



National
Native Title
Tribunal



Annual Report 2011–2012

Facilitating timely and effective outcomes.



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About this report

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

Copies of this annual report in book form may be obtained from any Tribunal office (see back cover for contact details) or online at 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.



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National
Native Title
Tribunal



19 October 2012

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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 2012.

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:

The 20th anniversary of the High Court's judgment in *Mabo v Queensland [No 2]* provided an opportunity to celebrate what has been achieved in the native title system and to consider how the system might be improved.

Possible amendments to the Native Title Act and taxation laws were announced during the reporting period.

Institutional native title reforms which were announced by the Australian Government on 8 May 2012 will result in changes to the Tribunal's native title claim mediation functions, its organisational structure and its operations from 1 July 2012, with an aim to further improve the efficiency of the native title system.

Agreement-making continued, with most determinations that native title exists being made by consent, a record number of Indigenous land use agreements being registered, and many other future act agreements being made.

Year in review

Introduction

2011–12 was a year of reflection on the history of native title and what has been achieved to date, and a year during which administrative and legislative changes to the native title system were foreshadowed.

Reflections and recollections were prompted by the 20th anniversary, on 3 June 2012, of the High Court's historic judgment in *Mabo v Queensland [No 2]* ((1992) 175 CLR 1). In the judgment, the common law of Australia recognised for the first time the entitlements of Indigenous people to their traditional lands under their traditional laws.

The decision made a fundamental change in the way Indigenous peoples' interests in land were to be dealt with by the general law of Australia. One consequence was the enactment of the *Native Title Act 1993* (Cwlth) (the Act), which commenced on 1 January 1994.

The 20th anniversary of *Mabo [No 2]* provided an occasion for commentators and participants in the native title system to celebrate what has been achieved in the past two decades, and to look ahead to imagine how the system might be improved to give effect to the opportunities arising from that judgment and the Act.

It would be fair to say that, 20 years down the track, the native title system has received mixed reviews. For some groups of Aboriginal people and Torres Strait Islanders it has produced symbolic and practical outcomes. Indeed some groups have benefited significantly from having their native title rights and interests recognised or from negotiating agreements such as Indigenous land use agreements (ILUAs). For others, the delay and costs (including social and emotional costs) of reaching any sort of positive outcome have been great. Given the extent to which native title has been 'extinguished' by the grant of certain tenures over much of Australia, it appears that many other groups of Aboriginal people are likely to gain few, if any, direct benefits from the native title system.

Similarly mixed assessments are made by a range of people and bodies who are respondents to native title claims or have been involved in negotiations with native title groups.

Despite the limitations of the law so far as many Aboriginal people and Torres Strait Islanders are concerned, much has been achieved since the Act commenced. In broad terms, for example:

- the law has been clarified by judicial decisions, determinations made by the National Native Title Tribunal (the Tribunal) and legislative amendments; and that

clarification has influenced the number and content of outcomes

- determinations of native title have been made in relation to substantial areas of land and waters in many parts of Australia
- agreement-making rather than litigation has become the main way to resolve native title issues
- hundreds of ILUAs have been registered
- numerous future act agreements and determinations have been made
- relationships have been strengthened or created.

As required by the Act, this annual report relates to the activities of the Tribunal during 2011–12. Accordingly, it deals with the range of registration, mediation, arbitration, assistance and other statutory functions performed by the Tribunal in the reporting period.

My overview deals primarily with external factors affecting the Tribunal and its work and considers the potential consequences for the Tribunal of institutional reforms announced by the Australian Government (the Government) with the 2012–13 budget, as well as foreshadowed changes to the Act and taxation legislation.

A short report by the Native Title Registrar (Registrar) identifies a number of key developments within the Tribunal during the reporting period.

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

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

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 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 other courts, and future act determinations by members of the Tribunal.

Legislation

Commencement of legislation: During the reporting period, minor changes to the Act made by the *Acts Interpretation Amendment Act 2011* (Cwlth) and the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* (Cwlth) commenced.

More significantly, the *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011 (No 1)* and the *Native Title (Prescribed Bodies Corporate) Amendment Regulation 2012 (No 1)* commenced. The Regulations are discussed later in this Overview.

Proposed legislative instrument: As noted in last year's annual report, the *Native Title Amendment Act (No. 1) 2010* (which commenced on 16 December 2010) inserted subdivision 24JA into the Act. This subdivision created a new native title process for the timely construction of public housing and infrastructure in communities on Indigenous held land which is, or may be, subject to native title. In accordance with s. 24JAA(16), the Commonwealth Minister is able to set reporting requirements by legislative instrument. At the end of the reporting period, comments were being sought on the draft Native Title (Consultation and Reporting) Determination and the accompanying Explanatory Statement. A discussion paper was published to assist in facilitating comments.

Proposed legislation: On 21 March 2011, Senator Rachel Siewert (Greens, WA) introduced the Native Title Amendment (Reform) Bill 2011 into the Senate. The Bill proposed amendments to the Act which were summarised in last year's annual report.

On 12 May 2011, the Bill was referred to the Senate Legal and Constitutional Affairs Committee for inquiry and report. The Committee reported in November 2011. It recommended that the Senate should not pass the Bill.

On 29 February 2012, Senator Siewert introduced the Native Title Amendment (Reform) Bill (No 1) 2012. The 2012 Bill contains provisions similar to or the same as some (but not all) of the provisions in the 2011 Bill. In summary, it proposed amendments to the Act to:

- apply a presumption as to proof of specified factual matters in relation to native title claimant applications
- allow a court to determine that s. 223(1) has been satisfied in specified circumstances, despite there having been a substantial interruption in the acknowledgment or observance of, or a significant change to, traditional laws or customs
- 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

- enable extinguishment of native title in relation to national, state or territory parks to be disregarded
- insert criteria for determining whether negotiations in good faith have occurred in relation to the 'right to negotiate' scheme, and reversing the onus of proving it.

The Bill had not progressed through the Senate by the end of the reporting period.

Proposed amendments to the Native Title Act: On 6 June 2012, the Commonwealth Attorney-General (the Attorney-General) announced that the Government will progress a number of amendments to the Act. The proposed reforms are expected to:

- clarify the meaning of 'good faith' under the 'right to negotiate' provisions and make associated amendments to 'right to negotiate' provisions,
- enable parties to agree to disregard historical extinguishment of native title in areas such as parks and reserves, and
- streamline ILUA processes (including by simplifying the process for minor amendments to ILUAs, improving objection processes for area ILUAs and clarifying the coverage of ILUAs).

The proposal to clarify the meaning of 'good faith' was included in the Government's 2010 Discussion Paper, *Leading Practice Agreements: Maximising Outcomes from Native Title Benefits*. The amendment to enable parties to disregard historical extinguishment in parks and reserves was released as an exposure draft for public consultation in 2010. The proposals to simplify the process for minor amendments to ILUAs and improve objection processes for area ILUAs were also included in the *Leading Practice Agreements* Discussion Paper.

The Government has indicated that it will consult with stakeholders on the development and implementation of these reforms.

Proposed taxation legislation amendments: On 6 June 2012, the Attorney-General announced that the Government will amend the tax legislation to make it clear that native title payments and other benefits are not subject to income tax (which includes capital gains tax). Specifically, the tax reforms will make it clear that a payment or non-cash benefit provided under the Act, or under an agreement made under an Australian law to the extent that that payment or benefit relates to native title, will not be subject to income tax. This change follows the *Native Title, Indigenous Economic Development and Tax* consultation paper published in 2010. The proposed amendment is intended to remove the longstanding uncertainty about the income tax treatment of these payments and benefits by confirming they are not subject to income tax. At the end of the reporting period, the Government had announced that it would consult further on these changes via an exposure draft of legislation which would be made available on the Treasury website.

If enacted, any or all of the proposed amendments to the Act or taxation laws would have a range of practical implications for participants in the native title system, including the Tribunal. For example, the amendments would be relevant to the exercise of the Tribunal's statutory functions in assisting parties negotiate some future act agreements and in the arbitration of some future act determination applications. They could be relevant to the Registrar in relation to the registration of native title claims and ILUAs.

Judgments and litigation

During the reporting period, the Court delivered almost 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. Other courts (including the Supreme Courts of Queensland, New South Wales, South Australia and Western Australia) also delivered judgments on native title issues.

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 three applications for registration of native title claims.

A summary of one Court decision with significant impact on the operations of the Tribunal is set out in Appendix II Significant decisions, p. 93.

Policies and procedures of governments

Australian Government

Institutional reforms: On 8 May 2012, as part of the 2012–13 Budget, the Government announced institutional reforms to the native title system which would:

- transfer native title claims mediation and ILUA negotiations related to native title claims mediation to the Court,
- remove the Tribunal's status as an agency for the purposes of the *Financial Management and Accountability Act 1997* (Cwlth) (FMA Act)
- transfer the Tribunal's appropriation and staff to the Court, and
- create efficiencies in administrative services.

Amendments to the *Financial Management and Accountability Regulations 1997* to enact the changes took effect on 1 July 2012.

The Government also announced that it would continue to consider the extent to which the Tribunal's discretionary functions should be performed and funded, as well as the potential for cost recovery.

It was expected that most native title claim matters would cease to be mediated in the Tribunal as of 1 July 2012, but that some matters, for example those that were close to resolution, may remain with the Tribunal for mediation and ILUA assistance until finalised. Mediation and corporate service related staff would transfer to the Court on 1 July 2012. It is expected that all remaining Tribunal staff will transfer to the Court in the next reporting period. Where possible, Tribunal staff will be collocated with Court staff.

The Government expects that the institutional reforms will further improve the efficiency of the native title system. The reforms institute the recommendations made by the *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio* (Skehill Review) conducted in 2011. The reforms build on 2009 reforms, effected by amendments to the Act, which were discussed in the previous two annual reports.

The Government has stated that the 2012 reforms will result in a better alignment and allocation of functions, and a clearer focus on increasing the rate of claims resolution.

Importantly, the Government has also stated that the institutional reforms will preserve the Tribunal's status as a separate statutory authority and ensure a continuing role with a strengthened focus on its future acts functions. The roles of the Tribunal's President, Members and Native Title Registrar will continue to exist.

All of the Tribunal's other statutory functions will remain to be performed by the Tribunal after 1 July 2012, including:

- ILUA negotiations not related to a native title claims mediation
- future acts functions, including:
 - Tribunal determinations 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
 - processing and finalisation by the Tribunal of objections to the inclusion of an 'expedited procedure' statement in State/Territory government notices issued under s. 29 of the Act, and
 - mediation assistance by Tribunal members or staff in relation to agreements that allow certain types of future acts to proceed, including milestones reached during the mediation of a future act application and leading to a final agreement.
- maintenance of the Register of Native Title Claims, and related functions including application of the registration test pursuant to the Act (whereby the Registrar determines whether to register details of a claimant application on the Register of Native Title Claims)
- maintenance of the National Native Title Register, and
- maintenance of the Register of Indigenous Land Use Agreements and related functions
- public notification of native title applications and ILUAs

- statutory assistance functions
- review/inquiry functions about native title issues.

The Tribunal, the Court and the Attorney-General's Department have worked, and continue to work, together closely through a joint Steering Committee and specialist working groups to implement the Government's reforms with minimal impact to the operation of the native title system.

National discussion: Discussions about policy and operational matters continued at a national level. The Tribunal continued to participate in the Native Title Consultative Forum (NTCF), coordinated by the Attorney-General's Department. The NTCF comprises representatives from that Department, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Court, the Tribunal, 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.

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.

Referral to mediation: The Act emphasises mediation as the preferred procedure for resolving or narrowing 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.

Many 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. The Court has referred other applications to the Tribunal for mediation.

At 30 June 2012, 127 (or 29 per cent) of current claimant applications had been referred to the Tribunal for mediation, including 11 referred to it during the reporting period. Nationally there was a significant reduction in both the number and proportion of claims in Tribunal mediation compared with one year ago. Only in the Northern Territory, where there were 178 current claims at the end of the reporting period and the Court has adopted a different case management approach, did the Tribunal have no claims for mediation.

As noted earlier, the institutional reforms announced with the 2012–13 Budget include transferring native title claims mediation functions and ILUA negotiations related to native title claims mediation from the Tribunal to the Court. That transfer of functions is to be made administratively rather than by amending the Act.

The Tribunal expects that these changes will have a significant impact on its work and focus.

Relationship between the Tribunal and the Court: During the reporting period, the Tribunal continued 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
- negotiate any other forms of agreement that might be conditions of, or associated with, a determination of native title, or
- negotiate agreements that do not involve a determination of native title.

Much of the success in progressing some 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 (NTRBs) and native title service providers (NTSPs) 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 2012 there were 19 representative body areas, with 10 NTRBs for 11 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.

As the Commonwealth Minister for Families, Communities and Indigenous Affairs, the Hon Jenny Macklin MP, noted in June 2012, the native title system is now made up of people claiming native title under the Act and a growing number of people who have been determined to be native title holders. According to Minister Macklin, 'As the native title system has matured, the role of native title organisations has changed'.

In June 2012, the Australian Government announced the terms of reference for a review of such organisations 'to ensure the system is delivering for Indigenous people and communities'. The review will examine NTRBs and NTSPs and will consider the role and impact of other service providers to native title groups.

Prescribed bodies corporate

Where there is a determination that Aboriginal people or Torres Strait Islanders 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 150 registered determinations that native title exists and 94 PBCs registered on the National Native Title Register as Registered Native Title Bodies Corporate (19 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.

As noted earlier, the *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011 (No 1)* and the *Native Title (Prescribed Bodies Corporate) Amendment Regulation*

2012 (*No 1*) commenced during the reporting period. The 2011 Regulations were made following a process in relation to a consultation draft released in March 2010. According to the Explanatory Statement, the purpose of the 2011 Regulations includes:

- improving the flexibility of the PBC governance regime by:
 - enabling an existing PBC to be determined as a PBC for subsequent determinations of native title
 - removing the requirement that all members of a PBC are also the native title holders
 - clarifying that standing authorisations in relation to particular activities of a PBC need only be issued once
 - subject to certain exceptions, allowing PBCs to substitute their own consultation requirements in relation to native title decisions rather than follow the requirements in the regulations
- providing for the transfer of PBC functions in circumstances where there has been failure to nominate a PBC, where a liquidator is appointed, or where a PBC wishes this to occur, and
- enabling PBCs to charge a fee for costs incurred in providing certain services and set out a procedure for review by the Registrar of a decision by a PBC to charge such a fee.

Budgetary outlook

As noted in last year's annual report, the amount allocated to the Tribunal in the 2010–2011 budget, was reduced from previous years to \$26.92 million. That reduction was categorised as \$1.45 million for increased efficiencies, and \$2.05 million for improving access to justice. In 2011–12 the appropriation for the Tribunal was \$25.84 million, a reduction of \$1.08 million from the previous year's allocation.

Details of the Tribunal's finances for 2011–12 are set out later in this report, starting at p. 43 and in Appendix VI Audit report and notes to the financial statements, starting at p. 100.

The institutional reforms to take effect on 1 July 2012, outlined above, are expected to generate \$19 million in saving over the next four years to be redirected to support Government initiatives in the Stronger Futures in the Northern Territory package. The practical impact of those savings is a reduction of \$4.75 million each year. That amount came off a forecast of \$23.80 million for the Tribunal in 2012–13 that was listed in the Portfolio Budget Statement of 2011–12. In other words, there is a reduction of 19.96 per cent in the amount to be made available in 2012–13 for the range of functions previously performed by the Tribunal.

Because the Tribunal's status as an FMA Act agency was removed with effect from 1 July 2012, there is no direct annual appropriation to the Tribunal for the first time in

most of the Tribunal's history. Rather, the remaining \$19.58 million has been allocated to the Court for 2012–13, with \$12.72 million identified in a sub-program to support the Tribunal's remaining functions. From that, a budget of \$10.87million was agreed with the Court.

The immediate effect of the reduced appropriation on the Tribunal by the end of the reporting period included a significant reduction in the number of Tribunal staff, the relocation of the remaining staff in the Sydney office to the Law Courts building, and arrangements to close the operations of the Adelaide office as at 30 June 2012.

Tribunal membership

During the reporting period:

- Mr Neville MacPherson completed his term as a part-time member on 31 August 2011 after eight years of service
- Ms Helen Shurven was reappointed as a full-time member from 3 November 2011 until 28 November 2012
- Dr Gaye Sculthorpe was reappointed as a full-time member in February 2012 until 2 February 2013
- Deputy President John Sosso was reappointed from 28 February until 30 June 2012
- President Graeme Neate was reappointed from 29 February until 30 June 2012, and then from 1 July 2012 until 31 March 2013
- Mr Graham Fletcher was reappointed as a part-time member from 20 March 2012 until 30 June 2012
- Deputy President Christopher Sumner AM completed his final term on 17 April 2012 and retired after 17 years as a full-time member (1995 to 2000) and Deputy President (2000 to 2012).

At the end of the reporting period there were six members. Five members were full-time and one was part-time. However, the terms of Deputy President Sosso and Member Graham Fletcher expired on 30 June 2012. They, Member MacPherson and Deputy President Sumner made significant contributions across the range of Tribunal activities including the mediation of native title determination applications, the negotiation of ILUAs, the mediation and arbitration of future acts and other important functions over many years. Their valuable contributions were recognised across the Tribunal and by stakeholders.

There will be at least some changes to the composition of the Tribunal in the next reporting period, given that there were only four members at 1 July 2012 and the term of each member will expire during that period.

For further information about the Tribunal's membership see p. 31 and Appendix I Human resources, p. 92.

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

is set out in the Overview of current applications, p. 35. For the purpose of this Overview it is sufficient to note a few key points.

The total number of current claimant applications fell during the reporting period by two to 441 applications. Sixty-five claimant applications were determined or discontinued, dismissed, struck out or combined with other applications, while 63 new claimant applications were filed.

The number of determinations that native title exists continued to rise. During the reporting period, 34 determinations of native title were registered (compared with 28 registered in the previous year). Of those, 31 were determinations that native title exists, bringing the total of registered determinations that native title exists to 150. Importantly, all but one of the determinations that native title exists registered during the reporting period were made by consent of the parties.

There has been some discussion as to whether the significant increase in the number of determinations in the 2010–11 and 2011–12 financial years can be attributed directly to the 2009 amendments to the Act. In making any assessment, it should be noted that the Tribunal was involved in the mediation of many of the claims that resulted in a consent determination, by mediating either to conclusion or to the stage when the Court ordered that mediation cease.

Importantly, a significant proportion of those determinations related to Northern Territory claims and were the culmination of the strategy adopted many years ago. As the Court's summary in *Jones v Northern Territory of Australia* [2007] FCA 1802 (*Jones*) demonstrates, the approach taken in the Northern Territory was in place well before the 2009 amendments.

In those matters, the Court and the parties adopted a strategy for resolving claims usually without any mediation. It involved grouping the various applications into categories and then identifying a 'lead matter' in each category to be 'progressed to resolution in as timely a manner as practicable, so that issues common to the applications in that category would be heard and determined if they could not be

resolved by mediation and by agreement'. Other applications in that category were then expected to be resolved by agreement 'assisted to the extent desirable by ongoing Court supervision through directions given as appropriate and by mediation also as appropriate'. The categories were Darwin matters, northern towns and related, pastoral estate matters, Central matters, and parks and reserve matters: see *Jones* at [16]-[17].

Judgments in the lead cases for Darwin matters, and the northern towns and related matters, were delivered in 2006, and in relation to the lead case for pastoral estate matters in 2007. Appeals on some issues were determined in 2007 and 2009: see *Jones* at [25]-[27].

Further, many of the applications determined during the reporting period were filed in 2010-11 and in many cases those applications rationalised older underlying polygon claims which apparently had been filed with a view to securing future act rights. In those cases, it was agreed that new 'country' claims should be filed rather than attempting to amend the old polygon claims.

Significant as the 2009 amendments are to the Court's management of native title claimant applications, in the Tribunal's view the welcome increase in the number of determinations in the past two years can be explained, in part at least, by a long-term strategy coming to fruition rather than as a direct consequence of those amendments.

Another 150 ILUAs were registered (compared with 71 in the previous year), the largest number in a financial year to date. That brought the total number of registered ILUAs at 30 June 2012 to 646. In May 2012, the 600th 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 one was removed from the Register.

These outcomes can be assessed in quantitative and qualitative terms. The registered determinations of native title (that native title does or does not exist) cover some 1,394,956 sq km (or approximately 18.1 per cent) of the land mass of Australia, and registered ILUAs cover about 1,398,127 sq km (or approximately 18.1 per cent) of the land mass, as well as approximately 5,753 sq km of sea (below the high water mark).

In respect of its future act work, during the reporting period the Tribunal finalised 1200 objections to the use of the expedited procedure, and also finalised 69 applications to make future act determinations. The bulk of those objections and applications were made 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.

In summary, the determinations of native title 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 ongoing agreement-making context in which native title issues are usually resolved.

