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JOINT STATUTORY COMMITTEE ON

NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND

Monday, 21 November 2005

Members: Senator Scullion *(Chair)*, Mr McMullan *(Deputy Chair)*, Senators Crossin, Evans and Siewert and Mr Melham, Mr Randall, Mr Slipper and Mr Tollner

Members in attendance: Senator Scullion, Mr McMullan and Mr Melham

WITNESSES

Committee met at 9.29 am

CHAIR (Senator Scullion)—I declare open this public hearing of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account. I welcome everybody here today. This is the fifth hearing in the committee's inquiry. 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: the structure and role of the native title representative bodies; resources available to native title representative bodies, including funding and staffing; and the interrelationships with other organisations, including 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 Native Title Tribunal. This led the committee to recommend a follow-up inquiry into the representative bodies. The recent inquiry into the administration of Indigenous affairs recommended that this committee carefully examine the issue of conflict of interest in the funding of native title representative bodies as part of its current inquiry into the native title representative bodies. Almost all the submissions we have received have concerned themselves with issues surrounding funding and its delivery, administration and adequacy. These will be carefully considered by the committee in its report.

[9.31 am]

GALVIN, Mr David John, General Manager, Indigenous Land Corporation

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and I understand that you are well familiar with the processes of committees.

Mr Galvin—That is correct.

CHAIR—I now invite you to commence your briefing presentation, after which we will move to general discussion.

Mr Galvin—Our submission is not lengthy. Do you want me to take you through it, or would you prefer to go straight to questions?

CHAIR—If you have some opening remarks, please make them. If not, we can happily go straight to questions.

Mr Galvin—I think it would be just as easy to go straight to questions.

CHAIR—Over some time, you have made representations on behalf of the Indigenous Land Corporation to a variety of government committees. It sometimes appears that that is your only connectivity with government as a whole. We do not hold committees at your behest; we do not hold them when you, as an organisation, have some challenges. They are just held as a consequence of saying, 'Oh, we're around to that now; we're around to this now.' As a significant stakeholder in these processes, how do you think your relationship with government and, more particularly, your understanding of relationships between other representative bodies and government can be improved or altered?

Mr Galvin—I think our relationship with government, in general, is demonstrably through our minister, Minister Vanstone, and that we now have a very good relationship with her. We also conduct briefings for opposition shadow ministers for Aboriginal affairs and, in the past, I have provided one to Mr McMullan. We conduct a variety of briefings. We attend Senate estimates and also this committee quite regularly. I note that we regularly brief other members of parliament. For instance, I know that David Johnston, the former chair of this committee, representing the federal minister, attended the joint launch of the Kimberley Indigenous Management Support Project with Kim Chance, West Australian Minister for Agriculture, Forestry and Fisheries. So I believe that we have a good relationship with government, in general. We have a very good relationship with a number of state and territory governments.

With regard to native title representative bodies, throughout the year, every year, we conduct briefings on our activities. In that regime, we always brief native title representative bodies in the respective states and territories. I think our relationship with NTRBs is constructive. In our submission, we provide a run-down of how we see NTRBs working. We put them into three basic categories: statutory bodies, non-statutory NTRBs and de facto NTRBs. We believe that, in

general, statutory bodies—whether the NLC, the CLC or the Torres Strait Regional Authority—have a greater capacity to deal with issues. We believe that the regime around those bodies probably provides a better management structure, which allows us and probably other people to deal with them in a more reasonable and coherent sense.

With regard to the non-statutory NTRBs, as the majority are across Australia, there are many capacity and management issues. We have set out the problems these NTRBs have in attracting staff and perhaps with being diverted from their main course for political reasons et cetera. We believe that, in some regards, being underfunded probably does not assist them in conducting their work as well as it could be conducted.

Mr MELHAM—So you accept that they are underfunded.

Mr Galvin—Anecdotally, we believe that is the case in a number of areas, particularly when there are many cases and caseloads regarding not only claims but also mining work and applications et cetera.

CHAIR—In your submission, you say that there are core functions and other functions.

Mr Galvin—Yes.

CHAIR—Could you describe briefly what you consider their core functions to be, particularly with either pastoral or mining activities and the interaction there? What if the funding provided to them just looked at that core work, did that and did not provide for these other levels of amenity they are naturally asked to provide?

Mr Galvin—I will make a statement before I answer that. I was the general manager of the Torres Strait Regional Authority for five years. The Torres Strait Regional Authority is an NTRB, so I have experience as the general manager or CEO of an NTRB. I believe that the reality of focusing solely as an NTRB and trying to divorce yourself from being a land council and being politically active for all the reasons a land council would be active is no easy thing. Because the land councils are made up of people who are elected throughout the community, their goal is to pursue land rights on behalf of Indigenous people through any means they can, political or otherwise. If an NTRB's role could be confined to focusing solely on what is prescribed in the Native Title Act, that body would serve people better. As the general manager of the Torres Strait Regional Authority, I think we would be able to confine the NTRB's sole process and deliberations to functioning for native title claims—

Mr McMULLAN—Is that because there was somebody else to do the other work? The regional authority has a broader brief.

Mr Galvin—Yes.

Mr McMULLAN—So it is a little like you say that you now see the CLC. There is a demand from people in the Torres Strait and elsewhere—for example, today in Queensland—that more be done than what are narrowly described as the core functions of an NTRB. In the Torres Strait in the NLC and the CLC, there is somebody to do that, but for some of what you would call the non-statutory bodies there is nobody else to do that.

Mr Galvin—From my perspective, it may be more that a better management regime exists. It has grown up as a better management regime, so you are able to divorce the political and the other from your job as an NTRB solely focused—

Mr MELHAM—Is it just a better management regime, or are there different pressures? In itself, the Torres Strait is a little different from the NLC, the CLC and the Kimberley Land Council and the pressures placed on them.

Mr Galvin—Going back, there were 67 overlapping native title claims in the Torres Strait so, when we started, there was as much pressure, if not more. We were focusing on dealing with those issues while we had all the other issues. In a sense, I do not think there is any less pressure but I think there is a better statutory regime and a better management regime. Because of that, it is easier to get better management and better lawyers et cetera to focus solely on NTRB responsibilities while the other work proceeds. But certainly the pressure to resolve those 67 overlapping claims was tremendous.

CHAIR—I think my colleagues have referred to the differences between the Northern Land Council and the Central Land Council and the TSRA. For example, the TSRA had the benefit of the inter-island council, the membership of which is only two different from that of the TSRA. I am talking about the general roles.

Mr Galvin—Yes.

CHAIR—What if we had said: 'Look, forget about being a land council and so on. You have to hive off part of your land council, so you just deal with representative body issues and nothing else.'

Mr Galvin—Yes.

CHAIR—In fact, in some cases it has certainly been put to me that we would have been better off if there had been another establishment that had been resourced just to deal with these issues. There is a natural tendency—I think it is reasonable and I certainly accept it—that, generally speaking, Indigenous representative bodies of all types, particularly land councils, are underresourced for a whole range of reasons when compared with the expectations of their constituents. Do you think perhaps a better approach would have been to excise a body specifically to deal with those representative issues for which the NTRBs were initially intended?

Mr Galvin—In my opinion—and not speaking for the Indigenous Land Corporation—in a number of cases, that would have worked better. I think we are seeing these, as we call them, de facto NTRBs—now there is one in New South Wales, one in Victoria and one in south-east Queensland, or going down that way—being able to focus just on their NTRB responsibilities.

Mr MELHAM—I am a great fan of the CLC. I make no apology that I regard the CLC as the best performing land council that I have seen in this country. Because of its size, it is able to be resourced and staffed appropriately. If we hive these off, as mentioned by Senator Scullion, will we end up with a specialist organisation that is not quite big enough to do the work properly? It is a resource question.

Mr Galvin—From my perspective, we have the NTRBs, particularly with the CLC, the NLC and the TSRA. I do not see any reason to hive those off. I am talking more about what we call the non-statutory NTRBs, one of which is native title. I just cannot remember what it was called in Victoria, but that was constantly going through problems of administration, capacity, political turmoil et cetera. Now that has been done away with and there remains just a native title representative body, I think there is much more coherency. We find that in particular; we have dealt with it.

Mr McMULLAN—That was what I was coming to. I am very interested in your saying that. How does it show up in your relationship with them? Can you tease that out a bit, because that is very interesting?

Mr Galvin—I have attended a couple of general meetings with the old body in Victoria. It is amazing that, instead of focusing on the big picture, people were focusing on their own minute problem, which was probably a big problem for them. Ten people, including me, were around a table having 10 different arguments and points about a small block of land somewhere, instead of having an overall perspective of how we could pursue native title rights in Victoria, how we could negotiate with the government et cetera. I never found a single, coherent view, particularly in the old body in Victoria, because, at the table, you were talking about an historical past—liaisons with the ILC that might have dated back to 1996 et cetera. It was very hard to move on from that.

Mr McMULLAN—There are a few other models around, aren't there? South Australia has a non-statutory NTRB, but it is for the whole state. It does have some of the scale questions that flow from some of the statutory bodies. What is your experience there?

Mr Galvin—I think overall we have a pretty good experience in South Australia. An example of our not having a good experience was when the native title representative body was situated in the New South Wales Land Council. That was very difficult. It was all caught up in the politics of the New South Wales Land Council. Probably the administrative problems in the New South Wales Land Council were reflected in it being put into administration by the New South Wales government. In my opinion, it has a lot to do with the cohesion and stability of the representative body. If you are having constant CEO and PLO changes, you are going to find it very hard to get a good result.

Mr MELHAM—How much of it is a result of the pressure of underfunding on some of them? There is a burn-out pressure in terms of the staff and others.

Mr Galvin—Anecdotally, I think there would be two big problems there. One is that the underfunding could be a result of that. I would be careful to say that underfunding is not the whole problem. It may be from not having a proper management regime. It may be the political pressure. It may be the elected body to the NTRB not having the capacity and then putting pressure on the PLO and then on the CEO of the organisation without understanding that things cannot happen automatically: you cannot automatically get a result through the NTRB process. In my opinion, that would produce burn-out just as much as being heavily underfunded would.

Mr McMULLAN—In your land management function, I seem to remember that in previous discussions, when you came before the committee in response to the annual report, we talked

about the expectations of people who had access to land other than through you—not necessarily native title, but that might be part of it—and who were looking to you for land management assistance. Can you talk about that a bit—generally at first? But then I particularly want you talk about it in relation to prescribed bodies corporate—that is where I am going.

Mr Galvin—That is a call on our resources. We have a number of land management funded programs on land that is not ILC purchased land in the Northern Territory—whether it is weeds and mimosa from the Top End; whether it is the Indigenous pastoral project, which is a project across the Northern Territory assisting pastoral properties get back into production, which, I might add, has been highly successful; or whether it is in the Kimberleys with the Kimberley Indigenous Management Support Service. We are also funding small things in the Kimberley, whether it is weed eradication or planning across Indigenous lands outside Kalgoorlie. We are actually funding the rep body there—not for a large amount of money; it is joint funding for a position—where they are looking at unallocated crown land that the Western Australian government wishes to give back to Indigenous people just to see which is the most appropriate land.

In Victoria, we are jointly funding with FarmBis to look at all lands across Victoria in regard to having property management plans et cetera on those lands. We have joint programs with FarmBis in Western Australia, South Australia and the Northern Territory to look at the management of Indigenous held lands. I think we do a good job in looking at non-ILC held lands, whether it is native title lands or statutory Aboriginal held land through various regimes.

Mr McMULLAN—Thank you. That expands on what you said before, and it is consistent with my understanding. One of the things that has been put on our plate on this matter, and has been referred to generally by the government in its proposals about reform—though not specifically yet—is the problem that the law sets down that, when native title is successful, the title transfers to this prescribed body corporate, but nobody ever thought about how it gets the resources to start the management. If it is successful, resources will flow from the successful management of the land. But how do you get from zero to that point, only with regard to some of it—that is, that which might be useful in a pastoral capacity or something in which you have experience? There might be a role for you. Have you dealt with any of those prescribed bodies corporate or any of that land that has been transferred by native title? What has your experience been?

Mr Galvin—Yes. I am trying to think of some instances. I cannot think of them off the top of my head.

Mr McMULLAN—Perhaps you could look at that for us. That would be useful.

Mr Galvin—However, at the full conference of the native title management group in Perth, Shirley McPherson, the chair, said, 'We are happy to take any applications in regard to land management on native title held land in a land management process.' When people ask, 'Should you fund prescribed bodies corporate?'—and people have asked that—we take the view that we have 100 corporations that we have divested land to across Australia. None of those are funded on an ongoing basis. The capacity of the group to manage land should be done internally. We are glad to help people and give them assistance in capacity development, property management plans, business plans et cetera, if necessary, in conjunction with the Office of the Registrar of

Aboriginal Corporations, to develop good corporate management practices. But we believe the ongoing funding of our corporations and prescribed bodies corporate would be inappropriate. We believe that if there is, for instance, significant mining potential, where a lot of criticism is that people do not have the resources and capacity, there is room to negotiate with the mining companies to fund that capacity.

Mr McMULLAN—In the medium term, maybe even quicker than that, I think that is right. We need to find a way and perhaps the way you describe is a way. It is not direct funding like giving them a cheque; it is providing the resources to enable them to get started. But something does need to occur there. There are three different categories as it relates to you. The first are those that are likely to move into areas of your expertise that are comparable to the corporations that you assist with land that you acquire. Maybe we could look at some manner in which these bodies get the same sort of assistance that you provide. The second category are people who are getting land that might be economically useful in some other way. Everyone thinks about mining as the most obvious example. It might not be the best, though. What I am apprehensive about is that the body that we set to negotiate with the mining companies on behalf of Indigenous people is funded by the mining companies. We had that issue before us at our hearings in Western Australia. The representatives of the mining industry were also a bit apprehensive about that, first of all because they are not that keen on that call on their money. But I am not so much looking at that because you could deal with that in some way that was not unreasonable to them. But you do get a conflict of interest problem immediately you start saying, 'Somebody is funding both sides of the negotiations.' That is a bit of a problem. The third category are people who get native title land that is culturally significant but economically of no value. You have to decide what you do about that.

Mr Galvin—The first one and the last one can fit neatly within ILC's regime. For the first one, whether it is pastoral property or tourism on properties, we can provide assistance under land management and capacity building et cetera. The last one—the culturally sensitive land or important land—we can also assist through land management and advice and through dealings with the Natural Heritage Trust et cetera, which we have good joint programs with. We have no problem with this category.

The middle one is a lot harder from all perspectives. Maybe that is where there is a role, if the group wants to have a role, for the NTRB to be that facilitator for those negotiations. They do not have to be, of course, but they can be. Mining companies providing funds for those negotiations through the NTRB could well be a possibility. I suppose mining companies might argue that some of the NTRBs do not have the capacity to do those negotiations. The real challenge is to get the capacity into those organisations.

