Chapter 2

The National Native Title Tribunal
Annual Report 2004-2005

The National Native Title Tribunal

2.1 The NNTT'S functions are set out in section 108 of the NT Act. They include: dealing with applications, responding to inquiries, making determinations, mediation in Federal Court proceedings, providing assistance or mediation when requested and conducting research.

Formal reporting requirements

2.2 Under section 133 of the NT Act, the President of the NNTT is required to prepare and give to the Commonwealth Minister 'a report of the management of the administrative affairs of the Tribunal' as soon as practicable after 30 June each year. The report must include:

- financial statements under section 49 of the *Financial Management and Accountability Act 1997* (the FMA Act); and
- an audit of those statements under section 57 of the *FMA Act.*

2.3 The NNTT is a statutory authority which, as a matter of policy, complies with the Requirements for Annual Reports (the Requirements) prepared by the Department of the Prime Minister and Cabinet.[1]

2.4 The Requirements note that their purpose is 'accountability, in particular to the Parliament'.[2] They set five core items of compulsory information together with other mandatory information from specific statutory provisions.

2.5 The information prescribed by the Requirements includes:

- review by Departmental Secretary (or equivalent);
- departmental overview;
- report on performance;

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1 *Requirements for Annual Reports* approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*, Department of the Prime Minister and Cabinet, June 2005.

2 *Requirements for Annual Reports*, p.3.

- management and accountability;
- financial statements; and
- other mandatory information.

2.6 The Annual Report must include a letter of transmittal and aids to access – such as a glossary, index, table of contents and contact details.[3]

Compliance

2.7 The Tribunal's report for 2004-2005 complies with all of the formal requirements set out above.

The report

The President's overview

2.8 The President highlighted a number of matters of interest in his overview including:

- developments in the law on native title;
- policies and procedures of governments;
- Federal Court procedures and orders; and
- the roles and capacity of native title representative bodies.

2.9 The report noted that the nature and volume of the work undertaken by the Tribunal varies significantly over time, as well as between individual States and Territories. Much of the work is driven by parties who request Tribunal assistance, and by the Federal Court which refers native title applications to the Tribunal for mediation and supervises the mediation processes – 'these and other factors, including the negotiating stances of parties, make it difficult to predict accurately the number of agreements and when they will be finalised' (p.2).

2.10 The report also drew attention to a number of other external factors affecting the Tribunal including various legislative and policy changes at the national level, including the abolition of ATSIC; the restructuring of Commonwealth service delivery to Indigenous Australians by adopting a whole-of-government approach; and the proposed reduction in real terms of funding to the native title system over coming years – 'the practical implications of those changes for the native title system have yet to be identified' (p.2).

2.11 The report also identifies a number of trends within the Tribunal including shifts in the volume of registration, notification and mediation of native title determination applications; forms of assistance offered by the Tribunal; and future act

3 *Requirements for Annual Reports*, p.5.

work (pp.8-13). This information is particularly useful and allows the Committee to better gauge the Tribunal's progress from year to year.

2.12 The overview section of the report also predicts a number of trends in native title law and practice. These include 'predictions' that the law in relation to native title will become clearer; the volume of native title work will increase; agreement-making will become the usual method of resolving native title issues; there will be an increased focus on 'second generation' native title issues (such as the adequacy of the structural arrangements to administer native title once it has been formally recognised); the Federal Court will continue to affect, if not drive, native title processes; and the resolution of native title issues will not, of itself, resolve other social issues (pp.15-26).

Performance

2.13 The Tribunal has a single outcome: the recognition and protection of native title. Four output groups are used to deliver this outcome:

- registrations;
- agreement-making;
- arbitration; and
- assistance, notification and reporting.

2.14 In 2004-05, the Tribunal completed a review of the outputs by which it reports its performance. The objective was to capture more accurately the complexity of changes in workload and the nature of the work influenced by these external factors. In the 2005-06 financial year, the Tribunal will introduce a revised outputs structure that, it is argued, more clearly reflects the purpose of the Tribunal and its changed operating environment. It will also adopt a new outcome statement – 'resolution of native title issues over land and waters', which it argues better identifies its role and responsibilities than the previous outcome statement – 'recognition and protection of native title'.

2.15 The Tribunal has also introduced effectiveness indicators for the outcome. These indicators will help to assess the quality of agreement-making processes and the impact of the Tribunal's work on the type of native title outcomes achieved by parties (pp.13,34). The Committee welcomes these developments and looks forward to the Tribunal's reporting against these criteria in future reports.

Outcome and outputs

Output group 1.1: Registrations

2.16 The Tribunal's registration responsibilities are twofold. First, the Tribunal applies statutory registration conditions to claimant applications and to ILUAs. Second, the Tribunal is responsible for the upkeep of public registers required by the Act to record information relating to native title.

