b>	2,415	<b>10,274</b>	13,687

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

## Cash flow statement for the year ended 30 June 2011

	Notes	2011 \$'000	2010 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		29,053	30,047
Sales of goods and rendering of services		36	34
Net GST received		998	839
Other		76	47
<b>Total cash received</b>		<b>30,163</b>	<b>30,967</b>
<b>Cash used</b>			
Employees		(19,389)	(19,780)
Suppliers		(9,693)	(10,639)
<b>Total cash used</b>		<b>(29,082)</b>	<b>(30,419)</b>
<b>Net cash from (used by) operating activities</b>	9	<b>1,081</b>	<b>548</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		11	27
<b>Total cash received</b>		<b>11</b>	<b>27</b>
<b>Cash used</b>			
Purchase of property, plant and equipment		(1,286)	(757)
<b>Total cash used</b>		<b>(1,286)</b>	<b>(757)</b>
<b>Net cash from (used by) investing activities</b>		<b>(1,275)</b>	<b>(730)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Contributed equity		606	-
<b>Total cash received</b>		<b>606</b>	<b>-</b>
<b>Cash used</b>			
<b>Total cash used</b>		<b>-</b>	<b>-</b>
<b>Net cash from (used by) financing activities</b>		<b>606</b>	<b>-</b>
<b>Net increase (decrease) in cash held</b>		<b>412</b>	<b>(182)</b>
Cash and cash equivalents at the beginning of the reporting period		622	805
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>1,034</b>	<b>622</b>

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

## Schedule of commitments as at 30 June 2011

	2011 \$'000	2010 \$'000
<b>BY TYPE</b>		
<b>Commitments receivable</b>		
Net GST recoverable on commitments	(514)	(850)
<b>Total commitments receivable</b>	<b>(514)</b>	<b>(850)</b>
<b>Commitments payable</b>		
<b>Capital commitments</b>		
Property, plant and equipment	137	303
Intangibles	312	-
<b>Total capital commitments</b>	<b>449</b>	<b>303</b>
<b>Other commitments</b>		
Operating leases	5,125	9,017
Other	85	31
<b>Total other commitments</b>	<b>5,210</b>	<b>9,048</b>
<b>Net commitments by type</b>	<b>5,145</b>	<b>8,501</b>
<b>BY MATURITY</b>		
<b>Commitments receivable</b>		
One year or less	(366)	(253)
From one to five years	(148)	(597)
<b>Total operating lease income</b>	<b>(514)</b>	<b>(850)</b>
<b>Commitments payable</b>		
<b>Capital commitments</b>		
One year or less	449	303
<b>Total operating lease commitments</b>	<b>449</b>	<b>303</b>
<b>Operating lease commitments</b>		
One year or less	3,489	2,452
From one to five years	1,636	6,565
<b>Total operating lease commitments</b>	<b>5,125</b>	<b>9,017</b>
<b>Other Commitments</b>		
One year or less	85	31
<b>Total other commitments</b>	<b>85</b>	<b>31</b>
<b>Net commitments by maturity</b>	<b>5,145</b>	<b>8,501</b>

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

Note: Commitments are GST inclusive where relevant.

The Tribunal's capital commitments include the acquisition of case management software (ICaFAMS) and IT equipment.

The Tribunal's other commitments are of the nature of lease for office space, property, and motor vehicles.

## Schedule of contingencies as at 30 June 2011

	2011 \$'000	2010 \$'000
<b>Contingent assets</b>		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
<b>Total contingent assets</b>	-	-
<b>Contingent liabilities</b>		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
<b>Total contingent liabilities</b>	-	-
<b>Net contingent assets (liabilities)</b>	-	-

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

The Tribunal has no quantifiable contingencies as at 30 June 2011.

Details of each class of contingent liabilities and contingent assets listed above are disclosed in Note 10: Contingent Liabilities and Assets, along with information on significant remote contingencies and contingencies that cannot be quantified.

## Schedule of asset additions for the year ended 30 June 2011

The following non-financial non-current assets were added in 2010-11:

	Buildings \$'000	Property, plant & equipment \$'000	Intangibles \$'000	Total \$'000
<b>Additions funded in the current year</b>				
By purchase - appropriation ordinary annual services				
Departmental capital budget	56	298	-	354
Ordinary operating costs	494	-	187	681
By purchase - appropriation other services				
Equity injections	-	251	-	251
<b>Total funded additions funded in the current year</b>	<b>550</b>	<b>549</b>	<b>187</b>	<b>1,286</b>
<b>Additions recognised in 2010-11 - to be funded in future years</b>				
Make-good	112	-	-	112
<b>Total future years/unfunded additions</b>	<b>112</b>	<b>-</b>	<b>-</b>	<b>112</b>
<b>Total additions</b>	<b>662</b>	<b>549</b>	<b>187</b>	<b>1,398</b>

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

	Buildings \$'000	Property, plant & equipment \$'000	Intangibles \$'000	Total \$'000
<b>Additions funded in the current year</b>				
By purchase - appropriation ordinary annual services				
Ordinary operating costs	431	326	-	757
<b>Total funded additions funded in the current year</b>	<b>431</b>	<b>326</b>	<b>-</b>	<b>757</b>
<b>Additions recognised in 2009-10 - to be funded in future years</b>				
Make-good	398	-	-	398
<b>Total future years/unfunded additions</b>	<b>398</b>	<b>-</b>	<b>-</b>	<b>398</b>
<b>Total additions</b>	<b>829</b>	<b>326</b>	<b>-</b>	<b>1,155</b>