Forecast for the resolution of native title claims

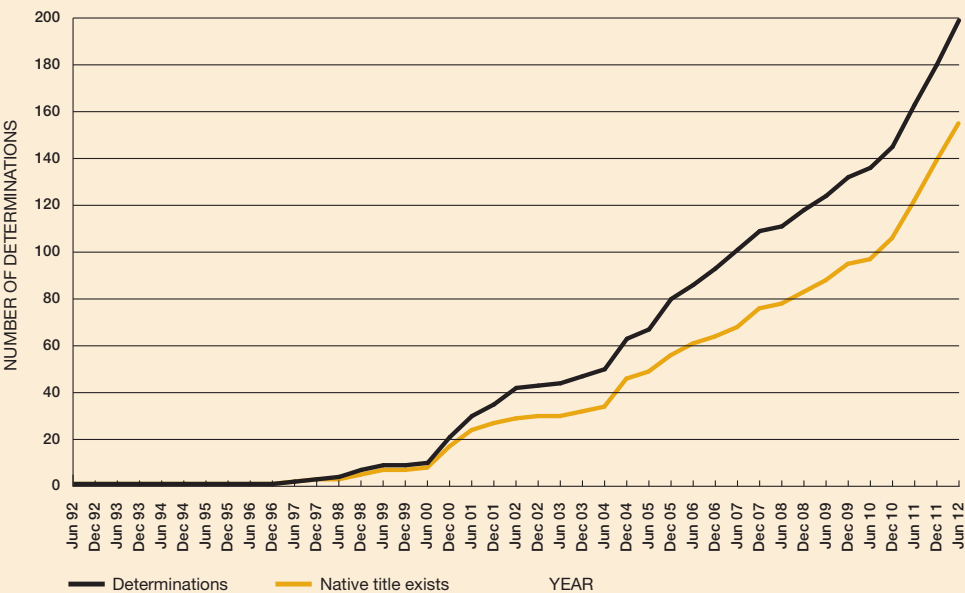
As at 30 June 2012, there were 471 applications in the system, 441 of them claimant applications, as well as 22 non-claimant, eight compensation applications and no revised native title determination applications. There were small reductions in the numbers of claimant and revised determination applications and an increase of three in the number of non-claimant applications during the reporting period.

Most of the claimant applications are in the Northern Territory (178 or 40 per cent), Western Australia (105 or 24 per cent) and Queensland (101 or 23 per cent). Most of the non-claimant applications are in New South Wales (18 or 82 per cent).

As Figure 1 shows, there has been a steady rise in the number of determinations of native title in recent years. There is a clear framework for negotiating outcomes rather than going to a Court hearing.

Nonetheless, it usually takes years to resolve claimant applications. Of the 36 claimant applications, the subject of determinations registered during the reporting period, 19 had been filed at least 10 years before the determination date.

Figure 1: Cumulative determinations of native title as at 30 June 2012.



An analysis of the 185 claimant applications the subject of registered determinations as at 30 June 2012 shows that:

- for the 134 determined by consent, the average time for achieving a determination was 77 months (6 years, 5 months), an average increase of six months compared with the average for all consent determinations at 30 June 2011
- for the 51 litigated determinations, the average time for achieving a determination was 83 months (6 years, 11 months), reduced by about one month from a year ago.

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. The 441 current claimant applications as at 30 June 2012 can be categorised as follows:

- 145 (or 33 per cent) were filed in or since 1 July 2007, i.e. within the past five years
- 79 (or 18 per cent) were filed between 1 July 2002 and 30 June 2007, i.e. between five and 10 years ago
- 217 (or 49 per cent) were filed earlier, i.e. have been in the system for between 10 and 18.5 years.

As was the case last year, the first and third of those categories increased in number and as a proportion of the total during the reporting period. The second category decreased in number and as a proportion of the total during that period. The first category reflects the effect of 63 new claims filed 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 relatively soon. For example, 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. 41, shows the extensive areas of Western Australia and South Australia, and smaller regions elsewhere (including the Torres Strait) that are subject to determinations that native title exists.

Building on the past for a better future

Among the lessons learned since the Mabo litigation and the commencement of the Act are that:

- native title litigation can be costly, unpredictable and unsatisfactory

- agreements can be reached but compromise is necessary
- discipline is necessary in resolving native title claims.

The challenges ahead include:

- securing the quicker resolution of current and future native title claims without a reduction in the quality of the outcomes (so that, where practicable, appropriate outcomes can be negotiated suited to the circumstances of each case)
- ensuring competent advice is available to the parties
- ensuring that claim related and future act agreements are of a high quality
- ensuring that, after determinations of native title have been registered, sound and robust governance arrangements are in place and the best use is made of native rights and interests.

A period of transition for the Tribunal

Changes in emphasis in the Tribunal's work: It is clear that, as a consequence of the institutional reforms described earlier, the nature of the Tribunal's work will shift away from claims resolution and the focus will be on future act negotiations, agreement-making and arbitral decision-making (with attendant registration work for the Registrar).

In her statement on the native title institutional reform, Attorney-General Roxon stated that the reform 'refocuses the resources of the Tribunal on its area of strength, enabling greater focus on crucial functions relating to future land uses affecting native title'.

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.

People and bodies wishing to use areas of land where native title exists will need to consult or negotiate with native title holders. Those native title holders will use their procedural rights to ensure that they have a say in, and receive some benefit from, the use of their traditional land or waters. Experience suggests that some of those negotiations might involve the Tribunal in the exercise of its mediation function. In some instances, negotiation parties will ask the Tribunal to determine whether a future act may or must not be done. In other circumstances, parties will ask the Tribunal to assist them to negotiate ILUAs or have their agreements registered.

Form of Tribunal annual reports: This is likely to be the last of the Tribunal's annual reports in the present form. For example, the next report will not include the extensive financial and other information required of the Tribunal when it was an FMA Act agency. The next report is likely to contain little about the mediation of native title claims and related ILUAs because responsibility for those functions will have been taken over by the Court before the end of the 2012–13 financial year. It is expected

that remaining Tribunal staff will be employed by the Court within that period, so the structure and governance arrangements will also change in the next year.

Change of President: This is also my final report as the President of the Tribunal. It has been an honour and a privilege to serve first as a part-time member of the Tribunal since December 1995 and then as its President since 1 March 1999.

That period has seen many changes in relation to native title law and practice and, most importantly, changes in attitudes. Those changes provide the context for agreement-making to become the norm rather than the exception in relation to native title claims and the vast array of future acts. The nature and extent of those changes might be traced, in part, through the Tribunal's annual reports which have sought to record much more than the administrative actions of the Tribunal.

It has been enriching and rewarding to serve with 35 other members of the Tribunal, three Registrars and hundreds of Tribunal staff in that period, as together we sought to give effect to the aspirations and principles inherent in the Act. It has also been a source of great satisfaction to work with numerous parties and their representatives as they strove to reach agreements on a wide range of issues, and to celebrate their achievements with them.

I wish those who remain with the Tribunal and others who follow all the best as they build on the legacy of achievement developed over the 18 and a half years since the Act commenced.

From left: Deputy President Chris Sumner, President Graeme Neate and Deputy President John Sosso.



Conclusion

Any legislative scheme, administrative process or judicial decision is a product of its time. Native title legislation was not the result of arid intellectualism or disinterested decision-making. Passionate, partisan people were involved. Important issues were at stake. Arguments invoked history, legal precedent, principles of federalism, morality, economics and social justice. Fundamental principles or taken-for-granted assumptions about property and social relations were questioned and occasionally upset.

The result was a compromise – an Act which provided the framework for dealing with complex issues. That framework has been adjusted in light of experience and judicial decisions. More amendments will be made in the future.

Native title issues are intergenerational. The aspirations of the participants in the system and the solutions they produce in striving to deliver them may be different from place to place and from time to time. It should not be surprising that, two decades down the track, as substantial areas of claims have been determined, the emphasis in the public debate has shifted to what native title holders can and should do and a range of related issues.

Much remains to be done to give effect to the principles articulated in the Preamble to the Act and its objects. The outcomes may be forged within the technical legal terms of legislation or may be negotiated with broader interests in mind.

In the year of the 20th anniversary of the *Mabo [No 2]* judgment, it is appropriate to celebrate the positive and substantial outcomes that have been delivered. For all its novelty and complexity, the native title scheme has delivered positive and substantial outcomes, particularly where parties were committed to reaching an outcome.

With that in mind we should concentrate on the challenges ahead, and cooperate in meeting them so that just and enduring outcomes are achieved.

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.

Throughout the reporting period, the Tribunal remained committed to working with the parties, the Court and governments (Commonwealth, state and 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:

During the reporting period a strategic review of small and medium agencies in the Attorney-General's portfolio occurred, which review included an examination of the Tribunal's functions and operations.

Against a background of change, both actual and potential, members and staff remained strongly focused on the Tribunal's Mission of facilitating 'timely and effective outcomes' and, at year's end, the Tribunal met or exceeded projections in respect of 10 of its 13 deliverables.

The Tribunal's executive and senior staff members worked closely with senior officers of the Court and the Attorney-General's Department to prepare for the implementation of institutional reforms on 1 July 2012.

Notwithstanding the significant costs associated with implementing the institutional reforms, the Tribunal recorded a modest surplus before depreciation in its annual financial statements.

The reporting period proved to be a watershed year for the Tribunal. At its commencement, on 1 July 2011, a range of new structural and reporting arrangements came into effect. These were introduced in order to respond effectively to the Tribunal's reduced appropriation for 2011-12, and its longer-term funding outlook.

In August 2011, a strategic review of small and medium agencies in the Attorney-General's portfolio 2012 commenced, which was led by Stephen Skehill SC (Skehill Review). The review team considered native title functions and operations, including those of the Tribunal, as part of its wider brief. The executive officers of the Tribunal, supported by key senior staff members, were closely involved with the Skehill Review over the course of the next five months.

Against that background of change, both actual and potential, members and staff remained strongly focused on the Tribunal's Mission of facilitating 'timely and effective outcomes'.

Significant initiatives achieved during the reporting period included:

- the development of the Tribunal's *Strategic Plan 2012-14*, which affirms the Tribunal's commitment to achieving outcomes, delivering high-quality services to clients, fostering a positive workplace culture and mandating personal and organisational accountability
- the completion in May 2012 of a *Client and Stakeholder Engagement Plan 2012-14*
- a major upgrading of the Tribunal's website, launched in March 2012, to introduce a greater 'business' focus and to make it more user-friendly for clients, stakeholders and the public
- the development of a comprehensive *Workforce Plan 2011-14*
- the implementation of a range of leadership initiatives, including an Emerging Leaders program for selected Executive Level 1 and APS Level 6 employees, and
- the design of a range of recruitment and other tools directed to advancing the Tribunal's *Indigenous Employment Strategy*, and its *Reconciliation Action Plan 2011-13*.

Major events included the approval and coming into effect of the *Enterprise Agreement 2011-14*, the holding of Mabo 20 year anniversary celebrations, the registration of the 600th ILUA and the registration of the 1000th user of Native TitleVision.

The simplifying and streamlining of procedures and processes remained a priority throughout the year. Registration test procedures, ILUA procedures, key future act documents and the National Case Flow Management Scheme Guide were reviewed and revised.

In addition, policies and practices consistent with the Government's Protective Security Policy Framework, and the *Work Health and Safety Act 2012* (Cwlth) were introduced, and a range of ICT reforms were implemented.

The report of the Skehill Review, released in May 2012, recommended a number of significant and far-reaching changes to native title functions and administration. Consequently, and as noted in the President's Overview, on Budget Night, 8 May 2012, the Attorney-General, the Hon. Nicola Roxon, announced institutional reforms which, among other things, would refocus 'the resources of the Tribunal on its crucial functions relating to future land uses affecting native title'.

The reforms, which were to commence on 1 July 2012, included:

- the transfer of the Tribunal's corporate services functions (human resources, finance and ICT) and of certain corporate and operational staff members to the Court, and
- the transfer of the responsibility for the mediation of native title claims to the Court, along with the claims-related ILUA negotiation assistance function.

During the period 9 May until 29 June 2012 the Tribunal's executive and senior staff members worked closely with senior officers of the Court and the Attorney-General's Department to prepare for the implementation of the institutional reforms on 1 July 2012. Among other measures, the Tribunal's Sydney office was re-located to the Sydney Law Courts Building, and its Adelaide office was decommissioned. All strategic, financial and operational objectives associated with implementing the institutional reforms were met successfully. At year's end, the Tribunal stood poised for a range of new structural and functional arrangements to commence on 1 July 2012.

Given the challenging operating environment which existed throughout the reporting period, it is very pleasing that, by year's end, the Tribunal had met or exceeded projections in respect of 10 of its 13 deliverables. It is also pleasing that, notwithstanding the significant costs associated with implementing the institutional reforms, in its annual financial statements the Tribunal recorded a modest surplus before depreciation.

President Graeme Neate has noted, in his Overview, that this is his last annual report. On behalf all of members and staff, both current and former, I extend my warm thanks to the President for his immense commitment and loyalty to the Tribunal throughout his presidency. I wish also to thank Deputy President the Hon Chris Sumner, Deputy President John Sosso, Member Neville MacPherson and Member Graham Fletcher for their many years of dedicated service to the Tribunal. A special note of thanks to June Eaton, Director, Operations West and Frank Russo, Director, Operations East for their tireless work throughout the year.

Finally, I thank all members, and all members of Tribunal staff, for their loyalty, resilience, hard work and continued commitment to the important goals of the Tribunal and the wider native title system.

Stephanie Fryer-Smith
Registrar

Tribunal overview



Back (from left): Member Dan O'Dea, Member Graham Fletcher, Member Helen Shurven, Deputy President John Sosso
Seated (from left): Member Gaye Sculthorpe, President Graeme Neate, Registrar Stephanie Fryer-Smith

In this section:

At the end of the reporting period there were six members. Five members were full-time and one was part-time.

The Tribunal developed and implemented a new *Strategic Plan 2012-14*. The Tribunal's Vision is 'Timely, effective native title and related outcomes' and its Mission is 'to facilitate the achievement of timely and effective native title outcomes; and to carry out our functions in a fair, just, economical, informal and prompt way'.

Thirty four determinations of native title were registered during the reporting period; and at 31 June 2012 there were 471 current native title applications, 194 registered determinations of native title, and 646 registered ILUAs.

Between 9 May 2012 and 30 June 2012, the Tribunal undertook extensive preparations for the pending institutional reforms.

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 objects of which include to:

- provide for the recognition and protection of native title
- establish a mechanism for determining claims to native title
- 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 future acts on areas where native title exists or might exist
- where parties cannot agree, arbitrating applications for a determination of whether a future act can be undertaken and, if so, whether any conditions 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 which meet those conditions on the Register of Native Title Claims
- giving notice of applications to individuals, organisations, governments and the public in accordance with the Act
- registering ILUAs that meet the registration requirements of the Act
- maintaining the Register of Native Title Claims, the National Native Title Register (the register of determinations of native title) and the Register of Indigenous Land Use Agreements.

The Registrar may delegate all or any of her powers under the Act to Tribunal employees, and may also engage consultants. For the purposes of the *Public Service Act 1999* (Cwlth) the Registrar is the head of the statutory agency comprising the Registrar and Australian Public Service (APS) employees assisting the Registrar.

Native title institutional reforms

As mentioned earlier in this report, on 8 May 2012, the Australian Government announced a number of key native title institutional reforms focussed on improving the efficiency of the native title system and assisting the Federal Court and the Tribunal to strengthen their ability to achieve native title outcomes.

The reforms preserved the Tribunal's status as a statutory authority with a strengthened focus on future act functions, as outlined in the President's Overview on p. 12.

As of 1 July 2012, the Court is responsible for:

- native title claims mediation
- ILUA negotiations related to native title claims mediation.

The Tribunal continues to carry out its other claims and registration functions and deliver services in the following capacities:

- notify native title applications and ILUAs
- maintain the Register of Native Title Claims
- maintain the National Native Title Register
- maintain the Register of ILUAs
- facilitate ILUA negotiations not related to native title claims mediation
- provide statutory assistance functions
- conduct review/inquiry functions about native title functions.

The Tribunal's functions in relation to the right to negotiate future act scheme are not affected by the institutional reforms.

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.

At the end of the reporting period there were six members. Five members were full-time and one was part-time. There will be some changes to the composition of the Tribunal in the next reporting period, as there were only four members at 1 July 2012 and the current term of each member will expire during that period.

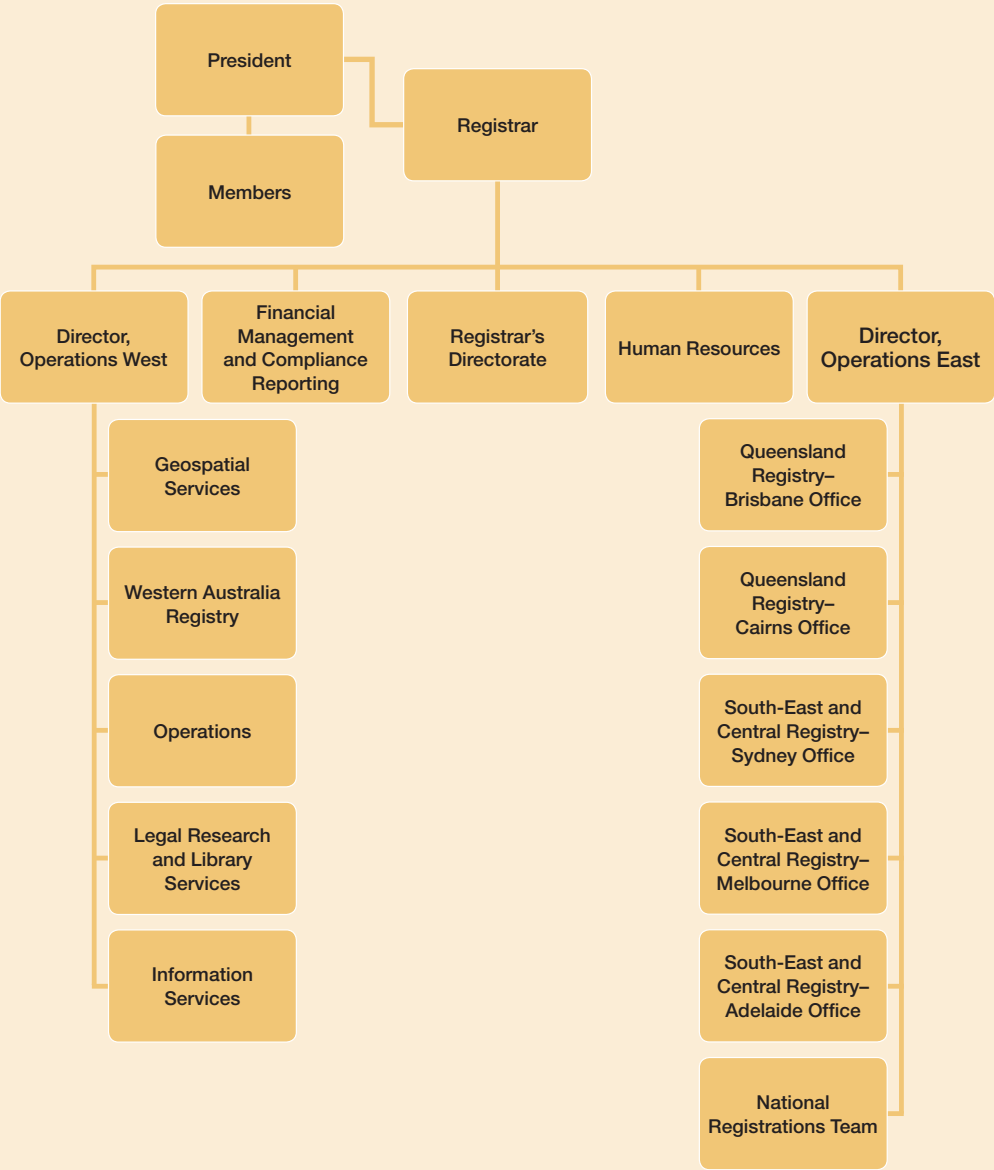
For a list of members, their terms of appointment and location see Appendix I p. 92.

Organisational structure

As foreshadowed in the last reporting period, the Tribunal entered a second phase of organisational restructure, which was implemented on 1 July 2011. The second phase included the establishment of the South East and Central Registry on 1 July 2011, combining the former New South Wales/ Australian Capital Territory, Victoria/ Tasmania and Central Australian registries. This Registry was based in Sydney, with small 'satellite' offices maintained in Melbourne and Adelaide. This resulted in streamlining of management structures across those offices, with the three offices reporting to one manager in Sydney.

At the close of the reporting period, the Tribunal was well-advanced in its preparations for a new phase of change to its organisational structure and operations in response to the pending native title institutional reforms. Those changes will be updated on the Tribunal's website at the commencement of the institutional reforms.

Figure 2: National Native Title Tribunal organisational structure as at 30 June 2012



Tribunal's Strategic Plan 2012-14

The term of the Tribunal's *Strategic Plan 2009-11* expired during the reporting period. Accordingly, in anticipation of that expiry, an internal working group reviewed the *Strategic Plan 2009-11* and developed a draft *Strategic Plan 2012-14*.

The Tribunal's Vision is 'Timely, effective native title and related outcomes' and its Mission is 'to facilitate the achievement of timely and effective outcomes; and to carry out our functions in a fair, just, economical, informal and prompt way'.

The *Strategic Plan 2012-14* was launched on 1 March 2012. It sets out the agency's priorities of:

- clients and stakeholders
- service delivery
- workplace culture, and
- accountability.

The *Strategic Plan 2012-14* guides the Tribunal's work through express commitment to:

- engage effectively with clients and stakeholders
- develop, implement and evaluate innovative ways of enhancing organisational value to clients and stakeholders
- continuously strive for excellence in services
- deliver high-quality mediation and agreement-making services
- foster a culture of achievement and high performance
- maintain a working environment that attracts and retains employees, and in which diversity is respected
- manage resources strategically and effectively and account for all of the agency's work
- ensure open and transparent processes and consistent approaches to decision-making.