2.17 The Committee notes that there were 54 applications registered in this reporting period, compared to 59 in the last financial year. The unit cost was $43,095, compared with $44,289 in 2003-04. The overall cost in 2004-05 was $2,327,121 compared to an estimate of $2,693,230. The report commented that the trend of a decreasing registration test workload continued in the current reporting period. Although there was a decrease in the overall number of decisions made, there was a noticeable shift in registration test workloads between the Tribunal's individual registries (p. 43).

2.18 The Tribunal estimated that seventy per cent of its applications would be decided within two months of receipt from the Federal Court. The actual result was 28 per cent of applications determined within the deadline. Last year the figure was 31 per cent. The Tribunal acknowledged that the timeliness of decisions was not met (as in previous years) and advances a number of reasons to explain this situation (p. 46).

Output group 1.2: Agreement-making

2.19 Agreement-making is defined as the work carried out to achieve a native title or related result with the active participation of two or more parties. The categories of agreement-making are Indigenous land use and access agreements, claimant, non-claimant and compensation agreements, and future act agreements.

2.20 The cost and number in each category is set out below together with the estimate in each case (pp.60,64,70).

Table 1: Agreement-making

Category of agreement	Estimated number	Actual number	Estimated cost	Actual cost
Indigenous land use and access	27	6	$3,066,012	$1,197,011
Claimant, non-claimant and compensation agreements	195	418	$9,868,950	$13,374,097
Future Act agreements	72	40	$2,522,304	$1,418,736

2.21 The above data indicate that during the reporting period, the Tribunal finalised six ILUA negotiation matters. While this appears a substantive decline in activity since the last reporting period when fifteen agreements were recorded, the Tribunal explained that the output figure only reflects assistance provided for 'stand alone'

ILUAs – that is, those ILUAs that do not flow from a native title determination application (p. 61).

2.22 Figures on claimant, non-claimant and compensation agreements saw a dramatic increase in the reporting period – more than double the number of agreements than in the previous reporting period. The Tribunal noted that the trend is consistent with the increased number of consent determinations and lodged ILUAs (p.64).

2.23 In relation to future act agreements, the report noted that Western Australia continues to account for the bulk of future act mediation assistance. On a national basis there has been a decrease in referral of matters to the Tribunal for mediation assistance (p. 71).

2.24 The Committee notes that the cost of claimant, non-claimant and compensation agreements exceeded the cost estimates, while the cost of Indigenous land use and access agreements and future act agreements were significantly less than the estimate.

Output group 1.3: Arbitration

2.25 This output group includes future act determinations and finalised objections to expedited procedure.

2.26 The Tribunal estimated fifty future act determinations and there were 43 for the financial year. The target of determining seventy per cent within six months of application was almost met – with 67 per cent determined within the time set (although this was down on last year's performance when 94 per cent were determined within the time set).

2.27 The second element of this output is the objections to the expedited procedure. The Tribunal's report notes that this is used in Western Australia, the Northern Territory and Queensland, with the other states either using their own procedures or opting not to use the expedited procedure provisions (p. 77).

2.28 Statistics indicate that there were 1,230 objections finalised, compared to 761 in the previous reporting period. In this reporting period the costs exceeded the estimate as in the previous reporting period.

Output group 1.4: Assistance, notification and reporting

2.29 This group includes assistance to applicants and other persons; notification; and reports to the Federal Court.

2.30 The Tribunal has three categories of assistance activities:

- contacts – assistance given over the telephone or by letter;
- events – education programs, information sessions, fact sheets and research for parties on agreement-making; and

- initiatives – these include capacity building for participants in the native title process.

2.31 The report noted that the number of people contacting the Tribunal for information and assistance was lower than anticipated in 2004-05, continuing the previous year's trend. The Tribunal stated that this was in part attributable to the fact that information about the various native title processes has reached most of its target audience – 'many of the Tribunal's clients and stakeholders are now experienced and do not need to contact the Tribunal to obtain information' (p.82).

2.32 Statistics indicate that the most common type of assistance requested was information about native title applications and the registers, including searches of the registers. People also contacted the Tribunal for information on future act processes and mediation (p.82). Also notable was the significant increase in the use of the Tribunal's website in the reporting period.

2.33 During the reporting period, the Tribunal's geospatial services unit continued to be enhanced. Apart from educational forums and claimant workshops, the Tribunal has developed a self-service system, known as 'Native Title Vision' to allow stakeholders to see and analyse spatial information on native title matters via the internet. This was further enhanced in March 2005 through a partnership with Geoscience Australia, which significantly increased the amount and quality of information to stakeholders. This is discussed at pp.88-89 of the Annual Report.

Financial performance

2.34 The report notes that the Tribunal's actual expenditure for the 2004-05 financial year was $31.918 million. This was $2.079 million less than the estimate in the Attorney General's Portfolio Additional Estimates Statements. The report explained that 'there were variations from estimates for several outputs, and this resulted in a slight reduction in the Tribunal's overall workload' (p.37). Details are provided on the cost of each output group and outputs in the reporting period (p.38).

