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JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

Reference: Native Title Representative Bodies

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JOINT COMMITTEE ON NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

Wednesday, 21 July 2004

Members: Senator Johnston *(Chair)*, Senator McLucas *(Deputy Chair)*, Senators Crossin, Lees and Scullion and Mrs Hull, Mrs Ley, Mr McMullan, Mr Secker and Mr Snowdon

Senators and members in attendance: Senators Crossin, Johnston and McLucas

Terms of reference for the inquiry:

To inquire into and report on:

The capacity of Native Title Representative Bodies to discharge their responsibilities under the Act with particular reference to:

1. the structure and role of the Native Title Representative Bodies;
2. resources available to Native Title Representative Bodies, including funding and staffing; and
3. the inter-relationships with other organisations, including the strategic planning and setting priorities, claimant applications pursued outside the Native Title Representative Body structure and non-claimant applications.

WITNESSES

Committee met at 2.04 p.m.

GUEST, Ms Krysti Justine, Senior Legal Officer, Kimberley Land Council

IRVING, Mr Ian Andrew, Principal Legal Officer, Kimberley Land Council

SEGEDIN, Mr James Adrian, Finance Manager, Kimberley Land Council

CHAIR—I declare open this public hearing of the Joint Parliamentary Committee on Native Title and the Aboriginal and Torres Strait Islander Fund, and I welcome everyone here today. The committee's terms of reference focus on:

> The capacity of Native Title Representative Bodies to discharge their responsibilities under the Act with particular reference to:
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> 1. the structure and role of the Native Title Representative Bodies;
>
> 2. resources available to Native Title Representative Bodies, including funding and staffing; and
>
> 3. the inter-relationships with other organisations, including the strategic planning and setting priorities, claimant applications pursued outside the Native Title Representative Body structure and non-claimant applications.

The importance of the role of representative bodies in the overall native title system became very evident during the committee's last inquiry into the effectiveness of the National Native Title Tribunal. This led the committee to recommend a follow-up inquiry into the representative bodies as designated their tasks under the act. This is the third hearing in the committee's inquiry, and it will be followed by other hearings around the country over the next couple of months.

I welcome representatives of the Kimberley Land Council—Mr Irving, Mr Segedin and Ms Guest. Information with respect to parliamentary privilege and the protection of witnesses and evidence has been provided to you. If you do not understand anything, do not hesitate to stop the committee and ask any questions about parliamentary privilege. I invite you to commence with an opening statement. If you want to go in camera at any time, feel free to ask me as chair of the committee, and the committee will consider that. I should remind you that, at any time, the Senate may decide of its own motion to publish material taken in camera; but also, having given the committee some evidence in camera, you can decide to have it published yourself, should you so require. I call upon you, Mr Irving, to make an opening statement and then we will go to questions from the committee.

Mr Irving—I thank you and the committee members for the opportunity to give evidence today. I put forward the apologies of Wayne Bergmann, who is the Executive Director of the Kimberley Land Council, and also Mr Tom Birch, who is our chairperson. They are unfortunately unable to be here. I have prepared a short statement and I beg your indulgence to read through it.

Native title has been described as an interface between blackfella law and whitefella law—perhaps most prominently by Noel Pearson, although he is not alone. Native title rep bodies, or

NTRBs, are set up under the Native Title Act to assist Aboriginal and Torres Strait Islander people to navigate that interface. The physical, cultural and political environments in which we work are absolutely unique, which makes NTRBs different from any other work environment. NTRBs are also different from each other, because Aboriginal people are not generic across Australia. For example, the situation of the Yorta Yorta has very little resemblance to the situation of the Kimberley Karajarri people. Consequently, NTRBs must in our view be empowered to be sufficiently flexible to respond to this specificity.

The KLC is a community organisation of 26 years standing. It was born out of political activism and a proud and active land management strategy in the Kimberley. This very fact should mean that the KLC is perfectly positioned to be an interface between the traditional laws and customs of native title applicants and the legal requirements of the Native Title Act and the consequential land management issues. However, this potential is thwarted by the constraints imposed on NTRBs not only by the Native Title Act but also by government regulation.

Since their inception, government has tried to control the work of the NTRBs. Most obviously, this has been done by not providing them with enough funds to effectively discharge their statutory functions, while increasing funding to non-Aboriginal native title institutions and parties. More recently, however, efforts at control are focused on ever more restricting conditions of the grant of funding and the increasing bureaucratisation of NTRBs from a central control point in Canberra. This move towards standardised and Canberra based control of NTRBs ignores regional differences, ignores the fact that the Native Title Act offers very different opportunities for different Aboriginal communities across Australia and ignores the specialised work of NTRBs. Such an approach runs the grave risk of creating a lowest common denominator of achievement. The KLC is still achieving very good outcomes for its constituents but its ability to achieve is becoming more and more difficult.

What are the ways that NTRBs are constrained in assisting Aboriginal and Torres Strait Islander people from achieving their land aspirations in practice? The prescriptive nature of the Native Title Act is probably a good starting point. The statutory functions of NTRBs are exhaustively set out in the Native Title Act, as is the manner in which the facilitation and assistance function—perhaps the most widely utilised—is to be performed. There is little room within the act for regional based innovation and flexibility.

The act does not operate in any integrated way. The act makes provision for the recognition and extinguishment of native title but largely ignores the issue of Aboriginal land management issues once native title has been recognised. Perhaps the most glaring omission in the statutory functions of NTRBs is the lack of assistance that can be offered to prescribed bodies corporate. NTRBs may assist setting up PBCs but cannot assist them in their operation or administration. Particularly in remote communities, PBCs without any funding base struggle to put in place even basic facilities such as a telephone or a fax machine, let alone being able to develop the specialist skills and capacity required for effective and ongoing land management. As the chairman of one Kimberley PBC put it, ‘I may be the chairman, but we can’t afford a chair.’

The result is that PBCs, as the 2002 ATSIC report says, ‘are essentially dysfunctional, have no infrastructure and are unlikely to meet existing regulatory requirements’. This means that one of the primary functions of the Native Title Act—to ensure that native title holders are able to enjoy fully their rights and interests, as stated in the preamble to the act—is unable to be realised. The

funding gap also has significant impacts on relationships between native title holders and third parties such as miners and pastoralists, who, despite the best intentions of both parties, are frustrated in their attempts to engage with underresourced and ineffective PBCs.

The chronic underfunding of NTRBs to perform their statutory obligation has been the subject of numerous submissions and reports, and the KLC support what has been said before on that subject. We would agree with the views expressed about NTRB funding in the ATSIC 1999 Love-Rashid report. We note that similar views have been expressed in several submissions since. Lack of funds has become so institutionalised that there exists an unhealthy acceptance of the limited ability of NTRBs to meet the demands and aspirations of their constituents. For example, it is widely recognised that most NTRBs will not have the resources or capacity to respond to every future act notice they receive. The acceptance of this lack of capacity is effectively an acceptance of widespread and unaffordable extinguishment of native title.

Inaction and delay caused by lack of resources is just as effective in denying Aboriginal people their rights as deliberate obstruction. For example, since the filing of the Bardi and Jawi native title determination application, half of the named applicants have died. A decision in this matter is awaited from His Honour Justice French. The litigation in Miriuwung-Gajerrong 1 took more than 10 years to be concluded. The pressures that this places on claimant communities are immense and could be avoided by more adequate resourcing of NTRBs.

Constraints on funding are not limited to funding provided by the Commonwealth. The state of Western Australia has entered into an agreement with the Kimberley Land Council to provide funding for the engagement of a future acts officer. Under the agreement, funding is to be provided in instalments over four years. The state has provided the first of these instalments; however, subsequent instalments have been withheld. The Kimberley Land Council has been told in the past that continued payment of the future acts officer funding is contingent on the KLC entering into a regional heritage agreement with mining industry representatives. The terms of the agreement proposed by industry and known to the state are fundamentally contradictory to the heritage principles that the KLC and Kimberley traditional owners have fought for 25 years to enshrine in our standard heritage protection agreements. The pressures created by underfunding mean that the KLC is faced with an invidious choice between losing a much needed staff position and acting in a manner contrary to the clear instruction of our constituents—something we are clearly unable to do.

While NTRBs are akin to legal aid providers, unlike other legal aid providers they do not operate at arm's length from the government that funds them. This is particularly concerning when one considers that the Commonwealth of Australia is a party to native title determination applications while it is simultaneously determining whether or not to support the litigation against it.

The ability of NTRBs to carry out their statutory functions effectively and autonomously is increasingly stymied by ever more controlling grant conditions placed upon them. NTRBs are fettered through grant conditions in what work they can do, how and when they can do the work and who they can employ to do the work. Like other NTRBs, KLC is required by the conditions of its grant of funding to prepare an operational plan for approval by DIMIA. Essentially, the operational plan sets out how the NTRB will use its funding to meet its objectives over the following 12 months. In practice, the operational plan lists the activities that the KLC intends to

undertake, together with the time frame and cost for the activity. Once accepted, the KLC must work to the plan and notify DIMIA in writing of any circumstances that may affect the achievement of the key results in the plan. DIMIA may request further information and then, if satisfied, approve a variation of the operational plan.

Recently the KLC submitted a draft operational plan that included entries corresponding to each of our native title claims, stating that we would respond to future acts as necessary and appropriate between July 2004 and June 2005. We felt unable to be any more precise, given that we are obviously unable to indicate in advance what or how many future acts will arise, as they are driven by third parties. We were duly informed that this aspect of our draft plan was not specific enough to satisfy our funders and that we had to effectively crystal ball gaze. Such a situation obviously significantly reduces our capacity to respond with any degree of flexibility, or effectively, to future acts. For example, the KLC received approximately 121 future act notices between November 2003 and April 2004. What would have happened if we had forecast only 80? This in turn has a detrimental impact on our relationships, not only with our own constituents—as lack of ability to respond to those future acts may result in the extinguishment of native title—but also with other organisations who become frustrated with native title as a hindrance to development.

The KLC may not refer a matter to litigation without consulting our funding agency, DIMIA. NTRBs may apply for additional funding for contested litigation matters but an application must be accompanied by 'the details of any offers made by any other party to settle the matter'. The same conditions apply to any application for funds for any appeal of a court decision. The only inference to be drawn from this condition is that DIMIA will decide what offers the native title applicants should agree to in settlement of their claims and will provide funding accordingly, including offers from the Commonwealth—an obvious conflict of interest.

Litigation is by its nature an uncertain process. Matters arise during the course of litigation that cannot always be foreseen. For example, during the litigation of the Bardi and Jawi native title determination application, it became apparent after the closing submissions that native title jurisprudence had developed in a way that required the KLC, on behalf of the applicants, to reopen their case. The current grant conditions do not foster the sort of flexibility that is required to respond to such a situation and hence impede effective representation of native title applicants in litigation.

There are bureaucratic fetters on independence. Another example of bureaucratic controls on NTRBs is the requirement imposed on the KLC that we inform and consult with DIMIA before we appoint people to the positions of executive director, principal legal officer or chief financial officer. This requires us to provide DIMIA with all relevant information about the applicants for those positions. Having consulted with DIMIA, the NTRB must take into account the views of DIMIA before making a decision about which applicant should be engaged. The KLC may not increase staffing levels beyond those identified in our operational plan unless DIMIA has provided prior written approval.

The flexibility of the KLC to carry out its functions has been even further restricted by the imposition of a grant controller. The grant controller was instituted by ATSIS after we made clear to them that the KLC could not meet the costs of its non-negotiable litigation load for 2003-04 within the amount of funds provided. The KLC funding crisis, partially generated by

lack of provision of funds for these non-negotiable litigation requirements, led to the closure of two of our regional offices and the reduction of staff numbers from 43 to 29. These factors will obviously negatively impact on the KLC's ability to progress claims and future act matters in a very clear way.

More insidious are the impacts of other decisions of the grant controller and the ATSIS consultants. KLC has been told that in our financially straitened position a designated policy position is a luxury we cannot afford. This has a direct effect on the KLC's capacity to engage in reform of native title and associated areas. For example, the lack of an appropriate range of Aboriginal land tenures in WA is a constant stumbling block in the resolution of native title and future act matters by agreement. Earlier this year the state of WA put out a discussion paper on alternative forms of Aboriginal tenure in WA and called for submissions. With no policy officer at the KLC, our capacity to respond to policy issues is almost nil. The KLC's ability to put forward creative settlements of native title applications is severely limited by not having an input into such policy debates.

The constraints on the KLC not only make the work of the KLC staff more difficult but impact directly on claimants and on how native title claims are run. This ranges from the obvious decisions about whether to appeal decisions or contest certain points to the question of how involved and empowered native title claimants are by the claims brought by the NTRB on their behalf. For example, the KLC have been advised by ATSIS consultants that we cannot spend NTRB funds to ensure that claimants can be present at the hearing of their own claims unless they are giving evidence. Attendance by claimants at, for example, the final submissions of a claim in Perth is critical in terms of instructing counsel on points rising. As well, it empowers those claimants to advise their communities of the progress of their claims, rather than relying solely on NTRB staff, who, within our financial constraints, can only afford infrequent visits to remote communities. It is difficult to see how this can possibly be within the spirit of the act.