## Schedule of administered items

### Income administered on behalf of Government for the year ended 30 June 2011

	Notes	2011 \$'000	2010 \$'000
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Fees and fines	14A	60	40
<b>Total income administered on behalf of Government</b>		<b>60</b>	<b>40</b>
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fees		60	40
<b>Total cash received</b>		<b>60</b>	<b>40</b>
<b>Cash used</b>			
Other : Return of fees		(60)	(41)
<b>Total cash used</b>		<b>(60)</b>	<b>(41)</b>
<b>Net cash flows from (used by) operating activities</b>		<b>-</b>	<b>(1)</b>
<b>Net Increase (Decrease) in Cash Held</b>		<b>-</b>	<b>(1)</b>
Cash and cash equivalents at the beginning of the reporting period		-	1
Cash administered on behalf of government Official Public Account for:			
-Appropriations		60	40
		<b>60</b>	<b>41</b>
Cash sent to Official Public Account for:			
- Appropriations		(60)	(41)
		<b>(60)</b>	<b>(41)</b>
<b>Cash and cash equivalents at the end of the reporting period</b>	14B	<b>-</b>	<b>-</b>

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

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Index of notes to the financial statements

- Note 1: Summary of Significant Accounting Policies
- Note 2: Events After the Reporting Period
- Note 3: Expenses
- Note 4: Income
- Note 5: Financial Assets
- Note 6: Non-Financial Assets
- Note 7: Payables
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Contingent Liabilities and Assets
- Note 11: Senior Executive Remuneration
- Note 12: Remuneration of Auditors
- Note 13: Financial Instruments
- Note 14: Income Administered on Behalf of Government
- Note 15: Appropriations
- Note 16: Special Accounts
- Note 17: Reporting of Outcomes
- Note 18: Comprehensive Income (Loss) attributable to the Tribunal

### 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 Government controlled entity. 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.

Outcome 1: Facilitation of native title determinations, agreements and the disposition of related matters for claimants and others with interests in land and waters through mediation, agreement-making and administrative decisions.

The continued existence of the Tribunal in its present form and with its present programs is dependent on Government policy and on continuing funding by Parliament for the Tribunal's administration and programs.

Tribunal activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the Tribunal in its own

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

right. Administered activities involve the management or oversight by the Tribunal, on behalf of the Government, of items controlled or incurred by the Government.

The Tribunal collects fees from regulatory services it administers under the *Native Title Act 1993* ('The Act') and Regulations ('The Regulations').

#### 1.2 Basis of Preparation of the Financial Statements

The financial statements are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997*.

The financial statements have been prepared in accordance with:

- a) Finance Minister's Orders (FMOs) for reporting periods ending on or after 1 July 2010; and
- b) Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities 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 statements are 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 Tribunal 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 executor contracts are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments or the schedule of contingencies.

#### 1.3 Significant Accounting Judgements and Estimates

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

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

#### 1.4 New 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, revised standards, interpretations, and amended standards were issued prior to the signing of the statements by the chief executive and chief financial officers, were applicable to the current reporting period and had an impact on the Tribunal:

- AASB 7 - Financial Instruments: Disclosures - June 2010
- AASB 132 - Financial Instruments: Presentation - June 2010
- AASB 139 - Financial Instruments: Recognition and Measurement - December 2009

Other new standards, revised standards, interpretations, and amended standards that were issued prior to the sign-off date and are applicable to the current reporting period did not have a financial impact, and are not expected to have a future financial impact on the Tribunal.

##### *Future Australian Accounting Standard Requirements*

The following new standards, revised standards, interpretations, and amended standards were issued by the Australian Accounting Standards Board prior to the signing of the statements by the chief executive and chief financial officers, which are expected to have an impact on the Tribunal for future reporting periods:

- AASB 9 - Financial Instruments - December 2010
- AASB 101 - Presentation of Financial Statements - October 2010
- AASB 107 - Statement of Cash Flows - October 2010
- AASB 108 - Accounting policies, Changes in Accounting Estimates and Errors - December 2009
- AASB 110 - Events after the Reporting Period - December 2009
- AASB 118 - Revenue - October 2010
- AASB 119 - Employee Benefits - October 2010
- AASB 132 - Financial Instruments: Presentation - October 2010
- AASB 137 - Provisions, Contingent Liabilities and Contingent Assets - October 2010
- AASB 139 - Financial Instruments: Recognition and Measurement - October 2010
- AASB 1031 - Materiality - December 2009
- Interp. 115 - Operating Leases - Incentives - October 2010
- Interp. 127 - Evaluating the Substance of Transactions Involving the Legal Form of a Lease - October 2010

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

Other new standards, revised standards, interpretations, and amended standards that were issued prior to the sign-off date and are applicable to the future reporting period are not expected to have a future financial impact on the Tribunal.

#### 1.5 Revenue

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:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) the probable economic benefits associated with the transaction will flow to the Tribunal.

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 end of the reporting period. 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.

#### *Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the Tribunal 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.

#### 1.6 Gains

##### *Sale of Assets*

Gains from disposal of assets are recognised when control of the asset has passed to the buyer.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

#### *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.

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

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 Tribunal as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

#### **1.7 Transactions with the Government as Owner**

##### *Equity Injections*

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity.

#### **1.8 Employee Benefits**

Liabilities for 'short-term employee benefits' (as defined in AASB 119 Employee Benefits) and termination benefits due within twelve months of the end of reporting period 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.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

##### *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 will be applied at the time the leave is taken, including the

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

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 2011. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

#### *Separation and Redundancy*

No provision is made for separation and redundancy benefit payments. The Tribunal recognises a provision for termination only when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

#### *Superannuation*

The Tribunal's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

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

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

### 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 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.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

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

#### 1.10 Provisions

Provisions are recognised when the Tribunal has a present obligation (legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

When the Tribunal expects some or all of a provision to be reimbursed, for example under an insurance contract, the reimbursement is recognised as a separate asset but only when the reimbursement is virtually certain. The expense relating to any provision is presented in the statement of comprehensive income net of any reimbursement.