Mr McMULLAN—What is clear is that prescribed bodies corporate in the main at this stage do not have the capacity to have those negotiations. NTRBs have variable capacity. That is very helpful. I am not absolutely sure what the conclusion out of that is yet, but that is very helpful. Thank you.

CHAIR—Supplementary to what Mr McMullan was speaking about—and correct me if I am wrong—historically the capacity of people to derive some benefit from their land in a fiscal and social sense appeared to be reasonably limited when the Indigenous Land Corporation started. It was a process—not entirely, but largely—of handing over land and saying: 'Our business is

done. There it is. Good luck. Off we go to the next piece of business.' The social, economic and environmental outcomes were limited.

Then there was a policy change which resulted in giving land but part of your resources and capacity went to ensuring that people had the capacity to understand management and all those things, which now includes FarmBis. There was also some funding allocated to financial management as well as some allocation of resources within Indigenous land corporations to ensure those outcomes. Those outcomes now—we have heard this through a number of other processes, including estimates—have been of inordinate benefit in comparison with the original ones.

Mr Galvin—Yes.

CHAIR—I think my colleague was referring to this. If we apply the same sort of model it is almost as if we have said exactly the same: 'Here's land. We will give you the names of prescribed organisations—but that is it.' There are no resources in terms of management, training or increasing capacity, as was done with the Indigenous land corporations. I guess the benefit would be in applying the same model, which I think Mr McMullan is suggesting. If we applied the same model, when the prescribed body corporate came onto the land perhaps there should be support from some process to ensure that that land became of use to those people—because without that it is just simply the title. Can you make some comments on that?

Mr Galvin—I certainly can. One of the things that we found out when we conducted the stocktake report looking back from 1995 to 2000—and nearly to 2001—was that on the 156 properties that were purchased by the ILC only 15 per cent were delivering what people set out to deliver. Basically, as Senator Scullion said, the ILC purchased land, divested it as quickly as possible, and then moved on to the next regime of land purchase. The purchase of land was seen as a benefit. In fact, in hindsight, not only was it not a benefit, it was actually an albatross around people's necks because they did not have the capacity to deal with that land, to pay rates and to manage the land properly.

I will give you a quick summary of what we have done with that land. We have now gone back and created the remediation program where we have asked people to come to us, develop property management plans, show capacity and commitment, and we have assisted in changing those properties, as much as we can, to become sustainable, whether it be through leasing them out or developing small enterprises on those properties. We probably have an 80 per cent take-up on that; 20 per cent of people do not want to know about us, are doing quite well or do not have the capacity because they are dysfunctional or there is conflict.

Of the 80 per cent there are some outstanding front runners and a lot of people caught in the middle who find it hard to get going but who want to get going. We are dealing with them slowly. This is a reciprocal, mutual obligation. We say, 'We will give you a property management plan and some money for the fencing but you put in the fencing yourself and you do some other things.' It is give and take. I think it is going well and we have committed upwards of $6 million to that. Under the new program which we have developed—and this is where there is a fundamental difference with what happens in regard to native title claims—people have to focus on what they want, whether it be a social application, an economic

application, a purely cultural application or an environmental application. Once people have chosen their primary purpose we say to them, 'Come up with a management plan.'

Very interestingly, we have just got a contract to purchase a house here in Cleveland for a group which runs alcohol and drug rehabilitation. It is one of the best groups I have ever been to, Goori House, where they put people who are institutionalised through a system and get a 60 per cent success rate where normally it is about 10 per cent. It is run by an Indigenous person who has come through the system himself and it is absolutely tremendous. They have a management regime and a capacity.

We would also then, say, buy a farm in Western Australia for a group who have a good land management background and want to do specific things with the farm and with rehabilitation, who are able to access funds through the Natural Heritage Trust or through the state government et cetera and who will do a great job. We are focusing people on what they want to deliver from the land. I will give you a cultural example. In Toowoomba there are bora rings et cetera, and a group is very focused on developing and maintaining that cultural land. It is only about 12 hectares, but they were able to get funds from the Queensland state government and so on.

The native title process runs as a claim, and there can be upwards of 2,000 people in that claim. Let us say it is only 500 people. The discussion about what to do with the land is only really thought about if you win the claim. There is no discussion about what you are going to do with the land, how you are going to manage the land, what your priorities are and who is and who is not going to live on the land before either a negotiated agreement or a judgment is made. So people are not focusing on outcomes. Their outcome is what the ILC outcome was—'We got the land; the benefits must flow.' Instead, there should be a thought process that says, 'When we get this land, how are we going to work together?' Sometimes a group will not be working together because, while they might be 1,000 people, they are an amalgam of 1,000 people. Some may live in the area and some may not live in the area; some may have strong ties to the land and others might live away from the land. When I say 'strong ties', I mean actually living within proximity to the land.

We found this with some of our applications in the past where we had 500 people in a group. A core of people had a vision and, unfortunately, that core was pulled down because the rest of the group did not have the same vision and criticised the group et cetera. I think one of the basic problems with the capacity of the land to deliver benefits—whether they are social, cultural, economic or environmental—is that the native title claimant group has not gone through a process of thinking what they may want to do with that land and what the benefits are.

Mr MELHAM—It is not practical for them to do that in the claims process. You cannot put the cart before the horse. Look at the Yorta Yorta. The Yorta Yorta missed out on their claim. Part of the problem in managing a large group is managing hopes and expectations, but if you have a contested claim I think it is a bit premature to be saying, 'Let's work out how we are going to deal it when we win.'

Mr Galvin—I am not arguing that that should happen, Mr Melham. What I am stating is that that is one of your big problems if you do win a claim.

Mr MELHAM—Yes, I hear what you are saying.

Mr Galvin—I am giving you a problem, but I am probably not giving you a solution.

Mr MELHAM—It is very hard to have a solution—other than, I suppose, to have some assistance for these groups and others in anticipation. I am not saying you cannot have an anticipatory procedure, but I just think one needs to be very careful.

Mr Galvin—I think, as the native title claims process proceeds, there will be a greater knowledge of which claim will be and which claim will not be successful.

Mr McMULLAN—I am sure it will become clearer. It always seems to be just about to emerge from the fog. Certainly, where negotiations are under way there ought to be the capacity to inject some resources to put that plan into the negotiation process. It must arise to some extent when you are talking about ILUA, because you have to make a decision about what you are and are not prepared to agree to. But, even so, I think we could do more. As part of a negotiated outcome, what you have raised is a very important point. The difficulty is what happens in those contested litigated ones.

CHAIR—Just in closing, Mr McMullan asked if you could perhaps provide some examples. If you can, that would be great. Not only do I think it would be useful if we could have some examples from a rural perspective but what we have not much of is an urban perspective. I am not saying that you might not have those experiences but it is my intention to also ask Mr Neate, the President of the Native Title Tribunal, to provide some examples to us. I will be asking him to use perhaps the Larrakia example because they are an in-between example. The Northern Land Council is the representative body, but with regard to the prescribed body corporate, as I understand it—I hope I am rock solid on that—the Larrakia were actually doing the negotiation at that level but were funded directly from the development because it flowed almost immediately. So that is why it was successful, and we identified that. However, had the prescribed body corporate not been able to do that, they simply would not have had the capacity. Because it was a development, that model actually worked fairly well. I will be asking the President of the Native Title Tribunal to perhaps provide us with some examples of where there is a representative body and also the prescribed body corporate, and the roles each one played. If you could provide some examples within that same framework, I would appreciate it.

Mr Galvin—We have a very good relationship with the Ngaanyatjarra council in Western Australia. A number of very good programs are running with them with the rep body and the land council. They are not a prescribed statutory land council but we have a number of very good programs with them in planning, capacity, development, identification of waterholes, fencing off waterholes et cetera. Just when you were asking me I could not click to it but that is a very good success story. It has small one-off fundings in rep bodies but not properly prescribed body corporates, but I will examine that in closer detail.

CHAIR—Thank you very much. We may later ask you some questions on notice if any come to us before the end of proceedings. We will write to you in the normal manner.

Proceedings suspended from 10.12 am to 10.28 am

BUDBY, Mr Charles Kenneth, Thanakwithi Group

Evidence was taken via teleconference—

CHAIR—I welcome Mr Charles Budby, deputising for Mr Donald Callope. Do you have any comments to make about the capacity in which you appear?

Mr Budby—I appear today on behalf of the Thanakwithi tribal people of the Weipa area. I am also one of the native title applicants on our native title claim. I was a witness at a hearing for this committee in Brisbane about a year and a half ago.

CHAIR—Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to commence your briefing presentation, after which we will move to general discussion. For your benefit, I remind you that the processes we are particularly interested in are the structure and role of native title representative bodies; the resources that are available to native title representative bodies, including staffing and funding; the interrelationships with other organisations, including strategic planning, setting priorities, claimant applications pursued outside the native title representative body structure and non-claimant applications. I understand you have made no written submission but you can now give a presentation.

Mr Budby—Thank you. Our first dealings with Cape York Land Council, which is the appointed representative body of the Cape York area, go back to the early nineties when several of our members became members of the governing committee. In response to taking up native title issues for our peoples on the cape, as time went on we could see that, instead of litigating against mining companies and so forth, we needed to stay out of litigation and that sort of stuff because of the huge cost involved in doing those things. We were told that Cape York Land Council, as the appointed body, was to do some of our negotiations. I am going back over some of the history that I also spoke about, with several of our other members who came down to the hearing in Brisbane, back in April 2003.

Basically, we see there is a role for these types of bodies; however, it should not be a parenting role or such that takes control of our lives, because we believe in self-determination. We do not believe in the pseudo bodies that are there to look after Indigenous interests when, at the end of the day, the people on the ground in the communities get no results and see nothing happening for them for years and years on end. All this time, funding has been poured into these bodies and we still have Indigenous people in our communities living very meaningless lives because of neglect, not from governmental funding but from these bodies that are set up to handle our issues and supposedly are there for our benefit when we do not get any benefit at all.

In our case, we have a particular distrust of the Cape York Land Council for several various reasons. It is built on the historical achievements that have been negative for us and it goes all the way back to our coming together here in Weipa at the signing of the Alcan agreement. One of the things we realised from the outset was that we did not want these types of bodies interfering in our financial lives. However, it appears that governmental bodies and people out there do not hear us on the cape. They think they are the ones who know what is best for us and who the

people giving us advice should be, when we should be able to go out and seek that advice ourselves.

In the case of the Cape York Land Council, when we signed the Alcan agreement, under the auspices of that agreement we were to set up a trust but Cape York Land Council had done that three days before the signing. Since then we have had nothing but trouble with Cape York Land Council's interference in that trust. It has gone on record how the Cape York Land Council has sabotaged land claims with regard to northern claims up on the NPA with the Angkamuthi people. They are trying to do that with our land claim when in fact they are supposed to be set up to help us process our land claims. It is just an ongoing deal with Cape York Land Council. We do not understand how on earth the federal government and the state governments continue to support these organisations that have rorted the system. There are no repercussions on them, but our people—we live in our communities—are getting picked up and charged with an alcohol offence for walking the street with an empty glass. These people get away with squandering literally millions of dollars.

These are the things that happen. We do not want any more interference or representation from these organisations that do not have actual grassroots support. They did have in the beginning, but the people who have taken over these organisations have done it for all the wrong reasons. They have moved away from what they really meant to stand for. That is why over the years we have collected documentation of just how they have interfered and stopped Indigenous people—and these people are supposed to be Indigenous themselves—up here from getting ahead with our lives. We live up here on the cape around two of the biggest mining companies in the world and we are still the poorest community. Even at this stage where we have agreements for financial benefits from these companies we have nothing to show for it. That is what we are saying. It is because of this interference.

It is not only interference from the land council. Other organisations that associate themselves with the Cape York Land Council and the likes hinder us from participating in the real economy. We are classed as Aboriginal industry up here. We are an Indigenous industry, an Indigenous economy that can never come out of that box that the system has put us in. Yet it is those little individuals who have access to media and big business that seem to be getting all the accolades for achievements when there is nothing on the ground for us.

CHAIR—Thank you.

Mr McMULLAN—Can you give me some examples? You may have done this when you came before the committee before, but I do not recall. You say on a couple of occasions that the Cape York Land Council sabotaged your land claims, that they stopped you from getting ahead, and that there have been agreements entered into and you have nothing to show for it. Can you expand on that a bit? How did this occur? What was the process that led to your land claim not being successful or the agreements proceeding and you not getting any benefit? How did this happen?

Mr Budby—Our particular native title claim was registered only on the basis that we stood up to the Cape York Land Council in the registration process to stop them from objecting to that registration. We have had cases such as that of the Angkamuthi land claim up on the NPA where they have tried to sack the legal people handling the Angkamuthi people's claim without the

authorisation or the consent of the applicants. It was shown in court that they had no right to do that only on the basis that it did not fulfil Cape York Land Council's agenda. We felt that Cape York Land Council objecting to our native title claim in 2000 and 2001 was on the basis that we were not including, or we did not want to include, Cape York Land Council in any of these trusts. It was because they did not have our trust. How can we give someone a position in a body that is a called a trust when we do not have trust in them?

Right through the process of our native title application they tried to object to us getting registration for it, because it meant that it might slow the registration of the Comalco agreement. We required Cape York Land Council to not be sitting at the table. We had good reasons, and time has proven has proven us right. We have a report by Acumen Alliance in Brisbane that was commissioned by Senator Vanstone's office. It is a summary of a report that had been taken up by KMPG and Deloittes about Cape York Land Council's mishandling of the Ely bauxite mine corporation and the Ely bauxite trust. We had been told over all those years, since the signing in 1997, that they were looking after it. We have also got copies of the record of the members' meeting when they admitted that they knew about the land council putting their hands in the Alcan trust to pay for their debts, vehicle repairs and those sorts of things that the traditional owners had not authorised under that agreement.

That is why we do not want these organisations controlling our lives financially, socially and so forth. Why would you trust someone you do not know or when you know from some of their history that they are not trustworthy? Why would anybody do that, let alone Indigenous people? Would non-Indigenous people do that? Wouldn't non-Indigenous people want to make sure? Yes, there are cases of everybody, everywhere, being hard done by. But when we get up and voice our opinion it just seems like there is no-one out there listening. It seems that, because we do not have access to the media, nobody wants to know what the traditional owners up on the cape think. It just appears that people who have manipulated the media over the years seem to have the run of the mill.

When we get up and talk about these things we are seen as stirring, we are seen as the ones who are causing all the problems, when it is not us—these problems exist. We are not isolated anymore. We are in the 21st century, where we have access to computers and other things so we can find these things out. Papers do not come to the cape every six months now, they come every day, so we read them. What we are saying is that we have had enough of that type of treatment. We had 225 years of non-Indigenous rule over us and of copping that treatment over time.