The KLC recognise the importance of cooperative relationships and seek to foster such relationships with our stakeholder organisations as a means of making the most of the resources available to us. Where possible, the KLC seek to agree priorities with other parties for the resolution of native title applications. Recently, the KLC approached the state seeking its cooperation to use the evidence and outcomes from related native title claims to settle outstanding claims. As 25 per cent of the Kimberley is now the subject of a finding of native title—and the vast majority of that is exclusive possession native title—it is our view that we should not have to continue to start from scratch with every outstanding claim.

While originally reluctant to stray from strict adherence to its connection report guidelines, the state has indicated that it is willing to adopt a more flexible approach. We are hopeful that this will lead to the resolution of the Uunguu and Dambimangari native title claims. However, the state currently remains unwilling to consider the settlement of the Miriuwung Gajerrong No. 4 claim, notwithstanding that the claimants are predominantly the same as in the now decided Miriuwung Gajerrong No. 1 claim and that the claim area of MG No. 4 is encircled by MG No. 1, which was settled by consent in December 2003.

Very recent discussions with the state to see if priorities could be similarly agreed in respect of future act matters revealed that there is currently no coordination between the petroleum and minerals divisions of the Department of Industry and Resources over future act notifications to

the KLC, let alone coordination between DoIR and the Department for Planning and Infrastructure, another main source of future act negotiations. Notwithstanding this, discussions continue and the KLC are optimistic of fruitful outcomes. This kind of relationship building is essential to an effective native title system and continues to be a priority for the KLC, despite the constraints on our capacity.

In conclusion, despite the pressures we face, the KLC continue to achieve excellent results. This is largely due to the dedication of our staff, the strength of the people we represent and of our relationships with them, and the strength of their laws and customs, which have been recognised in the determinations to date. In relation to the five matters in litigation in the last year, the KLC has settled one matter, the MG No. 1 claim; reached agreement in relation to the settlement of another, the second part of the Karajarri claim; completed the hearing of a third, the Bardi and Jawi claim; received a substantial determination in favour in a fourth, the Neowarra claim; and substantially progressed the fifth, the Rubibi claim, through the hearing process. That is due to be completed in October this year.

We are proud of this legacy and will continue to work to achieve these kinds of successes. However, the creeping tide of constraint and control, and the chronic lack of funding, inevitably hamper our ability to find flexible and integrated solutions to issues that are extraordinarily complex and unique. We are forced to watch with frustration those native title holders who have achieved recognition of their native title and who now struggle to make sense of their place in this new land management system. Imagine how much more could be done to ensure the recognition and protection of native title if NTRBs and the people they represent were given the support that they deserve.

Senator McLUCAS—Thank you for your commentary on the lack of funding for prescribed body corporates. We have heard that evidence everywhere and, as matters are being finalised, increasingly. The sort of advice I am sure the committee would be interested in is: what do PBCs need? I think the answer is probably different things in different places. For people who have achieved their native title over country, that has an immediacy in economic outcomes once the native title matter has been concluded. It seems to me that funding is not required forever, but it will be required for a time to get those people a chair and maybe a fax machine—and a building would be helpful—not just for them but so they can get on with the job of dealing with others. From your experience and the cases you have dealt with, what do you think is required to get those people to a point where they can properly negotiate with people who have an interest in their country?

Mr Irving—Senator, I think, as you have pointed out, the answer may be a range of different things for different peoples. In the Kimberley, for example, with the Karajarri prescribed body corporate—the Kimberley Traditional Lands Association or KTLA—there would be a range of things that people would need. As a matter of absolute practicality, people need funding so that they can get an office, a desk, a chair, a phone and a fax. With the KTLA, for example, their chairman—who has no chair and no phone—has asked the KLC if he could have a pigeonhole in the KLC where he could keep important papers, because he has nowhere in his home to keep them. On top of those very obvious and physical supports that people need, I think people clearly need assistance to build the capacity to engage in the sorts of negotiations that they are being asked to engage in. They need access to commercial advice, legal advice and all of those other things. Obviously, in places where an economic potential in the land is recognised by third

parties, funding in all likelihood will be required—probably immediately—to build people's capacity quickly. It is likely that, as more negotiated agreements are made and benefits flowing from those negotiated agreements flow back to the community and thus to the PBC, the level of funding can decrease in time.

Ms Guest—I would just add that I am not sure whether it is appreciated how complicated a lot of future act matters are up here—and, I assume, elsewhere. For example, in the East Kimberley, the state has issued compulsory acquisition notices for 55,000 hectares of land in the Kununurra region for the development of the Ord stage 2 proposal. If the Miriuwung Gajerrong claim had been settled, that matter would have to be dealt with by a prescribed body corporate from the Miriuwung Gajerrong. It is an enormously complicated matter. It is an enormously complicated negotiation that is taking place, with expert advice coming to the Miriuwung Gajerrong via the KLC through a whole range of places. Because of the history of their land and the significant dispossession through the damming of Lake Argyle, the Ord stage 1 project and the construction of Kununurra, the Miriuwung Gajerrong people are not a particularly cohesive group. There are all sorts of issues that they have confronted as a community, and it is almost impossible to imagine how, without significant assistance, they would be able to engage in the kinds of negotiations which are continuing today and will continue in the future.

I think what you are saying is right—that a decrease in funding will happen in the future—but I think it really needs to be understood that these are enormous commercial negotiations that traditional owners are being asked to deal with, and properly deal with. That will be fantastic and empowering and, in the future, it will create an economic foundation for Aboriginal regional communities to be self-determining, which is the aim of all government policy—but it is enormously complicated. They are not small issues of 'Here's a future act, tick a box—off you go.' It is not just a chair and a fax and a phone; it is all sorts of other things which people need in order to understand that level of complexity.

Senator McLUCAS—That leads me to the question of who should provide that legal advice and that technical advice. I understand that in the act currently the role of an NTRB stops at the point of the acknowledgment of native title and that for you to provide ongoing advice subsequent to that acknowledgment is essentially not allowed under the act. It seems to me that the NTRBs are the repository of a lot of information that is very valuable to those people whose ownership has been recognised. But is there a conflict? If we could get to a point where funding was provided to prescribed body corporates, could that funding be channelled through NTRBs or is that inappropriate? Is there a conflict there in a legal sense that I do not understand?

Mr Irving—There is no immediate conflict that is apparent to me. It may be that some PBCs are staffed by very capable and effective people who, because they want the self-determination and effective control over their own business, may not want that money to be channelled through rep bodies. Having said that, it seems obvious to me that not only are rep bodies repositories of an enormous amount of information about the communities that PBCs are representing but they are also the repositories of extremely specialist knowledge about the native title future act provisions. To me, they are an obvious example of where that sort of assistance could be provided, at least in the first instance. But I do not think they are the only way that it can be provided. In some ways, if we are talking about the legal advice then it may be that NTRBs are an appropriate source, but if we are talking about the building of capacity then it may be that that requires skills that are not readily available in the existing NTRBs.

Mr Segedin—Quite aside from the legal aspects, putting a corporate hat on this, a PBC is a corporation and there has got to be some fundamental corporate governance structures in place very initially so that the decisions that are made by the corporation as it goes through its commercial life are transparent.

Mr Irving—It is extremely difficult to generalise, which I know is kind of unhelpful. However, some of our claimant groups have people who are well known on the national scene as advocates for Aboriginal rights and interests, and their knowledge of the Native Title Act—and their knowledge of politics and business—probably rivals that of any of the lawyers who are at the KLC. In other cases, the people who afforded an important role in PBCs because of their role in the traditional society are people who may have English as a second, third or fourth language, no real formal education and no real understanding of the white legal system other than what they have gleaned either through their own contact or that of their family in the criminal justice system or through the native title process. Generally speaking, though, an enormous amount of community development needs to be done to build claimant communities to a place where they are going to be able to effectively operate their PBCs. The amount of funding that is currently made available to land councils would not allow us to do that. Significant amounts of funding would have to be added to the amount that land councils and other NTRBs are getting to enable them to do that sort of community development work.

Senator McLUCAS—I am afraid it is a bit of a 'how long is a piece of string' question. If you wanted to think about the question some more and to give us a bit more concrete advice I would be very interested in receiving that, without trying to make more work for you—I am sure you have got plenty to do.

Mr Irving—I would welcome the opportunity.

Senator CROSSIN—Can you just give me an idea of the costs that the Kimberley Land Council would have undertaken in order to conduct the Miriuwung-Gajerrong trials?

Mr Irving—The Miriuwung Gajerrong were represented by the ALS in the first instance. In fact, on appeal to the full Federal Court and in the High Court we acted for another party in that matter. We became the solicitors on the record for the Miriuwung Gajerrong when it was remitted back from the High Court to the full Federal Court, and we were the solicitors who acted for the applicants in the negotiations for the consent determination that eventually was agreed. A more appropriate or concrete example might be the Rubibi native title claim, which is close to conclusion.

Senator CROSSIN—That would have taken how many years?

Mr Irving—The actual hearing of the claim commenced in May last year. However, there were several years of intensive negotiations through a mediation process that preceded that. I think the original claims were lodged in 1994 or 1995 and they have been amended and supplemented as it has gone along, so it has a very long history. The litigation commenced last year.

Mr Segedin—It is in the region of $1 million, excluding salaries and wages time of internal staff.

Mr Irving—That is in the last year?

Mr Segedin—Yes.

Senator CROSSIN—You talked about the PRBAs having a degree of inflexibility at the regional level and the act not being flexible enough to allow the rep bodies to do what they need to do. Can you give me some examples of that and of specifically what you mean by that?

Mr Irving—NTRBs? Can I clarify the question: are you asking for examples of how the way the act is set up does not allow NTRBs to take more flexible approaches in representing—

Senator CROSSIN—In your opening statement you talked about the lack of regional based innovation and said that the act was inflexible. I just want some concrete examples of that.

Mr Irving—The way the act is structured means that, in order for a group of claimants to have any procedural rights over future act matters, they have to have a registered native title claim. Sometimes claims are lodged for the purposes of obtaining those rights without any real intention by the claimants of prosecuting a native title claim, not because there may not be the desire to win native title but because the claimants may have an understanding that they will not be able to get over the hurdles that are now in place in terms of the elements of proof that are required to make a native title claim. So it seems to me that one very obvious way in which the act is very inflexible is that it does not allow people to go through a process to obtain procedural rights and enter into negotiations with third parties or with government who may want to do things on their land versus those people who want to go through a native title application process and obtain a determination of native title from the court.

Senator CROSSIN—You are saying you must take one path, that you cannot take both paths at the same time. Is that right?

Mr Irving—I am saying you have to take both paths at the same time. You have to lodge your claim in the Federal Court as a native title determination application, which fundamentally is an application asking the court to make a determination of native title. Once your application is before the court it goes into the court management system that is instigated by the Federal Court, notwithstanding the fact that you may have lodged that application in response to an action by a third party wanting to do something on your area of land and that you may have lodged it in order to have rights to negotiate but you may not have lodged that claim wanting to proceed or be involved in a Federal Court litigation process.

CHAIR—Is it in terms of your area of land? You cannot have it both ways, can you? You cannot say it is their area of land pursuant to a native title determination that is not going to happen.

Mr Irving—I think that you may be drawing a distinction between the way that land and ownership of land is viewed by the courts or by white people, as opposed to the way Aboriginal people view their land and their relationship with land. Notwithstanding the fact that there may be areas within Kununurra, for example, that have been the subject of extinguishment or that it was necessary because of legal processes to exclude from the claim determination, there is no

way on God's green earth that the Miriuwung Gajerrong people would say, 'That is not our land,' because under their laws and customs it is their land.

CHAIR—But they are the sort of people who are going to go through the process of pursuing their native title to the nth degree.

Mr Irving—They are, but I doubt that the Yorta Yorta would accept that the area of land is not their land, even though it was not recognised by the courts as being their land.

CHAIR—But you and I cannot take, as a matter of law, a notional perspective. It might be my land, but I have to prove it. Surely that is the fundamental principle underlying legislation. We cannot just simply make an arbitrary determination to say, 'This is my land because I am Aboriginal and I have lived here all my life.' We have provided a framework in which you can establish rights through a process. You seem to be saying: 'Forget about the process. Let's have some flexibility such that a claim can be lodged with no obligation to substantiate the claim.' What then prevents—and what safeguards are there to stop—you and me lodging a claim?

Mr Irving—I am not an Aboriginal person, which will stop me from lodging a claim.

CHAIR—But that does not matter. Who is to say whether you are or you are not? You can still register a claim.

Mr Irving—I do not think I am suggesting that Aboriginal people should be afforded rights merely because they have lived on the land for all of their lives. There are many people who would identify, for example, as Noongar people, who are from Perth, who are now living in Broome. What I am suggesting is that there may be people who, because of the way the jurisprudence has developed, will never be able to obtain a determination of native title but who—

CHAIR—How can they have a right to negotiate, then?

Mr Irving—Because a right to negotiate depends on the prerequisite of having a native title claim registered by the National Native Title Tribunal.