Provisions are measured at the present value of management's best estimate of the expenditure required to settle the present obligation at the reporting date. The discount rate used to determine the present value reflects current market assessments of the time value of money and the risks specific to the liability. The increase in the provision resulting from the passage of time is recognised in finance costs.

#### 1.11 Cash

Cash is recognised at its nominal amount. Cash and cash equivalents includes:

- a) cash on hand, and
- b) demand deposits in bank accounts.

#### 1.12 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 'trade and other receivables'. Trade and other receivables are recognised at the nominal amounts due less any impairment allowance account.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

#### *Impairment of Financial Assets*

Financial assets are assessed for collectability of debts which is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

#### **1.13 Financial Liabilities**

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).

#### **1.14 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.

#### **1.15 Financial Guarantee Contracts**

Financial guarantee contracts are accounted for in accordance with AASB 139 Financial Instruments: Recognition and Measurement. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137 Provisions, Contingent Liabilities and Contingent Assets.

#### **1.16 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 income 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's accounts immediately prior to the restructuring.

#### **1.17 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

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Tribunal where there exists an obligation to restore. These costs are included in the value of the Tribunal's leasehold improvements with a corresponding provision for the 'make good' recognised.

#### *Revaluations*

Fair values for each class of asset are determined as shown below:

Asset Class	Fair value measured at
Land and buildings	Depreciated replacement cost
Property, plant and equipment	Depreciated replacement cost

Following initial recognition at cost, property, plant and equipment were carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations were conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

#### *Depreciation*

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Tribunal uses the straight-line method of depreciation in all cases.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

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

	2011	2010
Leasehold improvements	Lease term	Lease term
Plant and Equipment	3 to 10 years	<b>3 to 10 years</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

#### *Impairment*

All assets were assessed for impairment at 30 June 2011. 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.

#### *Derecognition*

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

#### **1.18 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 lives of the Tribunal's software are 3 to 5 years (2009-10: 3 to 5 years).

All software assets were assessed for indications of impairment as at 30 June 2011.

#### **1.19 Taxation / Competitive Neutrality**

The Tribunal is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- a) where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- b) for receivables and payables.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 1: Summary of Significant Accounting Policies

#### 1.20 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the schedule of administered items and related notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

#### *Administered Cash Transfers to and from the Official Public Account*

Revenue collected by the Tribunal for use by the Government rather than the Agency is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Tribunal on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 14B. The Schedule of Administered Items largely reflects the Government's transactions, through the Tribunal, with parties outside the Government.

#### *Revenue*

All administered revenues are revenues relating to 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. Administered fee revenue is recognised upon receipt of funds.

### Note 2: Events After the Reporting Period

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

### Note 3: Expenses

#### Note 3A: Employee Benefits

	2011 \$'000	2010 \$'000
Wages and salaries	15,862	17,252
Superannuation:		
Defined contribution plans	927	944
Defined benefit plans	1,208	1,556
Leave and other entitlements	421	382
Separation and redundancies	1,139	166
<b>Total employee benefits</b>	<b>19,557</b>	<b>20,300</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 3: Expenses

	2011 \$'000	2010 \$'000
<b>Note 3B: Suppliers</b>		
Goods and services		
Consultants	255	287
Contractors	30	61
Travel	591	861
IT services	390	351
Other	3,051	3,514
<b>Total goods and services</b>	<b>4,317</b>	<b>5,074</b>
<b>Goods and services are made up of:</b>		
Provision of goods – external parties	216	394
Rendering of services – related entities	214	231
Rendering of services – external parties	3,887	4,449
<b>Total goods and services</b>	<b>4,317</b>	<b>5,074</b>
<b>Other supplier expenses</b>		
<b>Operating lease rentals – related entities:</b>		
Minimum lease payments	1,996	1,899
<b>Operating lease rentals – external parties:</b>		
Minimum lease payments	4,232	2,387
Workers compensation expenses	81	95
<b>Total other supplier expenses</b>	<b>6,309</b>	<b>4,381</b>
<b>Total supplier expenses</b>	<b>10,626</b>	<b>9,455</b>
<b>Note 3C: Depreciation and Amortisation</b>		
<b>Depreciation:</b>		
Property, plant and equipment	530	478
Buildings	521	237
<b>Total depreciation</b>	<b>1,051</b>	<b>715</b>
<b>Amortisation:</b>		
Intangibles	3	4
<b>Total amortisation</b>	<b>3</b>	<b>4</b>
<b>Total depreciation and amortisation</b>	<b>1,054</b>	<b>719</b>
<b>Note 3D: Losses from Asset Sales</b>		
<b>Property, plant and equipment:</b>		
Proceeds from sale	-	7
Carrying value of assets sold	(4)	(9)
<b>Total losses from asset sales</b>	<b>(4)</b>	<b>(2)</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 4: Income

	2011 \$'000	2010 \$'000
<b>OWN-SOURCE REVENUE</b>		
<b>Note 4A: Rendering of Services</b>		
Rendering of services - external parties	37	35
<b>Total rendering of services</b>	<b>37</b>	<b>35</b>
<b>Note 4B: Rental Income</b>		
<b>Operating lease:</b>		
Other - Building sublease	24	-
<b>Total rental income</b>	<b>24</b>	<b>-</b>
<b>GAINS</b>		
<b>Note 4C: Sale of Assets</b>		
<b>Property, plant and equipment:</b>		
Proceeds from sale	11	27
<b>Net gain from sale of assets</b>	<b>11</b>	<b>27</b>
<b>Note 4D Reversals of Previous Provisions</b>		
Reversals of restoration obligations	109	-
<b>Total reversals of previous provisions</b>	<b>109</b>	<b>-</b>
<b>Note 4E: Other Gains</b>		
Resources received free of charge	26	26
<b>Total other gains</b>	<b>26</b>	<b>26</b>
<b>REVENUE FROM GOVERNMENT</b>		
<b>Note 4F: Revenue from Government</b>		
<b>Appropriations :</b>		
Departmental appropriation	26,925	29,682
<b>Total revenue from Government</b>	<b>26,925</b>	<b>29,682</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 5: Financial Assets