Now we are getting these organisations doing it to us, and they are supposed to be representing us. It is a travesty; it is an injustice. Yet these people get moved on to other organisations and benefits because they are standing up for traditional people, when people do not actually go and ask them for their history. 'How did you get treated by your people up there? Are you people put in those predicaments and positions by those people?' No. As a traditional I do not speak for any other tribal people. I represent our people. That is the way we are anywhere. We do not just get up and put our faces in other clan groups' decision making. But these people seem to want to represent everybody and anybody. And what do we get on the ground? Nothing.

Mr McMULLAN—When you pursued your native title claim, who represented you? If it was not Cape York Land Council, did you have an organisation that represented you?

Mr Budby—No, we had to go and get independent representation on the basis that we felt Cape York Land Council, if we were to choose them, would slow our application up to make sure that the Comalco agreement went through the registration process. We have an issue with that, because all the native title claimants had not signed that Comalco agreement, on the basis that we still had issues that we wanted sorted before the signing. We just went to a meeting with our elders down at Napranum, and one of the elders said: 'Charles—you and your younger ones—we should have listened to you. Now we have got all of these issues with this agreement.' It is not that we were right; the elders are realising that there are things set up in that agreement that we have no control over. Even to this day, five years on, it feels like we just do not have the ownership of that agreement. Yes, everybody sits around the table, but there is nothing effective coming out of it, because we wanted things included and excluded before we signed that agreement. How can that agreement, according to native title law, be registered without all the native title applicants? That boggles our minds. You set up the law to say one thing and then the very organisation that is supposed to uphold that law, the NNTT, is twisting the law to suit the politics of the day. That is the thing that gets to us.

We will not sign with Comalco. They are mining our country. We are the tribal people that are getting not one cent out of this agreement, only on the basis that they are saying, 'We will punish you because you are not signing the agreement.' How do you make sense of that? That is what land council is supporting. There was a meeting held—and it was supposed to be our meeting—in the very last week before the signing of that agreement, and we said to them, 'We do not want land council sitting on the trust or having representation at any of the organisations under this agreement.' Comalco's representative got up and argued with the traditional owners that land council should be there. Our argument was: if one clan group do not want that organisation there then they should not be there. Comalco twisted it around and said, 'No, it has got to be a majority rule.'

How does Comalco go back on their word when we have found out in time—our instincts were right—that land council have been taking funds from our trust from the Alcan agreement unwarranted? This is the thing that really gripes at us, and nobody is listening to us. I do not know how effective this committee is going to be, but I really do not see this committee making changes for traditional people. If you do, it will be a miracle.

Mr McMULLAN—What would you like to see? What structure? If we said, 'Okay, we're going to get rid of Cape York Land Council and bodies like that,' what would you set up in its place? How would you like it to operate so that your claim could be run by you?

Mr Budby—There are 27 tribal groups up on this cape, and the way tribal people work in Australia and up here in our region is to speak for their own country. We do not expect that someone from across the eastern side will get up and represent our people. I know that is an impossible body to form, because you are talking about too many people. But we are talking about the case of this gas line coming through the cape. Just lately, we have established that Mr Pearson had formed a company with the purpose of representing us in the negotiation. We do not know, understand or have any idea where he got the representation to do that negotiation on our behalf. He is meeting with ex-Prime Minister Paul Keating. He has formed a company called Carnegie, Wiley and Co, and he wants to handle all the money and negotiation on behalf of the traditional owners. We have not signed any agreement with him. We have no contracts.

If you want us to obey the laws of this country, how about they obey the laws of this country. They have access to the media. How about they come to the table the right way. If they are doing something wrong, how about they get treated the way other people get treated when they do things wrong. That is what we cannot comprehend. If they think for one minute that they are going to represent us when this gas line comes through our country, they have another think coming, because we will not stand for it. They have a track record of not having the trust of the people, and we are not buying into that. We have been burnt by these people as well.

What body would suit the system—the political system, the economic system, the social system—that we are living in? I do not know; I do not have the answer. But one thing we do have an answer to is that they will not represent our interests. We are making it quite clear to the local government agencies, the mining companies and the state government, and we will make it known to the federal agencies, that land council, Richie Ahmat and Noel Pearson do not represent us. Under no circumstances have we signed a contract for that representation.

Mr McMULLAN—You referred to a report by Acumen. Can you tell me about that report?

Mr Budby—Acumen did a summary of a report that was done by Deloitte and KPMG back in 2004 and early 2005. The Office of Indigenous Policy Coordination paid Acumen Alliance, which is a company that has its head office in Canberra—you might know them—to come up and find out what has been going on, because of the stirrings with Cape York Land Council. That report says that CYLC breached its fiduciary obligations in managing the Ely Bauxite trust and may remain liable for losses suffered by beneficiaries of that trust. They are telling us that they paid all those funds back. Over the four years that they have handled the trust, they have taken out roughly $760,000 with not a cent paid back to our trust. We do not even know whether we have any funds in the trust.

The trust is now being managed by Kern Consulting, which we believe has strong ties to Cape York Land Council through other organisations and businesses tied up with the land council that we do not want to manage the trust. We are making moves to take that trust back from Kern Consulting. In fact, they have insulted us through this process by not responding to our requests for documentation on the trust. That report—

Mr McMULLAN—Can I just ask another question?

Mr Budby—I am not too certain if you are able to get that report, because when I rang the Office of Indigenous Policy Coordination in Canberra they said, 'We cannot give you that report.' I said, 'And if we take you to court, we will request that report under freedom of information, because you cannot spend public money on a secret report on a public company, where the people whom they're supposed to be representing don't know anything about what's going on.'

Mr McMULLAN—Thank you. We will chase that report. I have no further questions.

CHAIR—Mr Budby, you raise a number of issues. I will preface my questions by saying that we probably do not have sufficient time for the questions, but I think—and this is normally the convention during these committees—you will have an opportunity to make in a written submission some dot points that refer to the other issues outside Acumen and the OIPC. You

referred to a court case that was completed. You referred to a whole range of processes that went on. If you would like to provide the committee with any documents associated with that, it may be useful for us to get that in the correct context.

Mr Budby—Yes.

CHAIR—I do have a couple of questions specifically. It has been my view—and I do not think there is anything new under the sun when it comes to land councils—that there is generally a level of amenity because, as you point out, there are so many different clan or language groups which are represented. In some ways, they are very useful because there are generic things that are provided that often many of the clans do not even hear about. They are not directly about providing anything in terms of royalties, but they provide a whole range of other things. But, just in terms of your relationship with the land council, have you had any resources directly flow to your clan group as a consequence of negotiations or royalties?

Mr Budby—The only thing we received through these negotiations was paid for by the mining companies—that is, for us to sit in the public meeting on the details of the negotiations, which we strongly and strenuously objected to, and there is a record by Comalco and those people who know. No, we have not got any backing financially from Cape York Land Council, because we felt that we had to make a stand, and our stand goes across the board. If we say they will not represent us, we do not—

We got a telephone call earlier this year telling us—as an example—'The directions hearing from the Native Title Tribunal has been called off.' That was given to us by the Cape York Land Council. Two days later, we got a letter from the High Court saying, 'You are invited to attend the meeting.' This is still going on, where they are trying to chuck us off the track. We are saying that we are not putting any trust in these people. We have received some financial compensation in regard to the Alcan royalties; however, with the Comalco royalties, none at all.

CHAIR—So, broadly, would you say that you are satisfied with the outcome from the Alcan royalties?

Mr Budby—No, we are not, due to the fact that, when the signing of the agreement was done back in 1999, three days prior to that signing the land council went off and formed the trust. Under the clauses in that agreement the parties—which are the traditional owners—along with the land council, were to sit down and work out what sort of arrangement we wanted. They had already gone off and formed the trust. That type of experience tells us that these people really do not have their interests, because, if that were the case, we would have sat down, we would have worked it all out, we would all have been on it and we would have been party to that trust. We are only called 'traditional owner consultative groups'. We have no representation on or control of that trust; it is all in the hands of the Cape York Land Council and Kern Consulting, with their solicitors, Morrow Petersen in Cairns. We are saying: 'We live on the cape. We don't live in Cairns. We want that back here in Weipa so any of our people, any of the beneficiaries of that agreement, should be able to get information.'

We are not happy with how it has been managed. We are not happy that we have not worked through the financial compensation of that agreement. That has not been done. The land council has said, 'Take all these funds back to your people and just share them out.' Every year when

that happens, there is a big fight, a big argument, in the community: 'Where is all this funding? We want our money now.' That is how the land council want us to do it: they want us to argue. Every year when the funds become available, they want us to share them out. They do not want us to consider all the other stuff that we are supposed to put in order to make that trust work so that it benefits us—not $1,000 in our hand today but in years to come when that trust finishes and we will have assets. We will have things to show that it has worked: we will have people educated, people in jobs and homeland development. These things are not happening. That is what frustrates us: we do not control the trust.

CHAIR—Are you aware of your clan group ever applying for native title representative body status or some similar status that would provide you with a higher level of input, apart from, as you put it, observer status?

Mr Budby—Our clan group have not. However, we want the committee's support on this issue: if any clan group want to go ahead and apply for native title, the Native Title Tribunal should come back to that clan group and say: 'How do you want to do this? Do you want to go through this body?' Our understanding of the position of Cape York Land Council is that they are there as an advisory body if you want to use them. It is not law that we have to use them. They are there under the Native Title Act to certify any agreements. What we are saying is that, if a clan group want to go ahead and put in a submission for a native title claim, shouldn't the Native Title Tribunal be dealing with that clan group?

It should be up to that clan group. We are modern day Aboriginal people; we can find these things out. There will be a lot of Aboriginal clan groups in the remote areas that need help. When they request that help, the existing bodies are there to do that for them. If we had a choice—that is the thing: we have no choice in this matter—would we want to use the land council after their track record? No, we would not. That is what we are saying. We should be able to say to the Native Title Tribunal: 'Do you have a group in your record of organisations that can help us through in this process?' It does not necessarily have to be the one body.

CHAIR—I have one last question on anthropology. Obviously, a determination of a land claim under any of the processes would initially involve some anthropology. Where do you get most of the anthropological information from? Is that supplied through the Cape York Land Council, or do you get it through another source?

Mr Budby—Our experience is that the Cape York Land Council have prevented nearly all the traditional owners in our region on the western cape access to that type of information. When we did apply for some information, we were told that we had to ask six or seven other different clan groups to give that authorisation. Now we just do our own research. We go out and talk to our family members. We do our research in Brisbane, Canberra and Sydney. Why does it have to cost me and my family money out of our own pockets? That shows we can do it ourselves. You are funding these bodies that are not user friendly, so we go out and do our own research.

The Cape York Land Council has been told by the Native Title Tribunal, because we went to that hearing, that they will be funded to give us an anthropologist to help us on our native title claim. They had no choice but to do it because that is what the judge told them to do. Why does the federal government keep supporting these organisations if they have to be told to help Aboriginal people? They were set up to do that in the first place. Because of their track record in

our dealings with them, we only limit ourselves to that help because the Native Title Tribunal paid for the anthropologist to do the job. If we could have, we would have asked the Native Title Tribunal to pay an organisation other than the Cape York Council to do it. That is our involvement with the Cape York Land Council on our native title claim.

What is going to happen when this pipeline comes through? You have all these different tribal people who, from all indications, do not want to use Cape York Land Council in their negotiations. Where does it leave those people? I spoke to the pipeline people and they said, 'We are coming up there because we have to talk to the land council.' I said: 'No, you don't have to. You come to the people and the people will tell you to go back and talk to the land council if they want you to.' What we are saying is: we do not have a choice. It seems like those companies do not have a choice, but they do, because you never made it law that you have to go and see one particular body all the time. They are not like a government body; they are not like a law body unto themselves. They are just there on the whim of the people, and it seems like nobody is listening to that.

CHAIR—Thank you very much for your evidence today.

Mr Budby—I have documents that I will send down, if I can get your mailing details, so that you know what we are saying.

CHAIR—Certainly. I will ensure that somebody from the secretariat gives you the details of where to send those documents. A number of aspects of your submission on parliamentary privilege would come under what we call adverse comment. To explain the process of that, we as a committee have to give all those people about whom adverse comment was made an opportunity to respond. It would be very useful for the committee, and I suggest for you, to have the Cape York Land Council respond to some of the comments that you have made.

Mr Budby—Absolutely.

CHAIR—I will be asking the secretariat to identify from the transcript those areas in which it would be useful to have a response from them. We will then write to them under the process of adverse comment and ask them to provide an answer, which they will. We will then send a copy of those answers to you. That is the usual process of adverse comment in these committees.

Mr Budby—That would be good. If you can get an answer or anything out of the land council, that would be interesting. We would like that too. We do not seem to be getting anything.

CHAIR—We will certainly provide that to you. Thank you very much for your evidence today.

Mr Budby—Thank you very much for your time.

[11.15 am]

PARKINSON, Ms Marnie Jane, Principal Legal Officer, Carpentaria Land Council Aboriginal Corporation

YANNER, Ms Justine Michelle, Chief Executive Officer, Carpentaria Land Council Aboriginal Corporation

YANNER, Mr Murrandoo Bulanyi, Native Title Claimant, Carpentaria Land Council Aboriginal Corporation

CHAIR—Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to commence your briefing presentation, after which we will move to general discussion. I make a note that we have also received a submission directly from you today. Obviously, we have not had the time to peruse it we should have but, if you can give us a presentation, we will move to questions.

Ms Parkinson—Firstly, thank you for providing us with the opportunity to make this submission today. Our written submission deals separately with each of the terms of reference of the inquiry. It begins with some background to the Carpentaria Land Council and a description of the performance and outcomes of the Carpenteria Land Council primarily since the re-recognition process. I might perhaps ask Murrandoo to give a short history of the land council and the re-recognition process, because it is a bit of a story.

Mr Yanner—We are the oldest surviving land council in Queensland. I think we physically started in 1982 with a large meeting at Doomadjee of Gulf traditional owners, the sort of territory stuff that started where we live. There are a lot of traditional owners from both regions on the border in the lower Gulf—some of the first land claims in the Northern Territory, like the Borroloola claim. There are a lot of claimants living in Doomadjee who went back and forwards. A lot of the countries, people's traditional countries, are actually split out on state line splits. Some people's country is back in the Territory. Obviously there is just a state line separating the same country, so there is a lot of interest in this side.

People started the land council and it was incorporated in 1984. It has never been defunct since. There was an old NQ around that became defunct. Everyone else has popped up in native title days. We have been working continuously since 1984 mainly in the Gulf area. You have a list there in your book of our major achievements in that Gulf area. During this whole period Mount Isa, which has probably the highest level of mineral prospectivity anywhere on the continent—the Carpentaria Mineral Province—was left for a period of five to eight years without a rep body. ATSIC simply put in a consultant and there was a lot of mess down there: claims made without knowing who the people were et cetera, everything done arse about—to put it in bush vernacular—putting the cart before the horse. There was not OIPC or ATSIC direct to the consultant and there was a whole mess that we had to clean up. We have done that in the following years.