2.35 The Tribunal stated that it is likely to face budgetary constraints in future years. The report noted that Budget papers published in May 2004 stated that the Tribunal's appropriation and expenditure grew steadily from 1994 to 2004-05. The 2005-06 and forward estimates years show a slight decrease in appropriation from 2004-05. The level of appropriation will remain relatively flat for the duration of the next four year budget cycle. The Tribunal observed that rising costs will erode the value of that funding, and continuing work demands are likely to put pressure on the Tribunal. The Tribunal added that:

> The effect of the budgetary constraints on the Tribunal will become clearer in the years ahead. It is apparent, however, that to meet the challenges of the new budgetary circumstances there will need to be some restructuring of the organisational side of the Tribunal … The Tribunal is also looking at its internal decision-making processes and other activities to ensure that it concentrates on the performance of its core functions (p.14).

Corporate governance

2.36 The Tribunal has a number of internal groups which support the members' professional role and the strategic management areas of the Tribunal. These groups include the Strategic Planning Advisory Group, Agreement-Making Strategy Group, National Future Act Liaison Group, an ILUA Strategy Group, and a Research Strategy Group.

2.37 The report noted that the focus for the Tribunal in 2004-05 has been on enhancing the leadership skills of senior managers. Learning and development activities continued in the areas of corporate compliance, skills development and professional and career development (p.103).

2.38 The Committee considers that the Tribunal's governance structures are comprehensive and assist it in gaining an objective understanding of its needs in the relevant areas of activity.

Workforce planning

2.39 The Committee notes that there continues to be a relatively high turnover of staff, reaching seventeen per cent in the reporting period. This figure has been close to, or at, ten per cent for the last two reporting periods prior to 2004-05.

2.40 In its last report, the Committee suggested that some analysis of staff resignations should be undertaken by the Tribunal. Some information is provided in the report. Data obtained from exit interviews shows that most employees leave the Tribunal because they have secured alternative employment. The second most compelling reason for leaving is to undertake family/caring responsibilities (p.104).

2.41 While the Committee notes that the Tribunal has made some effort to analyse the reasons for the relatively high staff turnover, further details would be useful; for example, whether the experience with the Tribunal had enhanced the person's skills so as to make them competitive in other areas. The Committee considers that staff turnover should be carefully monitored and strategies to address the issue should be given priority by the Tribunal.

Indigenous employees

2.42 Of the Tribunal's ongoing employees, 13.1 per cent are Indigenous. This has decreased by 0.9 percent over the previous reporting period. The Tribunal pointed to its relatively high proportion of Indigenous employees compared with other agencies. The report notes that the average proportion of ongoing Indigenous employees in Commonwealth public service agencies was 2.4 per cent (as at November 2004) – in the same reporting period, Indigenous employees made up fourteen per cent of the Tribunal's ongoing workforce. The Tribunal ranked fifth (of 75 public service agencies) in the number of Indigenous employees (p.105).

2.43 In its last report the Committee requested that further information be provided on areas within the Tribunal where Indigenous employees are located, especially in areas which have direct contact with Indigenous clients. Information in the report indicates that of the Tribunal's 34 Indigenous employees, 31 are employed in the service delivery division, two in corporate services and one in information management division. Information on the classification levels and location of Indigenous employees by State/Territory are also provided in the report (pp.105, 120).

Clients

2.44 The Tribunal commissioned research into the satisfaction of its clients and stakeholders, which took place in April-May 2005. This followed baseline research completed in 2003.

2.45 The Tribunal's overall satisfaction rating was 6.77 (out of a maximum of 10). Only six per cent of 149 clients surveyed were dissatisfied (rating below 5). In the 2002-03 research the dissatisfaction level was 16 per cent.

2.46 Clients and stakeholders identified five areas for potential improvement, including:

- speed, in relation to claims, notification, staff response and advice;
- interaction, in relation to engagement and 'having a say' in the operation of the Tribunal;
- practical help, including resources, better information and more advice;
- simple, efficient processes; and
- innovative and proactive approaches to resolution of claims.

2.47 The Tribunal noted that the results of the research will be used as part of its continuous improvement program. It will also be used to develop qualitative measures for ongoing measurement as part of its new output and outcome framework to be introduced in 2005-06 (p.113).

Claims Resolution Review

2.48 In September 2005 the Attorney-General announced the establishment of a Claims Resolution Review to consider the process by which native title applications are resolved.[4] The review will consider ways in which the NNTT and the Federal Court can work together more effectively to achieve sustainable outcomes for all parties. The Committee looks forward to the outcome of this review and the Tribunal's response to this important issue.

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4 Attorney-General, 'Practical Reforms to Deliver Better Outcomes in Native Title', *Media Release*, 7 September 2005.

Conclusion

2.49 The Annual Report provides a well structured and comprehensive overview of the Tribunal's activities with a clear emphasis on performance reporting. The Committee is pleased to see that suggestions made in its last report for additional information have been included in the current Annual Report.