	2011 \$'000	2010 \$'000
<b>Note 5A: Cash and Cash Equivalents</b>		
Cash on hand or on deposit	1,034	622
<b>Total cash and cash equivalents</b>	<b>1,034</b>	<b>622</b>
<b>Note 5B: Trade and Other Receivables</b>		
<b>Good and Services:</b>		
Goods and services - related entities	28	-
Goods and services - external parties	16	18
<b>Total receivables for goods and services</b>	<b>44</b>	<b>18</b>
<b>Appropriations receivable :</b>		
For existing programs	13,963	16,001
<b>Total appropriations receivable</b>	<b>13,963</b>	<b>16,001</b>
<b>Other receivables:</b>		
GST receivable from the Australian Taxation Office	125	234
<b>Total other receivables</b>	<b>125</b>	<b>234</b>
<b>Total trade and other receivables (gross)</b>	<b>14,132</b>	<b>16,253</b>
<b>Less impairment allowance account:</b>		
Goods and services	(3)	(3)
<b>Total impairment allowance account</b>	<b>(3)</b>	<b>(3)</b>
<b>Total trade and other receivables (net)</b>	<b>14,129</b>	<b>16,250</b>
<b>Receivables are expected to be recovered in:</b>		
No more than 12 months	166	249
More than 12 months	13,963	16,001
<b>Total trade and other receivables (net)</b>	<b>14,129</b>	<b>16,250</b>
<b>The impairment allowance account is aged as follows:</b>		
Overdue by:		
0 to 30 days	(3)	(3)
<b>Total impairment allowance account</b>	<b>(3)</b>	<b>(3)</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 5B (Cont'd): Trade and Other Receivables

#### Reconciliation of the Impairment Allowance Account:

	Goods and services \$'000	Other receivables \$'000	Total \$'000
<b>Movements in relation to 2011</b>			
<b>Opening balance</b>	(3)	-	(3)
Provision not required	3	-	3
Additional provision	(3)	-	(3)
<b>Closing balance</b>	(3)	-	(3)
<b>Movements in relation to 2010</b>			
<b>Opening balance</b>	(3)	-	(3)
Provision not required	3	-	3
Additional provision	(3)	-	(3)
<b>Closing balance</b>	(3)	-	(3)

### Note 6: Non-Financial Assets

	2011 \$'000	2010 \$'000
<b>Note 6A: Land and Buildings</b>		
Leasehold improvements:		
Fair value	6,826	6,300
Accumulated depreciation	(5,161)	(4,775)
<b>Total leasehold improvements</b>	1,665	1,525
<b>Total land and buildings</b>	1,665	1,525

No indicators of impairment were found for land and buildings.

### Note 6B: Property, Plant and Equipment

Property, plant and equipment:

Fair value	3,012	2,568
Accumulated depreciation	(2,104)	(1,676)
<b>Total property, plant and equipment</b>	908	892
<b>Total property, plant and equipment</b>	908	892

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

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 6C: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2010-11)

	Buildings \$'000	Property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2010</b>			
Gross book value	6,299	2,568	8,867
Accumulated depreciation and impairment	(4,774)	(1,676)	(6,450)
<b>Net book value 1 July 2010</b>	<b>1,525</b>	<b>892</b>	<b>2,417</b>
Additions*			
By purchase	550	499	1,049
Work in Progress	-	50	50
Makegood Asset	112		112
Written off during the year	(135)	(106)	(241)
Amortisation on Written off	134	102	236
Depreciation expense	(521)	(529)	(1,050)
<b>Net book value 30 June 2011</b>	<b>1,665</b>	<b>908</b>	<b>2,573</b>
<b>Net book value as of 30 June 2011 represented by:</b>			
Gross book value	6,826	3,011	9,837
Accumulated depreciation and impairment	(5,161)	(2,103)	(7,264)
	<b>1,665</b>	<b>908</b>	<b>2,573</b>

Net book value is deemed to represent the fair value of the asset.

\* Disaggregated additions information are disclosed in the Schedule of Asset Additions.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 6C (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2009-10)

	Buildings \$'000	Property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	5,470	2,910	8,380
Accumulated depreciation and impairment	(4,538)	(1,856)	(6,394)
<b>Net book value 1 July 2009</b>	932	1,054	1,986
Additions*			
By purchase	431	326	757
Makegood Asset	398	-	398
Written off during the year	-	(668)	(668)
Amortisation on Written off	-	658	658
Depreciation expense	(236)	(478)	(714)
<b>Net book value 30 June 2010</b>	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 and impairment	(4,774)	(1,676)	(6,450)
	1,525	892	2,417

Net book value is deemed to represent the fair value of the asset.

\* Disaggregated additions information are disclosed in the Schedule of Asset Additions.

### Note 6D: Intangibles

#### Computer software:

Internally developed – in progress	187	-
Internally developed – in use	452	452
Accumulated amortisation	(443)	(440)
<b>Total computer software</b>	196	12
<b>Total intangibles</b>	196	12

No indicators of impairment were found for intangible assets.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)

	Computer software internally developed \$'000	Total \$'000
<b>As at 1 July 2010</b>		
Gross book value	452	452
Accumulated amortisation and impairment	(440)	(440)
<b>Net book value 1 July 2010</b>	<b>12</b>	<b>12</b>
Additions*	187	187
Amortisation	(3)	(3)
<b>Net book value 30 June 2011</b>	<b>196</b>	<b>196</b>
<b>Net book value as of 30 June 2011 represented by:</b>		
Gross book value	639	639
Accumulated amortisation and impairment	(443)	(443)
	<b>196</b>	<b>196</b>

Net book value is deemed to represent the fair value of the asset.