A copy of the Tribunal's *Strategic Plan 2012-14* can be accessed via the website – www.nntt.gov.au.

In addition, the Tribunal developed and launched its *Client and Stakeholder Engagement Plan 2012-14*, which has been used to assist the agency's work in setting out engagement objectives and methods for each of the Tribunal's clients and stakeholders.

This Plan focuses on a common engagement approach across the Tribunal whilst also allowing regional differences to be taken into account.

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 has a single outcome for 2011-12:

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:

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

The three effectiveness indicators of the various components are:

- Agreement-making: increase in the number of native title and related agreements as an alternative to litigated or arbitrated outcomes
- Decisions: less than five per cent of decisions successfully appealed or reviewed
- Stakeholder and community relations: improvement in the quality of native title and related agreement-making.

Details of the Tribunal's performance in accordance with this framework are provided in Outcome and program performance, p. 48.

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 2012.

Table 1: Overview of public registers maintained by the Native Title Registrar as at 30 June 2012

Register	Number
National Native Title Register—approved native title determinations	194
Register of Native Title Claims—native title determination applications that have met the requirements for registration	338
Register of Indigenous Land Use Agreements—ILUAs accepted for registration	646

Table 2: Current applications as at 30 June 2012

Native title applications	Future act applications	Indigenous land use agreements
Claimant 441	FA determinations (s. 35)* 30	Lodged 4
Compensation 8	FA mediation (s. 31) 85	Accepted for notification 3
Non-claimant 22	FA objection* 841	In notification 18
Revised Native Title Determination 0		Notification ended 2
Total	471	

* Note: counted by tenement

Native title determinative applications: shifts in volume of registration, notification and mediation

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 2012, there were 441 claimant applications at some stage between filing and disposition. This is a decrease of two compared to the number of current claimant applications at 30 June 2011.

Sixty-three new claimant applications were filed in the reporting period, compared with 60 in 2010–11. During this reporting period, 65 claimant applications were the subject of native title determinations or were discontinued, dismissed, struck-out or combined with other applications. As a result, 1,193 (or 73 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, 91 registration test decisions were made, compared with 78 decisions made in the previous year. This total includes 25 registration tests made on applications for the second, third, fourth or sixth 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 seven requests for reconsideration have been received by the Tribunal since the 2007 amendments, with two of those requests made during 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. No applications were dismissed under s. 190F(6) during this reporting period. At 30 June 2012, 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 p. 56.

Notification

The number of notifications decreased in 2011–12, with 35 claimant applications notified, compared with 47 in the previous year (and 17 in the year before). Ten non-claimant applications were notified. Three compensation applications and one revised native title determination application were also notified during the reporting period. Some 392 (89 per cent) of current claimant applications had been notified by 30 June 2012.

Mediation

At 30 June 2012, 127 matters were with the Tribunal for mediation, including 11 matters that were referred to it during the reporting period. This is a decrease from the 178 matters that were with the Tribunal for mediation as at 30 June 2011 and it appears that the decrease, in part, reflects actions taken in response to the institutional reforms announced on 8 May 2012.

Having regard to the numerous factors that affect the progress of mediation, the Tribunal worked with parties to narrow issues in dispute (e.g. the resolution of tenure issues, examining connection issues, and exploring non-native title related outcomes) to assist in reaching agreement to resolve native title determination applications.

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. For the types of assistance the Tribunal has provided to parties on a case-by-case basis, and to stakeholders on a sectoral basis, see Performance: assistance and information and Performance: capacity-building and strategic/sectoral initiatives on p. 65.

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, as well as the resources available to the Tribunal, 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 150 new ILUAs were registered, bringing the total number of ILUAs on the Register of ILUAs as at 30 June 2012 to 646. Registered ILUAs covered about 1,398,127 sq km or 18.1 per cent of the land mass of Australia and approximately 5,753 sq km of sea (below the high water mark). The substantial increase in the number of applications for registration of an ILUA also caused the number of notifications of ILUAs to increase sharply to triple that projected.

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 2011–12, one Queensland ILUA was removed from the Register.

At 30 June 2012, 27 new agreements were in various stages of the process toward possible registration.

For further information about the level of ILUA activity, see p. 49.

Case study

Arabana People Consent Determination

Native title rights of the Arabana People in South Australia were recognised at a Federal Court hearing on 22 May 2012 at Finnis Springs Station, located south of the Oodnadatta Track, around 50km west of Maree.

Justice Finn made a consent determination to recognising the Arabana People's non-exclusive native title rights and interests over an area in the central north of South Australia, covering approximately 68, 823 square kilometres.

The claimed area included two significant geographical features of South Australia, namely, Lake Eyre and the Wabma Kadarbu Mound Springs Conservation Park.

Lake Eyre is a popular tourist destination, including for overseas visitors, and is the lowest point in Australia at approximately 15 metres below sea level. The Wabma Kadarbu Mound Springs Conservation Park is well known for its natural springs that rise from the Great Artesian Basin.

The Arabana claim was the subject of extensive mediation by the Tribunal, which facilitated the claim settlement negotiations since June 2010. Prior to that the Tribunal also conducted overlap mediations over a number of years between the Arabana and neighbouring claim groups including the Adnyamathanha, Antakirinja Matu-Yankunytjatjara, Kokatha and Barngarla groups.

A number of significant agreements were reached by negotiation as a result of the settlement of this claim, including:

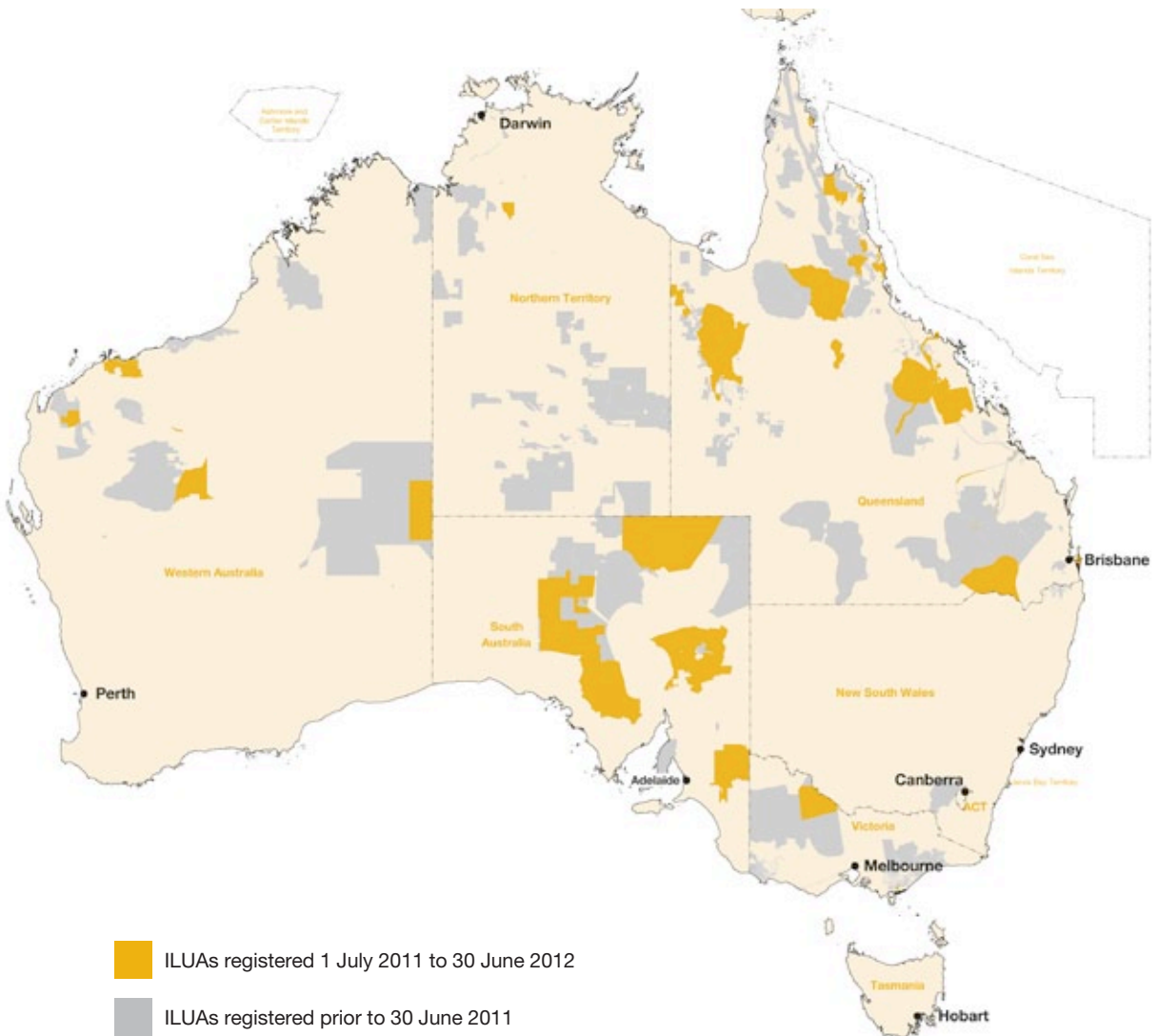
- an ILUA for a long term lease be granted to the Arabana Aboriginal Corporation over Finnis Springs. Funding has been allocated to enable important restoration and conservation works at the site
- a National Parks ILUA and Co-management Agreement which provide for the rights of the Arabana People recognised as part of the consent determination to be exercised in a way that is consistent with and enhances the management of the Parks in the region. This agreement provides for the input of the Arabana People into the management of the Parks.

The consent determination finalised the Arabana People's claim that was originally lodged in 1998 and recognised the non-exclusive native title rights to access, hunt, fish, camp, gather and use the natural resources within the relevant area. In addition, these rights also recognise the claimant's ability to undertake cultural activities, conduct ceremonies and meetings and protect places of cultural and religious significance.

From left: Tribunal's Deputy President, The Hon Christopher Sumner AM, Ken Buzzacott, Reginald Dodd, Peter Watts, Lionel Dodd, Aaron Stuart at Finnis Springs Station.



Figure 3: Map of indigenous land use agreements as at 30 June 2012



Spatial data sourced from and used with permission of: Landgate (WA), Dept of the Natural Resources & Mines (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 Gov't.

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Determinations of native title

During the reporting period, the Registrar registered 34 determinations of native title, 13 of which were in the Northern Territory. This was an increase of six compared with the number of determinations registered in 2010–11. Thirty-one of these determinations are that native title exists in relation to specific areas of land or waters. There were two determinations that native title does not exist made in respect of non-claimant applications, and one consent determination that native title does not exist in respect of a Northern Territory claimant application.

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.

Thirty 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.

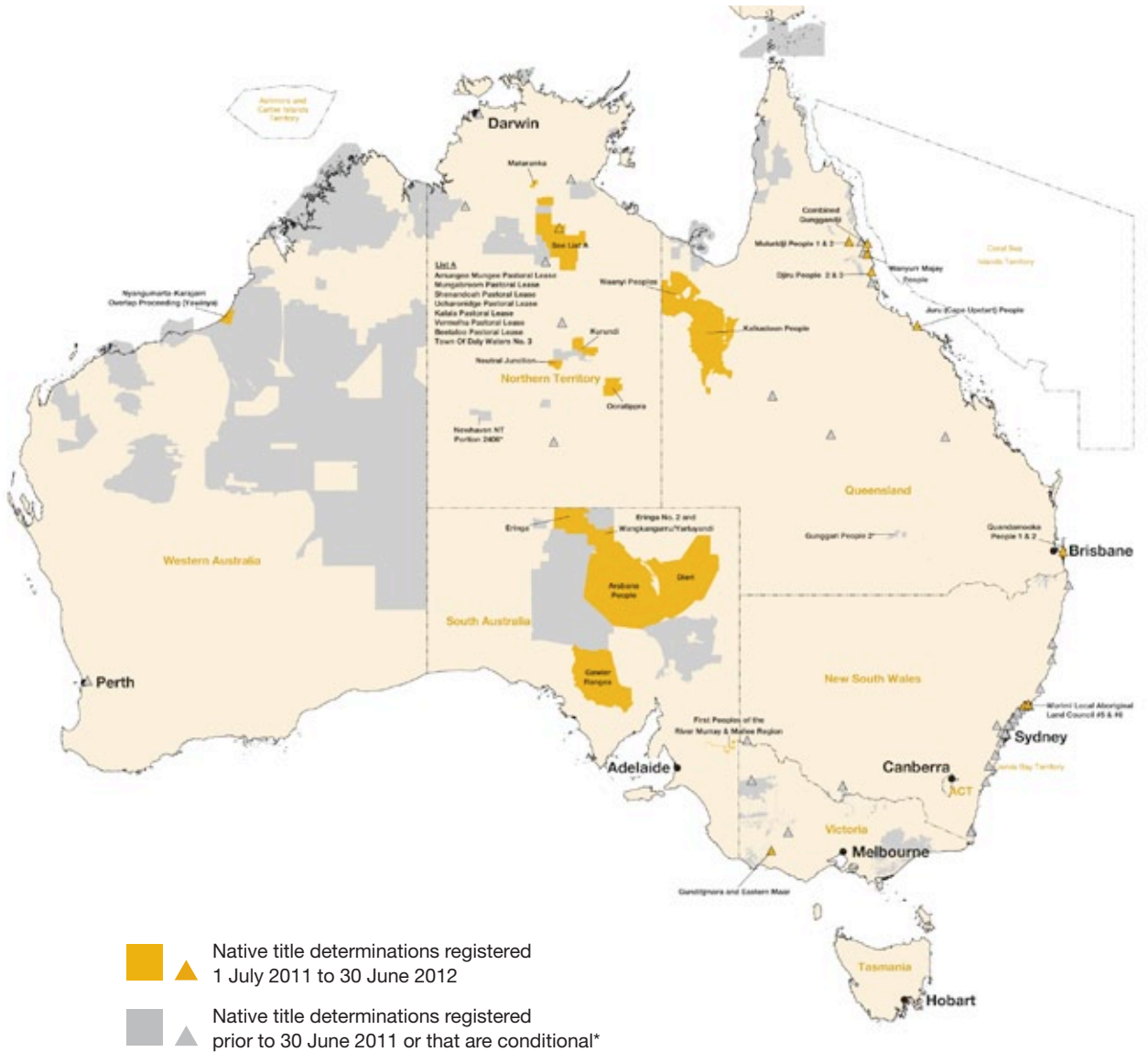
At 30 June 2012, there were 194 registered determinations of native title, including 150 determinations that native title exists. The registered determinations covered a total area of about 1,394,956 sq km or 18.1 per cent of the land mass of Australia. A further two conditional determinations in the Northern Territory and Queensland, as well as three additional Northern Territory determinations, all by consent that native title exists, were pending registration at 30 June 2012. These will increase the area to about 1,402,646 sq km or 18.2 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 p. 54.

Nationally there has been a decrease in the number of objections to the use of the expedited procedure under the Act. During the reporting period 1,359 objections were lodged, a reduction from that lodged the previous reporting period. As in previous years, most of those objections were in Western Australia. For further information see p. 62.

Figure 4: Map of native title determinations as at 30 June 2012



Spatial data sourced from and used with permission of: Landgate (WA), Dept of the Natural Resources & Mines (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 Gov't.

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Report on performance

In this section:

The Tribunal's expenditure for the reporting period was \$26.82 million, and the Tribunal finished the year with an operating deficit of \$0.40 million after depreciation.

The Tribunal exceeded its estimates for 10 of its 13 deliverables, including:

- Most areas related to agreement-making
- ILUA activity significantly increased from the previous year with double the number of ILUAs registered (150), including the registration of the 600th ILUA.
- Future act activity also increased from the previous year, with higher numbers of results in future act outcomes than expected.

Financial performance

This report on performance addresses the outcome and performance information set out for the Tribunal in the Portfolio Budget Statements 2011–12 for the Attorney-General's portfolio.

The resources made available to the Tribunal to achieve this outcome are set out in the following table.

Table 3: Agency resource statement

	Actual available appropriation for 2011-12 \$'000 (a)	Payments made 2011-12 \$'000 (b)	Balance remaining 2011-12 (a) – (b)
Ordinary Annual Services¹ Departmental appropriation²			
Estimate of resources	13,963		
Departmental appropriation	26,620	(28,581)	
Appropriations to take account of recoverable GST (FMA section 30A)	768		
Annotations to 'net appropriations' (FMA section 31)	113		
GST recoverable	(125)		
Cash in hand at year end	259		
Add back depreciation and amortisation expenses	600		
Add back appropriation held not used as payments not yet made	(37)		
Total ordinary annual services	A 42,161	(28,581)	13,580
Departmental non-operating			
Equity injections	19		19
Previous years' outputs	71	(71)	-
Total	42,251	(28,652)	13,599
Special Accounts ³			
Opening balance			
Non-appropriation receipts to Special Accounts	0		
Payments made		0	
Total Special Account	D 0	0	-
Total resourcing and payments	44,341	(30,378)	13,599

¹ Appropriation Bill (No.1) 2011-12. This includes Prior Year departmental appropriation and S.31 relevant agency receipts.

² Includes an amount of \$0.776m in 2011-12 for the Departmental Capital Budget. For accounting purposes this amount has been designated as 'contributions by owners'.

³ Special accounts were abolished.

Tribunal finances and 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.

In 2011-12 the Tribunal received an appropriation of \$25.84 million, \$1.08 million less than it had received the previous year.

The Tribunal uses its resources to produce goods and services (i.e. its deliverables) at a quantity, quality and price endorsed by the Government. The Tribunal's deliverables for 2011-12 are detailed in Performance overview, p. 46.

Table 4 identifies the price of the program during the reporting period against the full-year budget and quantifies any variation.

Table 4: Expenses and resources for outcome			
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:	Budget 2011-12 \$'000	Actual Expenses 2011-12 \$'000	Variation 2011-12 \$'000
Program 1.1: National Native Title Tribunal			
Departmental expenses			
Ordinary annual services (Appropriation Bill No. 1)	25,844	26,107	263
Revenues from independent sources (Section 31)	93	113	20
Expenses not requiring appropriation in the Budget year	567	600	33
Total expenses for Outcome 1	26,504	26,820	316
	2010-11	2011-12	
Average staffing level (number)	175	157	18

Key results in 2011-12

Key results for Tribunal departmental resources included:

- a net cost of services of \$26.24 million for the reporting period
- an operating deficit of \$0.40 million after depreciation, notwithstanding the incurring of significant expenses associated with preparing for the institutional reforms to commence on 1 July 2012 and the requirement for the Tribunal to operate with a reduced appropriation during the reporting period
- costs associated with staff separation and redundancies during the year in the sum of \$2.56 million
- as a result of the asset revaluation exercise carried out during the reporting period

the Tribunal's net equity increased to \$11.97 million from last year's net equity of \$10.27 million

- the Tribunal received an unqualified audit report on the 2011–12 financial statements from the Australian National Audit Office.

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

- general downscaling of operations led to lower supplier expenses compared with the previous year. These measures were responsible for a combined saving of \$5.15 million when compared with the previous year
- liabilities reduced by \$1.93 million due to reversal of provisions for a contract relating to lease obligations amounting to \$1.70 million
- equity contributions increased due to additional capital funding provided by the Commonwealth of \$0.78 million
- net assets increased by \$1.70 million which was attributable to a decrease in liabilities and the asset revaluation.

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) 2010–11 \$m	(2) 2011–12 \$m	(2)–(1) Change from last year \$m
Revenue from Government	26.92	25.84	(1.08)
Other revenues	0.21	0.58	0.37
Total income	27.13	26.42	(0.71)
Employee expenses	19.56	20.20	0.64
Supplier expenses	10.62	5.47	(5.15)
Other expenses	1.06	1.15	(0.09)
Total expenses	31.24	26.82	(4.42)
Operating result	(4.11)	(0.40)	(3.71)
Financial assets (A)	15.16	13.99	(1.17)
Non-financial assets (B)	2.88	3.82	0.94
Liabilities (C)	7.77	5.84	1.93
Net assets = A +B–C	10.27	11.97	1.70

Performance overview

Price

The total price for the Tribunal’s deliverables was \$26.82 million.

Client satisfaction

As part of its corporate performance management, the Tribunal 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 ordinarily undertaken every two years.

In early 2012, the Tribunal commenced preparations for the conduct of a client satisfaction survey to be conducted in May 2012. However, in light of the pending native title institutional reforms announced in May 2012, the conduct of the survey was postponed. The Tribunal will proceed with the survey during the 2012-13 reporting period.

Performance against key performance indicators

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

In 2011–12, the three components of the program and the related key performance indicators were as follows:

Component	Effectiveness indicator
Agreement-making	Increase in the number of native title and related agreements as an alternative to litigated or arbitrated outcomes.
Decisions	Less than five per cent of decisions successfully appealed or reviewed.
Stakeholder and community relations	Improvement in the quality of native title and related agreement-making

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

Results

As noted above, client satisfaction research was not undertaken in 2012. Accordingly, during the reporting period there were no results to report against the third key performance indicator.

The first 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 effectiveness indicators. More detailed information about agreement-making trends is included in the Performance report at p. 49.