CHAIR—But a claim carries with it obligations; it is not one-way traffic.

Mr Irving—I agree with that.

CHAIR—You seem to be saying that there should be some type of injunctive relief for people who cannot qualify for native title or who should not be mandated into the court process.

Mr Irving—I think what I am trying to say is that perhaps there could be separate processes, accessible to Aboriginal people, for following a native title determination and accessing negotiations over third-party uses of that land.

CHAIR—I have a lot of sympathy for the position that you take, because people have no resources, they want to lodge a claim, they are a family or clan group, they see future acts occurring and they feel helpless and want to do something. Their only remedy is to lodge a

claim. You are saying that the lodgment of a claim carries with it so many obligations as to disenfranchise them and to put undue burden upon them in terms of lawyers, anthropologists, genealogists et cetera. You are saying that they should not need to do that. They should be able to stop the future act without the obligation of substantiation.

Mr Irving—In terms of stopping the future act, I think that you will find in the Kimberley that most people are not actually anti development on their land—and I appreciate the issues that you have raised about the phrase 'their land'—but they would like to have some sort of say in the development. So it is not always a matter of stopping development or stopping a future act. What I am suggesting is that the inflexibility of the current system is that, in order to get those rights, people have to lodge a claim.

Senator CROSSIN—I wanted you to tell us what the solution is. If we were to say to you: 'Provide to us a form of words to use in a recommendation in our report,' what are you suggesting should be changed in the act to provide the degree of flexibility that you say is not there?

Mr Irving—Perhaps I could take that on notice and provide something in writing.

Senator CROSSIN—That would be fine. You made some comments about grant conditions. Are you talking about grant conditions for native title rep bodies?

Mr Irving—Yes.

Senator CROSSIN—Do you believe there are unreal expectations in grant conditions, or are you talking about the fact that they are vetted by DIMIA?

Mr Irving—In their current form, the grant conditions fetter the flexibility of native title rep bodies to fulfil their functions. They do that through the level of consultation required with DIMIA and through the level of bureaucratic processes that are required in order to change the activities that you may be engaging in, in a flexible and timely manner. For example, your operational plan might say that you are going to do A, B and C. Mining company Y suddenly comes along and says, 'We want to whack in a great big mine over there.' The state then notifies you and says, 'We want to start negotiating.' You did not know anything about this when you were putting your operational plan together. You have to get back in contact with DIMIA and say, 'Look, I need to amend my plan.'

Senator CROSSIN—Are you saying you do not have regional autonomy but you need to have it—that you need the flexibility to be able to move the goalposts, depending on what the circumstances provide?

Mr Irving—That is right.

Mr Segedin—Or the flexibility to operate within a budget. If, say, we had a $4 million budget, we would be cognisant that we would have to live within it. We would like to employ 10 more staff this month, because we have this big job happening, and then go back to our normal status. But, as it is written at the moment, we do not have that flexibility. That is how we interpret it. We have not lived with it yet, but that is how we interpret it.

Senator CROSSIN—My base is Darwin. I am used to dealing with the NLC and the CLC, which were established under the Northern Territory land rights act. I cannot imagine in a million years that the CLC would ever ask DIMIA—or even tell DIMIA—about who they hire as their principal legal officers. They just would not do it. There would be anarchy across the border if they were ever asked to do that.

Mr Segedin—They would be in breach of the current grant conditions if they did not.

Senator CROSSIN—I know that it is a different act. The NLC and the CLC are native title rep bodies most of the time, but I guess they operate under the land rights act more than the Native Title Act. I did not actually know that you had to consult DIMIA when filling senior positions. So what is to stop DIMIA—who, on behalf of the federal government, often appear against you in certain circumstances—approving the lowest common denominator, if there is such a thing—with all due respect.

Mr Irving—In our view, there is nothing to stop them—or there is the completely inverse argument.

Senator CROSSIN—So you do not get a discrete budget with a CEO who has the power to appoint people—like most other organisations do—and to operate the budget with some degree of flexibility?

Mr Segedin—Not as we interpret it—not anymore. Recent grant conditions have become a lot more restrictive.

Senator CROSSIN—When you say that it has become a lot more restrictive do you mean since the 1998 amendments?

Mr Segedin—No. I mean since we have stepped into DIMIA and the new grant conditions have come out. I do not know that that is a function of stepping into DIMIA; I think it is a function of ATSIS progressing with the accountability process that they have been on for some time.

Senator CROSSIN—When did that start to happen?

Mr Segedin—It has not started, because we have not signed it yet—but, effectively, from 1 July.

Senator CROSSIN—I see. So this is under the 'new world' regime, post ATSIS?

Mr Irving—Yes.

Mr Segedin—Maybe.

Senator CROSSIN—Tell me about some of the other anomalies, then, in a grant application that perhaps were not there previously and are now there in this grant application.

Mr Segedin—They are the two major ones. The rest of it tends to follow the normal prescriptive types of conditions.

Senator CROSSIN—There is not a clause there about the Commonwealth owning intellectual property?

Mr Segedin—Yes, there is, but that was previously—

Senator CROSSIN—That was always there, was it?

Mr Segedin—I could not say with confidence that it was always there, but it has been there before. It was in a slightly different guise, but it has been there before. The other thing that actually came out last year which got us all a bit riled up—it is hidden a bit more in the grant conditions this year—was the leading statement, which was that it was a criminal act to tell lies to Commonwealth public servants and blah blah. That was how they introduced their grant conditions. It was fairly petty.

Senator CROSSIN—What about quid pro quo? What if Commonwealth public servants lie to you? What is the quid pro quo there?

Mr Segedin—We just have to take it.

Senator McLUCAS—That is the issue I wanted to get to. Was it in fact going to happen under ATSIS or is this because of the change that has occurred in terms of the abolition of ATSIS and the mainstreaming of organisations? I suppose that is a question that you do not actually know the answer to—

Mr Segedin—We are not privy to that, no.

Senator McLUCAS—but it is something that we could pursue. I wonder, Mr Segedin, if you would not mind looking at that question of IP, actually comparing the two proposals and coming back to us if it is substantially different to what you have said to Senator Crossin, because it has been raised with us on another occasion. The other question I want to go to is the conflict that seems to come out of the fact that you have to tell an instrumentality—in this case, the government—what you intend to do in your operational plan in the knowledge that the government will be a respondent to many of those matters. Has anybody put their legal mind to the potential conflict in that? Is there something that I should understand as a nonlawyer in terms of that conflict? It seems to me that what you are doing as an organisation representing traditional owners or potential traditional owners is telling an organisation who is actually potentially going to be a respondent to that application what you intend to do. It is almost like showing your hand and then saying, 'Let's play cards now.' It seems a little unfair.

Mr Irving—I think that it is exactly right. I think the Commonwealth would say, 'Not to worry, because different parts of government are viewing different pieces of information and making different decisions.' But more insidious, I think, is that idea that we cannot refer anything into litigation. The Commonwealth knows, as a party to native title claims, that we are not allowed to refer any matter to litigation unless we get the Commonwealth to sign off. Our negotiation position, or anyone's negotiation position where there is no real threat of litigation

other than with the agreement of the opposite side, is negligible. The fact that, before we refer a matter to litigation, we have to provide the government with details of any offers that we have received from any other party to a piece of litigation which potentially the Commonwealth is involved in is, it seems to me, quite a strange situation. It is certainly one that does not assist us to effectively represent our constituents in native title claims.

Senator McLUCAS—I have to say this is one of the results of the abolition of ATSIS. You can have an argument, and people will, about whether or not we should have retained ATSIS or some organisation or entity, but, in a legal sense, this is one of the areas where I think true conflict has developed in a totally technical sense. Anyway, that is a bit of commentary.

Mr Irving—I would agree with that.

Mr Segedin—It is really the abolition of ATSIC where we lose this separation of powers. All of a sudden the funding and the decision making are made by the same body, which is a government organisation, and that is DIMIA at the moment. There is just no separation of powers. Before there was a corporate governance arm—I guess that was what it was—which was ATSIC.

Senator CROSSIN—How do rep bodies actually get some funding? They will now have to put in a grant through DIMIA, will they, and apply for funding?

Mr Segedin—As we always have, every three years we put in a strategic plan to the minister. We then build an operational plan for the next 12 months. Last year in point, our operational plan and operational budget was in the order of $6.3 million. ATSIS advised us last year, 'All you're going to get is $4 million—bad luck.' They have advised us that that will be our base level funding until at least 2007. In about October last year we realised that with these five matters in litigation and the requirements of the Federal Court there was no way we could live within that $4 million. We went to ATSIS as it was then and said, 'What are we going to do here? We have a steam train heading at us and you're not going to give us any more funding.' We jointly appointed a grant controller to help us manage the situation, when to our minds the situation was simply a matter of a lack of funds. We have had a grant controller ever since and, in fact, his position has just been extended for another six months. At the end of the day they came up with the extra $2 million that we put in our operational budget right at the beginning. That is what we have ended up operating to.

We have had to restructure under this process to live within the $4 million ongoing annual budget. We broadly put aside $1 million for litigation activities and $3 million for operational activities, which includes the employment of all our staff. That is probably the single largest cost followed by consultants. To live within that $3 million operational budget we have had to reduce our staff from 45 to 29 and close two regional offices. We are in the Kimberley—we are covering an area in excess of 400,000 square kilometres—and it is functionally inoperable. But we have no opportunity there.

Senator CROSSIN—What offices have you closed?

Mr Segedin—Halls Creek and Fitzroy Crossing. We now have two major offices functioning—Broome for the west Kimberley and Kununurra for the east Kimberley. We travel

to the claim groups in between. In a perfect world it is far from what we would want, particularly coming from a background of being a community organisation. It is largely driven by the fact that there is just no money in the system. The report that Ian referred to, the 1999 Love-Rashid report, recommended that native title funding should be in the region of $83 million in those days. I think it has pretty well stayed at about $50-odd million for that whole period. That is the money that is available to ATSIS-ATSIC for distribution between the 17-odd rep bodies in the country. The model is small rep body, medium rep body and big rep body. We are a big rep body. We get our $4 million even though we cover an area probably twice the size of Tasmania or something. That is how we fit in the model.

Ms Guest—I would like to add something about the closure of the Halls Creek and Fitzroy Crossing offices. They are both areas, particularly around Halls Creek, that are highly prospective in terms of exploration and mining. The closure of those offices makes it completely ineffective to facilitate future acts as we are required to because there is no staff down there having ongoing meetings or face-to-face contact with traditional owners. If you do not have that contact you cannot have the meetings to facilitate the future acts, which is not only detrimental for the traditional owners but obviously detrimental for third party interests who are very keen to do all forms of development. The traditional owners in those areas, as Mr Irving has already said, are not antidevelopment and it is just making a mockery of the dual focus of the Native Title Act to facilitate Indigenous interests, to provide certainty and to facilitate third-party interests. It is an extremely unfortunate situation where absolutely nobody wins at all.

Senator Crossin, I would like to add one thing to a question you asked previously in relation to the costs for Rubibi. Another good example—and I do not have the costs here, but I will find them out for you—in terms of time is the Bardi and Jawi native title trial. The Bardi and Jawi trial relates to an area directly north of Broome on the Dampier Peninsula. It is a very small area of land. The trial started in 2001. It was partially completed by the end of 2001. We were then waiting upon the High Court decision in the Miriuwung Gajerrong No. 1—the Ward case—which came down in August 2002. We had final written submissions for Bardi and Jawi in December 2002, and then we were to have a final hearing in February 2003. Post Ward and post Yorta Yorta, it became clear that jurisprudence had changed so much that we needed to reopen the Bardi and Jawi matter—something which had never happened before in Australia. We sought the right to reopen the whole trial, and after about four or five months that occurred in July 2003. We then had final written submissions in December 2003 and final oral submissions in February or March 2004. The trial spanned over three and a half years.

The area of land under claim is almost completely Aboriginal owned by the traditional owners or it is unallocated crown land—UCL. There is also an area in the claim over the sea. Clearly the Croker Island decision has settled what the law of the sea is going to be. That matter could have been settled years and years ago, but it was not settled by the respondent parties. The claimants were always willing to settle, and it was not settled. There was a large amount of money wasted in such a claim over a small area that was already Aboriginal held. There were no third-party interests at all. There was no-one else up there except some pearling interests which are secure because they are in the sea. I think that case was a very unfortunate use of public money and is a good example of what everybody recognises as, I guess, a misuse of public resources in native title.

Senator CROSSIN—I asked the question because I was trying to get a handle on the fact that there is $50 million in the native title budget, yet it should be closer to $80 million. You are saying you get $4 million a year and you should get around $6 million. Is that what you are telling us?

Mr Segedin—We are saying we need about $6 million.

Senator CROSSIN—One case in a year takes $1 million. Quite clearly, the level of funding you are getting compared to your costs and output in defending cases is not equitable.

Mr Irving—If we have around 25 claims, which we do, then we will all be back here in 25 years still talking about putting the claims through the litigation process. This cannot be of any benefit to anyone who is involved in the process.

CHAIR—How many claims do you have?

Mr Irving—We have 25. We are in the process of consolidating some and withdrawing from others. That is why I say around 25.