\* Disaggregated additions information are disclosed in the Schedule of Asset Additions.

### Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2009-10)

	Computer software internally developed \$'000	Total \$'000
<b>As at 1 July 2009</b>		
Gross book value	452	452
Accumulated amortisation and impairment	(436)	(436)
<b>Net book value 1 July 2009</b>	<b>16</b>	<b>16</b>
Amortisation	(4)	(4)
<b>Net book value 30 June 2010</b>	<b>12</b>	<b>12</b>
<b>Net book value as of 30 June 2010 represented by:</b>		
Gross book value	452	452
Accumulated amortisation and impairment	(440)	(440)
	<b>12</b>	<b>12</b>

### Note 6F: Other Non-Financial Assets

Prepayments	113	229
<b>Total other non-financial assets</b>	<b>113</b>	<b>229</b>
<b>Total other non-financial assets - are expected to be recovered in:</b>		
No more than 12 months	113	229
<b>Total other non-financial assets</b>	<b>113</b>	<b>229</b>

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 2011

### Note 7: Payables

	2011 \$'000	2010 \$'000
<b>Note 7A: Suppliers</b>		
Trade creditors and accruals	<b>321</b>	224
<b>Total supplier payables</b>	<b>321</b>	224

#### Supplier payables expected to be settled within 12 months:

Related entities	-	6
External parties	<b>321</b>	218
<b>Total supplier payables</b>	<b>321</b>	224

Settlement was usually made within 30 days.

### Note 7B: Other Payables

Salaries and wages	<b>331</b>	321
Superannuation	<b>51</b>	49
Separations and redundancies	-	84
Other	<b>17</b>	28
<b>Total other payables</b>	<b>399</b>	482

#### Total other payables are expected to be settled in:

No more than 12 months	<b>399</b>	482
<b>Total other payables</b>	<b>399</b>	482

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 8: Provisions

	2011 \$'000	2010 \$'000
<b>Note 8A: Employee Provisions</b>		
Leave	3,625	3,895
Superannuation	443	387
<b>Total employee provisions</b>	<b>4,068</b>	<b>4,282</b>

#### Employee provisions are expected to be settled in:

No more than 12 months	2,686	3,028
More than 12 months	1,382	1,254
<b>Total employee provisions</b>	<b>4,068</b>	<b>4,282</b>

#### Note 8B: Other Provisions

Provision for lease obligations	2,200	-
Provision for restoration obligations	783	855
<b>Total other provisions</b>	<b>2,983</b>	<b>855</b>

#### Other provisions are expected to be settled in:

No more than 12 months	2,567	87
More than 12 months	416	768
<b>Total other provisions</b>	<b>2,983</b>	<b>855</b>

	Provision for onerous contract \$'000	Provision for restoration obligations \$'000	Total \$'000
<b>Carrying amount 1 July 2010</b>	-	855	855
Additional provisions made	2,200	80	2,280
Amounts used	-	(43)	(43)
Amounts reversed	-	(109)	(109)
<b>Closing balance 2011</b>	<b>2,200</b>	<b>783</b>	<b>2,983</b>

As at 30 June 2011, a provision of \$2.2 million has been made in the accounts to recognise the present obligation of meeting the net cost of exiting an onerous lease contract in accordance with AASB 137. In January 2011 the Western Australian Registry relocated from the East Point Plaza building on Adelaide Terrace to the Principal Registry in the Commonwealth Law Courts premises on Victoria Avenue, Perth. The lease of the East Point Plaza premises is not due to expire until 30 June 2014.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 8: Other provisions continued

The Tribunal currently has 5 agreements for the leasing of premises which have provisions requiring the entity to restore the premises to their original condition at the conclusion of the lease. The entity has made a provision to reflect the present value of this obligation.

### Note 9: Cash Flow Reconciliation

	2011 \$'000	2010 \$'000
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement</b>		
<b>Cash and cash equivalents as per:</b>		
Cash flow statement	1,034	622
Balance sheet	1,034	622
<b>Difference</b>	-	-
<b>Reconciliation of net cost of services to net cash from operating activities:</b>		
Net cost of services	(31,034)	(30,388)
Add revenue from Government	26,925	29,682
<b>Adjustments for non-cash items</b>		
Depreciation / amortisation	1,054	719
Net write down of non-financial assets	5	10
Gain on disposal of assets	(11)	(27)
Loss on disposal of assets	4	2
Rental Income	(24)	-
Gain on reversal of restoration obligation provision	109	-
<b>Changes in assets / liabilities</b>		
(Increase) / decrease in makegood asset	(112)	(398)
(Increase) / decrease in net receivables	2,121	290
(Increase) / decrease in prepayments	117	124
Increase / (decrease) in employee provisions	(214)	240
Increase / (decrease) in supplier payables	97	(244)
Increase / (decrease) in other payable	(83)	141
Increase / (decrease) in other provisions	2,128	398
<b>Net cash from (used by) operating activities</b>	<b>1,082</b>	<b>549</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 10: Contingent Liabilities and Assets

#### *Quantifiable Contingencies*

The Tribunal has no quantifiable contingencies as at 30 June 2011.