Table 6: Results against effectiveness indicators: Agreement-making

Number of determinations, agreements and arbitrated outcomes	2009–10	2010–11	2011–12
Number of registered determinations that native title exists made with the consent of the parties	9	22	30
Number of registered determinations that native title exists that were litigated outcomes	-	2	1
Percentage made by consent	100%	92%	97%
Number of concluded agreements (ILUAs and future act)	101 (29 ILUA, 72 future act)	105 (49 ILUA, 56 future act)	171 (127 ILUA, 44 future act)
Number of arbitrated future act determination applications*	7	21	6
Percentage of outcomes by agreement	94%	83%	97%

Note: * Counted by application, not tenement.

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

Table 7: Results against effectiveness indicators: Decisions					
Decision type	Number of decisions made	Number appealed/ reviewed	Outcome	Number successfully appealed / reviewed	
Registration of claimant applications	91	2	2–pending	-	
Registration of indigenous land use agreements	150	2	1–successful* 2–pending	1	
Future act determinations**	69	4	3–dismissed* 2–pending	-	
Finalised objections to the expedited procedure (by decision)**	1200	1	1–pending	-	

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

** Counted by tenement.

Outcome and program performance

As outlined in Outcome and program structure, p. 34, 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:

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

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

Agreement-making

Performance: Indigenous land use agreements

Description

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

ILUAs are agreements between people who hold, or claim to hold, native title in an area and people who have, or wish to gain, an interest in that area. There are three types of ILUAs:

- Area agreements can only be made where there is no registered native title body corporate for the entire agreement area.
- Body corporate agreements can only be made where there is at least one registered native title body corporate for the entire agreement area. This means there must be at least one determination that native title exists over the entire agreement area.
- Alternative procedure agreements can only be made where there is at least one registered native title body corporate for part of the area or at least one representative Aboriginal/Torres Strait Islander body (i.e. representative body) for the agreement area. An alternative procedure agreement cannot be made, however, if there are registered native title bodies corporate in relation to all of the land and waters in the area.

The ILUA scheme facilitates agreement-making by allowing a flexible and broad scope for negotiations about native title and related issues, including future acts. ILUAs are often negotiated to resolve issues during the mediation of claimant applications and are an effective tool to support negotiation of broader land settlements.

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

Performance

The measures for ILUAs are:

- Quantity—number of agreements (fully concluded and milestone)
- Quality—clients' perception of the quality of the agreement-making process

Performance at a glance		
Measure	Estimate	Result
Quantity	(fully concluded) 34 (milestone) 138	127 88
Total	172	215
Quality	Clients' perception of the quality of the agreement-making process	Client satisfaction research not undertaken in reporting year due to pending institutional reforms

Table 8: Number of ILUAs achieved by state and territory

Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Fully concluded ILUAs	-	-	-	120	7	-	-	-	127
Milestones in ILUA negotiations	-	2	-	47	37	-	-	2	88
Total	-	2	-	167	44	-	-	2	215

Comment on performance

Fully concluded ILUAs

During the reporting period, the Tribunal concluded negotiations for 127 ILUAs within the context of native title determination application mediations in South Australia and Queensland, many of them linked to Federal Court consent determinations of native title handed down during the year.

In South Australia seven ILUAs were concluded, including a number of national park ILUAs with respect to the Gawler Ranges People, as well as ILUAs related to mining (Olympic Dam) and infrastructure (Cultana Defence Force Expansion).

The 120 ILUA negotiations concluded in Queensland were in conjunction with 47 negotiated milestone agreements. In many cases the strong ILUA agreement activity throughout Queensland has been inter-linked with the making of consent determinations of native title. A significant amount of assistance in Queensland has been provided under s. 24CF of the Act.

ILUA activity reduced significantly in Western Australia with no fully concluded ILUAs being recorded and only two requests for ILUA negotiation assistance being received.

Milestones in ILUA negotiations

The Tribunal achieved 88 milestones in ILUA negotiations. In Queensland, 47 milestones were recorded, mainly in relation to drafting of clauses as well as the resolution of tenure and other issues. A number of these related to the Queensland Pastoral Template as well as ILUAs relating to small scale miners' interests.

South Australia recorded 37 ILUA negotiation milestones, related to the Cultana Defence Force Expansion and the Gawler Ranges national parks ILUAs.

Case study

Gunggari People consent determination and ILUAs

On 22 June 2012, the Federal Court made a native title consent determination recognising the Gunggari People's native title rights and interests over land and waters in central southern Queensland. The determination area is 118,449.2 hectares and includes areas of reserve, and pastoral and other leases.

The outcomes achieved were a result of negotiations between the Gunggari People and the various parties to the application. As part of the settlement, the Gunggari People negotiated seven ILUAs that establish how rights and interests will be exercised on the ground.

The Gunggari People first filed a native title application in March 1996. Various amendments were made to that application in 1998, including substantial reductions to the area covered. In 2001, the application was effectively split into two parts. In December 2008, an ILUA in relation to the first part, between the State of Queensland and the Gunggari People, was registered. As a result, parcels of land in Dunkeld were handed over to the Gunggari People as ordinary freehold and Aboriginal freehold. The second part was the subject of the consent determination made on 22 June 2012.

The Gunggari People negotiated with a number of parties including the State of Queensland, Balonne Shire Council, Murweh Shire Council, Maranoa Regional Council, Ergon Energy Corporation Limited, Telstra Corporation Limited, parties with pastoral interests and one individual to reach agreement about their native title rights. The agreement was ratified through the consent determination on 22 June 2012. The Tribunal mediated between the parties to help them resolve the issues and reach agreement.

The Gunggari Native Title Aboriginal Corporation has been established as the Prescribed Body Corporate to manage the native title rights on behalf of all native title holders.

As part of the broader resolution of the Gunggari People's native title determination application, the Gunggari People negotiated:

- an ILUA with local government parties, and
- ILUAs with Ergon Energy Corporation Limited and five pastoral parties. The native title determination will take effect upon the registration of those ILUAs on the Register of Indigenous Land Use Agreements.

From left: Maria Drover, Aunty Irene Ryder, Kyra Dodd, Tribunal President, Graeme Neate, Bianca Kearns at the Gunggari People native title consent determination.



Performance: Native title agreements and related agreements

Description

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

The range of agreements includes:

- full consent determinations that provide for the recognition of native title or for alternative resolutions of claimant applications, as well as other agreements that fully resolve native title determination applications (full resolution agreements)
- agreements for compensation for the loss or impairment of native title and agreements that allow for, or regulate access by, native title holders to certain areas of land (specific issue agreements)
- agreements between parties that set the groundwork for more substantive outcomes in the future and may lead to the resolution of native title determination applications—these may be agreements on issues, process or frameworks (framework or process agreements).

Performance

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

- Quantity — number of agreements (full resolution, specific issues and framework agreements)
- Quality —clients’ perception of the quality of the agreement-making process

Performance at a glance		
Measure	Estimate	Result
Quantity	(full resolution) 13	10
	(specific issues) 80	201
	(framework and process) 72	190
Total	165	401
Quality	Clients’ perception of the agreement-making process	Client satisfaction research not undertaken in reporting year due to pending institutional reforms

Comment on performance

Of the 34 consent determinations handed down in the reporting period, 15 of these related to Northern Territory claimant applications which were not in mediation with the Tribunal. Although slightly fewer consent determinations were achieved than had been anticipated, the number of process or framework milestones was significantly higher than projected.

Table 9: Number of agreements by state and territory									
Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Full resolution agreements	-	2	-	6	1	-	1	-	10
Specific issue agreements	-	7	-	166	4	-	1	23	201
Process/ framework agreements	-	5	-	80	2	-	2	101	190
Total	-	14	-	252	7	-	4	124	401

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

In this reporting period, 10 agreements were reached to fully resolve native title determination applications, six of those being in Queensland. Performance for this output was less than the expected projections, due to overall activity being slower than forecast.

In Queensland a number of the Djiru People, Muluridji People and Gunggari applications were determined by consent.

Milestones on specific issues, leading towards the resolution of native title determination applications

The Tribunal worked with parties to narrow issues in dispute and otherwise assist in reaching final agreement to resolve native title determination applications. Nationally, agreement was reached on 391 outputs in relation to framework and process milestones and milestones on specific issues.

Queensland significantly exceeded its projections with 246 milestone agreements reached on a variety of matters. A large number of agreements were recorded which led to the withdrawal of some respondent parties in both the Gunggari and Djungan applications. There were also 40 agreements with respect to connection material in relation to a number of applications, and 115 agreements on tenure issues and other issues. In-principle agreement to consent determinations or partial consent determinations was reached on five applications.

In Western Australia, 23 milestone agreements were reached with respect to specific issues, fewer than expected. This reflects the level of engagement of parties in resolving non-claim resolution related issues and delays in the implementation of changing state government policy. In contrast, the forecast framework and process agreements expected were significantly exceeded with a total of 101 agreements recorded.

New South Wales recorded 12 agreements, with seven relating to specific issues, such as connection and party issues and five process and framework agreements. These related to the substantive mediation conducted in the Gumbaynggirr, Bandjalang and Yaegl applications.

Although South Australia and Victoria both recorded lower numbers of agreements, they exceeded projected outputs. In South Australia this was mainly due to the scarce resources available to the native title parties and state government being diverted to the pending Barngarla trial.

Process/framework milestones

As mentioned, Western Australia exceeded its projected outputs by recording 101 process/framework agreements. The vast majority of these agreements related to issues such as mediation programs and processes to deal with connection material across a number of applications, and these are expected to lead to a number of consent determinations being handed down by the Federal Court. In the south-west of the state, the representative body and the state continued their negotiations for the resolution of all south-west claims resulting in a Cabinet approved proposal. The Tribunal provided a substantial amount of assistance under s. 78 of the Act to the state and the representative body to achieve this outcome.

Despite the fact that the Court removed the majority of claimant applications in Queensland from Tribunal mediation, Queensland also recorded a significant number of process agreements relating to mediation and work programs in a number of matters, including the Western Yalanji People, Djungan and Bar Barrum applications.

Performance: Future act agreements

Description

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

The Tribunal mediates in relation to some future act matters when it is requested to do so by one or more parties, or where the President has directed that a conference be held to resolve issues related to an inquiry conducted by the Tribunal.

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

- s. 31, which applies to parties in cases where the right to negotiate applies
- s. 150, which allows the President 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.

Performance

Measures for future act agreements are:

- Quantity—number of agreements (full resolution and milestones)
- Quality—clients' perception of the quality of the agreement-making process

Performance at a glance		
Measure	Estimate	Result
Quantity	(full resolution) 42 (milestone) 32	44 67
Total	74	111
Quality*	Clients' perception of the agreement-making process	Client satisfaction research not undertaken in reporting year due to pending institutional reforms

Table 10: Number of future act agreements by state and territory									
Type of agreement	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Full resolution	-	-	-	8	-	-	-	36	44
Milestone	-	-	-	37	-	-	-	30	67
Total	-	-	-	45	-	-	-	66	111

Comment on performance

Agreements that fully resolve future acts

The Tribunal exceeded its estimated national number of agreements (42) for this financial year.

The number of mediation requests increased in Western Australia during the reporting period. A number of factors in the operating environment (including an apparent lack of resources for representative bodies), meant that matters did not necessarily proceed to full resolution during the year. In some regions in Western Australia there are native title claims in substantive claim mediation and/or claims in trial, thus limiting resources available for future act negotiations.

In Queensland the number of agreements that fully resolved future acts exceeded the forecast number.

Milestones in future act mediations

The Tribunal doubled its estimated milestones (67) for this financial year, mainly due to activity in Queensland. The vast majority of milestones reached related to agreements on compensation as well as other financial issues.

In Western Australia, the number of milestones also exceeded the projected figure, and focussed on issues such as drafting agreement clauses, the conduct of surveys, compensation and other financial issues.

Decisions

Performance: Registration of native title claimant applications

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

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

Under the Act, the Registrar must consider all new, and most amended, claimant applications for registration. In general, the Registrar will apply the full registration test 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.

Performance

Measures for registration of native title claimant applications are:

- Quantity—the number of decisions completed in the reporting period
- Quality—70 per cent of decisions are completed within six months of receipt of the original or amended application submitted for registration

Performance at a glance		
Measure	Estimate	Result
Quantity	79	91
Quality	70% of decisions completed within 6 months of receipt of the original or amended application submitted for registration	98% of decisions completed within 6 months of receipt of the original or amended application submitted for registration*

Note: Eight decisions were made pursuant to s. 190A(6A), and are therefore not included in the performance assessment.

Comment on performance

The estimated number of registration test decisions (79) was substantially exceeded in the current reporting period. Most of the claims were filed in Queensland, Western Australia and the Northern Territory.

Of the 91 registration test decisions made during the financial year, eight amended claims were accepted for registration following the more limited test pursuant to s. 190A(6A). Thirty-nine of the 83 claims that had the full registration test applied were accepted for registration.

During the reporting period, two reconsideration requests were received by the Tribunal and completed together with a third request which had been received in the previous reporting period. They related to applications in Western Australia. Judicial review proceedings were commenced in respect of two decisions. These related to matters in New South Wales and Western Australia.

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

State	Accepted	Accepted—s. 190A(6A)	Not accepted	Total
ACT	-	-	-	-
NSW	8	-	1	9
NT	3	3	31	37
Qld	15	4	4	23
SA	6	-	1	7
Tas	-	-	-	-
Vic	-	-	-	-
WA	7	1	7	15
Total	39	8	44	91

Timeliness of decisions

Excluding s. 190A(6A) decisions, 98 per cent of the remaining 83 decisions were tested within the six-month performance time frame, representing an improvement on performance reported in the previous reporting period. The average time taken to test claims was less than two months. The reduction in the average timeframes was the result of continuous improvement to practice.

Performance: Registration of Indigenous land use agreements

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

Parties to an ILUA apply to the Registrar to register their agreement on the Register of Indigenous Land Use Agreements. Under the Act each registered ILUA, as well as having the effect as if it were a contract among the parties, binds all persons who hold native title for the area to the terms of the agreement, whether or not they are parties to the agreement.

To process an ILUA application, the Registrar must:

- check for compliance against the registration requirements of the Act and regulations
- notify organisations and individuals with an interest in the area and, except in the case of body corporate agreements, notify the public
- determine any objections or other potential bars to the registration of the ILUA.

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

Performance

Measures for registration of ILUAs are:

- Quantity—the number of decisions completed in the reporting period
- Quality – 90 per cent of decisions are completed within six months of receipt of the application submitted for registration, where there is no objection or other bar to registration

Performance at a glance		
Measure	Estimate	Result
Quantity	75	150
Quality	90% of decisions completed within 6 months of receipt of the application submitted for registration, where there is no objection or other bar to registration	99% of decisions completed within 6 months of receipt of the application submitted for registration, where there is no objection or other bar to registration

Note: Fourteen applications received an objection/bar to registration and 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 or registered by state and territory									
	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
ILUAs lodged	-	-	-	98	31	-	2	7	138
ILUAs registered	-	-	2	106	31	-	2	9	150

Comment on performance

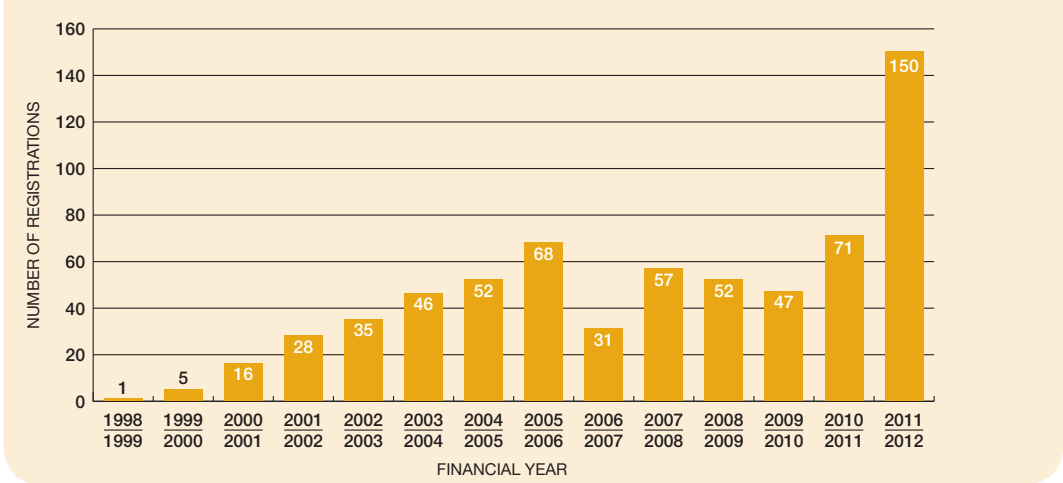
The number of ILUAs registered during the reporting period was double that which had been projected. During the reporting period decisions were made in respect of 150 ILUAs and 150 were registered. Most ILUA activity occurred in Queensland, where 106 ILUAs were registered, followed by South Australia with 31 registrations.

In December 2011, the Tribunal registered the 300th ILUA in Queensland. In February 2012, the 500th area agreement was registered and in May 2012 the 600th ILUA was registered. More than half of the registered ILUAs in Australia are in Queensland. As noted in the President's overview, some ILUAs have expired, and in the reporting period one ILUA was removed from the Register.

Of the total number of ILUAs registered in this reporting period, 18 were body corporate agreements and 132 were area agreements. To date, the Tribunal has not received any applications to register an alternative procedure agreement.

An application for judicial review of the Registrar's decision to register the Hopevale Congress Aboriginal Corporation (body corporate) ILUA was filed in the Court during the reporting period. The Court has heard the application. The decision was not handed down during the reporting period. A decision in *QGC v Bygrave* [2012] FCA 309 was handed down during the reporting period. The Registrar subsequently registered the Bigambul and QGC Pty Limited ILUA.

Figure 5: Number of ILUA registrations per financial year as at 30 June 2012



Timeliness of decisions

During the reporting period, an objection or adverse information was received in respect of 14 of the 150 ILUAs which were tested for registration. Of the remaining 136 applications, 99 per cent of the registration decisions were made within six months, exceeding the performance target.

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

This program item includes determinations made by the Tribunal that a future act may or must not be done and, if the future act may be done, whether it is to be done subject to conditions or not. It also includes decisions as to whether negotiations to reach agreement about future acts have occurred in good faith.

Any party to the future act negotiations 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 contends that another party (other than a native title party) did not negotiate in good faith, then the Tribunal must hold a preliminary inquiry to establish whether the negotiations have occurred in good faith. If it is established that negotiations have occurred in good faith, the Tribunal has the power to proceed with the substantive inquiry.

Performance

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

- Quantity—number of decisions
- Quality—80 per cent finalised within six months of the application being made

Performance at a glance		
Measure	Estimate	Result
Quantity ⁺	60	69
Quality [*]	80% of future act determination applications finalised within 6 months of the application being made	84% of future act determination applications finalised within 6 months of the application being made

Note:

+ Counted by tenement.

*Decisions in respect of seven tenements related to whether negotiation in good faith requirements were satisfied and were therefore not included in the performance assessment.

Comment on performance

During the reporting period, the number of future act determinations and decisions made by the Tribunal (69) was much lower than last year (96) however, still exceeded projections. Western Australia had slightly fewer determinations and decisions (36) than anticipated (40). Queensland exceeded its projections (20) by recording 33 determinations and decisions during the reporting period.

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

Table 13: Future act determination application outcomes by tenement			
Tenement outcome	QLD	WA	Total
Application withdrawn*	2	11	13
Consent determination—future act can be done	-	25	25
Consent determination—future act can be done subject to conditions	20	1	21
Determination—future act can be done	7	-	7
Determination—future act can be done subject to conditions	-	5	5
Determination – future act cannot be done	-	4	4
Future act terminated*	-	1	1
Total	29	47	76

*Note: Not counted for deliverable reporting purposes

During the reporting period, the Njamal People appealed the Tribunal's decision on whether or not Fortescue Metals Group (FMG) had negotiated in good faith (*Johnson Taylor & Or on behalf of the Njamal People v Fortescue Metals Group Ltd & Anor* [2012] FCA 52 (WAD151/2011 WF10/11 WF10/12, 6 February 2012, Justice Siopis). The appeal was dismissed. His Honour indicated that the key question is the good faith (or otherwise) of the grantee party, as opposed a particular employee of the grantee party.

In the event that the Court was to revisit the factual finding, his Honour indicated that it would not change the finding – i.e. that FMG negotiated in good faith.

One decision was made in September 2011 by Deputy President Sumner that certain future acts must not be done – see *Weld Range Metals Limited v Western Australia* [2011] NNTA 172, (2011) 258 FLR 9.

It was found that the four mining leases in question must not be granted primarily because of the special significance of the area concerned to the Wajarri Yamatji people.

Deputy President Sumner concluded on the evidence that:

[T]he interests, proposals, opinions or wishes of the ... [native title party] in relation to the use of the Tenement area should be given greater weight than the potential economic benefit or public interest in the Project proceeding. The Weld Range area (including the Tenement area) is of such significance to the ... [native title party] in accordance with their traditions that mining on it should only be permitted with their agreement—at [343].

A summary of this decision can be found in *Native Title Hot Spots* Issue 35.

Performance: Finalised objections to expedited procedure

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

The expedited procedure is a fast-tracking process for the grant of certain minimal impact tenements and licences which, under s. 237 of the Act, are considered not likely to:

- interfere directly with the native title holders' community or social activities, or
- interfere with areas or sites of particular significance, or
- involve major disturbance to any land or waters concerned, or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

The expedited procedure is triggered when a government party (in a public notice) asserts that the expedited procedure applies to a tenement application and, therefore, the right to negotiate does not apply. The Act includes a mechanism for registered native title parties to lodge an objection to this assertion.