In every single claim in the Isa, like many of the southern areas of Australia, there may be a loss of cultural knowledge, hence the need for the ILC. There have been a lot more overlaps. You see less of that in the northern land councils, from Kimberley's right through to northern, central, Cape York and Carpentaria, because not only the knowledge but the representative structures are tribally based. The physical evidence is there before you—the lack of confusion, the proper method of dealing with people on a proper cultural basis and the right people, in that you do not have conflict and overlaps. Isa have all that. We have encouraged every group coming in behind ATSIC's mess—or OIPC nowadays, I guess—that we would take it on, we would clean it up, we would throw all the wrong people out that had been abusing claims and we would put the right people in who, through someone else having a claim first, had been excluded. In the whole period this was going on in Isa there was not a single overlap in the lower Gulf. All our claims are proceeding and are getting good outcomes, mostly through mediated agreements with developers or whatever.

We conducted a giant research project and made everyone sign off that we would bring in these independent blokes, because everyone was saying that they owned the same thing. The independent blokes did three years worth of work which took a lot of time and money, and we have basically tidied up every group and resolved almost 90 per cent of the overlaps and the rest are to be resolved pretty soon. We are the only rep body in the country allowed any leeway by the Federal Court judge bringing on these cases. He gets sick of being mucked around, and he usually brings them on at his time, bugger what you tell him. We are the only ones to go to him with a full timetable and a proposal that we are going to undertake this research work. This was how the situation occurred in the past, so it was not our fault; it was ATSIC's fault. We had to clean it up, and we said how we proposed to do it. It is a sign of our professionalism, I think, even at that level of the Federal Court where they do not muck around.

Mr MELHAM—Who is the judge?

Ms Parkinson—Justice Moore.

Mr Yanner—He went totally without a timetable. He gave us three years and said: 'You go and do this. If you stick to your word, in three years I will start to bring it on.' That is the only time that has occurred on this continent. No-one else has been able to do that. We have really tidied up the Isa area. There is a great opportunity for everyone there, I guess—for developers and for native title holders—as it is such a large economic area. Hopefully, the stuff we have done will allow them to now move ahead in the near future and be able to take advantage of the fact that we have tidied up the mess that ATSIC left. There were millions of dollars totally wasted before we got there—$3 million in Mount Isa and not a single anthropological report for any land claim. The first thing you do is to find out who is who in the zoo—do they even belong to the tribe, what are their boundaries, who are their relatives, are they the right people? That is the first thing we did in the Gulf. OIPC or ATSIC spent $3 million in Mount Isa, and when we got there nothing had been done. We have had to go and not only do their work but do work which has already been paid for. We did it quite well, I think—hence the Federal Court judge's acceptance of it.

Ms Parkinson—Murrandoo is describing what we have called the Greater Mount Isa Region Research Project. There are some details about it in our written submission. The objective of the project was to provide for the resolution of a large number of overlaps in that region. We have

got to the stage where all of the claim groups in that region, except one, have made decisions to resolve those overlaps. We are waiting to make the amendments in the Federal Court.

Mr McMULLAN—How many groups have made decisions?

Ms Parkinson—Six. I think there was one that did not have overlaps. The others, as I said, have made decisions, assisted by the land council, to resolve those overlaps. We are extremely pleased with the outcome. The land council, as it has been going through that process, has also prioritised matters in that region in order that they may proceed through to the research stage for the preparation of a connection report.

I thought I might also add that the Gulf region, in particular, stands out in the sense of its remoteness. It is one of the most remote areas in Australia. Every year it is subject to heavy wets, and for a few months the roads are cut off. We also service the Wellesley Islands group out in the southern Gulf of Carpentaria, and obviously access to those islands is only by air or by boat. That area is also the subject of the Wellesley Islands sea claim, which is now a determination made by Justice Cooper. The land council has been working with those groups to establish a PBC.

That claim was prioritised because it deals with four traditional owner groups. The advantage of pursuing that claim ahead of the others was that we were hoping for mediation but in the end it was the Commonwealth that would not mediate that claim and so it was listed, it was heard and a positive determination was made for four groups in the southern Gulf of Carpentaria. We think that puts us at an advantage, because we now have a court determination that says that those people are the right people for that country. So, as we pursue their land claims, we know we have the right people.

Mr Yanner—We used to be in one region before we joined Mount Isa, but 80 per cent of the groups in the lower Gulf already have extremely strong native title outcomes in one form or another. Alongside other things, obviously the Century Mine agreement is a big one. That covers the Waanyi, the Gkuthaarn, the Kukatj and the Minginda groups—four groups. We have had an outcome for the Gkuthaarn in Normanton. It is an interesting one for you to consider, because you have this legal group called McDonalds who runs around with an extremely aggressive—

Ms Parkinson—Litigation strategy, perhaps.

Mr Yanner—Yes. They take these small councils and con them. For example, Carpentaria Shire Council needed this little town block at Kuramba. Most of the thing was already extinguished. This is how smart McDonalds are. They probably did not have to go through a non-claimant procedure, but they went through it anyway not realising that most of it was extinguished. Part of it was not. We went in on behalf of traditional owners very nicely talking about an agreement. At the end of the day, even on the white rates, that block was worth about $40,000. We said, 'You can compensate the tribe that $40,000.' They said, 'No, let's go to court.' One point something million dollars later, Carpentaria Shire Council is out of pocket, arguing with the Attorney-General over who is going to foot the $1 million bill to McDonalds—and they still had to pay the $40,000.

It is ridiculous. We have never wasted $1 million of any native title funding without a serious outcome that shows far greater returns than the money expended, hence the Century agreement. I figure that took us $3 million and several years. It is worth $90 million and a lot of indirect benefits that you will never realise until they occur. We spent $3 million up-front and returned $90 million worth of benefits to groups within the region. Our land council has never touched royalty money. It does not want anything to do with it. The company the government set up through us, with the mob on the ground, was given the right to use that whole $90 million for these little pre-PBCs that came before a claim. They send the PBCs to receive these benefits. That is mostly connected to the Century stuff, but they are good, solid outcomes.

Mr McMULLAN—Can you tell us about that example with the big legal costs for the government and the $40,000 still being paid. What legal costs did you incur as a result of that, or did your costs get awarded? That is one of the issues we are looking at. Sometimes you get legal costs not because of your priorities but because someone else takes an initiative funded by the government and you wind up having to pay the bill. I do not know if this is an example of that or not.

Mr Yanner—Certainly an example of that is the Waanyi case that was won in the High Court in February 1996 in which there was a procedural matter against Justice French. The Wik agreement was held up along with Waanyi. French assumed he had too many powers that he proved not to have later in the judgment. We challenged his right. We said his jurisdiction was procedural and that he could not be determining things, except whether they filled out a form right et cetera. In the end, that is what the High Court accepted. The Wik agreement was then allowed to go through. We got totally compensated for that.

Ms Parkinson—I think that can be distinguished in the sense that it created a legal precedent of sorts, whereas the Carpentaria Shire Council matter that we are speaking about creates no legal precedent whatsoever.

Mr Yanner—I can get you the exact legal figure. We may have had to spend somewhere around $130,000.

Mr McMULLAN—That is still a lot of money for you.

Mr Yanner—And it was all over $40,000. We should have been able to talk and say: 'This mob agree to $40,000, we agree to $40,000.' Why should we spend $130,000 defending this mob against that mob all over $40,000?

Ms Parkinson—The other thing it did was upset our prioritisation for that particular financial year. You would be aware that, at the beginning of each financial year, we prioritise matters. We set them out in an operational plan in accordance with a strategic plan. That year it all got complicated.

Mr MELHAM—Has that helped you in relation to other cases? In other words, do you now have something you can point to and say, 'This is not the way to go'?

Mr Yanner—It does, but it also needs something at your level with regard to this respondent party business. They cannot have an open cheque book. They are always on the back of rep

bodies about just about every single dollar. That was clearly an abuse of taxpayer funded money. The Attorney-General could have at least come in with independent advice to Carpentaria on top of McDonalds and said, 'You're not wasting $1 million of our money when our own lawyers and Attorney-General's are telling us, "This don't look right"' That is a simple thing that could have occurred. They all want to look at the black dollar. It is a total waste. It is an extreme example. All the shire councils are lining up with McDonalds for continuation of this sort of activity, in which case the feds are going to be left wrongfully holding the bill. I think that someone needs to clarify that or put the hard word on them at a higher level.

Mr MELHAM—What was the basis of the litigation?

Mr Yanner—Racism. We finished fighting in the 1920s and 1930s. No-one there does not know where they and their neighbours come from.

Mr MELHAM—So they just did not want to make the concession.

Mr Yanner—The people we live with in the Gulf are usually the ones who shot our grandparents and our grandparents speared them. It is an old region—white and black. They are all real bushies. A lot of the shires just do not want to recognise us. You can move whatever laws you want, such as social justice or native title, but the rednecks at home will say you are all a bunch of limp-wristed greenies down south. They have an extreme view. They would rather see us back under the act where we were. There is a lot of that mentality there. Out bush, native title does not receive the respect or seriousness it does in political, business or southern circles.

Mr MELHAM—They feel they can do this because they are funded.

Mr Yanner—More importantly, they abuse local government, they abuse their position and they abuse Commonwealth money. I am in the local government now; anything is possible in Australia. The blokes over on this table all own pastoral leases. I have a conflict of interest, and I have to leave the room when they are discussing my land claim. But, hang on; they are all using it—not only the local government council's but your money—to defend their own personal property. These blokes on the council in my region of Carpentaria all have pastoral leases. How is their conflict of interest any different from mine? They either lose some rights on the pastoral lease or keep it, and I either lose some or keep it here, so we both have a conflict. We both leave the room. No council can operate in north-west Queensland, because they will all be out. They are either black collars or pastoralists out there. So there is a conflict of interest, particularly where it relates to the respondent party funding. Someone needs to be real. I know about conflict of interest. It was a shame that I had to educate the Burke Shire Council boys—me a blackfella. Someone federally taught me through the rep bodies how to be nice and legit and clean and administratively correct, but, here, it is a joke. This mob are living in the fifties, and no-one in Canberra is keeping an eye on them. Every time we do something wrong, they are on the phone.

CHAIR—As I understood it, the only time the respondents got funny was when it was a test case. Are they making each case a bit different? Does that still apply? I just do not know.

Mr Yanner—I do not know whether that is the case. I do not think there was any legal test case for the Karumba incident.

CHAIR—As I understand it, the only basis under which you got respondent funding was that some time ago the federal government agreed to fund a test case. That is probably a question for OIPC, and we will make sure we get that.

Mr MELHAM—We will follow that up. That is a valid point. There has to be a threshold that is passed.

Mr McMULLAN—You referred to something in passing that I wanted to look at—that is, the call that prescribed bodies corporate make on you. You have talked about two clearly different examples. One was about the Wellesley Islands, where you say you are assisting them to set it up. It is a bit of a problem for you to do that, isn't it? Then you talked about the other example, where you tried to get some money through the mining companies before the PBCs were set up. It was a pre-native title claim that was being resolved, but if the PBC started it meant it could start and have the resources and you would not need to set it up. Do you understand the issue we are dealing with? In every state and in every land council—I am absolutely sure that is right—certainly with all the rep bodies I have spoken to over the years, somehow or other this prescribed body corporate issue and the challenge it presents to them comes up. Maybe you can just expand a bit on the two examples.

Mr Yanner—We are a pretty smart bunch. We have major outcomes with small councils. Legally and on the ground we have more outcomes than a lot of bigger land councils. What did you ask?

Mr McMULLAN—Prescribed bodies corporate.

Mr Yanner—When we started the stuff in 1994, we started setting up, I guess, pre-determination PBCs without realising it, because our representative structure is different from other land councils. They go to communities—anything. With some land councils, people are chosen from communities and not from tribes. So we said, 'How many tribes are in the lower Gulf with knowledge.' As I said, my mob came in from the bush in the 1930s in the lower Gulf, so there is a lot of knowledge. We set them up. We said, 'These are one tribe.' We have nine tribes in our region. Those nine bodies, being political representatives, had to have administrative functions et cetera. So, with Century being a post-determination thing, all the benefits went to these things. They are literally PBCs, although not legally because they have not come out of a determination. We got a lot of practice and a look at how they fail, how they can operate efficiently, what sort of resourcing they need and how working directly with companies is not always a beneficial thing, because you never have any independent advice. There is no Argyle agreement. This is what happened with Century. When the company spoke directly, without the rep body, the first agreement in October 1994 to February 1995 was thrown on the table by Paul Wand, who was deputy chairman or something at CRA then. There was $100,000 and 70 acres for 5,000 Aboriginals at the lower Gulf per year—not each; 70 acres for the 5,000 of us to somehow build a giant skyscraper and live in it. The $100,000 was based on the old Argyle agreement. We had people living in car bodies.

We acted through native title, through political, social and media strategies and campaigns and through the inherent right we have as sovereign people of the Gulf. I do not believe in this government or anything; I believe I own my part of the Gulf and I will believe that until the day I die. They can do what they want with the Native Title Act but, at the end of the day, you have

to deal with me and all of us. We are going to have the Gulf. We have never cared. The government went along and decided and made laws but all that happens in Brisbane and Canberra. We live out there. We are going to go out ourselves and sit on and occupy places because we have an inherent right to justice and to equality and we are seeing none of that out there.

I can talk specifically. It is really comical. At the end of the day you are doing people like me a real big favour when you take away the act. Where are we going to go? What are we going to do? There is no legal process; there is no social or political process for us to democratically, through rep bodies, talk. You take away the political voice. What can we do in any legal sense? All we have left is people power. We are going to go and block the road to the mine, hold up the trucks and all that stuff. How is that going to resolve any of the things the act was meant to resolve about developers? They are making it hard for the developers. They are saying they have to make it workable for everyone. That is going to make it really unworkable and you are going to be dealing with people like me without a book. At least a book spells out the rules. We have to be careful on future amendments to ensure that they maintain the integrity of the act. I am really worried because the last lot of amendments were deemed racially discriminatory by the United Nations and most Aboriginal people fear that this second round will come pretty close to doing the same thing.

Mr McMULLAN—You could be right about that. The committee might not agree about that amongst ourselves.

Ms Parkinson—Murrandoo is describing the implementation of the Century agreement—the implementation of a large future act agreement. The importance of the point he was making is the link between appropriate governance structures within Indigenous communities, particularly within traditional owner groups, and the potential for economic development in those communities. If you get the structure right you get the economic development potential right.