#### *Unquantifiable Contingencies*

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, 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 2011, the Tribunal has indemnified the lessors of the buildings in which the Central Australia, Brisbane, Cairns, Victoria/Tasmania, New South Wales/Australian Capital Territory, and Western Australia registry offices are located against any action brought against the lessors which results from actions of Tribunal staff. These indemnities are unlimited.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 11: Senior Executive Remuneration

#### Note 11A: Senior Executive Remuneration Expense for the Reporting Period

	2011 \$	2010 \$
<b>Short-term employee benefits:</b>		
Salary	438,115	589,155
Annual leave accrued	32,516	45,320
Performance bonuses	27,500	-
Other	79,803	128,907
<b>Total short-term employee benefits</b>	<b>577,934</b>	<b>763,382</b>
<b>Post-employment benefits:</b>		
Superannuation	61,661	85,970
<b>Total post-employment benefits</b>	<b>61,661</b>	<b>85,970</b>
<b>Other long-term benefits:</b>		
Long-service leave	8,014	14,729
<b>Total other long-term benefits</b>	<b>8,014</b>	<b>14,729</b>
Termination benefits	144,360	116,513
<b>Total</b>	<b>791,969</b>	<b>980,594</b>

#### Notes:

1. Note 11A was prepared on an accrual basis.
2. Note 11A excludes acting arrangements and part-year service where remuneration expensed for a senior executive was less than \$150,000.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 11B: Average Annual Remuneration Packages and Bonus Paid for Substantive Senior Executives as at the end of the Reporting Period

as at 30 June 2011					
Fixed Elements and Bonus Paid <sup>1</sup>	Senior Executives No.	Fixed elements			Bonus paid <sup>2</sup>
		Salary \$	Allowances \$	Total \$	
<b>Total remuneration (including part-time arrangements):</b>					
\$150,000 to \$179,999	1	161,362	13,659	175,021	-
\$240,000 to \$269,999	1	205,563	46,012	251,575	-
<b>Total</b>	<b>2</b>				

as at 30 June 2010					
Fixed Elements and Bonus Paid <sup>1</sup>	Senior Executives No.	Fixed elements			Bonus paid <sup>2</sup>
		Salary \$	Allowances \$	Total \$	
<b>Total remuneration (including part-time arrangements):</b>					
\$150,000 to \$179,999	1	128,250	32,391	160,641	-
\$180,000 to \$209,999	1	170,623	27,139	197,762	-
\$210,000 to \$239,999	2	188,126	34,689	222,815	-
<b>Total</b>	<b>4</b>				

#### Notes:

1. This table reports substantive senior executives who were employed by the Tribunal at the end of the reporting period. Fixed elements were based on the employment agreement of each individual. Each row represents an average annualised figure (based on headcount) for the individuals in that remuneration package band (i.e. the 'Total' column).
2. This represents average actual bonuses paid during the reporting period in that remuneration package band. The 'Bonus paid' was excluded from the 'Total' calculation, (for the purpose of determining remuneration package bands). The 'Bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the Tribunal during the financial year.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 11B: Average Annual Remuneration Packages and Bonus Paid for Substantive Senior Executives as at the end of the Reporting Period (contd)

#### *Variable Elements:*

With the exception of bonuses and superannuation, variable elements were not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements were available as part of senior executives' remuneration package:

(a) Bonus:

- Bonus was based on the performance rating of an individual.

(b) On average senior executives were entitled to the following leave entitlements:

- Annual Leave (AL): entitled to 20 days (2010: 20 days) each full year worked (pro-rata for part-time SES);
- Personal Leave (PL): entitled to 20 days (2010: 20 days) or part-time equivalent; and
- Long Service Leave (LSL): in accordance with Long Service Leave (Commonwealth Employees) Act 1976.

(c) Senior executives were members of one of the following superannuation funds:

- Public Sector Superannuation Scheme (PSS): this scheme is closed to new members, with current employer contributions were set at 15.4 per cent (2010: 15.4 per cent) (including productivity component). More information on PSS can be found at <http://www.pss.gov.au>; and
- Public Sector Superannuation Accumulation Plan (PSSap): employer contributions were set at 15.4 percent (2010: 15.4 per cent), and the fund has been in operation since July 2005. More information on PSSap can be found at <http://www.pssap.gov.au>;

(d) Various salary sacrifice arrangements were available to senior executives including super, motor vehicle and expense payment fringe benefits.

### Note 11C: Other Highly Paid Staff

During the reporting period, there were no other employees whose salary plus performance bonus were \$150,000 or more.

### Note 12: Remuneration of Auditors

	2011 \$'000	2010 \$'000
Financial statement audit services were provided free of charge to the entity.		
<b>Fair value of the services provided:</b>		
Audit	26	26
<b>Total</b>	<b>26</b>	<b>26</b>

No other services were provided by the auditors of the financial statements.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 13: Financial Instruments

	2011 \$'000	2010 \$'000
<b>Note 13A: Categories of Financial Instruments</b>		
<b>Financial Assets</b>		
<b>Cash and receivables:</b>		
Cash and Cash Equivalents	1,034	622
Receivables for goods and services	44	18
Allowance for doubtful debts	(3)	(3)
<b>Total</b>	<b>1,075</b>	637
<b>Carrying amount of financial assets</b>	<b>1,075</b>	637
<b>Financial Liabilities</b>		
<b>At amortised cost:</b>		
Trade Creditors	321	224
Other Payables	17	28
<b>Total</b>	<b>338</b>	252
<b>Carrying amount of financial liabilities</b>	<b>338</b>	252

#### Note 13B: Net Income and Expense from Financial Assets

There is no income or expense from financial assets not at fair value from profit and loss in either year.

#### Note 13C: Net Income and Expense from Financial Liabilities

There is no income or expense from financial liabilities not at fair value from profit and loss in either year.

#### Note 13D: Fair Value of Financial Instruments

The fair value of the Tribunal's financial instruments is equal to the book value.

#### Note 13E: Financial Liabilities Designated at Fair Value Through Profit and Loss

The Tribunal has had no changes in the fair value of financial liabilities due to credit risks. All financial liabilities are carried at the value of the cost to meet the obligation.

#### Note 13F: Financial Assets Reclassified

The Tribunal has not reclassified any financial assets.

#### Note 13G: Credit Risk

The Tribunal's maximum exposure to loss from the failure of counterparties to discharge their obligations is limited to the market value of trade receivables. No portion of this value is either past due or impaired. The Tribunal has assessed the risk of defaults of payment and has allocated \$3,000 in 2011 (2010: \$3,000) as an allowance for doubtful debts.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 13G: Credit Risk (contd)

The following table illustrates the entity's gross exposure to credit risk, excluding any collateral or credit enhancements.