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

Performance

The performance indicators for objections to the expedited procedure are:

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

Performance at a glance		
Measure	Estimate	Result
Quantity	1,060	1,200
Quality	80% of objections resolved other than by agreement finalised within 9 months of the s. 29 closing date	68% of objections resolved other than by agreement finalised within 9 months of the s. 29 closing date
	70% of objections resolved by agreement finalised within 9 months of acceptance	78% of objections resolved by agreement finalised within 9 months of acceptance

Note: Seventy-four objections were resolved by other processes and were therefore not included in the performance assessment. Other processes include non-acceptance of the objection application, withdrawal of the objection application prior to acceptance and withdrawal of the objection application due to external factors.

Comment on performance

Figures for this financial year show a 47.2 per cent increase nationally in land acquisition notices given (532) most notably in Western Australia where the number almost doubled in the Pilbara and Kimberley regions. Almost all of these notices were given under s. 24MD(6A) and (6B) of the Act, with 21 notified under s. 29.

On the other hand, there was a reduction in the number of s. 29 notices nationally advertised compared with those in the previous reporting period (e.g. a 13.3 per cent reduction in expedited procedures notices and 42.8 per cent decrease in non-expedited procedures notices).

Table 14: Objection application outcomes by tenement			
Tenement outcome	Qld	WA	Total
Consent determination – expedited procedure does not apply	-	1	1
Determination—expedited procedure applies	-	14	14
Determination—expedited procedure does not apply	-	22	22
Dismissed—s. 148(a) no jurisdiction*	34	31	65
Dismissed—s. 148(a) tenement withdrawn*	12	201	213
Dismissed—s. 148(b)	10	187	197
Expedited procedure statement withdrawn	1	-	1
Expedited procedure statement withdrawn—s. 31 agreement lodged	58	-	58
Objection not accepted	2	34	36
Objection withdrawn—agreement	37	662	699
Objection withdrawn—external factors	-	13	13
Objection withdrawn—no agreement	60	74	134
Objection withdrawn prior to acceptance	2	23	25
Tenement withdrawn*	-	1	1
Tenement withdrawn prior to objection acceptance*	1	96	97
Total	217	1,359	1,576

* Note: Not counted for deliverable reporting purposes.

The performance criterion of resolving 70 per cent of objection applications by agreement within nine months of acceptance was achieved nationally, with a 78 per cent resolution rate.

In respect of resolving objections other than by agreement within nine months of the closing date, Queensland achieved a 77 per cent resolution rate. It appears that in Queensland, notwithstanding the assertion of the expedited procedure, the state government prefers matters to be resolved by agreement where possible and supports a maximum time period for the grantee and native title parties to reach an agreement.

Western Australia achieved a 66 per cent resolution rate this financial year. Difficulties experienced in progressing resolution included seasonal law business and the wet season in the north of the state.

To date, no expedited procedure matter has proceeded to a finalised inquiry in Queensland, whereas 37 were finalised in this way in Western Australia, one of which was a consent determination that the expedited procedure did not apply.

Stakeholder and community relations

Performance: Assistance and information

Description

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

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

Performance

Measures for assistance and information are:

- Quantity—the number of assistance events, products or services
- Quality—80 per cent of respondents are satisfied with Tribunal services

Performance at a glance		
Measure	Estimate	Result
Quantity	274	413
Quality	80% of respondents are satisfied with services	Client satisfaction research not undertaken in reporting year due to pending institutional reforms

Comment on performance

The majority of requests for assistance (308) related to the provision of geospatial products, including geospatial mapping assistance in relation to claimant applications, future act mediations and ILUAs.

The Tribunal also assisted parties by providing preliminary comments on draft native title determination applications and ILUAs, as well as contributing to a number of external meetings throughout the year. Twenty-one information sessions were provided to stakeholders and other interested groups around the country.

Statistical data was provided on the progress of native title determination applications, future acts and ILUAs on a regular and ad hoc basis to other agencies working in the native title system. The Tribunal released its National Report to government, stakeholders and the public in August 2011 and February 2012. Produced to date 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.

Native Title Hot Spots continued to be a valued source of information about native title news and recent judgments involving native title. Two issues of *Native Title Hot Spots* were produced during this reporting period.

In June 2012, the Tribunal also produced a summary booklet with information about native title determinations and other significant events in commemoration of the 20 years of native title since the High Court’s judgment in *Mabo v Queensland [No. 2]*. Further information on this publication is provided on p. 68.

Performance: Capacity-building and strategic/sectoral initiatives
Description

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

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

Performance

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

- Quantity—the number of initiatives and projects completed in the reporting period
- Quality—80 per cent of respondents are satisfied with the initiative

Performance at a glance		
Measure	Estimate	Result
Quantity	14 projects and initiatives	10 projects and initiatives
Quality	80 of respondents are satisfied with the initiative	Client satisfaction research not undertaken in reporting year due to pending institutional reforms

Comment on performance

In the reporting period, the Queensland's Brisbane and Cairns offices convened regional planning meetings in the North Queensland and Cape York regions. Participants included the 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 and state government representatives. 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 representative bodies, state government representatives, active respondent parties, the Attorney-General's Department and the Court.

In South Australia and Western Australia an ILUA workshop for all stakeholders and a future act strategic meeting with the state government respectively, were also conducted.

Case study

Commemorative publication of 20 years of native title booklet and collaboration with AIATSIS

Sunday 3 June 2012 marked the 20th anniversary of the High Court of Australia's historic decision in *Mabo v Queensland [No 2]*.

In the lead up to this milestone, the Tribunal published a commemorative brochure summarising key developments, determinations and trends in native title.

The Tribunal's *20 years of native title – a summary of key dates and determinations* brochure provides statistics (as of May 2012) that demonstrate the changes in activity in the native title system. It can be accessed through the Tribunal website with printed copies available upon request.

At the time of its publication, Tribunal President, Mr Graeme Neate, said 'As the nation marks the 20th anniversary of the Mabo judgement, we should celebrate the positive and substantial outcomes that have been delivered, whilst acknowledging the complexity and limitations of the native title system.'

'The statistics tell part of the story, with native title determinations since 1994 covering 17 per cent of the country and more than 600 Indigenous land use agreements registered.'

Determinations of native title, ILUAs and other agreements have been made at the far points of Australia and many places in between. They cover islands of the Torres Strait in far north Queensland, part of the south eastern coastline of Victoria, Burrup Peninsula in Western Australia and Byron Bay in NSW.

Twenty years of native title has also seen trends towards Indigenous and non-Indigenous Australians working together to reach agreements and achieve outcomes rather than litigate before the courts.

'Agreement-making has become the usual way of resolving native title claims and other native title issues,' Mr Neate said.

'Indigenous land use agreements are often part of a package of agreements which record the settlement of a native title application between all the parties involved.'

In addition, the rising number of agreements about exploration and mining, and other uses of land and waters, demonstrate how native title parties engage collaboratively with others in making a shared future for communities around Australia.

Looking to the future, Mr Neate said 'Although many positive and substantial outcomes have been achieved, much remains to be done.'

On this 20th anniversary, it is appropriate to celebrate what has been achieved, to concentrate on the challenges ahead, and to cooperate in meeting those challenges so that just and enduring outcomes are achieved.'

The Tribunal's *20 years of native title* publication was well received by various groups of stakeholders, ranging from academia through to the media, sectors of which used the publication statistics and photographs to acknowledge this milestone event. The publication was also made available for distribution through the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) native title conference in June 2012 in Townsville at the Attorney General's display stall.

Mr Neate also contributed a chapter for *The Limits of Change: Mabo and Native Title 20 Years On*, a book published by AIATSIS, which provides reflections on developments in native title since *Mabo v Queensland [No 2]*.



Management



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

In this section:

The Tribunal's governance arrangements, which had been significantly restructured in early 2011, operated efficiently and effectively throughout the reporting period. A high-level review ('health-check') of the Tribunal's governance arrangements confirmed their efficiency and effectiveness.

A wide range of Human Resource-related projects, including the development of a *Workforce Plan 2011-14* and an Emerging Leaders program, were successfully completed in 2011-12.

The Tribunal progressed a range of initiatives in its *Reconciliation Action Plan* and *Indigenous Employment Strategy*, increasing intra-Tribunal cultural awareness and increasing opportunities for Indigenous employee engagement.

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, who is the head of the statutory agency for the purposes of the *Public Service Act 1999* (Cwlth) and has functions under the *Financial Management and Accountability Act 1997* (Cwlth) also, has a range of responsibilities under other Commonwealth legislation.

During the reporting period the work of the President and the Registrar were guided by Vision, Mission, Values and Strategic Priorities contained in the *Strategic Plan 2009-11* and the *Strategic Plan 2012-14*.

The President and Registrar, in making decisions about the administration of the Tribunal, are assisted principally by the Management Board: this comprises the Registrar (Chair), the Director, Operations East, the Director, Operations West, the Chief Financial Officer, the Chief Information Officer, the Manager, Human Resources and the Manager of the Registrar's Directorate.

The President's and Registrar's decision-making is also supported and informed by comprehensive corporate governance arrangements and practices. These are administered by a number of management groups and committees which are outlined later in this chapter.

Tribunal governance

Simplified and streamlined governance arrangements, which came into effect on 1 January 2011, comprise 12 high-level committees or groups. Those committees or groups include:

- Strategic and Expenditure Advisory Group
- Strategic Practice Group
- Management Board
- Members' meeting
- Registry and Section Managers' Group
- Consultative Forum
- Registration and ILUA Delegates Groups
- Indigenous Advisory Group, and
- Audit Committee.

Further information about the work of some of those groups is set out in the following pages.

The Tribunal's governance arrangements also include controls established under the Commonwealth's financial management and accountability framework (such as the *Chief Executive's Instructions* and supporting policies and guidelines), protective security and information security frameworks, business continuity planning and compliance.

Strategic and Expenditure Advisory Group

The Strategic and Expenditure Advisory Group (SEAG) is a key forum in the Tribunal's governance and which operates under the authority of the President and Registrar. SEAG comprises the President (Chair) the Deputy Presidents, the Registrar and Directors, Operations West and East. Its functions include providing 'forward planning' advice, approving and monitoring strategic projects, monitoring expenditure and related budgetary matters, and monitoring the Tribunal's deliverables. SEAG, which meets quarterly or as required, met three times in the reporting period.

Strategic Practice Group

The functions of the Strategic Practice Group (SPG) are to maintain a national and state/territory overview of practices, issues and trends in relation to agreement-making, ILUAs and future acts. The SPG is chaired by the President, and includes the Deputy Presidents, the ILUA Coordinator Member, the Registrar, the Directors, Operations West and East and two registry managers. The SPG also makes recommendations to the President, Members, the Registrar, the Management Board or other relevant forums in respect of agreement-making, ILUA and future act practice. It met four times during the reporting period.

Management Board

As indicated above, the Management Board supports decision-making by the President and Registrar. The Management Board meets every three weeks to consider strategic, operational, financial and administrative matters relating to the Tribunal. The Management Board is also the main forum in which the Registrar, Directors, Operations East and West and corporate managers discuss and progress a wide range of business matters.

The functions of the Management Board include providing high-level advice to the Registrar; developing, monitoring and reviewing budgets; approving human resource and financial policies, and dealing with high-level policy and operational matters.

Members' meetings

The President and Members met in Perth in November 2011 and in May 2012. The second meeting followed the Australian Government's announcement of significant native title institutional reforms which were to commence on 1 July 2012. This meeting was scheduled to coincide with the Registry and Section Managers' meeting

(discussed below), and therefore enabled several joint sessions to be held. A range of issues was discussed, with a particular focus on the, the pending institutional reforms.

The topics covered included:

- strategies to best prepare for and successfully manage the institutional reforms
- practice development issues and trends
- inter-agency liaison, particularly with the Federal Court.

Registry and Section Managers' Group

The Registry and Section Managers' Group, supports the achievement of the Tribunal's strategic objectives, has high-level oversight of operational matters, and is an important forum for sharing and disseminating information.

During the reporting period the Registrar convened monthly Registry and Section Managers' meetings by web-enabled videoconference, which were also attended by the Directors, Operations West and East.

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 May 2012, following the announcement of the pending institutional reforms, the Registry and Section Managers' Group met face-to-face to consider and discuss 'Institutional Reforms - The Path Forward'.

As noted above, the Registry and Section Managers met in joint sessions with the Members' Meeting. These sessions focused on identifying ways to best prepare for and execute the large-scale institutional changes which would take effect on 1 July 2012, and how best to support staff members during this process. As has occurred with previous joint Member / Registry and Section Managers' meetings, the contributions of all attending were innovative, practical and constructive.

Another group, the National Operations Managers' (NOM) group, met regularly by teleconference to plan for and oversee service delivery through the Tribunal's regional registries. NOM comprises state and territory managers and the Directors, Operations West and East. Other senior staff attend as appropriate.

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, such as the Manager, HR, attend as observers for particular purposes.

Audit committee


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 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 six times during the reporting period. A major project for the Audit Committee was to finalise the Tribunal's *Strategic Internal Audit Plan for 2012–13*.

Figure 6: Certification of Tribunal fraud control arrangements

I, Stephanie Fryer-Smith, certify that:

- a) the Tribunal has prepared fraud risk assessments and fraud control plans;
- b) 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
- c) the Tribunal has taken all reasonable measures to minimise the incidence of fraud in their agency and to investigate and recover the proceeds of fraud against their agency.



Stephanie Fryer-Smith

Registrar

9 October 2012

High-level review of Tribunal governance

A high level internal review (or 'health-check') of the Tribunal's committee and group structure commenced in late 2011. The review team found that the committee structure introduced on 1 January 2011 had been highly effective. The terms of reference for each committee/group were either confirmed or slightly refined, as appropriate.

Information and technology management

Since the last reporting period, the Information Services section continued its work to improve the Tribunal's business systems and network infrastructure to enable Members and staff to operate efficiently and therefore to deliver high-quality services to its clients and stakeholders.

Redeveloped corporate website

A website redevelopment project was launched in September 2011, and a working party comprising the Director, Operations East, and technical, operational and communications staff undertook several months of intensive work to upgrade the Tribunal's website. The key objective of the redevelopment was to ensure that information contained in the Tribunal's webpage was more business-focused and arranged in a more logical and user-friendly way. The redeveloped website went 'live' in December 2011.

Telephone and hardware replacement

During the reporting period the Information Services section successfully completed the Tribunal-wide implementation of its Voice over Internet Protocol (VoIP) system. The rollout of the VoIP telephony solution, which had commenced in late 2010, was funded by the Department of Finance and Deregulation's BAU Reinvestment Fund. An independent review was conducted by an external provider to support the implementation of VoIP and a benefits realisation plan was developed to monitor the cost-effectiveness of the new telephony system.

A Microsoft 'Lync' solution was implemented during the reporting period, replacing the 'ooVoo' web-conferencing system used by the Tribunal. Microsoft Lync and web conferencing generally has provided considerable savings for the Tribunal. The Lync solution has also, through its Instant Messaging function, improved inter-office communications.

Desktop replacement

In March 2012, Information Services commenced a comprehensive desktop computer replacement project, because the Tribunal's existing desktop fleet was approaching end-of-life. The project was completed in June 2012, resulting in the replacement of all desktop and notebook computers in Tribunal offices. Complementing the desktop replacements was the upgrading of the existing standard operating environment from Windows Vista, Office 2007 to Windows 7, Office 2007.

Compliance

During the reporting period, Information Services section worked with other Tribunal officers to ensure the necessary progress of important compliance-related initiatives. These included protective security measures and records management.

Protective security policy framework

During the reporting period, the Tribunal undertook all necessary measures to implement the mandatory initial stages of Australian Government Protective Security Policy Framework (PSPF). Led by the Director, Operations West, the Tribunal developed and implemented an agency-specific PSPF, including the development of essential internal policies. The Tribunal's Agency Security Advisor delivered comprehensive protective security training to all Members and staff. A specific PSPF information page was uploaded on the Tribunal's intranet system to keep Members and staff informed of the Tribunal's progressing in managing PSPF compliance.

In addition, Information Services, with advice by the Information Technology Security Adviser, implemented Janus Seal into the Tribunal's Outlook (email) system. Janus Seal places a security marking on all outgoing email and appointment communications.

Records management

The Tribunal's File Request System (FRS) was redeveloped during the reporting period. This was designed to bring the FRS in line with the other existing in-house applications and to permit modifications consistent with legislative, standard and policy changes, including the PSPF.

Acceptable use of ICT policies

Aligned to the implementation of the PSPF, a number of ICT policies were revised and updated. These policies referenced all relevant legislation including the Privacy Act and the Crimes Act, as well as (where appropriate), the APS Code of Conduct.

ICT commissioning and de-commissioning activities

In addition to Information Services' project work and business as usual activities, the Information Services team carried out a range of office ICT commissioning and de-commissioning activities during the reporting period. These were essential to ensure that the re-location of the Tribunal's Sydney office to the Sydney Law Courts Building in mid-June 2012, and the closure of operations in the Tribunal's Adelaide office by 30 June 2012 proceeded effectively and smoothly. Both of those commissioning and de-commissioning projects required significant technical and records management support.

Human resources

Overview

During the reporting period, Human Resources (HR) continued to provide advice and support, to the Tribunal in respect of wide-ranging human resource matters.

The Tribunal's *Enterprise Agreement 2011-14* (EA 2011-14) was approved by Fair Work Australia on 5 August 2011, and came into effect on 12 August 2011. The Manager HR and the wider HR team assisted the Registrar, the Directors, Operations East and West and the Registry and Section Managers in ensuring the successful implementation of the EA 2011-14.

HR officers also facilitated workplace changes, handled misconduct, grievance and dispute management matters and, assisted in a range of key working groups and projects which are outlined below.

Key activities and achievements during 2011-12 included:

- The Manager, HR, together with an external consultant, developed a comprehensive *Workforce Plan 2011-14* with a view to optimising the Tribunal's organisational efficiency, flexibility and responsiveness. The *Workforce Plan 2011-14* built on significant structural changes which had been introduced the previous year. Implementation of the *Workforce Plan* commenced in August 2011.
- An Emerging Leaders program and Leadership Toolkit Quarterly Forums, conceptualised and developed as key leadership plans, and HR and succession planning initiatives, were launched in late 2011. The Emerging Leaders program was delivered to selected Executive Level 1 and APS Level 6 employees who had been identified by their managers as having particular leadership potential. The 'Leadership Toolkit' Quarterly Forums were available to all Tribunal staff and were very well-received.
- The HR team undertook a review and revision of Tribunal recruitment practices, with reference to existing Tribunal practices, the practices of other APS agencies and that of private sector providers. The objective of the review was to streamline future recruitment processes and render them more user-friendly for potential applicants.
- The HR team reviewed the staff induction program, and updated and upgraded the content and structure of the induction 'package' in consultation with Tribunal managers and supervisors.
- The HR team refined the Tribunal's work review and development plans (WRDPs) to make them more relevant and user-friendly. In 2011-12 the Tribunal recorded a 100 per cent completion rate for WRDPs.
- HR oversaw the delivery of two seminars that focused in particular on building

the 'business' knowledge of the Tribunal's corporate staff. These seminars included discussions by the Manager, Legal, Research and Library of the major elements of the Act. Both seminars were well attended and generated positive feedback.

Our workforce profile

At 30 June 2012, the Tribunal had seven Holders of Public Office (President Graeme Neate, Deputy President John Sosso, Registrar Stephanie Fryer-Smith and Members Gaye Sculthorpe, Graham Fletcher, Dan O'Dea and Helen Shurven) and 130 people employed under the *Public Service Act 1999* (Cwlth) (PSA). This represents a reduction of 24 per cent from the same time last year. The average head count of APS employees for the year was 168.

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

Turnover

During the period of 1 July 2011 to 30 June 2012, a total of 92 persons left the agency (including transfers and end of non-ongoing contracts), with 32 per cent of these cessations due to redundancy. The aggregate turnover rate for this reporting period was 41.44 per cent, substantially higher than the 25 per cent turnover rate experienced in the 2010-11 reporting period.

The Tribunal's *Workforce Plan 2012-14* provided strategic direction on recruitment decisions, and it also resulted in some non-ongoing positions being advertised for permanency. In addition, new advertising strategies incorporating electronic media and recruitment processes were further developed through the Tribunal's electronic system eRecruit.

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

Employees	At 30 June 2011	At 30 June 2012
Female	118	90
Indigenous	14	7
Linguistically diverse background	16	27
People with a disability	4	2
Ongoing	136	96
Part-time	25	13

Table 16: Tribunal employees by location as at 30 June 2012

Classification	Office location						Totals
	Principal	WA	NSW	Qld	Vic	SA	
APS level 1	-	-	-	1	-	-	1
APS level 2	3	12	1	6	2	2	26
APS level 3	3	1	1	1	-	-	6
APS level 4	10	8	2	5	0	2	27
APS level 5	8	-	-	1	-	-	9
APS level 6	18	8	2	5	-	1	34
Legal 1	2	-	-	-	-	-	2
Legal 2	-	-	-	-	-	-	-
Media 1	-	-	-	-	-	-	-
Media 2	-	-	-	-	-	-	-
Library 1	-	-	-	-	-	-	-
Library 2	-	-	-	-	-	-	-
Executive level 1	9	3	2	1	1	1	16
Executive level 2	5	1	1	-	-	-	7
Senior executive	1	-	1	-	-	-	2
Total employees	59	33	10	20	3	5	130

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 employees

At 30 June 2012, Indigenous employees comprised five 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 APS.