That is to be distinguished from the work we are doing in the Wellesley Islands after the determination where we are assisting those traditional owner groups who are the subject of the determination to establish their prescribed body corporate. As you know, we are funded by IOPC to assist with the establishment of that PBC so that means we work with them until they have their rules ready to get registered. It provides a nice example. There are four groups involved in that determination. They live in very remote areas along the coast of the southern Gulf of Carpentaria and in three separate island groups. The logistical issues surrounding consultation have become very obvious to us in trying to provide advice and receive instructions in relation to the rules.

The other thing that has become obvious to us is the need to make those rules and the decision making processes in those rules fit somehow with the legislative requirements of the Aboriginal Councils and Associations Act and traditional law and custom. I am sure that a lot of representative bodies are raising that issue. We could talk about the amendments to that act but I do not really want to. The obvious question for OIPC and the government is the post determination, post establishment of PBC funding—the consultation requirements under the PBC regulations. We have spoken to A-Gs in that regard and intend making a submission to them.

Mr McMULLAN—What is your view? How should we do that? A lot of NTRBs that have been successful have had this problem. They have been successful and have this prescribed body corporate that, other than in the case you talk about, has no resources to do the job now that they have the land. How do they proceed to run this body? The rep body does not have any weight or get funding on an ongoing basis.

Mr Yanner—Regardless of the funding, the body itself is limited. Traditional owners are limited under the Aboriginal Councils and Associations Act. What a joke! How racially discriminatory is it! I had a prison sentence over an assault and I could not be on any board, yet I could run for federal parliament, state parliament and local government. I cannot be on any council associations there, because of my prison sentence, yet I can run for federal parliament and I have got in local government—

Mr McMULLAN—Federal parliament is not as important!

Mr Yanner—There are things under the federal companies act, particularly for this problem of asset-rich poor people. In terms of a council association, it is a bit of a political body in a lot of ways, more than an economic development body. I believe it should be far more flexible. With my group we have got a couple of things under the federal companies act, for economic development stuff, separate to native title. We find it far more appropriate and far more flexible than anything Aboriginal council associations could even come close to dreaming of. Give us the flexibility and the choice and the rights others have—they can join under whatever act they want; they are not limited and forced into council associations. It is nice that council associations are there for those who want to use them, but how about my right to partake in decision making or have a say. I would like to take my people under the federal companies act. You mob created it; surely it is a decent act and it is all legit. Why can't I have the opportunity to take my people under that? That would give this body the chance to truly develop economically.

Mr MELHAM—So your argument is you should have choice. It is a government that always parades choice but it is limiting your choice.

Mr Yanner—It has limited my choice. You have buggered PBCs by forcing them to be under council associations. How about allowing them three options? How about allowing them to go under federal companies? You can still expect them to have no conflicts and all of that—there are laws for that under the federal companies act.

Mr MELHAM—Can I take you to one of your summary recommendations where you acknowledge that a number of reports have considered that native title rep body funding is inadequate and recognised the serious implications of lack of adequate funding of NTRBs and the native title system. I am interested in the next line in particular, where you say you believe that multi-year funding should be introduced. Can you talk a bit about that, about the problems with the cycle of funding now and what it is you would like in terms of multi-years?

Mr Yanner—Marnie and Justine are a bit better on this, but there is one thing I have noticed in particular. We were out in the bush and at Isa. Now we have an office in Cairns which OIPC sort of forced on us, but it is working out great in that we are able to attract better people than you can get out there. But while you can attract all these good people here, they are experienced and they are the people you need in an organisation to deliver real outcomes on the ground, you

can only offer them a one-year contract because you are on 12-month funding. If you are from WA you are not going to move all the way to Cairns on 12-month funding.

Mr MELHAM—So what are you looking at—two-year or three-years cycles?

Mr Yanner—Three years at least—and that is in line with a lot of other government departments. Once again, we want equality. Why do we have four times the level of reporting? I will challenge you right now: I will match our accountability at the Carpentaria Land Council against the internal accountability of OIPC in Canberra. You can go back and get all their stuff and you can ask us for all our stuff. I will put my reputation on the line right here and now over that—that is how good our land council is. Not one cent has been alleged to have been stolen, despite the millions of dollars through native title we have received in the last decade, particularly the large agreements we have created but not touched, thrown the money to the mob, because of the perception in the Territory now: 'Oh, the land council got all the royalties!' We knew that, so we never wanted to lose our political strength and connection through touching bloody silly money; we let that go there. But, out of all that money, never has one cent ever been even alleged, let alone proven, to have been stolen. We have had administrative problems. We never had an accountant for years.

Mr MELHAM—So three-year funding would help you in terms of staff. Would it also help you in terms of your planning?

Ms Parkinson—With prioritisation and strategic planning. As you know, A-G's is also looking at a claims resolution review, looking at the way in which claims are dealt with particularly by the NNTT in the Federal Court.

Mr MELHAM—Is this something that other bodies have a similar view on?

Mr Yanner—I think so. In most of the bodies I have met, not just land councils but Aboriginal bodies in general under the whole ATSIC structure, they are entirely dissatisfied with the 12-month funding. It really limits you. It limits you commercially. And it is a waste of money from you mob at the end of the day in that, for example, if we go to DAS and ask for a three-year lease arrangement for their vehicles for the rep body we will get a better arrangement and a cheaper one, but if we can only do it for one year they are charging us extra that you are picking up. So we are all wasting money through forcing us into this one-year thing.

Mr MELHAM—Okay. That is why I wanted to get you on the record about this.

Mr McMULLAN—Do you want to say anything more about that from an administrative point of view?

Ms Yanner—I think that is covered.

Mr McMULLAN—It was a good political explanation, but I am interested in the impact mentioned in the first half of Daryl's question, not so much about three-year funding but about the shortage of funding. Can you talk about the impact that has on what you would like to do that you cannot do?

Ms Parkinson—Some of us have grown used to the rep body system and the lack of funding. There is a lack of human resources. I do not have enough lawyers, anthropologists and project staff on any given day.

Mr McMULLAN—If you had the money, are the people available? That is a parallel issue. Maybe you could comment on the two things at the same time.

Ms Parkinson—I might talk about that by pointing out that the Carpentaria Land Council did have a lot of trouble recruiting staff in the two previous financial years. We simply could not get staff to go to our regional offices in Mount Isa or Burketown so the committee made a decision to open up a professional support office in Cairns. Since we moved to Cairns we have had absolutely no trouble filling the limited positions we can fund. We would like to be able to better fund, in particular, the preparation of connection reports in the mediation phase in relation to consent determinations and in relation to the making of agreements under the future act regime. We are constantly limited. We think: 'Can we can stretch this out?' 'Can we only have one meeting this quarter?'

Mr Yanner—That is a good point because in relation to the outcomes for the TOs who are talking with developers, if you have limited funding then you have to say: 'There's 30 miners talking to 30 groups this year. We can't attend to them all. Our budget limits us to 10. Which are the 10?' You should represent the 30—20 groups should not miss out. But hang on, we only have enough funding to meet with 10. To be fair we have to look at agreements for the 10 projects that impact on the most people negatively and positively, and they are the 10 we have to run with, just on an equity basis. But that is a bit rough. It leaves 20 groups deprived of their legal rights entirely.

Ms Yanner—Because it is such a slow process and the funding is so slow, we have to prioritise claims and even meetings, and the TOs that we represent feel that they have been neglected. It just puts pressure on staff to go out and consult TOs when it is like that. That is the point I wanted to make.

Mr McMULLAN—It probably puts twice as much pressure on because you have to spend half the meeting calming them down from being upset.

Ms Yanner—You have to explain yourself and then you have to do what you are there to do.

Mr Yanner—I have heard service bodies being spoken about. I really think that is a joke. I think we will all go downhill. It will not hurt us mob in the Gulf; we will just do our own thing. We will not accept any service body. We have not come this far do that. We know that even under international statutes and international human rights we have a right to participate in this process and to have a say. How can a service body provide any service to a region when you are excluded from representation because of perceived conflicts or whatever? I say this: we have not had fraud in the CLC, and we have had more money than anyone. So not everybody should be tarred with the same brush.

You have policies. You mob have democracy. You have something; you are in the federal parliament. Every man in the street says, 'Pollies are all crook,' and all this rubbish. It is the same as you hearing traditional owners complaining about rep bodies. How is that different from

the taxi driver out here saying, 'The pollies are all looking after themselves'? What do you have in place to stop that? You have policies about conflicts of interest and penalties. We have those. Why do you have to take away the political representation of rep bodies on the basis of this when we have those policies? Under the existing laws for the rep bodies, I would go to jail if I stole any money. You need to make an example of more crooks. Catch them and jail them. Do not punish all the honest people or the honest rep bodies because of a few crooks.

You do not have to close down Parliament House because some bugger nicked some TA. You go and nail him through the auditor's office or whatever. We want the same as you want. That is all my people and I want. We have been deprived of that under this, and it is going in a different direction. That is all I am asking for. I am not asking for you to go back to England while I stay here.

I am asking for what you have here; the same sort of power and inherent right to have a say and be involved in these things—and not to have a bill sent out to me after it is already gone downhill. We get a token consultation but we never have any say in it. Like I said, all we are asking for is what you mob have. Do not remove the boards because of a conflict of interest. Sharpen the law up; make it like your law. Make them declare it. As soon as you join federal parliament you have to fill out that list. Make us do that. Let us just do that—why disempower us and send us back further?

As I said, legally and internationally we have a right, particularly when it comes to law, custom, traditional decision-making processes, which native title relates to. You cannot bring a service body in; you will completely destroy all that immediately. You have all these people—the blackfellas from down south, the whitefellas who are nice and honest, but how do we know they do not have conflict? How do we know that they are not in bed with a company they are promoting or are not abusing the system? We have safeguards against that at the moment with our mob. We will not have anything if you bring in service bodies instead of rep bodies. Some rep bodies in Australia have been corrupt, as have some famous Aboriginals. But all I say is, like the whitefella: catch them and jail them. You cannot tar us all with the same brush. That has gone on for too long.

Mr McMULLAN—Hear, hear! I agree with that.

Ms Parkinson—We have set out in our submission that we have noted OIPC's comments to the inquiry, where they seem to equate native title service delivery type models with accountability. We are accountable, but we are also a community organisation that advocates on behalf of a community of native title holders. Being able to provide an avenue for self-determination does not mean that we cannot be accountable, cost-effective and efficient.

Mr Yanner—With respect to our legal outcomes, obviously you know that, throughout Australia, we have been great political advocates for the Gulf, yet how has that affected our rep body? We have the largest single commercial agreement on the continent at the moment with Murrays. Alcan or whoever might have taken it over after the Century days—that was the biggest one of its day—while all this political stuff was going on. We do not need the federal government to tell them, 'You need to go out and have nice agreements with Aborigines.' The area that is most successful is on the ground. If that political representation can be successfully matched with a beautiful administrative financial support base, which I believe our rep board

has, it can achieve great outcomes. Century is an example. We were saying to multinational companies, 'You can't take the wealth out of this region and not leave anything.' The rep body was doing all the groundwork with the traditional owners, defending their rights under the Native Title Act et cetera, to make that occur. But you cannot have one without the other. You cannot expect everyone to make agreements if you remove the rep body's ability to fully inform people and provide legal representation et cetera.

If you remove the legal framework and the rights that support traditional owners and encourage companies to develop big agreements like Century and replace them with this nice moral principle of: 'Go out and give them money. Here's $20; bugger off you blackfella,' that is what will happen. That is obvious. That is what happened before native title came along and before you were able to successfully match the political representation with a proper service delivery agency. That is what we have been able to do. It has been proven. I will match our stuff against OIPC: 'Here are all our outcomes in the Gulf.' In 1992 or 1993 we had no land in the Gulf—not even Aboriginal reserves had been handed back. Every single reserve in the region—a few on the land, some of the islands—has been handed back. We have 10 stations. Three of the most commercially viable are in our region: Lawn Hill, Riverslea and Delta Downs. The other seven, the whitefellas did not even run them. They are out in the scrub, they are a bit rough and not good for cattle, but the mob were out there living, exercising and getting away from the unhealthy social circumstances of certain communities.

They are real outcomes. Four hundred blokes have gone through Century. Some are surveyors and some are engineers and so on—whereas, normally, we could never aspire to anything other than a bulldozer in the communities. The largest injection of employment, capital infrastructure and economic development for Aboriginals has come through a commercial agreement between Aboriginals and a company, not through federal or state governments. It was not totally through the Native Title Act, like everything else this Gulf mob did, but through a political framework, a nice admin and a nice legal framework—one that allowed this Century thing, which has achieved more for the people of the Gulf on the ground than any federal or state government has achieved. It is a private industry, but it has to have that legal framework. Otherwise, we are going away from the Centuries back to the Argyles, and you will come to my country one day and you will see this beautiful rich bauxite mine, but you will see old Murrandoo in a car body. I do not think you would want to see me like that. It might embarrass you; I might remember you.

Ms Parkinson—Just on a fairly simple logistical matter, if you create a new legal service provider in the Gulf tomorrow, it is going to take them two years to work out where people live, how to get to them, how to contact them and how to speak to them.

Mr Yanner—It will become a far more expensive process because we do it so well and we have people on the ground there. It is cheaper than flying some bugger in who no-one will talk to or who does not realise that the bloke has gone bush for three weeks in the Territory, which quite often happens. Only from having people on the ground and having that connection—the service delivery organisers have a real grassroots connection—can you know all that real stuff.

Mr McMULLAN—I cannot speak for the committee, but I am personally not very interested in replacing functioning representative bodies with service providers. But I am interested in whether there is some way that this problem of getting—let me give you an example. You have done what on the face of it seems a very sensible thing—setting up this office in Cairns. But that

means that in Cairns there are two lots of lawyers and anthropologists working. If you take other cities and other states into account, you are going to get that problem replicated. Is there a way we can do that more efficiently, because not only are we short of money but also we are short of lawyers and anthropologists? We are not short of lawyers—the country's full of them—but we are short of people who know about native title and we are short of anthropologists who know about the skills involved in doing what native title requires. Can we somehow pool them in a way that makes it more efficient and does not take away the fact that there is an elected board still making the decisions about priorities and all those sorts of things? It happens elsewhere. Other organisations do things like that. I do not know if it could work or not. I have not really thought it all through yet, but is that conceivable? Could that possibly work.

Mr Yanner—I think it can; certainly, with some rep bodies. We have done it with a couple of them, sharing a couple of positions and technology things. If the other office has it, we get to use it. But that has not really been formalised or fully explored with all the rep bodies the way it could be. I think it could be a lot more. Rather than taking away the thing and saying, 'Instead of all you mob getting this bloody GIS mapping system, why don't you just have the one in Cairns. Cape York, North Queensland and Gulf all get to do their maps on that machine instead of each of you buying one, like the Central Land Council might do.' So things like that we might share. But when you get to accountants you have to be careful because one accountant cannot do the books for the three of you. But I think there should be a lot more encouragement for where we can do it.