CHAIR—I want to take up the issue of the Bardi case. It sounds quite interesting. You say that it could have been resolved years and years ago. It probably could have been resolved some time after August 2002. Who were the respondents?

Ms Guest—The respondents were the State of Western Australia, the Commonwealth and the Western Australian Fishing Industry Council.

CHAIR—What was the principal bone of contention for the lack of will to settle?

Ms Guest—There are two issues. It is the nature of the title—whether it is exclusive possession or non-exclusive possession.

CHAIR—Over what?

Ms Guest—Over the land.

CHAIR—The claim was withdrawn insofar as it related to the sea?

Ms Guest—No, the sea claim remains, but we never claimed exclusive possession over the sea after the Croker Island decision. The other main difference is in relation to whether the native title is held at an estate group level—they are called buru; tiny little estate groups that dot themselves around the coast—or whether it was held at the level of the community of the Bardi and Jawi. The applicant's case is that traditional law and custom has always been held at the level of the community. The little groups are like little suburbs in Melbourne. They are merely little suburbs, but the laws and customs that organise those groups is the law of the community. Melbourne law applies to Doncaster, lower Templestowe or wherever. It is the same logic with the estate groups.

CHAIR—Are you saying that the state, and the Commonwealth for that matter, had some problem with the manner in which the claimants were going to disperse the rights that flowed from a determination?

Ms Guest—I cannot recall at the moment the state's final submissions but the Commonwealth's final submissions were very clearly that title rights and interests should be held at the level of an estate group and not held at the level of a community.

CHAIR—A single estate group?

Ms Guest—Each single estate group.

CHAIR—I am still a little bit confused. It is each single group, whereas the applicants wanted to hold the rights—

Ms Guest—at the level of their community.

CHAIR—So a very large number of people would have held individual titles. Is that what you are saying?

Ms Guest—No. It is confusing without having a whiteboard. The Bardi and Jawi case is that the Bardi and Jawi people number about 900, that native title would be granted at a communal level, that it would be held by a prescribed body corporate and that individuals may have rights in certain estate groups. Say Mr X's estate group was at the bottom of the Dampier Peninsula. Mr X had rights under traditional law and custom to occupy that land in a way that Mrs Y did not. So the rights held would be dispersed to individuals in certain areas. There are other areas of land that, under traditional law and custom, are communal areas, so that all Bardi and Jawi people have rights to those areas of land.

CHAIR—So that has never happened before in any determination?

Ms Guest—Yes. The determination put in express rights at that level. We would never express rights at that level. Our position is that the Bardi and Jawi people, at the level of their law and custom, hold native title in their land and that it has always been a matter for the Bardi and Jawi people to cite under their law and custom where Bardi and Jawi people have rights and interests. That is how it would continue to happen under a prescribed body corporate. As Mr Irving has pointed out and as you are saying, that is consistent with all other determinations.

Senator CROSSIN—But the Commonwealth's position was that they wanted to prescribe those individual rights in each of those estates.

Ms Guest—They certainly wanted to prescribe them further down than how the Bardi and Jawi applicants saw it. Obviously we had not settled a determination so they had not—

Senator CROSSIN—Is that a consistent position that the Commonwealth take in each and every case?

Ms Guest—The Commonwealth were not in the Miriuwung Gajerrong matter, so they did not take a position in that.

CHAIR—Tell us why the Commonwealth took the view that they did. Obviously they have been approached.

Ms Guest—The Commonwealth's position in their final submissions is that they consider that their view is supported by the evidence.

CHAIR—But you said it was not.

Ms Guest—That is certainly our view.

CHAIR—Didn't various degrees of rights flow from the two different interpretations? Weren't people's rights affected?

Ms Guest—In what way?

CHAIR—If the Commonwealth's interpretation prevailed, people's rights were affected differently from the way that the claimants' legal advice sought to have the determination made. There are two different types of approaches to the way the native title rights should have been dispersed to the claimants—correct?

Ms Guest—The difference is that it was very clearly put by the Bardi and Jawi that native title has to be in accordance with traditional law and custom. They said that traditional law has always been and still is practised as a community. You may not know that the Bardi and Jawi are one of those very famous Aboriginal groups in Australia who are internationally known for the way in which they practise their law. They all practise their law together. The Jawi law starts in the islands and comes down onto the mainland. They have always said, 'Our native title must be held at a communal level because that is where our law comes from.' The Commonwealth's view was that that was not the case and that 'Jawi have always been different from Bardi. It is only recently that the Bardi and Jawi have merged into one community and therefore it is impossible to have a communal title for the Bardi and Jawi because theirs are different communities. In fact, the Jawi do not have any rights left at all because theirs have been subsumed by the Bardi people. Therefore the way that title has to be held is not at that communal level.' That is the Commonwealth's case. They all adopted a different view of history and the law, which they are allowed to do of course.

CHAIR—That is right. So the Commonwealth sought a determination that protected rights that flowed from its perception of what the evidence supported?

Ms Guest—Yes, that is correct.

CHAIR—Who is going to be the ultimate arbiter of that very important distinction between the claimant group and what the Commonwealth says the evidence supported?

Ms Guest—It will be Justice French.

CHAIR—Exactly. The fact that the process takes so long is neither here nor there, but it sounds to me as though it was not as readily able to be settled or resolved as you might suggest.

Ms Guest—That is your view, but I do not take that view. I think the evidence is overwhelmingly clear.

CHAIR—But, of course, you are acting for one of the parties.

Ms Guest—That is correct, but I still think the evidence is overwhelmingly clear that their law has sprung, and has always sprung, from the one community, just because of the way that the law is practised.

CHAIR—I take it that the ultimate result went with you—that the judge determined the matter in favour of your interpretation.

Ms Guest—It is still waiting for determination.

CHAIR—That is interesting. What was the state respondent's view of that argument?

Ms Guest—As I said, I am drawing a blank on their final submissions. Until their final submissions they took a very similar position to the Commonwealth.

CHAIR—Which led them into what—over a period of years?

Ms Guest—I am getting confused; I cannot recall what the state said in their final submissions. The state made an offer to settle with the Bardi and Jawi quite close to final submissions, which was on the same terms that we had put our case.

CHAIR—Was that in 2003 or 2004?

Ms Guest—It was in 2004. But that did not answer your question.

CHAIR—Why did the state not want to settle? We have one arm of government, the Commonwealth, doing one thing and one arm of government, the state, not settling until 2004. What was the problem with them?

Ms Guest—I think that raises the interesting question of the way that native title trials are run. Native title trials are run in a manner where you have the applicants on one side and, on the other, a whole host of respondents who are highly resourced in a way that, obviously, the rep bodies are not resourced.

CHAIR—It is the claimants, really, not the rep bodies, isn't it? The claimants get their resourcing through the rep bodies.

Ms Guest—Yes, that is correct.

CHAIR—The claimants can go out and get their own lawyers if they want to, but very rarely do they have the resources to do that.

Ms Guest—That is correct. The reason you would have the state, the Commonwealth, WAFIC, mining companies and all sorts of other respondents lining up against the applicants is simply because they are all respondents. The way you are asking the question puts it in a certain way—that one would hope that both the Commonwealth and the state are model litigants and behave in a way where they look objectively at the evidence and not as partial litigants, I guess, who are pursuing their own matter. In my experience, in the five years I have been at the Kimberley Land Council, that is not how I have seen the Commonwealth and the state act. I do not think they have acted as model litigants, and that is why you will get the state and the Commonwealth taking a position which, in my view, is contrary to the evidence.

CHAIR—I accept that, and I accept the frustrations of litigating very complex matters with very limited resources. But when you tell me that the Bardi case, if I can call it that—and these are the One Arm Point people, as I understand with my limited knowledge—could have been settled within a few months of the Miriuwong Gajerrong determination and yet lingers until 2004, my natural propensity is to ask: tell me who the respondents were and what they were saying such that you could not get a resolution?

You have told me about the Commonwealth, which I think has some substance—it is not a matter which I can off the top of my head say, 'The Commonwealth is whistling Dixie and being an intractable litigant for no reason.' I think there is some substance to that. My next question is: what about the state? Were they just tagging along on the coat-tails of the Commonwealth or did they have some legitimate issues? Then tell me about the other respondents. What was the gripe? Was there a justiciable matter arising?

Ms Guest—As I said, the two main issues were whether or not there was a Bardi and Jawi community and whether they held exclusive possession. So it was the nature of the community which we disagreed with. The Commonwealth and the state took an estate based model, which they take in many claims. On the issue of exclusive possession we completely disagreed—clearly the Bardi and Jawi hold that land exclusively. We will see what happens in the outcome.

I have to say that in Neowarra, or the Wanjina case—the very large case in the middle of the Kimberley—the state and the Commonwealth took highly oppositional positions to that of the applicants, and the applicants won hands down. The views taken by the respondents in that case were harshly dealt with by the judge. We will wait to see what the judge says in the Bardi and Jawi case, but I do think oppositional views are taken in a way that is not necessarily very helpful or the role of a model litigant.

CHAIR—Would you just refresh my memory and tell me whether there is any scope for the awarding of costs where there is such a stick-in-the-mud attitude taken by respondents?

Ms Guest—There is; the judge has the discretion to award costs.

CHAIR—Did the judge award costs in the other case?

Mr Irving—No application was made.

CHAIR—Why not?

Mr Irving—The final determination has not yet been made by the judge. The judgment has been handed down.

CHAIR—I am not talking about the Bardi people; I am talking about the other one.

Mr Irving—I am talking about the Neowarra as well.

CHAIR—The Neowarra has not been determined ultimately?

Mr Irving—A reasons for decision has been made, but the final determination is yet to be handed down.

CHAIR—I will not go to what you intend to do, but just talking generally it would seem logical to me that, where there has been criticism by the judge in his ratio, you would seek costs.

Mr Irving—I will take that comment on board. My only comment would be that, as you are no doubt aware, generally speaking, native title is recognised as being a no-cost jurisdiction. However, it is not impossible and I will take your comment on board.

CHAIR—The judge having taken the trouble to tell you that he is unhappy with the performance of the respondents and that that agreement, from what Ms Guest is saying, should have been done, I think he is clearly inviting, is he not, some sort of indemnity?

Mr Irving—I do not think I can put that any higher. I will take your comments on board.

CHAIR—Under 203B the rep body has specific functions which are listed (a) through to (g): facilitation and assistance functions, certification functions, dispute resolution functions, notification functions, agreement-making functions, internal review functions et cetera. To me it seems that there can be a modelling of cost and anticipated eventualities that should be undertaken by rep bodies. You are saying that the current DIMIA demands are too onerous and too restrictive and that we cannot within our legislative framework seek to do justice to our future funding in this process. Is that what you are saying?

Mr Irving—I am talking specifically about future acts in that regard, but the same would apply to dispute resolution, for example. It is very difficult to work out at the beginning of the year what money you will need to resolve a dispute that may not actually arise until some way through the year.

CHAIR—That is a bit curious to me, given that the act has been around since 1993.

Mr Irving—Yes, and it was amended in 1998.

CHAIR—How many claims has the Kimberley Land Council initiated and presided over since that time?

Mr Irving—As I say, there are 25 currently. We have the five that are in litigation. But certainly the Tjurabalan claim has been resolved by consent determination, the Rubibi No. 6 claim was resolved through a determination of the court and there are the other five I have talked about today, as well as the other 20-odd that are in mediation.

CHAIR—No other land council in Australia has the experience and the battle-hardened understanding of what native title is all about that the Kimberley Land Council has.

Mr Irving—I would certainly agree with that, but I am also saying that we are talking about the future acts.

Senator CROSSIN—But they would like the price tag that goes with it.

Mr Irving—Yes. We would like to be not so battle hardened and scarred.

CHAIR—How is it so difficult for the council to anticipate, dating back now over 10 years, what its likely wish list budget is to be every year under those different headings?

Mr Irving—The primary response would be that we do that to the extent that we are able, but also a lot of the work that we do is dependent upon factors outside of our control. Future acts come from third parties and disputes arise within communities.

CHAIR—Isn't that what DIMIA are saying? 'Give me what your standard $4 million structure should be as anticipated'—everyone has to do a budget, surely—'and, then, if there is an extraneous contingent matter that comes out of left field, come back to us and we will see if we can deal with it.' Isn't that what they are saying?

Mr Irving—I do not think we were ever suggesting that we should not be forced to work within a budget; it is how we can most effectively work within the budget that we are given and how we can effectively access extra funds in a timely and flexible manner. That is the point of our submission.

CHAIR—Who is the ultimate arbiter of what is effective?

Mr Irving—I think that, as you say, the experience of Kimberley Land Council over the last number of years—

CHAIR—So Caesar should judge Caesar?

Mr Irving—Is that a rhetorical statement or is that a question?

CHAIR—How do we objectively benchmark your performance to see that we are getting value for money? How do we go about the task? That is what everyone has to do these days.

Mr Irving—True, but the Kimberley Land Council was carrying about one-third of the country's native title litigation. I have outlined the achievement over the last year; I have outlined the achievements that we have shown there. The native title applicants would be satisfied with the outcomes that we have achieved, with some assistance with their claims.