The composition of the Tribunals' Indigenous employees as at 30 June 2012 is set out in Table 17.

Indigenous Employment Strategy

During the reporting year, a project team continued with implementation of the *Indigenous Employment Strategy* (IES). The IES is linked to the Tribunal's *Reconciliation Action Plan 2011-13*. The IES, which commenced in May 2011, is designed to render the Tribunal an employer of choice for current and prospective Indigenous employees. Implementation of the IES also delivered a number of important tools and documents, including a 'Guide for Selection Panels,' 'Indigenous Recruitment Policy' and 'Identified Position Role Profile Template.'

Progress of the Tribunal's *Reconciliation Action Plan* and IES is contained within the following case study.

Case study

Tribunal's Reconciliation Action Plan 2011-13...one year on

The Tribunal's *Reconciliation Action Plan 2011-13* (RAP) was launched in May 2011 at the biennial conference of the agency's Indigenous Advisory Group. At the conference, the Advisory Group also developed an action plan to implement the *Indigenous Employment Strategy* (IES) for the Tribunal.

The Tribunal's RAP identifies actions and targets around relationships, respect and opportunities, whereas the IES focuses on recruitment, retention and workplace environment strategies. The IES forms a significant part of the Tribunal's RAP, and many of the targets outlined in both documents are similar. Tribunal staff and groups responsible for the implementation of the RAP and IES have liaised closely and worked with the Advisory Group to give effect to various strategies within those documents.

In December 2011, the Tribunal launched the Welcome to Country/Acknowledgement to Country Protocol which was developed as one of the actions under the RAP.

The Tribunal welcomed Australian Public Service Commission (APSC) Indigenous Trainee Program applications for 2012 and finalised an Indigenous traineeship position in January 2012.

The Tribunal's Human Resources section streamlined the agency's recruitment process which involved making changes to advertising and recruitment practice to better attract and support Indigenous applicants.

A new page on the Tribunal website called Indigenous Employment at the Tribunal was developed and launched, containing information for potential applicants and staff profiles. An Indigenous Recruitment Brochure was developed and distributed at various relevant events attended by the Tribunal.

Tribunal staff and members around the country continued to acknowledge and celebrate various events such as Mabo Day and NAIDOC Events. Communications continued to be provided to staff and members on the messages of Reconciliation Week in 2012.

One year on, the Tribunal continues its commitment to promote and advance reconciliation, as outlined within the RAP, in its everyday business and strategic focus.

From left: Tribunal staff members Marion Towndrow, Alex Ripper and Paul Willaway.



Indigenous Employee Study Award

Each year the Tribunal grants a scholarship to enable an Indigenous employee (or more than one Indigenous employee) to undertake a course of study relevant to their employment in the APS. All Indigenous employees of the Tribunal are eligible to apply and in the reporting period the Tribunal awarded two scholarships.

Table 17: Indigenous employees by location as at 30 June 2012

Classification	Office location						Totals
	Principal	WA	NSW	Qld	Vic	SA	
APS level 1	-	-	-	1	-	-	1
APS level 2	-	1	-	-	1	-	2
APS level 3	-	-	-	-	-	-	0
APS level 4	-	-	-	2	-	-	2
APS level 5	1	-	-	-	-	-	1
APS level 6	-	-	1	-	-	-	1
Legal 1	-	-	-	-	-	-	0
Legal 2	-	-	-	-	-	-	0
Media 1	-	-	-	-	-	-	0
Media 2	-	-	-	-	-	-	0
Library 1	-	-	-	-	-	-	0
Library 2	-	-	-	-	-	-	0
Executive level 1	-	-	-	-	-	-	0
Executive level 2	-	-	-	-	-	-	0
Senior executive	-	-	-	-	-	-	0
Total employees	1	1	1	3	1	0	7

Individual flexibility arrangements

Although most employees are covered by the Tribunal's EA 2011-14, at the end of the reporting period, 12 employees were working under individual flexibility arrangements (IFAs). IFAs cover conditions such as overtime rates, penalty rates, allowances, remuneration and leave.

Rewards and Recognition Program

The Tribunal recognises there will be times that an employee, or employees, may perform duties to a standard, or complete projects of particular importance, that are beyond normal expectations. The Tribunal makes provision under its Rewards and Recognition program to formally and publicly thank such employees.

During the reporting period the Tribunal expanded its Rewards and Recognition Program to include the following six specific categories:

- Excellence in leadership and management
- Service improvement or innovation
- Best new employee (up to two years service)
- Contribution to service excellence through exemplification of the Tribunal's Values
- Outstanding Indigenous employee
- Outstanding team

Ten individuals and two teams who had shown exceptional dedication, innovation and commitment to their work and to the Tribunal received awards in a Rewards and Recognition ceremony held in June 2012.

The Tribunal also acknowledges employees who have given more than 10 years of service to the Tribunal. The Tribunal recognises this important milestone by presenting the employee with a plaque and their name is placed on the 10 Year Honour Board. In this reporting period, 16 people were honoured with the award.

Learning and development

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

- satisfy the need for skills and knowledge to increase the Tribunal's capacity to achieve its corporate goals, manage change and extend organisational competence
- provide trained employees for specific current and future workplace requirements
- assist an employee with his/her career development, and
- 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. As at 30 June 2012, the Tribunal had four members and seven employees accredited under the LEADR program.

Studies assistance

The Tribunal's studies assistance program is provided for in the EA 2011-14 and 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.

Work health and safety performance

Work Health Safety (WHS) Representatives and HR team members worked with

sections and registries Tribunal-wide, conducting inspections and finding solutions for any WHS hazard or risk.

The Tribunal's National Health and Safety Committee provided leadership for a number of proactive safety and wellness initiatives that were undertaken during the year, including;

- the flu vaccination program
- healthy lifestyle programs, and
- mental health month programs.

WHS Representatives continued to be accredited as required. Other safety related training courses conducted included emergency warden training, first aid, four wheel driving courses, and risk management.

The *Work Health and Safety Act 2011* (Cwlth) came into effect on 1 January 2012. The Tribunal's HR team ensured that all Members and staff received training in WHS obligations and familiarisation during the following months. This instruction continues for employees new to the Tribunal as part of its induction program.

Workers' compensation

During the reporting period two workers' compensation claims were lodged, compared with one in the previous reporting period. No performance improvement notices were issued during this reporting period. A comparison between two reporting periods is included in the table below:

	2010-11	2011-12
Number of claims	1	2
Total paid to date for policy year	\$67,333	\$87,395
Time lost (year to date)	115.27 days	118 days

Comcover

The Tribunal participated in Comcover's 2012 Benchmarking Survey, achieving a benchmarking overall score of 6.4 which translates into a risk maturity 'Top Down'. That risk maturity rating 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 4.00 per cent on its 2012-13 Comcover premium.

Accountability



In this section:

No requests for access to documents under the Freedom of Information Act 1982 (Cwlth) were made in 2011-12

No complaints were made in the reporting period under the Tribunal's Client Service Charter

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

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 expanded conflict of interest policy. During the reporting period, there were no complaints under either document.

Ecologically sustainable development and environmental performance

Energy efficiency initiatives implemented during the last reporting period continues to be observed within the Tribunal. These initiatives include:

- use of all lighting points with energy efficient lamps
- fitting of all water taps and shower areas with water saving devices to ensure environmental impact continuity
- placement of recycle bins at each desk to remind staff to be environmentally friendly and aware
- maintenance of air conditioning and other major plant and equipment to ensure maximum efficiency whilst continuing to reduce power consumption
- promotion of and participation for Earth Hour 2012.

External scrutiny

Judicial decisions

No judgments relating to native title were handed down by the High Court during the reporting period. However, the Federal Court delivered one decision that may have a significant impact on the operations of the Tribunal (*QGC Pty Ltd v Bygrave* [2011] FCA 1457, (2011) 199 FCR 94).

For further information see Appendix II Significant decisions, p. 93.

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. 97.

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 2011*, to which the Tribunal contributed data and other information, was tabled in Parliament on 28 October 2011. The Report reviews developments in native title law and policy from 1 July 2010 to 30 June 2011 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 February 2012, the Tribunal began preparations for a client satisfaction survey to be conducted in May 2012. However, in the light of the 8 May 2012 (Budget Night) announcements of significant native title institutional reforms to take effect on 1 July 2012, the Tribunal considered that it would not be appropriate for the client satisfaction survey to be undertaken at the anticipated time. The Tribunal expects to undertake the client satisfaction survey for reporting in the 2012-13 financial year.

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. As noted earlier, the Tribunal's website was redeveloped and upgraded during the reporting period. In addition, provision has now been made for future act applications to be paid for using Electronic Funds Transfer technology.

Geospatial services

The Tribunal's Geospatial Services deliver online access to native title spatial information and data to stakeholders and client groups to support their engagement in the native title process.

During this reporting period, the Tribunal's Native TitleVision – a free online visualisation, mapping and query tool, registered a record number of new subscribers, 500 per cent increase from the 2010-11 year (257 new users) to 1409 for the 2011-12 reporting period.

Performance against purchasing policies

Procurement

The Tribunal's policy and procedures on procurement are established by the *Chief Executive's Instructions*. These facilitate compliance 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.

Contracts

In accordance with the Senate Order dated 21 June 2001, the Tribunal has continued to list all contracts in excess of \$100,000 on its website. This list identifies whether these contracts contain confidentiality clauses in line with the Senate Order directions.

Consultancies

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

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

During the reporting period, four new consultancy contracts were entered into involving a total expenditure of \$91,572. In addition, two ongoing consultancy contracts were active during the 2011–12 year, involving a total expenditure of \$116,752.

Table 18: Expenditure on consultancy contracts	
Type of contract	Expenditure
New	\$ 91,572
Ongoing	\$ 116,752
Total	\$ 208,324

Appendices

In this section:

At 30 June 2012, the Tribunal had 130 employees: 40 male, 90 female.

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

Appendix I Human resources

The average number of employees for 2011–2012 was 168. 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 2012																	
Classifications	Salary Ranges	Male							Female								
		Location/Registry							Location/Registry								
		Principal	WA	NSW	Qld	Vic	SA	Totals	Principal	WA	NSW	Qld	Vic	SA	Totals	TOTAL	
APS level 1	\$23,452 - \$43,201	-	-	-	-	-	-	0	-	-	-	1	-	-	1	1	
APS level 2	\$44,235 - \$49,053	1	3	-	-	1	1	6	2	9	1	6	1	1	20	26	
APS level 3	\$50,387 - \$54,382	3	-	-	-	-	-	3	1	1	1	-	-	-	3	6	
APS level 4	\$56,159 - \$60,973	1	1	-	-	-	-	2	9	7	2	5	-	2	25	27	
APS level 5	\$62,638 - \$66,417	5	-	-	-	-	-	5	3	-	-	1	-	-	4	9	
APS level 6	\$67,651 - \$77,712	11	-	1	1	-	-	13	8	6	2	4	-	1	21	34	
Legal 1	\$51,915 - \$103,740	1	-	-	-	-	-	1	1	-	-	-	-	-	1	2	
Legal 2	\$115,198 - \$120,190	-	-	-	-	-	-	0	-	-	-	-	-	-	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	-	-	-	-	-	-	0	0	
Library 2	\$67,651 - \$77,712	-	-	-	-	-	-	0	-	-	-	-	-	-	0	0	
Executive Level 1	\$86,727 - \$93,646	5	1	-	-	-	-	6	5	2	1	1	1	-	10	16	
Executive Level 2	\$100,027 - \$117,193	2	-	1	-	-	-	3	2	1	1	-	-	-	4	7	
Senior Executive Level	From \$165,000	-	-	1	-	-	-	1	1	-	-	-	-	-	1	2	
Total Employees		29	5	3	1	1	1	40	32	26	8	18	2	4	90	130	

Table 20: Holders of public office of the National Native Title Tribunal as at 30 June 2012

Name	Title	Appointed	Term	Location
Graeme Neate	President	1 Mar 1999 ¹	Five years	Brisbane
		1 Mar 2004	Reappointed for a further three years	
		1 Mar 2007	Reappointed for a further five years	
		29 Feb 2012	Reappointed until 30 June 2012	
		1 Jul 2012	Reappointed until 31 March 2013	
John Sosso	Full-time	28 Feb 2000	Three years	Brisbane
	Deputy	28 Feb 2003	Reappointed for a further four years	
	President	28 Feb 2007 ²	Appointed as a Deputy President for five years	
		28 Feb 2012	Reappointed until 30 June 2012	
Graham Fletcher	Part-time member	20 Mar 2000	Three years as full-time	Brisbane
		20 Mar 2003	Reappointed for a further four years	
		20 Mar 2007	Reappointed for a further five years	
		20 Mar 2012 ³	Reappointed until 30 June 2012	
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 ⁴	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 2011	Reappointed for a further year	
		3 Feb 2012	Reappointed for a further three months or until reappointed for a full-term	
		9 Feb 2012	Reappointed until 2 February 2013	
Helen Shurven	Full-time member	29 Nov 2010	One year, part-time	Perth
		3 Nov 2011 ⁵	Reappointed until 28 November 2012	
Stephanie Fryer-Smith	Registrar	20 Oct 2008	Five years	Perth

1 Reappointed from part-time member to President

2 Reappointed from full-time member to Deputy President

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

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

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

Table 21: Performance based pay

Classification	No of employees	Aggregated amount	Average	Minimum	Maximum
SES / EL2 / EL1	12	\$115,797	\$9,650.00	\$1,500	\$11,500.00

Appendix II Significant decisions

During the reporting period, one decision was the most significant in terms of its impact on the operations of the Tribunal. Further information and extensive summaries of some 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.

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.

Federal Court

QGC Pty Ltd v Bygrave [2011] FCA 1457, (2011) 199 FCR 94, Reeves J, 16 December 2011

QGC Pty Ltd (QGC) entered into an agreement with the Bigambul People that was intended (among other things) to deal with 'future acts' in relation to the development of a liquefied natural gas project. The agreement area covered about 21,500 square kilometres of land and waters in southern Queensland, all of which was within a registered claim by the Bigambul People. The Kambuwal People and the Kamilaroi/Gomeroi People were also identified as persons who may hold native title to some of the agreement area. At the authorisation meeting between 40 and 50 people, mostly Kamilaroi/Gomeroi People, walked out and refused to take further part before a number of resolutions, including the authorisation of the making of the agreement, were put to the meeting.

The Registrar's delegate, in applying the registration test, relied upon Justice Branson's decision in *Kemp v Native Title Registrar* (2006) 153 FCR 38; [2006] FCA 939 (Kemp) at [40], [41], [54], [59] and [62], and decided that the requirements of s 24CL of the Act were not met as the Kamilaroi/Gomeroi People had not authorised the making of the agreement. Specifically the delegate found in relation to the Kamilaroi/Gomeroi People that:

- they were identified as persons who may hold native title to part of the agreement area through the process of making all reasonable efforts to identify such people (s 24CG(3)(b)(i)),
- based upon material in the application and the anthropological report prepared by NTSCORP, their claim to hold native title to part of the agreement area was more than 'merely colourable' (see Kemp at [59]),
- they were therefore persons who had to authorise the making of the agreement (s 24CG(3)(b)(ii)),

- their claim to part of the agreement area was in conflict with the Bigambul People's claim to all of the agreement area,
- they were a different group from the Bigambul People and they may insist on separately authorising the making of the agreement, and
- they did not authorise the making of the agreement—see QGC at [52] to [54].

Justice Reeves distinguished the Kemp decision on its facts. He held that the delegate fell into error in applying the 'not merely colourable test' to the facts in this matter (QGC at [76]).

His Honour, in summary, distinguished the Kemp decision on the following grounds:

- no application had been made by the Kamilaroi/Gomeroi People to become a respondent party to the Bigambul People's claim (they had not had to define exactly what their native title interests in the area were),
- no native title claim was lodged by the Kamilaroi/Gomeroi People and no acceptable reason was given for not doing so,
- the Kamilaroi/Gomeroi People were not required to identify the precise area of land or waters over which they claimed native title rights and interests, and
- the ILUA in this case did not have the 'overwhelmingly destructive effect' on the rights of the Kamilaroi/Gomeroi People as would have been the case in Kemp if that ILUA had been registered (QGC at [81] to [85]).

His Honour indicated that because of the 'unique and unusual factual circumstances of Mr Kemp', he did not need to decide whether or not he agreed with adopting and applying the test in Kemp (QGC at [87]).

Justice Reeves held that s 24CG(3)(b)(i) and s 251A(a) and (b) identified two different groups of persons whose membership was defined by different criteria: the group identified under s 24CG(3)(b)(i) who "hold or may hold native title" in the area concerned, and the authorising group under s 251A(a) and (b) who 'hold or may hold the common or group rights comprising the native title'. His Honour held that the later group does the authorising of the agreement for the former (QGC at [92]).

Reeves J considered that the expression 'all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement' in s 24CG(3)(b)(i) was to be construed expansively and inclusively to mean every individual, group of persons, or community of Aboriginal or Torres Strait Islander descent, who holds native title, or by any means makes a claim to hold native title, or otherwise has a characteristic from which it is reasonable to conclude that person, group, or community holds native title, in any part of the area covered by the agreement (QGC at [101]).

His Honour considered the expression in s 251A(a) and (b) 'who may hold the common or group rights comprising the native title', was to be construed in a confined and exclusive way, as referring to that group, or those groups of Aboriginal persons, that have demonstrated they may hold the group rights comprising the specific set of native title rights concerned, by filing a native title determination application under Pt 3 of the Act and having that application duly registered under Pt 7 of the Act (QGC at [121]).

Reeves J held that the Kamilaroi/Gomeroi People were not entitled to insist upon being involved in the authorisation process as a conflicting group. His Honour held that the only group that was in a position where it could be said that they may hold the common or group rights comprising the native title in the Bigambul area were the Bigambul People (QGC at [122]).

In summary, Justice Reeves found that the delegate erred in law by applying the 'not merely colourable' test to assess the entitlement of the Kamilaroi/Gomeroi People to participate in the authorisation process as a conflicting group, and further she erred in law by construing s 251A as she did, and finally erred by taking account of irrelevant considerations, viz the conflicting claims of the Kamilaroi/Gomeroi People, as a group (QGC at [125]).

Tribunal's response

The Tribunal's response to the decision has principally focused around the court's interpretation of s 24CG(3)(b)(ii) and s 251A, specifically who should authorise the ILUA. The Tribunal's response revolves around four different factual situations:

- where there is a registered native title claimant (RNTC) for the entire ILUA area,
- where there is a RNTC for the entire area, but there is an Indigenous respondent party claiming to hold native title to any of the area,
- where there is a RNTC for part of the ILUA area, and
- where there is no RNTC for any part of the ILUA area.

Where there is a RNTC for the entire ILUA area, the principles set out by Justice Reeves are taken to apply and s 251A has a confined and exclusive meaning that requires only the claim group for the registered claim to authorise the ILUA.

Where there is a RNTC for the entire ILUA area, but there is an Indigenous respondent party claiming to hold native title to any of the area, the delegate must consider whether Kemp is distinguishable. If Kemp is distinguishable then s 251A is to be given its confined and exclusive meaning and only the claim group for the registered claim need authorise the ILUA. If Kemp cannot be distinguished then the 'merely colourable test' must be applied and the ILUA must be authorised by the claim group for the registered claim and the Indigenous respondent party who meets the merely colourable test.

Where there is a RNTC for part of the ILUA area, the principles set out by Justice Reeves are not wholly applicable as the facts are distinguishable. It is arguable that those principles would apply to that part of the claim area where there is a registered claim. However, in respect of any area that is unclaimed or there is not a registered claim, the principles in Kemp may apply in relation to the authorisation where more than one community or group is identified who assert native title to that part of the ILUA area where there is no registered claim. In this circumstance authorisation of the ILUA would need to be done by the group for the registered claim, and in relation to the area for which there is no RNTC, any other persons identified in the process under s 24CG(3)(b)(i).

Where there is no RNTC for any part of the ILUA area the principles set out by Justice Reeves are not applicable. In this instance the principles in Kemp in relation to authorisation would need to be applied where more than one community or group is identified. Authorisation would be required by any individual, group of persons, or community identified in the process under s 24CG(3)(b)(i).

Appendix III Freedom of information

Agencies subject to the *Freedom of Information Act 1982* (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 section 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 at <http://www.nntt.gov.au/news-and-communications/freedom-of-information/pages/informationpublicationscheme.aspx>.

The Tribunal disclosure log sets out information which 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 at <http://www.nntt.gov.au/news-and-communications/freedom-of-information/pages/foidisclosurelog.aspx>

Inquiries regarding freedom of information may be made at the Principal Registry and the state offices (see back cover for contact details) or online at www.nntt.gov.au

Number of formal requests for information

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

Appendix IV Use of advertising and market research

During the reporting period, no advertising campaigns were undertaken by the Tribunal.

The Tribunal originally engaged a research company, Sweeney Research, to manage its client satisfaction research. However in light of the native title institutional reforms announced in May 2012, the contract was terminated. The total amount spent on the initial step of the project (discussion and development of survey questions) was \$5,170.

The total amount spent for on advertising was \$281,530.

The costs for advertising via a media advertising organisation are 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	\$ 242,052
Staff recruitment	\$ 39,478
Total expenditure on advertising	\$ 281,530

Appendix V Consultancy contract details

During 2011–12, four new consultancy contracts to the value of \$10,000 or more were entered into involving total actual expenditure of \$91,572. In addition, four ongoing consultancy contracts were active during the 2011–12 year, involving total expenditure of \$116,752.