	2011 \$'000	2010 \$'000
<b>Financial assets</b>		
Receivables for goods and services	44	18
<b>Total</b>	<b>44</b>	<b>18</b>

### Note 13H: Liquidity Risk

The Tribunals non-derivative financial liabilities are all short term payables. The Tribunal has established policies and procedure to effectively manage its allocated budget to ensure that funds are available upon demand to fully meet these liabilities. The exposure to liquidity risk was based on the notion that the Tribunal will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely as the Tribunal is appropriately funded from the Australian Government and the Tribunal manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due.

	2011 within 1 year \$'000	2010 within 1 year \$'000
<b>Maturities for non-derivative financial liabilities</b>		
Suppliers	321	224
Other	17	28
<b>Total</b>	<b>338</b>	<b>252</b>

The Tribunal has no derivative financial liabilities in either the current or the prior year.

### Note 13I: Market Risk

The Tribunal holds basic financial instruments that are not subject to currency risk, interest rate risk, or other price risks.

### Note 13J: Assets Pledged/or Held as Collateral

The Tribunal has no pledged or held as collateral assets.

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 14: Income Administered on Behalf of Government

	2011 \$'000	2010 \$'000
<b>Revenue</b>		
<b>Non-taxation revenue</b>		
<b>Note 14A: Fees and fines</b>		
Other fees from regulatory services	60	40
<b>Total fees and fines</b>	<b>60</b>	<b>40</b>
<b>Note 14B: Administered Reconciliation Table</b>		
<b>Opening administered assets less administered liabilities as at 1 July</b>	-	1
<b>Adjusted opening administered assets less administered liabilities</b>		
Plus: Administered income	60	40
Transfers to OPA	(60)	(41)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>-</b>	<b>-</b>

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 15: Appropriations

**Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2011 Appropriations			Appropriation applied in 2011 (current and prior years) \$'000	Variance \$'000
	Appropriation Act	FMA Act	Total appropriation \$'000		
	Annual Appropriation \$'000	Section 31 \$'000			
DEPARTMENTAL					
Ordinary annual services	27,351	112	27,463	29,520	(2,057)
Other services					
Equity	270	-	270	251	19
Total departmental	27,621	112	27,733	29,771	(2,038)

**Notes:**

Variance in ordinary annual services has occurred as a consequence of the Tribunal utilising prior year appropriations receivable.

	2010 Appropriations			Appropriation applied in 2010 (current and prior years) \$'000	Variance \$'000
	Appropriation Act	FMA Act	Total appropriation \$'000		
	Annual Appropriation \$'000	Section 31 \$'000			
DEPARTMENTAL					
Ordinary annual services	29,682	98	29,780	30,145	(365)
Total departmental	29,682	98	29,780	30,145	(365)

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 15: Appropriations (contd)

**Table B: Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')**

	2011 \$'000	2010 \$'000
<b>Authority</b>		
Appropriation Act (No 1) 2004-05	907	3,035
Appropriation Act (No 1) 2005-06	2,895	2,895
Appropriation Act (No 3) 2005-06	105	105
Appropriation Act (No 1) 2006-07	5,900	5,900
Appropriation Act (No 1) 2007-08	2,960	2,960
Appropriation Act (No 1) 2008-09	656	656
Appropriation Act (No 1) 2009-10	450	450
Appropriation Act (No 1) Capital Budget (DCB) -Non Operating 2010-11	71	-
Appropriation Act (No 2) Non Operating- Equity Injection 2010-11	19	-
<b>Total</b>	<b>13,963</b>	16,001
Cash and cash equivalents at balance date	1,034	622
<b>Total available funds</b>	<b>14,997</b>	16,623

### 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.

	2011 \$'000	2010 \$'000
<b>Balance carried from previous period</b>	-	-
Other receipts	10	17
<b>Total credits</b>	<b>10</b>	17
Payments made	(10)	(17)
<b>Total debits</b>	<b>(10)</b>	(17)
<b>Balance carried to next period</b>	-	-

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 17: Reporting of Outcomes

The Tribunal has one outcome; the facilitation of native title determinations, agreements and the disposition of related matters for claimants and others with interests in land and waters through mediation, agreement-making and administrative decisions. 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 2011	Actual 2010
<b>Output Group 1</b>		
Capacity-building and strategic/sectoral initiatives	14	16
Assistance and information	409	392
<b>Output Group 2</b>		
Fully concluded indigenous land use agreements	49	29
Milestone agreements in indigenous land use agreements negotiations outside NTDA*	138	79
Milestone agreements in indigenous land use agreements negotiations within NTDA*	106	113
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Process/framework NTDA *	244	193
Agreements that fully resolve Future Act applications	56	72
Milestone in Future Act mediations	144	69
<b>Output Group 3</b>		
Registration of native title claimant applications	78	39
Registration of indigenous land use agreements	72	47
Future act determinations	96	60
Finalise objections to the expedited procedure	1464	1278

NTDA\* - Native title determination applications

## Notes to and forming part of the financial statements for the year ended 30 June 2011

### Note 17A: Net Cost of Outcome Delivery

	Outcome 1	
	2011	2010
	\$'000	\$'000
<b>Expenses</b>		
<b>Administered</b>		
Refund to Official Public Account (OPA)	(60)	(40)
<b>Departmental</b>		
Departmental expense	(31,241)	(30,476)
<b>Total</b>	<b>(31,301)</b>	<b>(30,516)</b>
<b>Income from non-government sector</b>		
<b>Administered</b>		
Revenue from services rendered	60	40
<b>Departmental</b>		
Activities subject to costs recovered from provision of services	207	88
<b>Total</b>	<b>267</b>	<b>128</b>
<b>Net cost of outcome</b>	<b>(31,034)</b>	<b>(30,388)</b>

### Note 18: Comprehensive Income (Loss) attributable to the Tribunal

	2011	2010
	\$'000	\$'000
<b>Total Comprehensive Income (loss) attributable to the Tribunal</b>		
Total comprehensive income (loss)*	(4,109)	(706)
Plus: non-appropriated expenses		
Depreciation and amortisation expenses	1,054	-
<b>Total comprehensive income (loss) attributable to the Tribunal</b>	<b>(3,055)</b>	<b>(706)</b>

\* As per the Statement of Comprehensive Income.