Senator CROSSIN—Perhaps every time you defeat the Commonwealth in a claim your budget should go up 50 per cent!

CHAIR—All I am asking is for you to tell me how we determine whether we are getting value for money.

Mr Irving—As I said, we are not suggesting that there should be a bottomless pit of money made available to the land council; our beef is that we are happy to work within a budget but we want to be able to maintain the flexibility to react to positions as they arise throughout the year.

CHAIR—So you want to have some cash in the tin to do with as you deem necessary from time to time?

Mr Irving—To respond appropriately to the issues arising under our statutory obligations, as they arise through the year.

CHAIR—Why wouldn't the way that DIMIA wants you to operate be just as transparent and acceptable—that is, 'Come to us, tell us you have a problem and we will see if we can fund it'?

Senator CROSSIN—Because people might say no.

Mr Irving—There is that—the ability of the funder to say no. What I am suggesting is that the increasing bureaucratisation of those sorts of processes has a necessary impact on our ability to respond flexibly and in a timely manner to issues that arise.

CHAIR—How long does it take for a group of highly trained battle-hardened lawyers to knock out a submission to DIMIA to say that you need $2 million more for this reason?

Mr Irving—That depends on how much time we are spending working on the five native title claims and the 121 future act notifications with five lawyers, 1.5 of whom are full-time employed on the major negotiations that are happening in Kununurra.

Senator CROSSIN—But isn't the real issue here the turnaround time of DIMIA in responding to your claim for the $2 million?

CHAIR—That was not the issue he raised.

Mr Segedin—An example of that was the contribution by ATSIC, as it was then, to the MG claim, which was before my time but which I stumbled across in the files recently. We applied for some extraordinary funding in late 2002, and the funding hit our bank in May 2003.

CHAIR—Exactly. So life under the old system was not as rosy as it could have been—

Mr Irving—And it is going to be a lot less rosy under these.

Mr Segedin—We had to jump through all these hoops, yet they could not respond in a timely manner without these additional hurdles.

CHAIR—What additional hurdles are you talking about? Tell me about them.

Mr Segedin—Every time we want to move effectively from our operations—

CHAIR—Away from your defined budget.

Mr Segedin—away from our operational plan—we need their permission in writing.

CHAIR—Are they saying you need their permission? What they are saying is: 'We will not give you the money unless we accept the exigency and the necessary nature of the funding.' They are saying that you can do whatever you like—'But, if you want our money, tell us what it is for.' Isn't that what they are saying?

Mr Irving—I think there are two separate issues there. One is that an operational plan is more than a budget. An operational plan is the activities and the timeframes for carrying out those activities. If there is a change in those, they also have to be notified to DIMIA and comments and approval sought to vary the operational plan. There is then also the issue of the capacity to access funding over and above your base level funding.

CHAIR—You have got one person to go to in DIMIA. Do you have a person in DIMIA that you can relate to, one on one?

Mr Segedin—Not yet.

CHAIR—But you anticipate having one, surely?

Mr Segedin—Our situation is a bit peculiar with the grant control in place. At last count, we were reporting to about five different offices—Brisbane, Canberra, sometimes Darwin and sometimes Broome.

CHAIR—How does that happen?

Mr Segedin—I wish I knew.

CHAIR—Given that this system started on 1 July, tell me what has happened.

Mr Segedin—Nothing has happened in relation to the new system starting on 1 July, because everything has stayed on foot, from our perspective, as it was. We are dealing with the same people as we were, obviously.

Senator CROSSIN—You will actually deal with the Office of Indigenous Policy when it gets set up, won't you, rather than DIMIA?

Mr Irving—They are part of DIMIA.

Mr Segedin—Really, we will be dealing with the bureaucrats that came across from ATSIS. They will be the same people.

CHAIR—You will have someone there that you can get on the phone to—or fax, email or whatever—with your urgent need with respect to something that arises. Surely that is not a huge burden, as you would have me understand.

Mr Segedin—If it were an exceptional change, I would agree. But our reading of it seems to be a lot more mundane than that.

CHAIR—You are nervous about the new development?

Mr Segedin—We are nervous about being even more fettered in our operations. It is our jurisdiction to decide how we are going to operate our business.

Mr Irving—Our experience, at least since the imposition of the grant controller, is that decisions are not quite as simple as getting on the blower and having a discussion that is supported by a piece of paper. That is simply not our experience.

CHAIR—But you have not got any experience yet, have you?

Mr Irving—We do have experience, because we still have a grant controller.

CHAIR—Sure. But you have not got any experience with the new system, because it has been in operation for less than a month. The fact is that the old ATSIS is what you have experience of it.

Mr Irving—On the face of it, the grant conditions are more onerous than the existing ones. It is my submission that it flies in the face of logic that we could expect something that is less onerous.

Mr Segedin—And, as we said, the personnel are the same.

CHAIR—Less accessible—that is what you are talking about.

Mr Segedin—And less accessible.

CHAIR—Let us move on from that, because we are speculating. What is the fundamental problem with prescribed body corporates? You are saying they are not funded. Tell me what you think prescribed body corporates should practically be doing.

Mr Irving—That is such a wide question; where would I even begin? Their job is to hold the native title on trust for the native title holding community. They are to be the focal point for third parties who want to interact with that community. What they should be doing is everything that allows them to do that in an effective way.

CHAIR—So, in each instance, that depends on the size of the land they hold?

Mr Irving—It probably depends on the amount of activity. The size of the land might be much bigger in the desert than around Broome, for example, but the amount of activity in Broome would be much greater.

CHAIR—So it is the context of other land users with relationship to that determined land?

Mr Irving—Are you talking about third-party interests?

CHAIR—Whether it is mining land, fishing land, tourist land or whatever, the context of the land will determine the level of responsiveness required by the prescribed body corporate.

Mr Irving—Possibly.

CHAIR—Have you got a bare model for the operation of a prescribed body corporate in circumstances where there is a fair average collection of interaction—for instance, a group of mining tenements? Let us take Halls Creek as a classic example.

Mr Irving—I am not sure that I understand what you mean by a bare model. Do you mean: do we have a structure?

CHAIR—Yes.

Mr Irving—We have a prescribed body corporate set up in the Djurabalan and in Karajarri.

CHAIR—What have they got?

Mr Irving—What do you mean? Do you mean what do they have in terms of bare human resources and ability to negotiate agreements?

CHAIR—Yes. And what does it cost?

Mr Irving—Karajarri have nothing. Karajarri have a very smart chairman who has probably had some level of formal education—although not as much as anyone sitting in front of me, I would imagine.

CHAIR—Has anybody ever asked you these questions? You have told me that you know what the Karajarri would need to administer their grant of native title.

Senator McLUCAS—I think Mr Irving has taken this question on notice. That is what he said he would come back to us with.

CHAIR—I want to ask this now. What do they need? This is not a criticism—let us be clear about that. I want you to tell us, from your experience, what you perceive to be the ideal perspective for government to properly look after a group of people who have received a grant of native title.

Ms Guest—They need a very small office. We have tried on several occasions to negotiate this through third-party future act negotiations, which is why I am quite clear about it. They want a very modest office—what is called a donga—with fax and computer facilities, chairs, somewhere small to have meetings. They want some form of governance training to be able to administer properly their obligations under the Corporations Act and they would probably need some ability to access legal advice generally in relation to the third-party acts that happen over

their land. As Mr Irving has just said, the Karajarri have an extraordinary chairperson—he is extremely clever and articulate—and they are very keen to get those things to get going. They are desperate to get out from under government handout control and to have economic development on their country, but, besides the state and Commonwealth not providing money, no third party has ever engaged in negotiations that would allow them that. The people are increasingly becoming very despondent. They got their native title in 2001, and the chairman is getting despondent and looking for other jobs. It is one of those really frustrating situations. If he was here he would tell you what they need, and it is not a lot of money. It is just facilities which you could get from mining companies—things like old dongas. It is not hard.

CHAIR—But the point is that the ongoing costs are: one employee who will attend to the phone and fax, do all the messaging and get the chairman and the people together—

Ms Guest—On a part-time basis.

CHAIR—the capital infrastructure of an office, and then the probably considerable cost of hooking that up to electricity, telephone and/or other communication or IT services. The ongoing legal advice seems to me to be the large portion of the ongoing costs. I do not think it would be feasible for these people to access private lawyers. Is it possible for the rep body to contract out its legal services to the prescribed body corporate as a matter of law? Obviously you have the knowledge. Having got them the title, you have the knowledge of what you anticipated they would be able to do with it to some large extent. Surely it is logical that the rep body would provide the ongoing legal assistance to them, but the way I read the act there is no provision for you to do that. But I would have thought that it is possible for the rep body, as an incorporated entity, to do a separate contract to provide those services to the prescribed body corporate.

Mr Irving—I would have to take that question on notice and have a look at the terms of the act and our grant.

CHAIR—I would like you to address the issue of what you think a fair and reasonable cost would be on an hourly basis for the rep body to provide those ongoing services.

Ms Guest—It is obviously the optimal outcome, because it is the people who they have worked with and the people who have those particular skills.

CHAIR—But no-one seems to want to tell us in practical terms what sort of expense there is and what structures we need to give these people to go on with using the rights they have.

Ms Guest—That list of things I went through was costed in relation to a future act matter that we negotiated several years ago. I can hunt that out and provide it to you.

CHAIR—I would love to receive your advice on that.

Senator McLUCAS—Is the KLC intending to give a written submission to the committee?

Mr Irving—Yes, we are.

Senator McLUCAS—Thank you. That would be very much appreciated. In that submission, could you advise the committee whether you have had any experience in dealing with people who have had access to the Attorney-General's fund, what that experience is and what your view is of the differential amounts of money that are allocated to native title representative bodies, the A-G fund and the NNTT itself. You might also want to look at the report of this committee into the effectiveness of the NNTT, because there is some detail and a response from the NNTT to the suggestion that was made in many submissions to that inquiry about what would occur if we rechannelled funds away from the NNTT and to the rep bodies. You may want to respond to that as well.

CHAIR—Thank you for your attendance and the information you provided to the committee.

[3.39 p.m.]

BODILL, Mr Ian, Chief Executive Officer, Broome Shire Council

CHAIR—Welcome. With respect to parliamentary privilege, I believe the secretariat has given you some information on the protection of witnesses and on seeking to give evidence on certain matters in camera. Should you require anything to be heard in private or in camera, please do not hesitate to inform the committee and we will deal with that. I will explain things further to you on such a request. As you are a public servant, I would like to remind you that you are not required to answer any questions relating to policy matters within your shire. Should you want to take any matter on notice, do not hesitate to say, 'I would rather not answer that and I will go and address it and come back to you on notice, if I may.' Would you like to give us an initial presentation, after which we will then seek to ask some questions?

Mr Bodill—Very briefly, the history in the Shire of Broome has been that the previous CEO has had a lot to do with the native title issues that have occurred over the past number of years. As a result, not many people within the council of the Shire of Broome have a large knowledge of what has occurred chronologically over the last few years. The knowledge of native title issues, as a result, is very lean within the Shire of Broome. However, I do have a couple of things that I would like to bring up later on. In a broad brush sense, that is exactly where we are at this stage.

CHAIR—With respect to those matters that you would like to bring up, let's have you discuss them now—highlight what issues you want to raise with them. The committee would be interested to understand where you are coming from on some of these points.

Mr Bodill—Sure. With the granting of native title with the Karajarri—I think that is how you pronounce that—the community based at Bidyadanga, we have a need to engage with them regarding getting a source of gravel from them. I think you touched on this with the previous group regarding what the requirements of a prescribed body corporate, a PBC, would be. We do not know who to speak to. We do not know who to contact. We cannot send them a fax. They have no administration body to deal with the issues and we have no idea who we are speaking to. In a nutshell, it almost seems like the granting of native title to that particular group has not made any difference at all to them and it is pretty frustrating for us. That is probably one of the main issues that we have come to deal with. Other than that, there is not much more regarding questions.

Senator CROSSIN—I will ask a few questions. Can you give us an idea of where the council might have been involved in native title issues?

Mr Bodill—No, I cannot.

Senator CROSSIN—Are you are a bit new in the position?

Mr Bodill—Correct; I have been there for two months. From my understanding, the native title issues have been dealt with mainly by the previous CEO. I think he participated in a lot of

inquiries. He commented a lot on behalf of the shire regarding native title issues and I think he left the shire with all that information in his head. I know that does not help the situation much, but that is the fact of the matter.

Senator CROSSIN—Your example there is sort of the other side of the arguments that we have been hearing, which is that a lot of the prescribed bodies corporate—the ones that actually get a grant of native title—are saying, as you have just heard, they are particularly frustrated, because it is bit like a dog chasing its tail. Once they could actually sell you the gravel they would have money to get on their feet and get going, but they do not actually have the resources to get going initially. So yours is a very concrete example, if you would excuse the pun—a grave example—of the fact that you have not got anyone to contact in the first place, because they have no office, no logo, no letterhead, no fax machine.

Mr Bodill—Nothing has changed.