Mr McMULLAN—You have to have different CEOs and certain core functions, I agree with that, but I just think we can tease out that pooling idea somehow or other.

Ms Parkinson—We can all use the same car company and get the benefits of that.

Mr Yanner—And get better value for our dollar.

Ms Parkinson—In my view, shortages in rep body staff, particularly lawyers—we have noted the contents of the Potok report in our submission—are partly the result of inadequacies in the funding and support of NTRBs. Lawyers go into NTRBs where they face a variety of levels of salary and benefits across the country. They are usually employed in an organisation which is unable to provide the lawyer with good training, professional support and career advancement. If we could add to the system in that way, I think it would help. I do not think it is necessarily the case though that that means one rep body for a huge region.

Mr Yanner—The reason you see a lack of anthropologists and lawyers is that a great number of them are going into the private industry after a five-year period or whatever. Marnie is well beyond that. She is in her 10th year with us. Someone at her stage of experience would normally be in private industry or their own firm. With this sort of upcoming arrangement I think Howard should be angling forward with savings and the service delivery agency rather than cutting costs. What you will get is a very unlevel playing field because the Mining Industry Council, the Farmers Federation and every other bugger can afford the best lawyers, while we are going to end up with all these kids out of university, poor buggers, who are as fresh as a fiddle and think they can change the world but are not very experienced against these sharks—they are guppies facing sharks. That is not fair, that is unlevel and that is what is happening. That is why there is a lack of them out there. Because the rep bodies can only pay this much, unless they have a good

heart, they end up going where the dollars are big and working against the little man, kicking him around and they can be paid well. So that is an unlevel playing field—really unlevel.

CHAIR—We are actually out of time. We will probably put on notice some questions in some areas. I would like to make a couple of comments that you might respond to. On the native title representative bodies, there has been some suggestion going to this issue. Again, I think you make the point that there is nothing new: some farmers do it right and some do not; some fishermen poach and some do not. You cannot brand them all with the same brush. There has been some sort of view that, when the representative body is in a land council and if the land council is a bit soft on some areas, that is why there is no funding for this body. You seem to do it well. Would you be able to identify in your own mind, notionally at least, that this is a budget line almost. I can see how that exists in a council. You do a whole bunch of stuff. You would have a budget notionally for your representative body stuff, a budget to belt Johnny with and a budget to do that with. Most organisations do that. Would you say that would be reasonable, that that is what you would do? You would allocate part of the funding? I am not asking you to particularly extract it but to tell me whether or not you have that approach to identifying what funding is for the representative body area specifically?

Ms Parkinson—We obviously receive funding under OIPC's native title funding program. All of that money goes straight into native title outcomes, and they are set out in an operational plan every year.

Mr Yanner—We have to show in that operational plan for every single dollar not only what we have prioritised but also the processes. There may be an accusation from a weaker group that do not have any mines. They might be wondering why there is no activity when they see their neighbour going to a lot of meetings, but it is because the bugger has 50 future acts. We explain that and we show them the processes for when they are applying for assistance et cetera. They are appraised. We do not just come to that decision; we look at the people impacted, how many future acts there are and anything else. We are not going to hold a meeting with you to talk about future acts when there are no future acts. We are going to have 50 meetings with the Kalkadoons because they have them all over, but that does not mean we are doing everything for them and nothing for you. Wait until you get a future act; we will come and give you the same service.

Mr Yanner—It is well documented.

Ms Parkinson—I guess your question is: is there room under the native title funding program for us to use native title moneys on other outcomes?

Mr Yanner—For spur of the moment things?

Ms Parkinson—No way.

CHAIR—No, there is not. But that is what some of them are sort of suggesting. You seem to have them pretty lined up.

Ms Parkinson—We support, I guess, OIPC's need for that kind of transparency and accountability. We have no issue with that whatsoever.

CHAIR—The other general question I have goes to anthropology. The power in land lies with anthropologists; it is not with the blackfellas anymore.

Mr Yanner—Not in my neck of the woods.

CHAIR—I have seen that. Do the anthropologists actually work for you or do you have independent anthropologists and you check things with them? Who owns all that? Do they do the work and it comes to you? Who owns the information?

Mr Yanner—It is intellectual property. When I got to the Gulf—following the Territory land claims, the Queensland Aboriginal Land Act and the Native Title Act—a lot of anthropologists had worked on the Territory stuff with us and had come back in on all this new stuff. They all had this old business about, 'Everything I do is mine.' There we were saying to the federal and state governments, 'Hang on, this is our country,' and all of that sort of stuff. We could not be looking out but not cleaning up within. Every single anthropologist within the Gulf is now on a particular contract such that every single thing—that is, his tape recordings, his field notes, his originals and everything—belongs to us. If Mr Famous Anthropologist who made his life off us wants to go to Washington in the future and wants to use any of his previous stuff, he needs our written permission. I know that has been abused greatly around the country, and I preach wherever I go about how we solved it.

CHAIR—You resolved that by pretty much considering it copyright.

Mr Yanner—Everything goes back to the traditional owners. He has paid to record that; he has not paid to own it.

CHAIR—So, in the contractual agreement to take them on and to pay them, you say, 'Listen, this is your contract,' but in the contract you sign off to say that everything they get comes to you.

Mr Yanner—Absolutely. Clause by clause spells out what happens with their written notes and everything. It spells it out in detail. There is nothing he can keep and there is nothing he can ever use secretly or he is in big trouble. As I said, we are the real deal.

CHAIR—I think there may well be some questions on notice. We did not really have enough time to quiz you right across the board. If you do not mind, we will provide those to you on notice.

Mr Yanner—Hopefully that stimulated you.

CHAIR—Indeed.

Ms Parkinson—We would be happy to do that.

CHAIR—Thanks very much. I really appreciate your appearing here today.

[12.09 pm]

JOHNSON, Mr Tony Edward, Chief Executive Officer, Gurang Land Council (Aboriginal Corporation)

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to commence your brief presentation, after which we will move to general discussion.

Mr Johnson—Thank you for the opportunity to make a presentation and to have some subsequent discussion. I would like to give you a little bit of personal background to give you an understanding of my involvement in the native title system. I have worked collectively for eight years at native title representative bodies, the last three years as the Chief Executive Officer of the Gurang Land Council. In the last 10 years I have also spent two years working with ATSIC in the native title and land rights branch, so I have worked on both sides of the fence: in community control and as a government employee. I saw the 1993 act introduced and I saw the 1998 amendments. I guess, 10 years down the track, it is time to sit back and have a look at where the native title system has taken us, what it has delivered and whether it has satisfied the speculation and aspirations of Aboriginal people.

One of the things I want to start with is the fact that the native title process is itself litigious, and litigation is by nature an adversarial process. I have to say that I find that, conscionably, a very difficult thing for us as Aboriginal people to participate in. Through the native title representative body process, our claimant groups represent 95 per cent of the 600 claims in the system, yet you consistently see that we are the most underresourced part of the system. In recent years, for example, the tribunal has handed money back, the Federal Court has got extra money—everybody in the system got extra dough except the rep bodies. We are facing a really adversarial process in the litigation and we simply do not have the resources to do it.

But what is more important to me than the dollars is the human toll that it takes on Aboriginal groups and Aboriginal people. One only needs to see the transcript of the Yorta Yorta trial to see the devastating impact adversarial shark lawyers can have on Aboriginal people. Our mob should not be demeaned to present the facts of this country. When you have 217 years of colonisation, attempted genocide, dispossession and removal of people, it is not going to be solved by five minutes of anthropological work, as they say.

There is a dearth of suitable anthropologists but, with respect, the challenge in the task is really huge. At our land council we do not employ any anthropologists on the staff. We employ by subcontract senior anthropologists, who collectively have 250 years of experience. We have had some of those people in the field for 18 months doing dedicated work with specific-purpose contracts. I do not doubt their endeavours and I do not doubt their hard work ethic, but they are still saying to us that there is more to be done. We make a choice: do we keep trying to get the best case? We have to prosecute this, remember. We cannot make a budget decision and say, ‘Look, we’ve only got $X and we’ve got to cut it short there.’ Our obligation, as in any legal process, is to present the very best possible case for our clients.

So we have a real dilemma about redressing the whole colonisation process, and native title makes you do that. What you have to do in a native title process is to identify the apical ancestors at the time of colonisation. Colonisation did not all happen in 1788; it happened at various intervals all the way across the state and all the way across the country. So there is a huge task—that is the point I am making—and the resources allocated to representative bodies in particular have been inadequate. We commit 90 per cent of our facilitation and assistance funding to research. In the last three years we have spent over $2 million on research. We have delivered one final connection report to the Queensland government for consideration. There are five or six that are at advanced stages of drafts and, as I said, in my view it is not an issue of the professionalism or the work ethic of the anthros; it is simply that there is so much work.

In our region we have the Woorabinda deed of grant-in-trust community. That was the place where they put all the black fellas who were either cheeky, did not do what they wanted them to do or whatever else it was. There are 800 to 1,000 people living at Woorabinda. One hour outside our border is the Cherbourg Aboriginal DOGIT community. There are 3,000 people living there, most of whom are a potpourri of tribal groups from across the state and across the country. Their rights are no less than those of people who have been fortunate enough to have uninterrupted occupation of their country. At the end of the day, you need to understand that when you work in a populous area, they are some of the difficulties that you approach in a research task. I think it is also important that we acknowledge that the native title process has provided a range of important statutory procedural rights for Aboriginal people, and for that we think the system ought to be acknowledged and applauded. For the first time, Aboriginal people are at the table and they are negotiating on projects, infrastructure and other matters, and that has to be a good thing.

One of the things that we see as a possible danger to us is the prospect that, in the amendments, there is a diminution of some of those procedural rights that are already in the system. We would argue strongly that there is no place to take away the right to negotiate or other future act procedures. What we are finding by and large in our region is that if you put the effort in you can get your way through those processes. Our region is a resource-rich region. It is part of the huge Bowen Basin coal area. We have Rio Tinto, BHP, Newcrest and all the other huge miners. What I am pleased to be able to report is that at last Aboriginal people and Aboriginal groups are engaging with those proponent companies.

In our role as a native title representative body, and giving consideration to our functions under the act, we take it very seriously whenever Aboriginal groups engage in that process. We see the engagement in agreement-making processes as part of the cornerstone of empowerment and capability enhancement for the groups. It should not just be that you go and do a deal and get a pat on the back and away you go; we want these deals to not only deliver benefits and outcomes for the improved quality of life for Aboriginal people but to also make us smarter and better people. The greatest advice ever given to Aboriginal people, in my view, was by the greatest sportsmen on earth, Mohammed Ali, when he visited in the 1970s. He said that the best thing Aboriginal people can do is get out of the bar room and get into the boardroom. With respect, that wonderful human has given us some great advice.

On the downside, I put this to you, Senator Scullion. You live in a community in the Northern Territory. What would happen if something was happening in your neighbourhood and someone came along and said to you: ‘Senator, we are going to disturb your ambience and we are going to

disturb the pleasance and enjoyment of your suburb, but in return we are going to give you $5 million. We want you to set some objectives, set up a process and work out how your whole community can benefit from that'? You have varying skills. With respect, I think you would have a hard time.

What is being asked of Aboriginal people is not only that. I will give you an example of the Rio Tinto mine proposed for Claremont. It is a $6 billion project and Aboriginal people are meant to engage and get 'a good deal'. With respect, most Aboriginal people have only ever bought a car on hire purchase. People of my generation have been lucky enough to perhaps buy on a loan. Through our culture, the people that we most respect and authorise and empower are our elders. So you have people, for whom the biggest deal they have ever done is with CreditLine or AGC, who are suddenly at the table talking with numbers with zeros and zeros and zeros. That is not a fair process. One of the things that we as a rep body do in that process is try to enshrine some key negotiating principles. So, if you are going to come to the table and you are going to negotiate and engage, you are going to do it in a way that is fair and reasonable. You cannot expect Aboriginal people to agree to these big deals unless they have informed consent. Informed consent means a good understanding and a good knowledge of the whole process and the deal per se.

So there is a whole range of things that are brought to the table in the agreement-making proposal. Our land council has a policy of not pursuing litigation. We do not want to go to court. We have been able to engage with the Federal Court and to provide reports and to comply with their orders over the last three years in a reasonable manner. Her honour that we have as a presiding judge is both very practical and very reasonable. We find that as long as we are meeting our work orders and our targets and we keep the court informed, the court is not going to produce the sledgehammer just yet. That is not to say that it will not, bearing in mind that, overall, Federal Court judges have their own priorities and career goals, I suspect, in terms of their own personal development. The Federal Court has its own system ticking away. We just happen to be fed in as an Aboriginal part. We are not considered anything special or anything different; we are just another party of a stream of litigation.

In a sense I could almost say that we are lucky, but we are not lucky because the judge is a nice person—and she may well be; it is because we put in the hard work and we deal with our respondent parties and we deal with the state. We deal with the other parties to the system and make sure that every time we go to a directions hearing the judge is aware of what is going on, she knows we are not pulling her leg and she knows that at the end of the day we are doing the very best we can with our resources.

I wanted to put that in context. Yes, the litigation process can be taxing, but if you do it in a professional, meaningful and honest way, it is not the end of the world. We have not had any test cases that we wanted to run in our region. That is an area where, from a national perspective, there has not been much dialogue or much coordination of which cases are going to be run. I worked in the head office branch for two years and one of the things that troubled me was that there was no set of criteria that would determine which matter would be a test case; it was largely down to political favours, whim and where the best pressure was coming from.

I worked in Canberra for two years, and there were no criteria for what were the priority litigation matters across the country. But in that program your bureaucrats handed out about five

million bucks to two or three land councils. Did they come and ask us whether there was a test case that was worth running? Did they run the principle by us? No, no, no. Some of the greatest disservice done to the native title representative body system, with respect, has been done by bureaucrats in Canberra meddling in the native title system. Well-meaning people with social science backgrounds and no legal experience were determining what the legal priorities were. That is not the way for success.

What you need is a balanced input and people with appropriate skills. If you want to buy a car, you do not go and get a mower motor mechanic to give you the drum on whether it will go. You get the appropriate level of skills. At the body end we have been at the butt of much of that rubbish. I seriously reject it and rebut it, because we have worked as hard as we can within the circumstances to do the best we can. We had well-meaning—I am not demeaning the individuals—people trying to do the right thing in their own minds. What they did was the wrong thing. They did not involve us; they did not want to have any say with us. That concerns us.