# 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.

**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 Australian Government on any or all of its activities.

**Expenditure from appropriations classified as revenue:** expenditures that are netted against receipts. They do not form part of outlays because they are considered to be closely or functionally related to certain revenue items or related to refund of receipts, and are therefore shown as offsets to receipts.

**Financial Management and Accountability Act 1997 (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* 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* (30 April 2011), pp. 109–115, at [www.nntt.gov.au](http://www.nntt.gov.au). Each party and each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s. 136B(4)).

**IAG:** Indigenous Advisory Group comprised of Indigenous employees of the Tribunal.

**ILUA:** Indigenous land use agreement, a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).

**Liability:** the future sacrifice of service potential or economic benefits that the Tribunal is presently obliged to make as a result of past transactions or past events.

**Mediation:** the process of bringing together all people with an interest in an area covered by an application to help them reach agreement.

**Member:** a person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

**Milestone agreement:** an agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.

**National Native Title Register:** the record of native title determinations.

**Native title application/claim:** see native title claimant application/claim, compensation application or non-claimant application.

**Native title claimant application/claim:** an application made for the legal recognition of native title rights and interests held by Indigenous Australians.

**Native Title Registrar:** see Registrar.

**Native title representative body:** representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australia government to provide a variety of functions under the *Native Title Act 1993* (Cwlth). These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for

determinations of native title and area agreements (ILUA), resolving intra-indigenous disputes, agreement-making and ensuring that notices given under the Act are brought to the attention of the relevant people.

**Non-claimant application:** an application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.

**Non-current assets:** assets other than current assets.

**Notification:** the process by which people, organisations and/or the general public are advised by the relevant government of their intention to do certain acts or by the National Native Title Tribunal that certain applications under the Act have been made.

**‘On country’:** description applied to activities that take place on the relevant area of land, for example, mediation conferences or Federal Court hearings taking place on or near the area covered by a native title application.

**Party:** a person or organisation that either enters into an agreement, such as an indigenous land use agreement, with another person or organisation, or is a participant in a legal action or proceeding such as an application for a determination of native title.

**PBS:** Portfolio Budget Statements.

**PBC:** prescribed body corporate, a body nominated by native title holders that will represent them and manage their native title rights and interests once a determination that native title exists has been made.

**Principal Registry:** the central office of the Tribunal. It has a number of functions that relate to the operations of the Tribunal nationwide.

**Receipts:** the total or gross amount of moneys received by the Commonwealth (i.e. the total inflow of moneys to the Commonwealth Public Account including both ‘above the line’ and ‘below the line’ transactions). Every receipt item is classified to one of the economic concepts of revenue, outlays (i.e. offset within outlays) or financing transactions. See also Revenue.

**Receivables:** amounts that are due to be received by the Tribunal but are uncollected at balance date.

**Register of Indigenous Land Use Agreements:** a record of all indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

**Register of Native Title Claims:** the record of native title claimant applications that have been filed with the Federal Court, referred to the Native Title Registrar and generally have met the requirements of the registration test.

**Registered native title claimant:** a person or persons whose names(s) appear as ‘the applicant’ in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.

**Registrar:** an office holder who heads the Tribunal’s administrative structure, who helps the President run the Tribunal and has prescribed powers under the Act.

**Registration test:** a set of conditions under the *Native Title Act 1993* (Cwlth) that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with certain other rights, while their application is under way.

**Revenue:** ‘above the line’ transactions (those that determine the deficit/surplus), mainly comprising receipts. It includes tax receipts (net of refunds) and non-tax receipts (interest, dividends etc.) but excludes receipts from user charging, sale of assets and repayments of advances (loans and equity), which are classified as outlays.

**Running costs:** salaries and administrative expenses (including legal services and property operating expenses). For the purposes of this report the term refers to amounts consumed by an agency in providing the government services for which it is responsible, i.e. not only those elements of running costs funded by Appropriation Act No. 1 and receipts (known as ‘section 31 receipts’) raised through the sale of assets or interdepartmental charging and received via annotated running costs appropriations.

**Sections of the Native Title Act:** parts of the Act available online from the Australasian Legal Information Institute at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/nta1993147/](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.

# Compliance index

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	Letter of transmittal	Mandatory	3
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	Contact officer(s)	Mandatory	2
	Internet home page address and Internet address for report	Mandatory	2
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	Review by departmental secretary	Mandatory	30–34
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	Overview of department's performance and financial results	Suggested	23–34
	Outlook for following year	Suggested	24–29
	Significant issues and developments – portfolio	Portfolio departments – suggested	N/A
<b>Departmental Overview</b>		<b>Mandatory</b>	
	Role and functions	Mandatory	38–39
	Organisational structure	Mandatory	40–41
	Outcome and program structure	Mandatory	42
	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	Mandatory for portfolio departments	N/A

Part of report	Description	Requirement	Page
<b>Report on Performance</b>		<b>Mandatory</b>	
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	Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory	55–85
	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	11–22
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	Social inclusion outcomes	If applicable, mandatory	N/A
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	Discussion and analysis of the department's financial performance	Mandatory	51–54
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Part of report	Description	Requirement	Page
	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	N/A
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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

Part of report	Description	Requirement	Page
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.	Mandatory	128–129
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
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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](http://www.nntt.gov.au).

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