Senator CROSSIN—It is a very real example of how that can affect you. How are you progressing that matter then? Do you have to go back through the Kimberley Land Council or are you trying to deal with a single person as best you can?

Mr Bodill—At the moment we are at a little bit of a stalemate. I am going down there on Monday, and I hope to pursue that particular issue with somebody who is prepared to give me some idea of how we can pursue it. It is quite a frustrating issue. I am not going down to Bidyadanga for that particular reason; I am going to involve them in a strategic planning process for the Shire of Broome, and I hope to bring up that particular issue as well. The lack of resources, even regarding Rubibi, is pretty frustrating as far as the shire is concerned. We do have a good working relationship with the Rubibi, and every time we come to some sort of discussion or participation with them the issue of funding does come up. So it is a little bit frustrating.

CHAIR—In what context does it come up? How does funding arise?

Mr Bodill—We have got little projects that we are doing at the moment. One, for example, is Minyrr Park, which is a great example of how the shire is working with Rubibi on a non-formal basis. There are no letters of agreement; there is nothing in place in terms of liability and all that sort of stuff. But it is working really well. They do not have the resources to participate to the level that they would like to participate, and the shire is always having to come up with the funding. So that is a little bit of frustration that we are experiencing at this stage.

CHAIR—Give us a bit of a practical mind's eye picture. You have got a park development.

Mr Bodill—Yes, it is called Minyrr Park. It is a section of coastline that exists between Cable Beach and Gantheaume Point, on which the Rubibi people, with the assistance of environmentalists and consultants, are putting together a walk-through for tourists. It will have little activities, places where you can sit and rest in the shade and have a glass of water or whatever. It still needs a lot more to happen there before it is finished, but I think it will be one of those ongoing things. We, as the shire, have got to assist in terms of funding, as well as being the funding body for any funding that they might seek from any other funding groups, because they are not a corporate body.

CHAIR—So they have not got the capacity to type up an application or to do anything like that?

Mr Bodill—They might, but they are not a corporate body.

CHAIR—They are not a corporate body?

Mr Bodill—Not as far as I understand.

CHAIR—Has native title been granted to them?

Mr Bodill—No.

CHAIR—So they are just claimants?

Mr Bodill—Correct. There is that propensity for us to work together, but there is a frustration that we are not working with equal resources.

CHAIR—Is their claim overlapping?

Mr Bodill—I do not know. I do not know what that means, to be honest with you.

CHAIR—It means it will be a long time before it is resolved.

Mr Bodill—From the discussions that I had with Pat Dodson on Monday, it seems like it might resolve itself over the next 12 to 18 months.

CHAIR—What sort of interaction do you have with the Kimberley Land Council? Do you understand the function and role of the land council?

Mr Bodill—I do. I have had none, and I think the existing council has had very little. I think it was mainly with the previous CEO, but I am not sure what was discussed.

CHAIR—Is that a good way to go?

Mr Bodill—Probably not. I think the most recent involvement that we have had with Rubibi has been the notice to take of Cable Beach 5B and 5C, which is a development of 350 lots. The state government have given some indication that they are going to develop the blocks, through LandCorp. They have put a proposal to Rubibi, after some negotiations with them, which involves the shire as a third party. We are quite frustrated that that can be brought in at this late stage. It is quite separate to native title, even though it does involve native title, but it is a commercial venture.

CHAIR—It is a future act process.

Mr Bodill—It is a commercial venture basically. We are quite frustrated that we were given a letter on 4 July to comment on and make a decision on by 7 July, and by the will of the state

government to push it through at all costs at the expense of the shire. We do not have the resources, the time and the knowledge to make a decision on something so broad which involves the whole community.

CHAIR—Precisely what are they seeking to push through? Is it by subdivision?

Mr Bodill—It is a subdivision. I think it is Cable Beach subdivision, which is in the older part of Broome.

CHAIR—Yes.

Mr Bodill—There are about 350 lots. It is unallocated land, obviously.

CHAIR—It is on vacant crown land, in other words?

Mr Bodill—Correct.

CHAIR—Save for the claimants' claim?

Mr Bodill—It is part of the claim and the state government has given them notice to take—I think that is the right terminology—and they have negotiated with Rubibi, as far as I know, for some land that is totally disassociated with the particular land. They regard land all over the shire including Cable Beach and from Cable Beach to Gantheaume Point as reserves over which they want to be partners in terms of managing it. They want freehold land which is near this hotel, the Mangrove Hotel. I think it is on that side over there and across the road. There are other pieces which I cannot remember. They want the land freehold but they do not want to pay rates so I guess that is where the shire comes in. And I guess the shire also comes in because the shire is quite keen to have some development on the land in question but we are at a position where we have to think about whether we want to be the third party or wait until native title is determined and deal with whoever has the land. I understand that that is probably not a good thing to do either because LandCorp, with its notice to take, will take it anyway. I think they are trying to take it in the nicest possible way.

CHAIR—That is right, and the determination may be many, many years away.

Mr Bodill—It could be.

CHAIR—How will better funding of Rubibi assist you in all of this?

Mr Bodill—I think it will take a little bit of pressure off us financially. I think it will also give them a platform from which to seek further funding, as far as joint operations are concerned. There is a feeling from the council—especially from me, being new and seeing how the whole matter functions—that we do not like the fact we are a financial partner mainly. I believe that there should be some sort of financial contribution made from Rubibi as well. For example, we are looking at a coastal management plan as well. I think that is quite important. It would be nice if Rubibi had funding which they could put towards some sort of plan with the council.

CHAIR—Rubibi is a representative name of how many claimants?

Mr Bodill—I cannot tell you. I do not know whether there is anybody behind me who can tell you. There are a few claimants.

CHAIR—I hear from the back of the room that there are 2,000.

Senator McLUCAS—There are 2,000 individuals.

CHAIR—Isn't the solution initially to go and consult the land council? The claim was probably lodged through the land council and they probably know more about it than anyone else.

Mr Bodill—I am not sure.

CHAIR—I take it that the shire has no real interaction with the land council on these various matters.

Mr Bodill—Not since I have been here.

CHAIR—It might be an idea for you to have a look at doing that.

Senator CROSSIN—It has only been two months.

Senator McLUCAS—I would like to make a comment. I used to be a councillor in a local government area in Cairns some years ago. I am not trying to tell you anything but I suggest that you go to the Local Government Association of Australia. They have a really good manual that I found extremely valuable in working with representative bodies, claimants and whatever. You might find that very useful.

Mr Bodill—Thank you.

Senator McLUCAS—I appreciate that you have only been in the job for some time and I am not trying to tell you how to do your job. I understand it from your perspective as well.

CHAIR—Thank you very much for coming, Mr Bodill. We appreciate the information and the assistance you have given the committee in its deliberations on its terms of reference.

[4.04 p.m.]

GEORGE, Mr Kevin John, Chairperson, ATSIC Kullarri Regional Council

MURPHY, Mr Frederick John, Regional Councillor, ATSIC Kullarri Regional Council

SIBOSADO, Mr Martin, Regional Councillor, ATSIC Kullarri Regional Council

CHAIR—I welcome members of the ATSIC Kullarri Regional Council. Mr George, would you like to make an opening statement? If anyone else wants to make one after you they can.

Mr George—You are asking me to give a statement regarding not just my position but my involvement with—

CHAIR—Tell us what you want to tell the committee about its terms of reference. The terms of reference are to do with the funding of representative bodies.

Mr George—KLC, as you might know, is a representative body for our area here in Broome. Through consultations with them I can see that more funding should be available for the proper deliverance of native title in our area.

CHAIR—Tell us a bit about what the Kullarri Regional Council does.

Mr George—What we are about is advocating our people's concerns. We advocate on their behalf and develop regional plans for the area.

CHAIR—Who are the Kullarri Regional Council's people?

Mr George—We have got what we call wards around the place, and they are people from the south of Broome up to the Dampier Peninsula in the north, where I am a tribal member.

CHAIR—Approximately how many people does the council represent?

Mr George—About three and a half thousand, I believe.

CHAIR—And you are the acting chair of that council?

Mr George—As we speak, I am the acting chair, yes.

CHAIR—In terms of the day-to-day functions of the council, what do they do for the people? You say they advocate for them.

Mr George—Doing business with government departments and service providers for the people in this region and, I guess, making sure that everything is done the right way for our people.

CHAIR—I will tell you the terms of reference, just to refresh your memory. The committee's terms of reference focus on the capacity of native title rep bodies to discharge their responsibilities under the act with reference to: the structure and role of those bodies; the resources available to the rep bodies, including funding and staffing; and the interrelationships with other organisations, including strategic planning and the setting of priorities, claimant applications pursued outside the native title rep bodies structure, and non-claimant applications. To paraphrase all of that, how does the Kullarri Regional Council interact with the Kimberley Land Council and native title claimants, and what do you see as some of the major problems concerning native title rep bodies and the prescribed body corporates that have received native title? If you see any problems with those, you should tell us about them.

Mr George—Firstly, from what I understand, in any engagements with KLC we have let them go on their merry road, really, doing what they do best—representing people on land issues. I have been involved with that in my area, where I come from, with the Bardi Jawi claim. I am a claimant, I understand, in that and I have been given time as a witness in the case of the Bardi Jawi native title claim. I hope, firstly, to get a determination. That is what we would be seeking for our people, and I would be certainly hoping that it will be in favour of our people. We know we practise what we say we do; we have got a governance here for our people in our areas, and more so, as I say, where I come from—Bardi Jawi. There is a governance system there.

I am afraid we need to prove to the government that we existed before Europeans came to Australia and we need resources to prove that, which is funding of some sort. If that is not going to be available to us then I do not think we are going to get very close to a settlement, and we might not be able to achieve what we want to achieve. I am not sure if I answered your question.

CHAIR—That is good. I will take that as an opening remark. I will go to Mr Sibosado and see if he has any opening remarks with respect to the terms of reference we have. If not, that is fine. Then I will go to Mr Murphy.

Mr Sibosado—I have an opening remark with regard to statutory rep bodies, which is the Kimberley Land Council, as stated in the Kimberley. First, I will declare my interest: I am also a Bardi person and part of the Bardi-Jawi native title claim, so I have had a fair bit to do with the land council. In terms of the rep body and its role with the ATSIC regional council—our role is in policy, advocacy and representation of Aboriginal people in this region—I think it is one area that could be improved. It is more of a coordination issue. I am certainly not having a go at the land council; I am just saying it is an area where, as Mr George, the chair, has said, there has been a tendency in the region for the rep body to progress people's land claims and issues while ATSIC regional council's main focus is on service or citizenship and delivery of essential services.

In recent times—and I cite Karajarri to the south of Broome; that is determined native title—some issues have arisen between the community or the historic people, if you want to call them that, of Bidyadanga and the traditional owners. We have seen a process where the determination has been there for well over 12 months, and the traditional owners have no sort of representative structure, administration or office. From speaking to those people, other than having the security of their land, they are not able to advocate anything. In my opinion, it is a resourcing issue for the prescribed body corporate. That is not what they do. They have got instructions to focus mainly on legal issues and progressing claims. I do not think a lot of thought has been given by

the government or the rep body to post-native title, and that is where some coordination could occur with the regional council. We will be finished next year on 30 June.

I will give the committee a glimpse of what I am talking about. The regional council has spent the last five years—I am in a position to say this because I have been on the last two three-year terms—planning with all the major communities around Broome. In our regional plan, we have gone back to wards based on an Aboriginal construct, as we knew this country before settlement. With the blessing of the communities, the regional council is currently proposing—it was a fairly big consultation process—to shift the boundaries within the Kullari region into four wards based on traditional boundaries between Bardi-Jawi, Nyulnyul, Nimanburru, Jabirrjabirr, Yawuru and Karajarri, and Nykina Mangala down south. We have now come up with a proposal which reflects the native title claims that have been lodged. My only comment is that it needs to be a bit more coordinated.

Mr Murphy—Not a lot at this point,2 because I am not directly involved with any native title claimant traditional owner or attached to families from this area. I was born in Port Hedland but I have connections, or family ties, to the Jura-Kija people in the Halls Creek and Turkey Creek area. That is where my family ties come from.

CHAIR—Gentlemen, thank you for those opening statements. I am sure the senators have some questions.

Senator CROSSIN—Mr George, it might have been you who made the comment that not enough thought has been given to post native title.

CHAIR—It was actually Mr Sibosado.

Senator CROSSIN—Sorry, I did not write down your name next to your comments, I just wrote the comments. Let us say that your claim is successful. Where do you go from there? What do you think is the next step for you if you have a successful claim?

Mr Sibosado—It is the subject of tomorrow, the land management functions, cultural protection and all those sorts of issues. What is not really documented anywhere is that a significant proportion of those 3½ thousand Aboriginal people—it could even be more now, they are fairly old statistics—still abide by and practise Aboriginal law. There are two components of Aboriginal law: there is the common law and the secret ceremonial business. Most people still abide by it and they can tell you where they come from, where their ancestors are from and also the relationships that are set by our common law. There are all those sorts of issues.