At the moment there is a new group of bureaucrats which has come in, and they are putting together some guidelines. Their approach, I have got to say, has been a whole lot more professional. I do not say that lightly. If you go to the annual reports that are put in by our corporation, you will see that—not this year but the year before—I was very critical of the bureaucracy and the way it frustrated and ultimately caused grief for us as a rep body system. You cannot have myalls administering a system and expect the system to flourish. That is the best spin I can put on it, I am sorry. The saddest part for me is that some of those bureaucrats have been rewarded with promotions. I guess it begs the point that Sir Humphrey made. The system is alive and well and the bureaucracy is still kicking. Indeed, Senator, you have inherited one of them in your area, so that should be good.

I want to talk about agreement-making opportunities, because we are in a resource region, and the things that we do as a representative body to try and put some parity into the process. The first thing we do is look at the relevant statutory provisions. When proponents come to us, the best thing that they can get out of a rep body is a certification in accordance with section 203B of the act, which means that we have made all the inquiries in terms of process—we have notified all the potential holders and given them the opportunity to come to a meeting and they have had their say. At our land council we run databases on each of the 18 groups in our region, so we have got a pretty good handle on who we have identified through our work. Some of the databases number 3,000 or 4,000 people. When you have got a group that big you need to get the information out and you need to give them an opportunity to have a say.

There are some logistical issues that we have to address. Getting 1,500 or 1,000 people together is no mean feat. It is also hellishly expensive. Gurang Land Council take the approach that we actually honour our certification function under the act. You will not find Gurang Land Council lawyers or staff coming and telling you what a great deal they have negotiated on behalf of the blackfellas in our region. You will find that in plenty of other rep body areas, I can tell you. In our view, if you are going to certify an agreement, you cannot be a party to the negotiation. There is an inherent conflict as a lawyer. We think that the two parties are best left apart.

We are doing an agreement that looks like it will be certified in relation to a gas pipeline project for a Queensland government quango. Our lawyer has not been at the table in any of the negotiations. Our lawyer has been at every meeting, kept the minutes, kept careful attendance registers, noted all the resolutions and given the wherewithal to give efficacy to the process. The groups have had their own private lawyers who have given them commercial and other advice. We think that is the way to go. But you cannot be a certifier of an agreement and be a party to the agreement. It does not make sense.

I often speak at national conferences, and I say to lawyers, black and white, and administrators, black and white: 'Shame, shame, shame when you get up and utter those words. You did not negotiate a deal for anybody. You provided advice and support to a group who had their rights being scrutinised.' I think that is one of the fundamentals we have got to get right in this system.

I heard the previous presenters talk about well-meaning people coming to the process—and they do, and they bring a hell of a lot of expertise and a hell of a lot of goodwill. But I think on balance, with a bit of regret, they all bring a tinge of social worker with them. We need their empathy and we need their understanding, but we do not need their sympathy. We are plying people's goodwill to get them into our system. The issue of resources and salary levels is a good example. The difference between what CEOs in Australia get and what CEOs in rep bodies get is remarkable, as is the difference between what principal legal officers get paid—and I am talking about from $70,000 to $180,000 as a framework. Some CEOs get $70,000; some get $180,000. You work out where the parity is. Your funding bodies are ticking off on these processes.

When you have that sort of inequity, how are we going to get the best people at any time? We are not in the ballpark of providing commercial rates where I work. There is nobody in our organisation that gets anywhere near six figures, but we are still expected to attract quality people. I guess we are lucky we live four hours from Brizzie, an hour's plane flight. As a rule, we generally get reasonable quality applicants and, ultimately, good lawyers.

CHAIR—Does that also mean you have to pay more for them?

Mr Johnson—No. We do not have the capacity to pay more for them. It is all right saying that someone gets $180,000, but if I got $180,000 it would mean I would have to cut two of my project officer staff. With respect to any CEO, if you think you are going to do three people's work, you are a mug. In our organisation the project officers are the people who have primary interface with our clients. I can tell you I am not worth three of them. In fact, I would argue that two of them are worth one of me, because they are our lifeblood to our clients, they are the ears and the eyes of our work. I could say, 'Yes, I could pay myself $180,000, sure.' I could probably convince the board and get it in the certified agreement. Would it deliver any better outcomes to our mob? No. What I want to do is set about providing some parity and some equity. We need to have the system in balance. It is horribly inefficient.

CHAIR—I was just trying to understand why there are such different pay scales set across the country. Is it simply because of a decision for a different approach from different land councils rather than anything else?

Mr Johnson—I think it is that. You also need to know that every budget we put in lists all our salaries. The funding agencies have been aware of that disparity for years and have done nothing about it. To the credit of the new crew who have just come in, they have done an NTRB salaries project. That is how come we know the figures now—they went around and asked everybody what the difference was. But it is hellishly hard when someone is being paid $50,000 or $60,000 more to pull them into your show.

I also wanted to talk about, in this negotiation process, establishing the parameters for negotiating agreements. There is a need for clarity of roles in the projects. We need to know what good faith means. We get it told to us all of the time. When our mob do not turn up for a meeting, the proponent is the first one to say, 'You mob don't show good faith.' We need to know what it is and how it is and what we have got to do. We asked for the proponents to ensure their compliance with the statutory procedure roles that are afforded to the native title group. We also asked them sensibly—most of them are doing it—to integrate native title issues as part of the total project cost. It is nonsense for proponents to be coming to government and saying, 'We can't do this because of the cost to native title.' Let me tell you the figures that have emerged: native title costs somewhere between 0.5 of one per cent and 1.5 of one per cent of the total project cost, so if your project is going to fall over because of 0.5 per cent then, with respect, I do not think you ever had a viable project. The majority of proponents have put that nonsense line away and come to the table in good faith and say, 'Yes, we now embrace native title as part of the project costs and we see it is a reasonable figure.' The ones who will not are the small people who 'have no money', who do not have resources.

The best thing about this is that as Aboriginal people engage in the processes, we actually become smarter, we become more knowledgeable and we become more learned. I have a good example. We do mining in our region and we created a mining database. We have got a profile on every miner in our region. It was with great mirth that I watched the CEO of a large Queensland mining company trot into a group of applicants, sit down at the table and say: 'I hope you enjoy your morning tea and your afternoon tea. We are a very humble company; we don't have very much money and, at best, we can give you an insulting figure.' With great pleasure I watched one of the senior Aboriginal men put his hand up and say: 'Well sir, you must have a problem because I read your report to the Stock Exchange and you told them you made $220 million profit, so who is lying? Are you lying to us now or did you lie to the Stock Exchange?' The look on that gentlemen's face was worth bottling. Suffice to say, he took off the pumpkin and put on a sensible head and came back to the table and they have negotiated a deal. What we need is for that nonsense to stop; stop treating us like idiots. The more we get involved in it, the better we will be at it.

That went through the mining industry like wildfire. 'Don't go up there bullshitting to the blackfellas because they know about us!' The next thing we are going to start releasing, if they want to keep going, is the remuneration these people get. That is not where we are going to go to or where we want to go to. We want to promote positive engagement to create enduring relationships. This is not just about a mine or just about a power station or a gas line; it is about how we enhance the quality of life of Aboriginal people as a part of that process. It is heartening to see the companies starting to embrace their triple-bottom line instead of their old double-bottom line. They are looking at environment, return to shareholders and the community. It is a shame that it has taken so long for them to get to that. The multinationals are the first to do it; I suspect because they can afford it most and they can afford the bad publicity least—but that

might be a cynical observation. But, to their credit, where they are engaging in doing it properly, I give them all the accolades, publicly and privately, that I can.

So I am not about canning development, canning mining or anything like that; I am about canning bad process. If groups come to us with good process that allows us to satisfy our statutory functions and resource the process properly, we can do business. We do not have crystal balls and we cannot read into the future. A good example at the moment is that we have the Papua New Guinea pipeline back on the table. When we did our budget submissions in April and May for the OIPC people, PNG was not even on the pipeline. We have now had PNG come to the table and say, 'We want an agreement by the end of March.' One does not have to be an Einstein to work out what we would have in our budget for it, and I am not about to go and tell other groups who have worked hard and got their priority, 'Sorry, we didn't see this last year and you're going to have to miss out.' That is not the way we are going to do business. And, to the credit of the consortia, they are still engaging in positive negotiations with us. So it shows that people will and can do the business.

We also need to ensure that native title group applicants have a proper and appropriate authorisation from and involvement with their wider group, whether it is down to smaller family group meetings, a big group meeting or a range of meetings. It depends on the individual group and their traditional decision-making processes. We also think it is imperative that they have independent legal, technical, economic and financial advice. It is no good saying to people, 'We'll give you $10 million. We'll whack it in a trust and you can work out how to do it.' That is not good enough anymore. We need to know, and people need to have independent legal advice on, the quality of the mechanism to distribute the benefits. If you are going to do a gas pipeline or a coal project, you need technical advice. What is the return on those industries? What is reasonable? We are being told that there is a world mining boom. We would like to see some of the benefits flow in a more wholesome way. If they are going to have any economic independence in the future, they also need to have the ability to access economic and financial advice. It is no good getting a $10 million package if it goes down the drain in 12 months or it cannot be distributed because of other difficulties. You have to address these issues.

One of the things that really amaze me is that Aboriginal people, whilst we have cultural differences, are actually not that different to the rest of society. Our priorities are pretty simple. We would like to provide opportunities for our kids and our grandkids. We would also like to be able to integrate our care-of-country responsibilities as part of a project. You do not have to create a moonscape anymore, and thankfully we have seen governments of all persuasions at state and Commonwealth levels pursue proper mining and proper process.

We also need to look at the relationships between the proponent and native title claimant groups and the rep body. We need to ensure that we all know what we are going to do, when we are going to do it and how we are going to do it, and we do that by way of a service agreement with the parties involved, so we have a document. We do not have any difficulties from our point of view in having proponents consider our service agreement model, and by and large they sign it. I think that is a reflection of the fact that they probably see it as a fair and reasonable document, rather than the only way through. At the end of the day, for national or state projects, they have compulsory acquisition as a fall back, but I am pleased to say that most companies are not waving that as the big stick. They are saying, 'No, let's try and engage.' As I said, I am not a knocker. I knock bad process, not process and opportunity, and that is the important part.

We also need to look at the role between the rep body and the claim group: who is going to do what? What will the NTRB do? What do we expect the applicants to do? We need to have an agreement to understand it. From the 10 years we are now in, we have had some agreements come up in our region. We have had some good ones and we have had some indifferent ones. One of the things that I think we should be turning our focus to now is the implementation and review of those agreements. It is all right to say you have a wholesome negotiation process, you have ticked off all the processes, you have a good lawyer, you have a good accountant, you have a good economist, you have a good system to do the deal, but how do you actually put your attention to the implementation of that deal? What is going to be the mechanism to distribute the benefits? Is it going to be through a trust? Is it going to be through a discretionary trust? Is it going to be through annual royalties? Or is it going to be through some other mechanism? They are all the things that cause grief to the implementation of agreements.

So we think that implementation and review should be an essential term of the agreement, not an afterthought, not in an annexure and not in a pie-in-the-sky document that sits somewhere out there in isolation. Experience shows that if you commit resources to implementation and review you can actually get an agreement that delivers what it is supposed to do—that is, allow the project to proceed, allow positive and beneficial Aboriginal engagement and, at the end of the day, allow everybody to look each other fair and square in the eye and say, 'Listen; we upheld our part of the deal.' I think that is important for two reasons: because not only from time to time do proponent companies not uphold their end of the deal but also Aboriginal people from time to time do not uphold their end of the deal.

I do not think that the time is ever right for us to just walk away and say, 'It is too hard.' I am of the view that if you are going to have implementation and review, you should make it a two-way street. So, if we do not provide the number of kids or the number of whatever it is, we have to give some account for that. It is no good having a contract that has one-way penalties, because that is not a contract; it is a bullying act. That is what we want to get away from. We want to get into wholesome implementation and review, to look at an agreement after three to five years and see how it was implemented, how the benefits were distributed and how the quality of life, for example, of Aboriginal people may have improved as a result of the process and the project.

As part of the agreement-making process, we focus on self-determination and empowerment for our groups. We need to ensure that we provide support and advice when they engage in the agreement-making process. Our job is to be, I guess, a shepherd. It is not to do the deal; it is to set up parameters and to give effect to our legal obligations as an NTRB. We take that seriously and, in terms of our resources, we have made a very strong effort to make sure that our mining and legal units have a greater emphasis on that. We have just taken on a third lawyer. Her role is solely agreement making. We have a mining unit that has a database of every miner or explorer who comes into our region. It is almost a trivial example that I have given you, but it shows the change in balance that created for the process. We did not have to do that one more time. Not one CEO or negotiator came up and said, 'We are just poor, miserable, little miners.' They all came through and said, 'We are company A. This is what we have got and this is what we do.' How much more proper and correct is that? If people know you are serious, you can get a proper engagement.

From my point of view, I have to say that the part of the Native Title Act that is not functioning effectively is in relation to litigation. The management of the litigation process is

still chaotic. There is no single set of circumstances or blame to be attributed here. The state, for example, has to agree to consent determinations to avoid litigation. The Queensland government, in our case, has to resource their appropriate agencies so that they can deal with all this work that we are doing. For your information, we provide a connection report, they read it against their guidelines and then make a recommendation to the Premier and cabinet as to whether they should litigate or do a consent determination. If you compared the cost of this to that, this would less than 20 per cent of that. So it is in everybody's interests to get a consent determination agreement.

We have worries about the longer term. We are spending lots of dollars on these connection reports. In 2006 we will be submitting four or five. We are worried about whether the state will be able to handle that kind of demand, given there are six representative bodies. We are all on the same plane. We are all about delivering connection reports. In one year the state could hypothetically have 20 connection reports delivered. It has two anthros and a historian. They are very good people and are probably very talented, but even with the greatest talent and the greatest work ethic in the world, we are not going to get them turned around in a month, six months or 12 months. It is going to take 18 or 24 months for them to be processed. Who are the losers out of that? Our mob. They complain like bloody hell. We spend 18 months doing everything except measuring their foreheads—as some of them say—in terms of inquiring about their personal lives. Then they still want to know: 'When are we going to get our land?'

So there are other impediments. I am not here to bag the state. They make their decisions and ultimately they live and die by the sword, but what I am suggesting is that it is not good enough to put the native title stuff in with political goodwill. That is where it is at at the moment. There are not too many determinations in this state that are not in Labor electorates. They are the facts. I do not know what conclusions to draw from them, but my point is that political patronage is still required to advance matters, in my view. That is a political party's and a government's prerogative, I guess, at the end of the day. But, when you are trying to get justice for people whose lives have seen so seriously affected by this invasive colonisation, surely there is a bit of equity required in the process, not just saying, 'Oh well, that is a close one,' or 'That is a safe seat. We will do that.' I do not know if that happens. I am just a casual, uninformed observer in relation to that. But there is a whole raft of things that come up as potential impediments.