Consultants were selected and engaged on the basis of either open tender, select tender or direct sourcing. The main reasons for engaging consultancy services were due to a requirement for specialist expertise or professional skills not available within the Tribunal and a need for independent research or assessment.

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.

Appendix VI Audit report and notes to the financial statements



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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 2012, which comprise: a Statement by the Chief Executive Officer and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Schedule of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Administered Schedule of Comprehensive Income; Administered Schedule of Assets and Liabilities; Administered Reconciliation Schedule; Administered Cash Flow Statement; Schedule of Administered Contingencies; 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 is necessary to enable the preparation of the financial statements that give a true and fair view and 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 the 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 concluding 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 2012 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office

S. Buchanan

Serena Buchanan
Audit Principal


Delegate of the Auditor-General

Canberra
27 September 2012

National Native Title Tribunal

Statement by the Chief Executive and Chief Finance Officer

In our opinion, the attached financial statements for the year ended 30 June 2012 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.

Signed 

Warwick Soden
Registrar and Chief Executive Officer
Federal Court of Australia
27 September 2012

Signed 

Peter Bowen
Chief Financial Officer
Federal Court of Australia
27 September 2012

Statement of comprehensive income for the period ended 30 June 2012

	Notes	2012 \$'000	2011 \$'000
EXPENSES			
Employee benefits	3A	20,203	19,557
Supplier	3B	5,465	10,626
Depreciation and amortisation	3C	600	1,054
Losses from asset sales	3D	-	4
Write-down and impairment of assets	3E	552	-
Total expenses		26,820	31,241
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Rendering of services	4A	9	37
Rental income	4B	141	24
Other	4C	26	-
Total own-source revenue		176	61
Gains			
Sale of assets	4D	5	11
Reversals of restoration obligations	4E	367	109
Other	4F	27	26
Total gains		399	146
Total own-source income		575	207
Net cost of services		(26,245)	(31,034)
Revenue from Government	4G	25,844	26,925
Surplus (Deficit) attributable to the Australian Government		(401)	(4,109)
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves	6C	1,323	-
Total other comprehensive income		1,323	-
Total comprehensive income		922	(4,109)

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

Balance sheet as at 30 June 2012

	Notes	2012 \$'000	2011 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	259	1,034
Trade and other receivables	5B	13,728	14,129
Total financial assets		13,987	15,163
Non-Financial Assets			
Land and buildings	6A,D	1,788	1,665
Property, plant and equipment	6B,D	1,544	908
Intangibles	6E,F	373	196
Other	6G	120	113
Total non-financial assets		3,825	2,882
Total assets		17,812	18,045
LIABILITIES			
Payables			
Suppliers	7A	438	321
Other	7B	1,614	399
Total payables		2,052	720
Provisions			
Employee provisions	8A	3,436	4,068
Other	8B	352	2,983
Total provisions		3,788	7,051
Total liabilities		5,840	7,771
Net assets		11,972	10,274
EQUITY			
Parent Entity Interest			
Contributed equity		3,887	3,111
Reserves		1,323	-
Retained surplus		6,762	7,163
Total parent entity interest		11,972	10,274

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

Statement of changes in equity for the period ended 30 June 2012

	Retained earnings		Asset revaluation reserve		Contributed equity/capital		Total equity	
	2012	2011	2012	2011	2012	2011	2012	2011
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Opening balance								
Balance carried forward from previous period	7,163	11,272	-	-	3,111	2,415	10,274	13,687
Comprehensive income								
Other comprehensive income	-	-	1,323	-	-	-	1,323	-
Surplus (Deficit) for the period	(401)	(4,109)	-	-	-	-	(401)	(4,109)
Total comprehensive income	(401)	(4,109)	1,323	-	-	-	922	(4,109)
Transactions with owners								
Contributions by owners								
Equity injection - Appropriations	-	-	-	-	-	270	-	270
Departmental capital budget	-	-	-	-	776	426	776	426
Sub-total transactions with owners	-	-	-	-	776	696	776	696
Closing balance as at 30 June 2012	6,762	7,163	1,323	-	3,887	3,111	11,972	10,274
Closing balance attributable to the Australian Government	6,762	7,163	1,323	-	3,887	3,111	11,972	10,274

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

Cash flow statement for the period ended 30 June 2012

	Notes	2012 \$'000	2011 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations		26,461	29,053
Sales of goods and rendering of services		8	36
Net GST received		768	998
Other		111	76
Total cash received		27,348	30,163
Cash used			
Employees		(18,694)	(19,389)
Suppliers		(9,261)	(9,693)
Total cash used		(27,955)	(29,082)
Net cash from (used by) operating activities	9	(607)	1,081
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		5	11
Total cash received		5	11
Cash used			
Purchase of property, plant and equipment		(696)	(1,286)
Total cash used		(696)	(1,286)
Net cash from (used by) investing activities		(691)	(1,275)
FINANCING ACTIVITIES			
Cash received			
Contributed equity		523	606
Total cash received		523	606
Cash used		-	-
Total cash used		-	-
Net cash from (used by) financing activities		523	606
Net increase (decrease) in cash held		(775)	412
Cash and cash equivalents at the beginning of the reporting period		1,034	622
Cash and cash equivalents at the end of the reporting period	5A	259	1,034

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

Schedule of commitments as at 30 June 2012

	2012 \$'000	2011 \$'000
BY TYPE		
Commitments receivable		
Net GST recoverable on commitments	(174)	(514)
Total commitments receivable	(174)	(514)
Commitments payable		
Capital commitments		
Property, plant and equipment	-	137
Intangibles	278	312
Total capital commitments	278	449
Other commitments		
Operating leases	1,636	5,125
Other	3	85
Total other commitments	1,639	5,210
Net commitments by type	1,743	5,145
BY MATURITY		
Commitments receivable		
One year or less	(96)	(366)
From one to five years	(78)	(149)
Total operating lease income	(174)	(514)
Commitments payable		
Capital commitments		
One year or less	278	449
Total operating lease commitments	278	449
Operating lease commitments		
One year or less	775	3,489
From one to five years	861	1,636
Total operating lease commitments	1,636	5,125
Other Commitments		
One year or less	3	85
Total other commitments	3	85
Net commitments by maturity	1,743	5,145

Note: Commitments are GST inclusive where relevant.

The Tribunal's capital commitments include the development internally and with consultants of future act and case management software (ICaFAMS) and the purchase of IT equipment. The Tribunal's other commitments are of the nature of lease for office space, property, and motor vehicles.

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

Schedule of contingencies as at 30 June 2012

	2012 \$'000	2011 \$'000
Contingent assets		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
Total contingent assets	-	-
Contingent liabilities		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
Total contingent liabilities	-	-
Net contingent assets (liabilities)	-	-

The Tribunal has no quantifiable contingencies as at 30 June 2012.

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.

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

Administered schedule of comprehensive income for the period ended 30 June 2012

	Notes	2012 \$'000	2011 \$'000
OWN-SOURCE INCOME			
Non-taxation revenue			
Fees	14	72	60
Total own-source revenue administered on behalf of Government		72	60
Net cost of (contribution by) services		(72)	(60)
Surplus attributable to the Australian Government		72	60
Total comprehensive income		72	60

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

Administered schedule of assets and liabilities as at 30 June 2012

	Notes	2012 \$'000	2011 \$'000
ASSETS			
Financial assets			
Cash and cash equivalents	15	-	-
Total financial assets		-	-
Total assets administered on behalf of Government		-	-
Net assets		-	-

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

Administered reconciliation schedule as at 30 June 2012

	Notes	2012 \$'000	2011 \$'000
Opening administered assets less administered liabilities as at 1 July		-	-
Surplus (deficit) items:			
Plus: Administered income	14	72	60
Administered transfers to/from Australian Government:			
Transfers to OPA		(72)	(60)
Closing administered assets less administered liabilities as at 30 June		-	-

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

Administered cash flow statement for the period ended 30 June 2012

	Notes	2012 \$'000	2011 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees	14	72	60
Total cash received		72	60
Cash used			
Cash to Official Public Account		(72)	(60)
Total cash used		(72)	(60)
Net cash flows used by operating activities		-	-
Net increase (decrease) in Cash Held		-	-
Cash and cash equivalents at the beginning of the reporting period		-	-
Cash from Official Public Account for:			
-Appropriations		72	60
		72	60
Cash to Official Public Account for:			
- Appropriations		(72)	(60)
		(72)	(60)
Cash and cash equivalents at the end of the reporting period	15	-	-

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

Schedule of administered contingencies as at 30 June 2012

	2012	2011
	\$'000	\$'000
Administered contingent assets		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
Total administered contingent assets	-	-
Administered contingent liabilities		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
Total administered contingent liabilities	-	-
Net administered contingent liabilities	-	-

The Tribunal has no quantifiable administered contingencies as at 30 June 2012.

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

The above 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 2012

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Note 1: Summary of Significant Accounting Policies

1.1 The National Native Title Tribunal: Establishment and Objectives

The National Native Title Tribunal (the 'Tribunal') is an Australian Government controlled entity. It is an independent agency established by the *Native Title Act 1993* (the 'Act'), 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 discharges a wide range of native title-related functions and its objectives are summarised in its outcome statement. That is, Outcome 1: Facilitation of native title determinations, agreements and the disposition of related matters for claimants and others with interests in land or waters through mediation, agreement-making and administrative decisions.

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

Notes to and forming part of the financial statements for the year ended 30 June 2012

The Tribunal collects fees from certain functions and services which it performs pursuant to the Act and the *Native Title (Tribunal) Regulations 1999*.

On 8 May 2012 the Australian Government announced a number of institutional reforms affecting the Tribunal and the Federal Court of Australia (the 'Federal Court'). In particular, from 1 July 2012 the Tribunal would no longer be a prescribed agency under the *Financial Management and Accountability Act 1997*, and its future appropriations, and its claims mediation and corporate services functions would be transferred to the Federal Court. The Tribunal would continue to discharge its remaining functions as a separate agency and a dedicated sub-program of the Federal Court. See also Note 2: (Events After the Reporting Period).

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 2011; 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.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the Statement of Comprehensive Income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

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 2012

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 - November 2010
- AASB 101 - Presentation of Financial Statements - May 2011
- AASB 107 - Statement of Cash Flows - May 2011
- AASB 108 - Accounting policies, Changes in Accounting Estimates and Errors - May 2011
- AASB 110 - Events after the Reporting Period - December 2009
- AASB 118 - Revenue - October 2010
- AASB 119 - Employee Benefits - October 2010
- AASB 124 - Related Party Disclosures - December 2009
- AASB 132 - Financial Instruments: Presentation - May 2011
- 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

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 13 - Fair Value Measurement - September 2011
- AASB 119 - Employee Benefits - September 2011
- AASB 2010-7 - Amendments to Australian Accounting Standards arising from AASB 9 (December 2010)
- AASB 2011-8 - Amendments to Australian Accounting Standards arising from AASB 13
- AASB 2011-9 - Amendments to Australian Accounting Standards - Presentation of Items of Other Comprehensive Income
- AASB 2011-10 - Amendments to Australian Accounting Standards arising from AASB 119 (September 2011)

Notes to and forming part of the financial statements for the year ended 30 June 2012

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*.

Prescribed receipts under section 31 of the *Financial Management and Accountability (FMA) Act 1997* and *FMA Regulation 1997 (Part 5, Regulation 15)* are recognised as revenue which includes Comcare receipts.

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.

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.

Notes to and forming part of the financial statements for the year ended 30 June 2012

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.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Government entity under a restructuring of administrative arrangements are adjusted at their book value directly against 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 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 2012. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Separation and Redundancy

As at the balance sheet date, provision has been made for separation and redundancy payments for positions identified as excess to the requirements within the next 12 months. The Tribunal recognises a provision for terminations 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). Some staff members elect to have contributions made to another superannuation fund of their choice.

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 2012 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.

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.

Notes to and forming part of the financial statements for the year ended 30 June 2012

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.

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

Notes to and forming part of the financial statements for the year ended 30 June 2012

reliably measured. Contingent assets are disclosed when settlement is probable but not completely 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 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 lease hold 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
Leasehold improvements	Depreciated replacement cost
Infrastructure, plant and equipment	Market Appraisal
Heritage and cultural assets	Market Appraisal

Following initial recognition at cost, property, plant and equipment were carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations were

Notes to and forming part of the financial statements for the year ended 30 June 2012

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.

Revaluation adjustments were made on a class basis. Any revaluation increment was credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets were recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives. 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:

	2012	2011
Leasehold improvements	Lease term	Lease term
Plant and Equipment	2 to 10 years	3 to 10 years
Heritage and Cultural	50 years	n/a

Impairment

All assets were assessed for impairment at 30 June 2012. 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.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Heritage and Cultural Assets

The Heritage and Cultural Assets consists of artwork and artefacts created by Aboriginal and Torres Strait Islander people. The entity has 172 paintings (2011:172) (with an aggregate fair value of \$104,736 (2011:nil)) including paintings of native Australian flora and fauna. The entity has classified them as heritage and cultural assets as they have been primarily used for purposes that relate to their cultural significance. The entity has adopted appropriate control and management fixed assets policies for these paintings, and the paintings are deemed to have an average life of 50 years. The Tribunal does not have a formal curatorial preservation policy. However the artworks are well looked after and mostly preserved in frames.

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 2012.

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.

1.20 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules 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 Tribunal is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. These transfers to the OPA are adjustments to the administered cash held by the entity on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Revenue

All administered revenues are revenues relating to ordinary activities performed by the Tribunal on behalf of the Australian Government. As such, administered appropriations are not revenues of the individual entity that oversees distribution or expenditure of the funds as directed.

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

Following the announcement by the Australian Government of institutional reforms on 8 May 2012, on 1 July 2012 the Tribunal ceased to be an agency governed by the *Financial Management and Accountability Act 1997*.

From 1 July 2012, all corporate and some operational functions of the Tribunal were transferred to the Federal Court of Australia (the Federal Court). The Federal Court has been provided funding for the Tribunal's operations, and corporate services to support the Tribunal, under a dedicated sub-program.

There have been no events that significantly affect the balances in the accounts. Pursuant to the institutional reforms referred to above, all assets and liabilities of the Tribunal as at 30 June 2012 have been transferred to the Federal Court. Similarly, all Tribunal commitments, contingent liabilities and contingent assets were transferred to the Federal Court as from 1 July 2012.

Note 3: Expenses

	2012 \$'000	2011 \$'000
Note 3A: Employee Benefits		
Wages and salaries	14,796	15,862
Superannuation:		
Defined contribution plans	926	927
Defined benefit plans	1,137	1,208
Leave and other entitlements	785	421
Separation and redundancies	2,559	1,139
Total employee benefits	20,203	19,557

Notes to and forming part of the financial statements for the year ended 30 June 2012

	2012 \$'000	2011 \$'000
Note 3B: Suppliers		
Goods and services		
Consultants	231	255
Contractors	-	30
Travel	685	591
IT services	500	390
Other	2,044	3,051
Total goods and services	3,460	4,317
Goods and services are made up of:		
Provision of goods – external parties	251	216
Rendering of services – related entities	464	214
Rendering of services – external parties	2,745	3,887
Total goods and services	3,460	4,317
Other supplier expenses		
Operating lease rentals – related entities:		
Minimum lease payments	1,975	1,973
Operating lease rentals – external parties:		
Minimum lease payments*	(45)	4,255
Workers compensation expenses	75	81
Total other supplier expenses	2,005	6,309
Total supplier expenses	5,465	10,626

*Amounts stated net of reversals for onerous contract provisions

Note 3C: Depreciation and Amortisation

Depreciation:		
Property, plant and equipment	390	530
Buildings	205	521
Total depreciation	595	1,051
Amortisation:		
Intangibles	5	3
Total amortisation	5	3
Total depreciation and amortisation	600	1,054

Note 3D: Losses from Asset Sales

Property, plant and equipment:		
Carrying value of assets sold	-	4
Total losses from asset sales	-	4

Note 3E: Write down and impairment of assets

Asset write-downs and impairments from:	-	-
Impairment of leasehold improvements	552	-
Total write-down and impairment of assets	552	-

Note 4: Income

Notes to and forming part of the financial statements for the year ended 30 June 2012

	2012 \$'000	2011 \$'000
OWN-SOURCE REVENUE		
Note 4A: Rendering of Services		
Rendering of services - external parties	9	37
Total rendering of services	9	37
Note 4B: Rental Income		
Operating lease:		
Other - Building sublease	141	24
Total rental income	141	24
Note 4C: Other Revenue		
Section 31 receipts - Comcare	26	-
Total other revenue	26	-
GAINS		
Note 4D: Sale of Assets		
Property, plant and equipment:		
Proceeds from sale	5	11
Net gain from sale of assets	5	11
Note 4E Reversals of Previous Provisions		
Reversals of restoration obligations	367	109
Total reversals of previous provisions	367	109
Note 4F: Other Gains		
Resources received free of charge	27	26
Total other gains	27	26
REVENUE FROM GOVERNMENT		
Note 4G: Revenue from Government		
Appropriations :		
Departmental appropriation	25,844	26,925
Total revenue from Government	25,844	26,925

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 5: Financial Assets

	2012 \$'000	2011 \$'000
Note 5A: Cash and Cash Equivalents		
Cash on hand or on deposit	259	1,034
Total cash and cash equivalents	259	1,034
Note 5B: Trade and Other Receivables		
Good and Services:		
Goods and services - related entities	-	28
Goods and services - external parties	-	16
Total receivables for goods and services	-	44
Appropriations receivable :		
For existing programs	13,599	13,963
Total appropriations receivable	13,599	13,963
Other receivables:		
GST receivable from the Australian Taxation Office	129	125
Total other receivables	129	125
Total trade and other receivables (gross)	13,728	14,132
Less impairment allowance account:		
Goods and services	-	(3)
Total impairment allowance account	-	(3)
Total trade and other receivables (net)	13,728	14,129
Receivables are expected to be recovered in:		
No more than 12 months	129	166
More than 12 months	13,599	13,963
Total trade and other receivables (net)	13,728	14,129
The impairment allowance account is aged as follows:		
Overdue by:		
0 to 30 days	-	(3)
Total impairment allowance account	-	(3)
Reconciliation of the Impairment Allowance Account:		
Movements in relation to 2012		
	Goods and services \$'000	Total \$'000
Opening balance	(3)	(3)
Provision not required	3	3
Closing balance	-	-
Movements in relation to 2011		
Opening balance	(3)	(3)
Provision not required	3	3
Additional provision	(3)	(3)
Closing balance	(3)	(3)

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 6: Non-Financial Assets

	2012 \$'000	2011 \$'000
Note 6A: Land and Buildings		
Leasehold improvements:		
Fair value	2,613	6,826
Accumulated depreciation	(825)	(5,161)
Total leasehold improvements	1,788	1,665
Total land and buildings	1,788	1,665

No indicators of impairment were found for land and buildings.

Note 6B: Property, Plant and Equipment

Heritage and cultural:		
Fair value	105	-
Total heritage and cultural	105	-
Other property, plant and equipment:		
Fair value	1,445	3,012
Accumulated depreciation	(6)	(2,104)
Total other property, plant and equipment	1,439	908
Total property, plant and equipment	1,544	908

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

No property, plant or equipment is expected to be sold or disposed of within the next 12 months.

Note 6C: Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 1.17. On 30 June 2012, an independent valuer conducted revaluations of the Tribunal's leasehold improvements, plant and equipment, and heritage and cultural assets that resulted in revaluation increment.

The total revaluation increment of \$1.323 million was credited to the asset revaluation reserve by asset class as per the table below and included in the equity section of the balance sheet; no amount was expensed during the year ended 30 June 2012 (2011: \$nil).

	2012 \$'000	2011 \$'000
Changes in asset revaluation reserves		
Leasehold Improvements	703	-
Plant and equipment	515	-
Heritage and cultural assets	105	-
Total changes in asset revaluation reserve	1,323	-

The asset revaluation reserve is used to record increases in the fair value of Building and Property, plant and equipment and decreases to the extent that such decrease relates to an increase on the same asset previously recognised in equity.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 6D: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2011-12)

	Buildings	Heritage and cultural'	Other Property, plant & equipment	Total
	\$'000	\$'000	\$'000	\$'000
As at 1 July 2011				
Gross book value	6,826	-	3,011	9,837
Accumulated depreciation and impairment	(5,161)	-	(2,103)	(7,264)
Net book value 1 July 2011	1,665	-	908	2,573
Additions				
By purchase	18	-	456	474
Work in Progress	90	-	(50)	40
Makegood Asset	69	-	-	69
Revaluations and impairments recognised directly in equity	703	105	515	1,323
Impairments recognised in the operating result	(552)	-	-	(552)
Depreciation expense	(205)	-	(390)	(595)
Net book value 30 June 2012	1,788	105	1,439	3,332
Net book value as of 30 June 2012 represented by:				
Gross book value	2,613	105	1,445	4,163
Accumulated depreciation and impairment	(825)	-	(6)	(831)
	1,788	105	1,439	3,332

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

1. Artwork that met the definition of a heritage and cultural item was disclosed in the heritage and cultural asset class.