What I see at Bidyadanga, which is the example I gave, is that there are five language groups down there. Historically it was a mission; people were moved there. People worked out fairly early in the piece, as a community of people, the five languages that form the Bidyadanga Council. That is the way they chose to govern that community so that the five tribes were represented. In my view, with the native title claim, that community cohesion has broken down to a degree because of course the rep body has to focus on the traditional owners in progressing their claims to the exclusion of the historic people. It has created some tensions that I did not think needed to be there. I am very mindful of telling the community that it is my view.

Senator CROSSIN—We understand that.

Mr Sibosado—It may not be the land council's view or other people's view, but I was involved in that claim in the early days. As I said, I know a lot of those community people down there; I actually went to school with them. I am reporting the discussions I have with them about the disunity in that community now as the result of native title.

Senator CROSSIN—Tell me where the regional plan fits on top of this. Are you expecting a good outcome with the native title claim? You have got a regional plan to progress your areas, but you will have no resources to do that. Is that what you are saying? With ATSIC gone, you will become a prescribed body corporate but you will lack funds to do anything. Is that the problem?

Mr Sibosado—That is currently the problem. As I said, Karajarri—and it could be the same with Bardi Jawi—if it becomes successful, at the end of the day the land is there. We currently live on the land, but organising services—putting a roof over your head, having water to drink, electricity and health services and all those sorts of issues—is not necessarily the rep body's role. However, that is why I am saying there could be better coordination with ATSIC—while we are here—or any body that replaces us about those types of issues. I can clearly see, down at Karajarri or Bidyadanga area, where they have native title it has not equated to anything. People cannot move on to their country because they do not have the resources. So, other than holding the land, they cannot do anything with it because they do not have the resources to develop it or live on it—to do whatever it is they want to do—or protect it. Everything has to go through the Bidyadanga Aboriginal corporation—and, as I say, they are outvoted anyway. There are five language groups that form the council there and the other four are historic. That is going to be an issue down the track.

Your question touches on the regional plan. I believe it is a majority view of regional council that, if there is an alternative structure—we have planned for one, and it is now up to government whether we get that—we want to approach native title in a different way, rather than go through the courts and progress through litigation. We have set up those wards, based on our traditional boundaries. That is acknowledged by all Aboriginal people in this region. The long-term view is that, if there is an alternative body—whether it is a regional authority or ATSIC lives in some other shape or form—we want to negotiate native title with the government. I will be honest with you and say—and I think I have said it before—that, despite the amount of money we spend on trying to prove native title, at the end of the day you can only win a proportion. The reason I say that is that initially, when we put in our claim from Bardi Jawi—and I forget the term—we went for it being recognised as our country solely, to the exclusion of others.

CHAIR—Exclusive rights.

Mr Sibosado—Yes, but over the years, with the Wik amendments and all the other legal cases that have come before it and the precedents that have been set, it has now come down to: 'That is not what we set off to achieve, but it is out of our control.' Being rational about it, I am saying that we can spend millions of dollars and still not achieve the outcome that we set off to achieve. Also, in terms of relationships in the community—because that is near and dear to my heart as a regional councillor in terms of representing people—native title should not be driving wedges or

creating disunity in communities, because we have to live together at the end of the day when native title has gone and everything else has gone.

Senator CROSSIN—What would you do differently to stop that happening? You said that you would negotiate native title differently. What would you like to see changed about it?

Mr Sibosado—I guess I would just like a fair negotiation process. I have a good idea of what negotiation is. One party will put a position and, if that is not acceptable to the other party, then put it on the table and work out what is acceptable and what the areas of negotiation are. But with the current litigation approach we have to spend millions on lawyers and anthropologists and all the rest of it to put our case. I do not believe there is an open dialogue or a negotiation framework where you say, 'We won't come at this,' or 'We'll consider this but we won't consider that.' So one party has to compromise somewhere. But there has not been enough of that or there has not been enough goodwill from both parties—the claimants and the government. The perspective of a future council or future operation would be to try to negotiate that. We understand that there are some areas that are not negotiable. But let us try to achieve a realistic and honest sort of settlement.

Senator McLUCAS—Those were the two areas that I was interested in pursuing as well, so back to you, Chair.

CHAIR—Mr George, you have been a member—and I think Mr Sibosado has also been a member—of a successful claimant group with the Bardi. Are you both Bardi people?

Mr George—Yes.

CHAIR—Let us just go through this. You had representation from the land council in your claim. Did the Bardi people as such have to outlay anything in order to pursue their claim? Did it cost them anything?

Mr George—In terms of money and funding?

CHAIR—Yes.

Mr George—I would say in terms of man-hours put in by a lot of the elders. We sadly have lost them, and that could probably have partly contributed to some of it.

CHAIR—So there was a cost in terms of stress and strain.

Mr George—Yes, to our elderly. The younger ones that are left today appreciate it.

CHAIR—The land council came along and provided you with lawyers. Do you remember how many lawyers you had?

Mr George—I am not really sure—maybe three or four.

CHAIR—Anthropologists?

Mr George—Probably two in the process.

CHAIR—Do you know what a genealogist is? He does all the family trees. Did you have any of those?

Mr George—Yes, we have done a bit of that. With genealogy, people have stated where they come from, named other family members and how they are related to each other from that area and that clan group.

CHAIR—Did you have any archaeologists?

Mr George—I am not sure. I do not think so.

CHAIR—You had anthropologists but not necessarily archaeologists. Do you remember what else you got the land council to provide you for the running of your claim?

Mr George—You mean when they assisted us?

CHAIR—Yes.

Mr George—We were brought to different places to have those places recorded as sites of significance or places of importance and to record what it means to our people. We were brought around with vehicles.

CHAIR—Were you named as one of the individual claimants?

Mr George—I am not sure, but I spoke on behalf of my area, the Gurrbalgun. I gave evidence in Federal Court.

CHAIR—I know this is a very difficult question, but how would you judge the level of service that the land council gave your claim? Did they appear to be doing it very well? How did it look to you?

Mr George—For me to judge, generally speaking—

CHAIR—It is very difficult. Because you are only one claimant.

Mr George—Yes. I have only been through it once, and it is a heck of a lot of work. It is a big task as it is but, having said that—and it is the only one we went through—to me it looked like they were doing a good job.

CHAIR—All right. Were you aware of any problems that they were having in looking after your claim? Did they tell you, 'Look, Mr George, we can't go out to your country because we haven't got enough money'?

Mr George—I cannot recall them saying that to me directly, but sometimes you would get that feeling that—

CHAIR—Things are tight.

Mr George—Yes, that things had been tight.

CHAIR—Do you recall in what areas things were tight? Did they not have enough lawyers? Did they not have the capacity to get everybody together to hold meetings and things like that? Do you remember what the areas of problems were?

Mr George—I think there was a bit of everything—all parts of the area, to be honest.

CHAIR—Do you remember what year your claim was first launched—1994, 1995 or 1996?

Mr George—No. Like I said, it has been stressful and tiring. I cannot remember. I think that might contribute to why I cannot remember.

CHAIR—All right. What is going to happen with respect to the Bardi Jawi? Forgive me if I have got that name wrong, because I have a lot of Aboriginal claims to try to remember.

Mr George—I understand it as 'Djawa', without an 'i' or 'e' in it. But people pronounce it 'Jawi'—like they say 'Bardi', when Bardi was always said 'Bard'.

CHAIR—Let's say the Federal Court determines that you should be given a grant of native title: what do you think you need to do? You have to have a prescribed body corporate, which is going to hold your native title for you.

Senator CROSSIN—They are going to have a big celebration first, I reckon!

CHAIR—Sure—that's right! But what do you look to the prescribed body corporate to actually do? Have you got anything in mind as to what difference it is going to make to you in terms of having a grant of native title?

Mr George—My personal view is, firstly, when you said, 'What if you get native title,' I did not smile for that. But now you might be hinting we might get native title. I do not know if you know something I don't know but—

CHAIR—I would love to know something, but I do not.

Mr George—With respect to the question, my own understanding of a prescribed body corporate, I suppose, is to look after the land for the claimant group and, from there, to form a committee on how to look after business in the prescribed body corporate, protecting the land for the future generations to claimants from the area. It would probably be part of negotiating with interested parties on development—whether it be tourism or other ventures.

CHAIR—I would anticipate—I do not know whether you do too—that that is going to cost some money. You are going to need an office; you are going to need a fax and phone and maybe an employee, even on a part-time basis. Where do you anticipate the money is going to come from to do that? Has anyone given that any thought?

Mr George—I was hoping that the government could help us, initially, in starting up. And probably later on, if some ventures and enterprises are successful from the land groups, we could probably become self-sufficient. That is the way I see things at this moment.

CHAIR—So to get the ball rolling—to get the office set up and to get things stabilised—you need some initial seed capital, if we were to call it that, to get the show on the road.

Mr George—Yes, that is the way I see it.

CHAIR—How many people are in your claim? What does the claim represent? Do you know?

Mr George—Probably 1,500, or maybe more.

CHAIR—Are there any questions from the committee?

Senator McLUCAS—Mr George, thank you for those thoughts. If you were to have an office, where would you have it? I know you would have to go back and talk to your people, but, in your mind, where would you have the office?

Mr George—I always say the best place to have any office is in the place where people live. If it is a Bardi Jawi claim and it is all about land issues, then I believe the office should be up there in Bardi Jawi country.

Senator McLUCAS—Thank you. This is an area of the committee's interest that many people have talked to us about.

CHAIR—Gentlemen, thank you. That has been very informative. I believe you are the first witnesses tomorrow for Senator Crossin's select committee. I will be in attendance but she will be chairing that. Of course, you know that is about the changes to ATSIC and all of those other matters. Thank you very much for that important information on the experiences that you have with respect to your claim and the funding of the rep body and its performance.

Mr George—Thanks to the committee.

Proceedings suspended from 4.34 p.m. to 4.54 p.m.

CARTER, Mr Andrew, Chairperson, Ardyaloon Inc.

NARDI, Mr Walter Peter, Councillor, Bidyadanga Aboriginal Community

YANAWANA, Mr James Robert, Chairperson, Bidyadanga Aboriginal Community

CHAIR—Welcome. Gentlemen, do you have anything to add on the capacity in which you appear?

Mr Carter—Ardyaloon Inc. was formerly known as One Arm Point. We are of the Bardi Jawi tribe and we are about 240 kilometres north-west of Broome, at the tip of the peninsula.

Mr Yanawana—The Bidyadanga Aboriginal community is about 180 kilometres south of here and consists of five language groups.

CHAIR—Thank you. I had a brief discussion with you before you came into the committee, but I will point out to you some of the procedures under which the committee operates. If you want to talk about anything in private, please do not hesitate to ask the committee and we will consider whether your application to go in camera, as we call it, should be agreed to. Normally we would agree to that. The committee would prefer evidence to be given in public because important things that you have to say will not necessarily be published if said in private. However, the Senate can resolve to publish what you say and you can determine whether what you say can be published also. When you get a copy of the *Hansard*, you can look at the pages and say, 'I don't want to publish this part, but I will publish the rest.' The secretariat will assist you to do that. If at any time you want to tell us something that you think should be said in private, ask us to go in camera. Mr Carter, would you like to make an opening statement?

Mr Carter—I am not really that prepared. We only received information last night. I personally have not had much to do with the Native Title Act, because that is usually coordinated through the native title prescribed body corporate that they have got organised. It is mainly done through all the elders who represent the actual communities of the tribes. As I said before, I am associated with the Bardi Jawi tribe, which is currently going through the native title hearings.

One of the big issues that I and a lot of other people on the ground have is that a lot of information is not coming back to the people themselves in the communities. There is not enough feedback, communication. As chairperson, I find that a lot of it seems to be diverted. The chairperson and councillors of a community need to know exactly what is happening around us within our land areas, because we are the custodians elected by the members of each community. Unless we ask for it ourselves, the information does not get on the ground to the people. A lot of the information has been held back. A lot of people—I will say the elderly people—who do go down and represent all the members are not taught how to come back and communicate with the rest of the community, in other words, to bring the information back down. I think it is widespread. It may be the same in Bidyadanga; I can only talk for myself. That is something that we have experienced.

CHAIR—Mr Yanawana, would you like to make an opening comment?

Mr Yanawana—Like I said before, we have five language groups at Bidyadanga. I am from one, Mangala, and the five tribes are Mangala, Juwaliny, Yulparija, Karajarri and Nyangumarta. But the four tribes from the desert are Mangala, Juwaliny, Yulparija and Nyangumarta. We are on a traditional land area belonging to Karajarri. Bidyadanga consists of about 800 members from all the tribes. The main thing is that Bidyadanga was built up by all of the existing tribes, but what is happening is that they are going onto native title. On behalf of Bidyadanga, I believe that we will be looking at entitlement as we have grown up in that area. We believe that we have no lawyers to help us out with the land within that area of Karajarri—for help with the four existing tribes' land. The Karajarri mob have the KLC and a lawyer to back them up, whereas the four existing tribes, which are Mangala, Juwaliny, Yulparija and Nyangumarta, do not have. We believe that we should be entitled to have a lawyer to help us along in what we say and what we do there.

CHAIR—Mr Nardi, do you want to say anything in addition to what the chairman has told us?

