

**Parliamentary Joint Committee on
Native Title and the Aboriginal and
Torres Strait Islander Land Fund**

OPERATION OF THE NATIVE TITLE ACT

**Inquiry Into The Effectiveness Of
The National Native Title Tribunal**

Submission No:18

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President

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25 October 2002

Ms. Maureen Weeks
Secretary
Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait
Islander Land Fund
Parliament House
Canberra, ACT 2600



Dear Ms Weeks,

Re: NATIONAL NATIVE TITLE TRIBUNAL

Thank you for your invitation to make a submission into the effectiveness of the National Native Title Tribunal.

The Law Society accepts that the Tribunal operates within certain restraints by virtue of governing legislation and the common law. For example, no State or Territory government has so far indicated a willingness to accept that native title can co-exist with leasehold interests. It appears unlikely they will. In addition very large tracts of Australia have been the subject of pastoral lease grants over the last 100 years or so. Amendments to the legislation in 1998 as well as two High Court decisions in 2002 have had a fundamental affect on the Native Title process also.

The Law Society is encouraged to see a rise in the number of native title determinations, particularly in the last few years. There are also a rising number of indigenous land use agreements ('ILUA's'), and recognition that mediation will play an increasingly important role in the future of the Tribunal. It is encouraging to see a growth in ILUA's because of their inherent flexibility and capacity to be created for a specific set of circumstances.

The Law Society notes from the Tribunal's 2001 Annual Report that there is a strong expectation that the work for the organisation will increase in the coming years. It is interesting that agreement making is predicted to be the preferred method of development for the Commission.

As with most organisations responsible for access to justice issues provision of adequate information to the public at large is important. An internet website is an important resource for those who wish to use make a claim with the Tribunal. The Law Society considers the website (<http://www.nntt.gov.au>) is useful and it appears that there is further work to develop the website into an excellent resource. The Law Society

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considers the Tribunal is under a duty to continue to promote itself and provide information, especially to remote or disassociated Aboriginal communities in Australia.

It is clear the most influential event for the Tribunal in 2002 has been the handing down of the *Wilson v Anderson* [2002] HCA 29 (8 August 2002) and *Western Australia v Ward* [2002] HCA 28 (8 August 2002) decisions. This has had the effect of further clarifying the ambit of native title. The Tribunal faces a challenge to continue to seek increased certainty from the judiciary about the role of native title in Australia. To that end, the Federal Court continues to play a key role in shaping the future of the Tribunal.

The Law Society views the rise in agreement making by mediation is a particularly positive step in the activities of the Tribunal. Rising numbers of claims can only serve to increase expertise and understanding of the native title process.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'K. Cull', written in a cursive style.

Kim Cull
President