	Buildings	Property, plant & equipment	Total
	\$'000	\$'000	\$'000
As at 1 July 2010			
Gross book value	6,299	2,568	8,867
Accumulated depreciation and impairment	(4,774)	(1,676)	(6,450)
Net book value 1 July 2010	1,525	892	2,417
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)
Net book value 30 June 2011	1,665	908	2,573
Net book value as of 30 June 2011 represented by:			
Gross book value	6,826	3,011	9,837
Accumulated depreciation and impairment	(5,161)	(2,103)	(7,264)
	1,665	908	2,573

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

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 6: Non-Financial Assets (continued)

	2012	2011
	\$'000	\$'000
Note 6E: Intangibles		
Computer software:		
Internally developed – in progress	359	187
Internally developed – in use	452	452
Purchased	10	-
Accumulated amortisation	(448)	(443)
Total computer software	373	196
Total intangibles	373	196

Note 6F: Reconciliation of the Opening and Closing Balances of Intangibles (2011-12)

	Computer software internally developed	Total
	\$'000	\$'000
As at 1 July 2011		
Gross book value	639	639
Accumulated amortisation and impairment	(443)	(443)
Net book value 1 July 2011	196	196
Additions	182	182
Amortisation	(5)	(5)
Net book value 30 June 2012	373	373
Net book value as of 30 June 2012 represented by:		
Gross book value	821	821
Accumulated amortisation and impairment	(448)	(448)
	373	373

Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)

As at 1 July 2010		
Gross book value	452	452
Accumulated amortisation and impairment	(440)	(440)
Net book value 1 July 2010	12	12
Additions	187	187
Amortisation	(3)	(3)
Net book value 30 June 2011	196	196
Net book value as of 30 June 2011 represented by:		
Gross book value	639	639
Accumulated amortisation and impairment	(443)	(443)
	196	196

Notes to and forming part of the financial statements for the year ended 30 June 2012

	2012 \$'000	2011 \$'000
Note 6G: Other Non-Financial Assets		
Prepayments	120	113
Total other non-financial assets	120	113
Total other non-financial assets - are expected to be recovered in:		
No more than 12 months	120	113
Total other non-financial assets	120	113

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

Note 7: Payables

	2012 \$'000	2011 \$'000
Note 7A: Suppliers		
Trade creditors and accruals	438	321
Total supplier payables	438	321
Supplier payables expected to be settled within 12 months:		
Related entities	-	-
External parties	438	321
Total supplier payables	438	321

Settlement was usually made within 30 days.

Note 7B: Other Payables

Salaries and wages	314	331
Superannuation	65	51
Separations and redundancies	1,094	-
Other	141	17
Total other payables	1,614	399
Total other payables are expected to be settled in:		
No more than 12 months	1,614	399
Total other payables	1,614	399

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 8: Provisions

	2012 \$'000	2011 \$'000
Note 8A: Employee Provisions		
Leave	3,041	3,625
Superannuation	395	443
Total employee provisions	3,436	4,068

Employee provisions are expected to be settled in:

No more than 12 months	3,096	2,686
More than 12 months	340	1,382
Total employee provisions	3,436	4,068

Note 8B: Other Provisions

Provision for lease obligations	-	2,200
Provision for restoration obligations	352	783
Total other provisions	352	2,983

Other provisions are expected to be settled in:

No more than 12 months	177	2,567
More than 12 months	175	416
Total other provisions	352	2,983

	Provision for onerous contract \$'000	Provision for restoration obligations \$'000	Total \$'000
Carrying amount 1 July 2011	2,200	782	2,982
Additional provisions made	-	69	69
Amounts used	(500)	(132)	(632)
Amounts reversed	(1,700)	(367)	(2,067)
Closing balance 2012	-	352	352

On 30 June 2011, a provision of \$2.2 million was made in the accounts to recognise the obligation of meeting the net cost of exiting an onerous lease contract in accordance with AASB 137. In January 2011 the West 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 was not due to expire until 30 June 2014. The said lease obligation was settled in full on 27 October 2011 and as a result the onerous lease obligation provision was reversed as it was no longer required.

The Tribunal currently has 2 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.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 9: Cash Flow Reconciliation

	2012 \$'000	2011 \$'000
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	259	1,034
Balance sheet	259	1,034
Difference	-	-
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(26,245)	(31,034)
Add revenue from Government	25,844	26,925
Adjustments for non-cash items		
Depreciation / amortisation	600	1,054
Resources received free of charge - services	27	-
Net write down on non financial assets	-	5
Gain on disposal of assets	(5)	(11)
Loss on disposal of assets	-	4
Write-down and impairment of assets	552	-
Rental Income	(141)	(24)
Gain on reversal of restoration obligation provision	(367)	109
(Reversal) / provision of onerous contract	(1,700)	2,200
Changes in assets / liabilities		
(Increase) / decrease in makegood asset	(69)	(112)
(Increase) / decrease in net receivables	401	2,121
(Increase) / decrease in prepayments	(6)	117
Increase / (decrease) in employee provisions	(632)	(214)
Increase / (decrease) in supplier payables	117	97
Increase / (decrease) in other payable	1,215	(83)
Increase / (decrease) in other provisions	(198)	(73)
Net cash from (used by) operating activities	(607)	1,081

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 10: Contingent Liabilities and Asset**Quantifiable and Unquantifiable Contingencies**

The Tribunal has no quantifiable and unquantifiable contingencies as at 30 June 2012.

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 2012, the Tribunal has indemnified the lessors of the buildings in which the Adelaide, Brisbane and Cairns offices are located against any action brought against the lessors which results from actions of Tribunal staff. These indemnities are unlimited.

Quantifiable Administered and Unquantifiable Administered Contingencies

The Tribunal has no quantifiable administered and unquantifiable administered contingencies as at 30 June 2012.

Remote Administered Contingencies

The Tribunal has no remote administered contingencies as at 30 June 2012.

Note 11: Senior Executive Remuneration**Note 11A: Senior Executive Remuneration Expenses for the Reporting Period**

	2012	2011
	\$	\$
Short-term employee benefits:		
Salary	569,466	517,918
Annual leave accrued	39,698	32,516
Performance bonuses	27,900	27,500
Total short-term employee benefits	637,064	577,934
Post-employment benefits:		
Superannuation	69,425	61,661
Total post-employment benefits	69,425	61,661
Other long-term benefits:		
Long-service leave	12,902	8,014
Total other long-term benefits	12,902	8,014
Termination benefits	-	144,360
Total employment benefits	719,390	791,969

Notes:

1. Note 11A is prepared on an accrual basis (therefore the performance bonus expenses disclosed above may differ from the cash 'Bonus paid' in Note 11B).

Notes to and forming part of the financial statements for the year ended 30 June 2012

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

Note 11B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives During the Reporting Period

2012					
Average annual reportable remuneration ¹	Senior Executives No.	Reportable salary ² \$	Contributed superannuation ³ \$	Bonus paid ⁴ \$	Total \$
Total remuneration (including part-time arrangements):					
\$180,000 to \$209,999	2	167,044	20,475	11,850	199,370
\$240,000 to \$269,999	1	235,378	28,474	-	263,852
Total	3				

2011					
Average annual reportable remuneration ¹	Senior Executives No.	Reportable salary ² \$	Contributed superannuation ³ \$	Bonus paid ⁴ \$	Total \$
Total remuneration (including part-time arrangements):					
less than \$150,000	2	41,948	4,568	-	46,516
\$150,000 to \$179,999	1	155,704	19,086	-	174,789
\$180,000 to \$209,999	1	137,801	15,288	27,500	180,588
\$240,000 to \$269,999	1	224,413	27,162	-	251,575
Total	5				

Notes:

1. This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.

2. 'Reportable salary' includes the following:

- gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
- reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
- exempt foreign employment income.

3. The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as per the individuals' payslips.

4. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 11: Senior Executive Remuneration (continued)

5. Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

Note 11C: Other Highly Paid Staff

Average annual reportable remuneration ¹	Staff No.	2012		Bonus paid ⁴	Total
		Reportable salary ²	Contributed superannuation ³		
		\$	\$	\$	\$
Total remuneration (including part-time arrangements):					
\$150,000 to \$179,999	2	125,848	18,675	13,250	157,773
\$180,000 to \$209,999	1	190,323	12,303	750	203,376
Total	3				

Average annual reportable remuneration ¹	Staff No.	2011		Bonus paid ⁴	Total
		Reportable salary ²	Contributed superannuation ³		
		\$	\$	\$	\$
Total remuneration (including part-time arrangements):					
\$150,000 to \$179,999	1	125,806	19,378	18,000	163,184
Total	1				

Notes:

1. This table reports staff:

- a) who were employed by the entity during the reporting period;
- b) whose reportable remuneration was \$150,000 or more for the financial period; and
- c) were not required to be disclosed in Tables A, B or director disclosures.

Each row is an averaged figure based on headcount for individuals in the band.

2. 'Reportable salary' includes the following:

- a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
- b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
- c) exempt foreign employment income.

3. The 'contributed superannuation' amount is the average actual superannuation contributions paid to staff in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as per the individuals' payslips.

Notes to and forming part of the financial statements for the year ended 30 June 2012

4. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.

5. Various salary sacrifice arrangements were available to other highly paid staff including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

Note 12: Remuneration of Auditors

	2012 \$'000	2011 \$'000
Financial statement audit services were provided free of charge to the entity by the Australian National Audit Office.		
Fair value of the services provided:		
Audit	27	26
Total	27	26

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

Note 13: Financial Instruments**Note 13A: Categories of Financial Instruments**

	2012 \$'000	2011 \$'000
Financial Assets		
Cash and receivables:		
Cash and Cash Equivalents	259	1,034
Receivables for goods and services	-	44
Allowance for doubtful debts	-	(3)
Total	259	1,075
Carrying amount of financial assets	259	1,075
Financial Liabilities		
At amortised cost:		
Trade Creditors	438	321
Other Payables	141	17
Total	579	338
Carrying amount of financial liabilities	579	338

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 13: Financial Instruments (continued)

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 \$0 in 2012 (2011: \$3,000) as an allowance for doubtful debts.

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

	2012 \$'000	2011 \$'000
Financial assets		
Receivables for goods and services	-	44
Total	-	44

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 13H: Liquidity Risk

The Tribunal's 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.

Maturities for non-derivative financial liabilities

	2012	2011
	\$'000	\$'000
	within 1 year	within 1 year
Suppliers	438	321
Other	141	17
Total	579	338

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.

Note 14: Administered - Income

	2012	2011
	\$'000	\$'000
OWN-SOURCE REVENUE		
Non-taxation revenue		
Note 14A: Fees		
Other fees from regulatory services	72	60
Total fees	72	60

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 15: Administered - Cash Flow Reconciliation

	2012 \$'000	2011 \$'000
Reconciliation of cash and cash equivalents as per Administered Schedule of Assets and Liabilities to Administered Cash Flow Statement		
Cash and cash equivalents as per:		
Schedule of administered cash flows	-	-
Schedule of administered assets and liabilities	-	-
Difference	-	-
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	72	60
Cash transferred to Official Public Account	(72)	(60)
Net cash from operating activities	-	-

Note 16: Administered - Commitments

There are no administered commitments to report for the current or prior year.

Note 17: Appropriations**Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2012 Appropriations			Appropriation applied in 2012 (current and prior years)	Variance
	<i>Appropriation Act</i>	<i>FMA Act</i>	Total appropriation		
	Annual Appropriation	Section 31			
	\$'000	\$'000	\$'000	\$'000	\$'000
DEPARTMENTAL					
Ordinary annual services	25,844	113	25,957	26,504	(547)
Total departmental	25,844	113	25,957	26,504	(547)

Notes:

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

	2011 Appropriations			Appropriation applied in 2011 (current and prior years)	Variance
	<i>Appropriation Act</i>	<i>FMA Act</i>	Total appropriation		
	Annual Appropriation	Section 31			
	\$'000	\$'000	\$'000	\$'000	\$'000
DEPARTMENTAL					
Ordinary annual services	26,925	112	27,037	29,165	(2,128)
Total departmental	26,925	112	27,037	29,165	(2,128)

Notes:

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

Notes to and forming part of the financial statements for the year ended 30 June 2012

Table B: Departmental and Administered Capital Budgets ('Recoverable GST exclusive')

Table B: Departmental and Administered Capital Budgets (Recoverable GST exclusive)					
	2012 Capital Budget Appropriations			Capital Budget Appropriation applied in 2012 (current and prior years)	Variance
	Appropriation Act	FMA Act	Total Capital Budget Appropriation		
	Annual Capital Budget	Section 31			
	\$'000	\$'000	\$'000	\$'000	\$'000
DEPARTMENTAL					
Ordinary					
annual services -					
Departmental					
Capital Budget	776	-	776	594	182
Total departmental	776	-	776	594	182

Notes:

Variance in ordinary annual services has occurred as a consequence of the Tribunal utilising only part of the appropriation available for the year.

	2011 Capital Budget Appropriations			Capital Budget Appropriation applied in 2011 (current and prior years)	Variance
	<i>Appropriation Act</i>	<i>FMA Act</i>	Total Capital Budget Appropriation		
	Annual Capital Budget	Section 31			
	\$'000	\$'000	\$'000	\$'000	\$'000
DEPARTMENTAL					
Ordinary					
annual services -					
Departmental					
Capital Budget	426	-	426	355	71
Equity	270	-	270	251	19
Total departmental	696	-	696	606	90

Notes:

Variance in ordinary annual services has occurred as a consequence of the Tribunal utilising only part of the appropriation available for the year.

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 17: Appropriations (continued)

Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')

	2012	2011
Authority	\$'000	\$'000
Appropriation Act (No 1) 2004-05	-	907
Appropriation Act (No 1) 2005-06	944	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) 2011-12	2,311	-
Appropriation Act (No 1) Capital Budget (DCB) -Non Operating 2010-11	-	71
Appropriation Act (No 1) Capital Budget (DCB) -Non Operating 2011-12	254	-
Appropriation Act (No 2) Non Operating- Equity Injection 2010-11	19	19
Total	13,599	13,963
Appropriation Act (No 1) 2011-12 included in cash and cash equivalents at balance date	259	1,034
Total available funds	13,858	14,997

Note 18: 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.

As per Determination 2012/02 issued under section 20 (3) of the *FMA Act 1997*, the Special Account was abolished on 20 June 2012.

	2012	2011
	\$'000	\$'000
Balance carried from previous period	-	-
Other receipts	-	10
Total credits	-	10
Payments made	-	(10)
Total debits	-	(10)
Balance carried to next period	-	-

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 19: Compensation and Debt Relief

	2012 \$	2011 \$
Compensation and Debt Relief - Departmental		
No 'Act of Grace payments' were expensed during the reporting period. (2011: nil).	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> (2011: nil).	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period (2011: nil).	-	-
No ex-gratia payments were provided for during the reporting period (2011: nil).	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the <i>Public Service Act 1999</i> (PS Act) during the reporting period (2011: nil).	-	-

Compensation and Debt Relief - Administered

No 'Act of Grace payments' were expensed during the reporting period. (2011: nil).	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> (2011: nil).	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 37A of the <i>Fauna and Flora Act 1985</i> (2011: nil).	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period (2011: nil).	-	-
No ex-gratia payments were provided for during the reporting period (2011: nil).	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the <i>Public Service Act 1999</i> during the reporting period (2011: nil).	-	-

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 20: 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 2012	Actual 2011
Output Group 1		
Capacity-building and strategic/sectoral initiatives	10	14
Assistance and information	413	409
Output Group 2		
Fully concluded indigenous land use agreements	127	49
Milestone agreements in indigenous land use agreements negotiations	88	244
Agreements that fully resolve NTDA's*	10	11
Agreements on issues leading towards NTDA*	201	191
Process/framework NTDA *	190	244
Agreements that fully resolve Future Act applications	44	56
Milestone in Future Act mediations	67	144
Output Group 3		
Registration of native title claimant applications	91	78
Registration of indigenous land use agreements	150	72
Future act determinations	69	96
Finalise objections to the expedited procedure	1200	1464

NTDA* - Native title determination applications

Note 20A: Net Cost of Outcome Delivery

	Outcome 1 2012 \$'000	2011 \$'000
Departmental		
Expense	(26,820)	(31,241)
Own-source income	575	207
Administered		
Revenue from services rendered	72	60
Refund to Official Public Account (OPA)	-	-
Net cost of outcome delivery	(26,173)	(30,974)

Notes to and forming part of the financial statements for the year ended 30 June 2012

Note 21: Net Cash Appropriation Arrangements

	2012 \$'000	2011 \$'000
Total comprehensive income less depreciation/amortisation expenses previously funded through revenue appropriations¹	1,522	(3,055)
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	(600)	(1,054)
Total comprehensive income - as per the Statement of Comprehensive Income	922	(4,109)

1. From 2010-11, the Government introduced net cash appropriation arrangements, where revenue appropriations for depreciation/amortisation expenses ceased. Entities now receive a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

Glossary

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.

Consolidated Revenue Fund; Reserved Money Fund; Loan Fund; Commercial Activities Fund: these funds comprise the Commonwealth Public Account.

Consultancy: one particular type of service delivered under a contract for services. A consultant is an entity—whether an individual, a partnership or a corporation—engaged to provide professional, independent and expert advice or services.

Corporate governance: the process by which agencies are directed and controlled. It is generally understood to encompass authority, accountability, stewardship, leadership, direction and control.

CPA: Commonwealth Public Account, the Commonwealth's official bank account kept at the Reserve Bank. It reflects the operations of the Consolidated Revenue Fund, the Loan Funds, the Reserved Money Fund and the Commercial Activities Fund.

Current assets: cash or other assets that would, in the ordinary course of operations, be readily consumed or convertible to cash within 12 months after the end of the financial year being reported.

Current liabilities: liabilities that would, in the ordinary course of operations, be due and payable within 12 months after the end of the financial year under review.

Determination: a decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

Disposition of native title matters: the rate at which native title applications are determined or otherwise dealt with so that they are no longer in the system.

Expenditure: the total or gross amount of money spent by the Government on any or all of its activities.

Expenditure from appropriations classified as revenue: expenditures that are netted against receipts. They do not form part of outlays because they are considered to be closely or functionally related to certain revenue items or related to refund of receipts, and are therefore shown as offsets to receipts.

(Cwlth) (FMA): the principal legislation governing the collection, payment and reporting of public moneys, the audit of the Commonwealth Public Account and the protection and recovery of public property. FMA Regulations and Orders are made pursuant to the FMA Act. Financial results: the results shown in the financial statements.

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 2012), pp. 109–115, at www.nntt.gov.au. Each party and

each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s. 136B(4)).

IAG: Indigenous Advisory Group comprised of Indigenous employees of the Tribunal.

ILUA: Indigenous land use agreement, a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).

Liability: the future sacrifice of service potential or economic benefits that the Tribunal is presently obliged to make as a result of past transactions or past events.

Mediation: the process of bringing together all people with an interest in an area covered by an application to help them reach agreement.

Member: a person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

Milestone agreement: an agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.

National Native Title Register: the record of native title determinations.

Native title application/claim: see native title claimant application/claim, compensation application or non-claimant application.

Native title claimant application/claim: an application made for the legal recognition of native title rights and interests held by Indigenous Australians.

Native Title Registrar: see Registrar.

Native title representative body: representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australia government to provide a variety of functions under the *Native Title Act 1993* (Cwlth). These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for determinations of native title and area agreements (ILUA), resolving intra-indigenous disputes, agreement-making and ensuring that notices given under the NTA are 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 which will represent them and manage their native title rights and interests once a determination that native title exists has been made.

Principal Registry: the central office of the Tribunal. It has a number of functions that relate to the operations of the Tribunal nationwide.

Receipts: the total or gross amount of moneys received by the Commonwealth (i.e. the total inflow of moneys to the Commonwealth Public Account including both ‘above the line’ and ‘below the line’ transactions). Every receipt item is classified to one of the economic concepts of revenue, outlays (i.e. offset within outlays) or financing transactions. See also Revenue.

Receivables: amounts that are due to be received by the Tribunal but are uncollected at balance date.

Register of Indigenous Land Use Agreements: a record of all indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

Register of Native Title Claims: the record of native title claimant applications that have been filed with the Federal Court, referred to the Native Title Registrar and generally have met the requirements of the registration test.

Registered native title claimant: a person or persons whose names(s) appear as ‘the applicant’ in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.

Registrar: an office holder who heads the Tribunal’s administrative structure, who helps the President run the Tribunal and has prescribed powers under the Act.

Registration test: a set of conditions under the *Native Title Act 1993* (Cwlth) that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with certain other rights, while their application is under way.

Revenue: ‘above the line’ transactions (those that determine the deficit/surplus), mainly comprising receipts. It includes tax receipts (net of refunds) and non-tax receipts (interest, dividends etc.) but excludes receipts from user charging, sale of assets and repayments of advances (loans and equity), which are classified as outlays.

Running costs: salaries and administrative expenses (including legal services and property operating expenses). For the purposes of this report the term refers to amounts consumed by an agency in providing the government services for which it is responsible, i.e. not only those elements of running costs funded by Appropriation Act No. 1 and receipts (known as ‘section 31 receipts’) raised through the sale of assets or interdepartmental charging and received via annotated running costs appropriations.

Sections of the Native Title Act: parts of the Act available online from the Australasian Legal Information Institute at 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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	Portfolio structure	Mandatory for portfolio departments	N/A
Report on Performance		Mandatory	
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Purchasing	Assessment of purchasing against core policies and principles	Mandatory	
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	99
Australian National Audit Office Access Clauses	Absence of provisions in contracts allowing access by the Auditor-General	Mandatory	Nil to report
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	In the case of ‘public service care agency,’ compliance with the agency’s obligations under the Carer Recognition Act 2010.	If applicable, mandatory	N/A
	Grant programs	Mandatory	Nil to report
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