Mr Nardi—No, I am all right.

CHAIR—That is good. I will hand over to the senators for some questions.

Senator CROSSIN—Mr Yanawana, you have a native title claim that you have lodged. Is that right?

Mr Yanawana—No, the traditional owners are Karajarri.

Senator CROSSIN—They have lodged a native title claim?

Mr Yanawana—Yes, they have lodged a native title claim on their own land, which is around Bidyadanga.

Senator CROSSIN—So they will not have the Kimberley Land Council helping them as their native title rep body?

Mr Yanawana—I think they will, yes.

Senator CROSSIN—But are there are some concerns that the Kimberley Land Council's resources will be so stretched with all the work they have that they will not be able to give you enough time or enough lawyers to help with that claim? Is that the problem?

Mr Yanawana—No, what I am speaking about is that the Karajarri members have their own lawyer and the KLC to back them up, to speak for them, whereas the four other tribes that I have mentioned from the desert have not. There is no resource—support, I could say—for the rest of the tribe members who are there.

CHAIR—Perhaps I can be of some assistance—just correct me if I am wrong. Bidyadanga is a community south of Broome. It is an old pastoral lease, in fact, is it not?

Mr Yanawana—Yes.

CHAIR—And it has five language groups living on it.

Mr Yanawana—Yes.

CHAIR—One of the language groups is the traditional owner of the country, but for a very long time the other four language groups have been living at Bidyadanga, and the other four need some sort of representation before the native title claim of the one traditional owner group, so that everything is decided on a fair and equitable basis.

Mr Yanawana—Yes.

CHAIR—Is that right?

Mr Yanawana—Yes. I will go into a bit of detail here. The No. 1 thing we are afraid of is losing access to use the land—access to the beach and taking our children out. They have been collecting sand, firewood and stuff. We had a meeting last week with them and two members said it was okay for us to go out anywhere that we want. But, in detail, one member said that we have to respond and just learn to listen to the Karajarri. After all, we have grown with them, lived with them and made it with them.

Senator CROSSIN—You have got a lawyer. How are you paying for that person?

Mr Yanawana—We have not got one.

Senator CROSSIN—So you need a lawyer. Is that not where the Attorney-General funds kick in?

CHAIR—I am thinking that that is where we could do that, but it is a very interesting situation. I was going to ask them about the history of Bidyadanga and how it is that the five language groups exist there and only one of them has a claim. I think that is very novel. Mr Yanawana, tell us: how did you get Bidyadanga? What happened? Did the state government give it to you; what happened? Do you remember? How long has your community been at Bidyadanga?

Mr Yanawana—From the early seventies or the sixties. See, what happened, through the welfare system they went out collecting people from the desert and brought them in. My family comes from the riverside and they brought all of the family into the mission.

CHAIR—Bidyadanga was a mission, wasn't it?

Mr Yanawana—Yes.

CHAIR—That is right; it was a mission. But it was on the same site as a pastoral lease.

Mr Yanawana—Yes.

CHAIR—That is very interesting, and it is a very interesting problem. We might be able to talk to you afterwards as to what you can do about that and we might be able to assist you.

However, for the purposes of this matter, have you made application to the land council for assistance?

Mr Yanawana—As far as I have noticed, they have only talked to the one language group. That means that one language group is going for its own native title and land claim entitlements. In doing that they are disregarding us and putting us to one side.

Mr Nardi—At Bidyadanga, we want to build our community up, the whole tribe. But when we want to ask for sand and we get back to the members of that particular group they say that they will get back to us, whereas they will not. We find it a bit difficult because they are holding up the progress of the community.

CHAIR—Does the claimant group live at Bidyadanga?

Mr Yanawana—Yes.

CHAIR—All of them?

Mr Yanawana—Yes. All of them do and some are in town.

Mr Nardi—The Bidyadanga Aboriginal community have been living there since we were kids and we have children now. What we have been fighting for is that we are not getting enough support or feedback from that one particular group. Five tribes got together when our people came in from the desert. The old people from the Karajarri tribe brought them in and said 'This can be your home, you can stay with us.' That is what happened and now we have Bidyadanga. Now we feel as if they are trying to take over. There is this Karajarri mob there, the group that belong to us. In our language we call them Garraninibirrdi, who belonged to the five tribes—what would have been five tribes before Bidyadanga. Since this native title came in, you have this outside mob that had been in town all the time. They are the ones that come in to the community because of this native title claim and they call themselves representative bodies. Whereas the mob that was in there in the first place—we all helped Bidyadanga up—have not got the say. The outsiders come in and say 'We are Karajarri mob.' We are saying 'Where were you when we were building Bidyadanga?'

CHAIR—What is the land tenure at Bidyadanga? Is it a pastoral lease or a special lease? Is it freehold?

Mr Yanawana—I think it is freehold or perhaps it is on crown land. I am not too sure

CHAIR—If it is freehold, you do not have a problem; if it is crown land, you probably do.

Senator McLUCAS—Mr Yanawana, I come from Queensland. What you have just described is quite common in North Queensland where people either came from other country to a place or were moved, especially to missions, so what you have just described is something I have come to understand and I do understand some of the difficulties that you face. Do you talk to the KLC? I know the KLC is representing the particular claimant group even though you guys are all living there. When you want to do something for the council, such as get some sand or do

something like that, do you talk to the native title claimants that are in your community or do you talk to the KLC?

Mr Yanawana—We talk to the native title claimants—the members of that particular group.

Senator McLUCAS—Those particular people who are living with you?

Mr Yanawana—Yes.

Senator McLUCAS—It might be helpful for you to talk to the KLC as the council—do you know what I mean? Have you tried that before?

Mr Yanawana—We tried that before.

Senator McLUCAS—What happened?

Mr Yanawana—At various times we have tried arranging a meeting for them to come down to sort out these issues about land and what is going to happen to the members of Bidyadanga and Bidyadanga itself. We still have not come to an agreement on it.

Senator McLUCAS—Do they come and talk?

Mr Yanawana—The only time they talk is to help the particular group who want the land.

Senator McLUCAS—They will read this piece of paper and they might come and see you.

Senator CROSSIN—Mr Carter, you said there is not enough information going back to other members in your community. Is this from traditional owners or people in your community who have been to meetings or from the Native Title Tribunal or from the Kimberley Land Council and organisations?

Mr Carter—It is a combination of all of them. It is not only KLC; it is also the representatives that go out from the communities. As I said earlier on, the main reps that do go out and represent the communities are mainly the elderly people. A lot of the younger ones are not involved in it and they are not given the opportunity. Sometimes it is sort of segregated. They pick certain families and just stick to them. It is not what you know but who you know.

Senator CROSSIN—So they do not come back and have a big community meeting and tell everybody what is happening?

Mr Carter—No, they do not. This is a problem that I have raised a few times with the KLC. We are not getting enough information on the ground. I have actually had to go in to the KLC office and try to pick their brains to get some information, rather than hear it on the grapevine. A lot of issues in the Kimberley you hear about on the grapevine before you see them on paper. It gets people talking a lot, and you do not know exactly what is the truth and what is not the truth.

Senator CROSSIN—What do you think is the way around that? What do you think should happen? Perhaps after each meeting there should be a one-page summary of what happened.

Mr Carter—A public document should be sent out to each of the communities who are affected by any native title claims and whom the KLC is representing. But a lot of it is not public.

Senator CROSSIN—I can understand that. If you have a meeting with your traditional owners and you are trying to get your case together, you do not want to make your case public.

Mr Carter—I mean public for the community members, because they are all Bardi Jawi people. It is not as if it is going to be public in the town for every Tom, Dick and Harry to look at, or every different tribe.

Senator CROSSIN—Have you raised this with the Kimberley Land Council?

Mr Carter—Yes. I think it is an issue right across the board—even with Bidyadanga, just from hearing what James and Walter were saying.

Mr Nardi—I would agree with that.

Mr Carter—It does affect a lot of people.

Senator CROSSIN—Kimberley Land Council gave us evidence today that they have had budget cuts. Their resources are stretched and they have a large number of cases, so for them to also produce a document after each meeting for each different area would be another drain on their resources. Perhaps it is just a matter of them trying to prioritise how they spend their time and their money.

Mr Carter—That raises another issue: how they prioritise things. They take on all these claimants, instead of doing claims one at a time. They are trying to take on too much at one time. I may be wrong in saying this, but I think that is why the rest of the claims are going on the backburner. We have actually experienced issues like that, not only with KLC but also with other departments and other issues. They take on too much work, and we get left behind. They are trying to generate more income. It all relates back to the funding.

Senator CROSSIN—If they had a large enough amount of funding to do the job, everyone could get service at the same time.

Mr Carter—Court cases get dragged on. Our next court case, I think, is in September this year. The last one was in November last year. There is that time there where nothing gets done. So what are the lawyers doing? Rather than concentrating on one thing and giving us all the information, they are probably running off creating more work for themselves, saying, 'Let's forget about them and continue with something else.' We do not know how they operate.

Senator McLUCAS—Not only does the court system describe the time frame in which matters will be heard but also the Native Title Act requires that certain things have to happen in a certain time frame. I am not here to defend the KLC or any other land council, but I think it is fair to say that their work program is sometimes directed by both the court and the act, rather than by what they would like to do on your behalf.

CHAIR—Mr Yanawana, does the Bidyadanga community have an incorporated body?

Mr Yanawana—Yes.

CHAIR—And each of the five language groups are represented on that body corporate?

Mr Yanawana—We have a council, with two from each tribe. The council sits every month on issues of the Bidyadanga.

CHAIR—Has it met to address the issue of one of the language groups making a native title claim over the land of the community? Has that issue been discussed by the council?

Mr Yanawana—Yes.

CHAIR—It is a very delicate issue, I would think.

Mr Yanawana—Yes.

CHAIR—So it is a problem for discussions to be held by the council, is it?

Mr Yanawana—Yes, sometimes it is.

CHAIR—The most important thing for the community would be to have the representation of a lawyer.

Mr Yanawana—When we are going to talk about land issues, yes, we do need a lawyer.

CHAIR—Has the community thought of being a respondent to the claim?

Mr Yanawana—What do you mean?

CHAIR—I mean participate in the claim—that is, actually lodging papers to say that you are an interested party and that if these rights were granted to the claimants it would affect the community.

Mr Yanawana—Yes.

CHAIR—So it has thought about doing that. What has been the obstacle to or the problem with doing that? Has it been resources?

Mr Yanawana—There have been representatives from both parties, the KLC and the traditional owners of the land.

CHAIR—So no-one has been prepared to provide you with any assistance, in the form of resources for lawyers or for advice, as to what the community's position is?

Mr Yanawana—No.

Senator McLUCAS—The other way that some communities I have seen in your situation deal with this—instead of looking for a legal answer and going to lawyers or becoming a respondent to a claim—is to look for a negotiated outcome. So instead of looking to become a party to the legal process of determining native title you would think about negotiating an outcome. I do not know if you have thought about that as a council.

Mr Yanawana—We have someone looking into that issue—someone giving us information and helping us out. He is a lawyer. His name is Theo North. So we have a lawyer to assist us. The problem is arising within the Bidyadanga. We would expect this to involve the Bidyadanga only not the outside—outside meaning the traditional law and the Karajarri. The place is getting too big and we want to develop more and expand for the Bidyadanga.

Senator McLUCAS—So that lawyer is helping you with those discussions?

Mr Yanawana—Yes, on the land issue.

Senator McLUCAS—On the Bidyadanga land?

Mr Yanawana—Yes.

Senator McLUCAS—Do you want to talk to us about what they are telling you? You may not want to.

Mr Yanawana—No, I do not want to.

Senator CROSSIN—Have you talked to anybody from the National Native Title Tribunal or had someone from that tribunal come up and talk to all of the groups—for example, someone from the tribunal office in Perth—to get an outcome?

Mr Yanawana—Not really.

Mr Nardi—Do you mean to mediate with each other?

Senator CROSSIN—Yes.

Mr Nardi—No, even though we did, at one stage, ask.

CHAIR—You have asked?

Mr Nardi—Yes.

Senator CROSSIN—Maybe someone from the NNTT might read this *Hansard* as well and decide to make a trip up, because they also should be there to help you. Maybe they need to make contact with you as well.

Mr Nardi—That is right. I want to say something about the lawyers who represent the Karajarri corporation. We have never been anywhere else. Bidyadanga has been our home. We

have travelled around this land of Australia. We do not go to big places where they speak high talk. The lawyers would come back and speak to us in their way of high talking and we would not understand.

CHAIR—I know exactly what you mean.

Mr Nardi—We would like that to be broken down so that people can understand.

Senator CROSSIN—You are not the only person who feels that way. I do not have a law background, so if they could break it down for me too, that would be very useful.

Senator McLUCAS—Mr Nardi, when you say 'the lawyers' do you mean KLC lawyers and other people as well?

Mr Nardi—The KLC lawyers.

CHAIR—I do not think we have any further questions. I want to thank you very sincerely for taking the time to come in and talk to us about these problems; they are very important issues. I thank you very much on behalf of the committee for taking the time to come in and present them to us. Thank you very much.

Committee adjourned at 5.26 p.m.