I have been in my job for three years. It has taken us three years to get ourselves onto the front foot, to enjoy the confidence and support of our clients, but we still have to tell them that there are more delays. I briefly want to raise funding applications. This current financial year is the first time in six years that we were not told categorically that we could not apply for more than what we got last year. I want to acknowledge the new people who are running the program. In the five previous years, we were told never to apply for more than what we got last year. You would get a deflator, which is something to do with inflation—I don't know; I am not in finance—and that was it. So how were we going to make new initiatives and do new things when we were told that we were not going to get any more than the 1.8 we got last year? This year, to the bureaucrats' credit, we have done a wholesome operational plan application. Because we could measure to what we can do—it is not about grabbing money; it is about making sure that you can deliver—we managed to get the lion's share of what we asked for. But it is the first time in five years that it has happened. I do not think that is a wholesome process at all.

Mr McMULLAN—How big an increase did that constitute?

Mr Johnson—For us, it was about $200,000.

Mr McMULLAN—Which is about 10 per cent?

Mr Johnson—Yes. It means that we have three significant agreement-making opportunities coming up with the state. We have been able to put some money into that to at least start the dialogue. We have told the state—like we tell Rio Tinto, Enertrade and the Australian pipeline consortium—'We do not have the dollars in our bucket to go through a full authorisation process in this state. You need to be able to cough up some resources for that.' It depends on the case and on the project, but the state, like most treasuries, has some manoeuvrability.

If we had the resources to properly authorise three or four really big agreements in the next year, we could do it. They are significant, precedent-setting agreements in very populous and popular areas on the east coast of our region. Among some of the ponderables being put forward by the state are land-for-land swaps. They take the unallocated state land and convert it to freehold for developers and others to do the infrastructure—sewerage and water. In return, they provide land of equal value to the Aboriginal group as unencumbered freehold. Those things are going to change the future of Aboriginal people's lives. If we can get an economic base out of that land opportunity, it will take us somewhere. But we cannot have the state saying: 'But we don't have any money to do it.' You will have to go on the backburner too, with respect.

Mr McMULLAN—How much more resource would it take for you to be able to do that?

Mr Johnson—I am thinking in the order of $500,000 to $1 million.

Mr McMULLAN—In a year?

Mr Johnson—Yes. It would not be every year. A responsibility that I have as CEO is to cut the sail to what we need to do. It is no good my saying that I can do that year in, year out. If the opportunities are not there, why would I need the money? We would be looking at it on a project-by-project basis. One thing that may be advantageous is if the program had some flexibility in that regard, if the government held some money back and said, 'If one-off opportunities or precedent opportunities come up, make a submission.' I think that would give us some advantage I know that that group have been engaged with the state for three months. They are now asking us: 'Why can't we go forward?' Our response has been fairly simple: 'You've got 1,500 people on our database and if we are going to have this agreement authorised'—the quantum we are talking about is $10 million to $20 million—we want those people to be informed of the process, to be able to participate in the process and, if that process means a group meeting, we need to get them together. You do not have to be too smart to work out that, to get 1,500 people together, you are probably looking at $300,00 to $400,000. That is the nature of what is attached to doing the deal. We could logistically coordinate it and do it, provided we had the resources

I reiterate: it is not just a question of money. We have seen for too long what too many zeros do to Aboriginal communities. It generally makes them dysfunctional; it generally makes them lose contact with their culture; and it generally turns them into divisive people, which is so far from our culture and our way. So money alone is not the solution. The solution is to enhance the capacity of Aboriginal communities to solve their own problems and address their own issues of

self-determination and capability enhancement. How can we do our business better? The mining is not going to stop. The project development is not going to stop. What I see is a pool of potential negotiators who, at the moment, are flat out getting beyond—I guess I had better contemporise it now—the VK Commodore instead of the EH Holden. That is where we are at. We need to get people working smarter and harder.

One of the things we have tried is setting up negotiation workshops where we get skilled people to come in and talk to our applicants about what a negotiation is. Aboriginal people and white people have different concepts of it, and we need to change our concept to reflect the real world. The real world is: people want to come and access your land, get their mine on it, make their money and leave. You can negotiate in one of two ways. You can do it in a totally abrasive, nasty and non-efficient way, or you can look at creating enduring relationships, which last beyond the life of the mine so that if revegetation or reforestation projects come up Aboriginal people have some advantage. There are lots of ways to do it, and there are lots of examples across the country where the latter way has worked.

I almost have the view: if it ain't broke, don't try and fix it. I say that in respect of agreement making. We can get a little bit smarter. But the litigation is problematic. There have been three 'their honours' pass over in the last 12 months and the Federal Court is not rushing to send in new judges. Ask any Federal Court judge what their workload is and they will tell you it is horrendous. Indeed, I heard someone comment that it is murderous. That is the reality. Even if all this were suddenly turbocharged, what would we do? There is no simple fix. There needs to be a look at the whole process. Look at what the Federal Court does, what the tribunal does and what rep bodies do and make it work. Finetune it, sure, but do not change the fundamentals. The opportunities are there, and we believe that with adequate resourcing and proper skilling we can make it work.

CHAIR—Thank you. We are almost out of time so the questions will probably reflect that. Obviously there will be, certainly from me, some questions on notice. We will give you time to answer those.

Mr MELHAM—I have a question, which I also asked the earlier people, to do with funding. Do you support the introduction of multiyear funding?

Mr Johnson—I think it is absolutely essential. One of the problems we have is that at the moment I can give six months probation and six months after that. It is unfair when you are asking professional people, particularly, to relocate from other cities or regions.

Mr MELHAM—Are you looking at a triennial funding?

Mr Johnson—We had triennial funding once. It is about not only the staffing but also the corporate planning you can do. If you know you have a level of funding for the next three years, you can start to do what we should do as a responsible business—that is, develop coherent corporate plans.

Mr McMULLAN—I do not want to start a new discussion, but you might put it together with your reserve fund for special projects that everybody can apply for, so you would have core triennial funding and something like that.

Mr Johnson—Yes, some top-up money. One of the things we talked about was reward performance.

CHAIR—The two processes are interesting. We all recognise one as probably pretty flawed. Some people see it as a last resort and some as a first, but that is from an industry perspective. Regarding litigation and consent determination, it seems that with a consent determination which seems to have the very best outcomes for everybody industry pay the least last, if you like. They know what they are up for in litigation—the big fat lawyers are rolled out and all that sort of stuff. But in terms of your connection report and all those sort of things, it is sort of stymied. They are quite happy, if it gets to the end of it, to spend a large amount of money fixing it another way. Do you have any ideas about how industry may view providing, in terms of the consent determination, a share? They, you and we have an interest in it, and they should pay more of it. It always seems like when you go down the litigation path they are quite happy to pay. I am not saying this is not government's responsibility but somebody else's, but the consent determination process is expensive. At the moment that cost is principally borne by the traditional owners and other levels of government, which means by the taxpayers. The principal interest in this lies with the industry. Yes, you pay taxes and those sorts of things, but industry has the principal interest. Do you think there would be some benefit in perhaps engaging them on that issue?

Mr Johnson—I think there is, and I think it should be targeted at one particular area—that is, enhancing the capability of Aboriginal people to do more about their own lives. I do not think there is any place for respondent parties to be involved in offsetting connection report preparation, but, if you get to a consent determination, under the act you are obliged to form a PBC, and you are forming a going concern. There is nothing wrong with industry looking at the prospect of providing some support. Some people say it could be even as simple as providing a set of computers and a printer. That is the level of simplicity it may well be at. Yes, I think there is a prospect, in answer to your question.

CHAIR—Thank you very much. You can expect some questions on notice over a whole variety of issues you raised in the excellent contribution you made today.

Proceedings suspended from 12.50 pm to 1.46 pm

BELLEAR, Mr Russell, Executive Officer, Central Queensland Land Council

DORE, Mr Martin Edwin Ellis, Principal Legal Officer, North Queensland Land Council

ROBINSON, Mr Trevor, Executive Officer, Queensland Indigenous Working Group

WHALLEY, Mr Peter Michael, Research Officer, Queensland Indigenous Working Group

CHAIR—I welcome representatives from the Queensland Indigenous Working Group, the North Queensland Land Council and the Central Queensland Land Council. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I now invite you to commence your opening presentation, after which we will move to general discussion and questions.

Mr Robinson—Native title matters are about land, of which legal proceedings are inherently complex and lengthy and necessarily involve numerous parties besides Indigenous people, including landowners, industry groups and all levels of government in Australia. Native title is a communal interest involving the collective decision making of Indigenous groups, who are often geographically dispersed. The representation of their interests is itself complex and lengthy and involves considerable cost.

These factors, together with the increasing burden of evidence required to prove native title rights interest, itself a factor not of Indigenous people's making, means that the process of litigation will necessarily be lengthy, costly and complex. In this historical context, the achievements of native title representative bodies have been quite remarkable and the dedication of native title representative bodies staff and governing committee members in terms of both their hours of work and their commitment to native title holders' interests needs to be acknowledged and applauded.

Nationally there have been 73 native title determinations—53 that native title exist and 20 that it has been extinguished. The majority of these positive determinations have been achieved by agreement. Thirty-five of these determinations have been in Queensland. Only two have been by litigation and one was an unopposed determination that native title does not exist. This rate of determination may itself be increasing over time with the development of case law and precedent. Fifty-two ILUAs were registered in 2004-05, bringing the total to 182. As of 16 November there were 224 Indigenous land use agreements, another 42, of which 120 were in Queensland and 75 in the Northern Territory—31 of which were over national parks. In Queensland, 1,409 applications for exploration permits and mining have been received since April 2003 and 1,004 have been granted. I wanted to provide that information to reflect on the good work that native title representative bodies have been engaged in, in Queensland alone. I will pass over to the other members here today so they can express their thoughts.

Mr Dore—The topic of making native title representative bodies more efficient means that you have to look first at those things that push us towards the inefficient end of the scale. In saying that, a large amount of agreement making is happening, as Mr Robinson has already pointed out. But along the path to those agreement makings there are things that impede us in the

delivery of native title services and the achievement of our major goal—which, of course, is a native title determination for our clientele. We see those impediments as, first of all, the unnecessary plethora of respondent parties that are allowed into the native title system. In our submission, the courts' decisions are out of control. People who have no greater interest than any member of the public are being admitted as respondent parties. We feel that the general public interest should be represented by and protected by the state and that there is no need or room for those others to be separately represented.

We have had cases in the North Queensland region where people have been admitted as parties simply on the basis that on the weekend they liked to get in their tinny and visit certain islands off the coast which were under native title claim. They were not asserting any right higher than you or I might do if we happened to be in the area with a boat, an outboard and an afternoon to spare. There are many examples of what we call 'nuisance parties' along those same lines—people who have no particular legal interest to be protected. What is of disappointment to us is that, when you look at the fact that a native title determination is always subject to the laws of the Commonwealth and the laws of the state, one has to ask: what have they got to lose? Why do they need to be in there? What is it that they are protecting?

Mr MELHAM—Are they being legally aided or are they funding their own interventions?

Mr Dore—We believe that many of them are funded through the Attorney-General's funding system. It is a matter of concern to us. We see that as a waste of public moneys.

The other thing that having the plethora of respondent parties does is that you find parties are in there not just to protect whatever current interest they may have but to get what they can out of the system. The classic case of this is with holders of occupation licences. In Queensland, the licences are granted by the government on a short-term, usually 12-month, basis, usually for things like letting cattle roam across certain areas of government land. It suits the government's purpose, keeps the vegetation down and therefore reduces fire risk. But they are very much just a licence to run cattle or something else on the property for 12 months. On the basis of that, they become a party and say, 'We will not agree to your determination of native title until you agree to us getting a full upgrade to a pastoral lease'—or, in some cases, it is a perpetual lease. We regard that as a form of blackmail. They are not protecting an existing interest, but rather they are using it to try and increase their interest at the expense of the native title parties, and many lengthy negotiations have to be entered into on those matters. Those are the sorts of things that chew up our time. In terms of being effective at getting to our goal of settling a matter with a determination, they are the sorts of things that get in the way.

The major problem has always been underfunding. We are often told that we sound like a broken record but, until matters are properly addressed, the record will have to be played time and time again. We can go back to the Love-Rashid report—which is now some four years old—that told us that before the new system was brought in we were underfunded and that there would not be sufficient moneys for rep bodies to carry out their core functions. Indeed, those functions have increased and the burden upon native title representative bodies to do their work has increased. That remains the situation: funding has not been increased in any meaningful sense, and yet there are more and more burdens being placed upon us.

As case law develops and governmental attitudes change, there is also the need to be more and more expansive in our research of connection matters. We find that in Queensland the government is now being more demanding of research and proof of connection, which again is an extra burden upon us having to do more work. The dollars are not elastic. More work on one claim inevitably means that another claim will have to be put onto the backburner until sufficient funds become available to dedicate to that particular claim.

With respect to reporting requirements, we find that what we have to do under our contract funds as opposed to grant funds, in terms of the reports to the OIPC, takes up an inordinate amount of our time. We seem to be constantly reporting on what we have done with funds rather than being able to spend the funds on our core functions and other work. At the coalface we feel we spend more time reporting than doing our real work, and that is a very real concern to native title rep bodies.

Some other areas are causing concern. I just pause to say that I prepared a paper for those who are looking into the technical changes to the Native Title Act. I am happy to provide this committee with a copy, because in one sense some of the issues do overlap from one area to another. One area of concern is the registration test. It has gone from what was envisaged to be a simple prima facie exercise to something that is highly technical. It is being administered in a way which we submit is entirely inconsistent because of the way the act is drafted, requiring in effect a subjective test by the person who is delegated the job of looking into the particular matter. The delegate is required to be satisfied with the way the act is worded, which is a largely subjective test as opposed to objective, as a result of which we have situations—and I have outlined one in some detail in my paper—where the same sort of wording in a claim was happily accepted by one delegate and rejected out of hand by another.

So there is no real build-up of precedent and no real build-up of consistency, and we have moved far away from and beyond what should be a simple, objective, prima facie style test with registration matters. Having to try to grapple at the coalface, as the legal officers do with wording claims, you cannot find one and say, ‘Right, this one got through. It found favour with the delegate, so let’s look at how we worded that and see whether we can word this one similarly.’ Even when you do that, you run the very real risk of it getting chucked out on the registration test because the next delegate takes a different view of the world from the one who looked at the first matter. They are real problems that chew up a lot of our time and effort. They take us away from the real aspects of getting native title researched and getting claims dealt with and being able to deal with what I would suggest are legitimate respondent parties and sorting out their interests and getting to the point where, therefore, we can look forward to a consent determination.

One of the things that does cause us a great deal of turmoil is that, in this whole process of running a native title claim, we seem to end up having to fix everybody else’s problem before we can get to a determination. We have to deal with local shires who have built roads outside of the road reserves. We deal with local shires who have built entire dams and reticulated water supplies outside of the reserve set aside for it. We deal with shires that have been busily doing matters that should attract advertising under the future act process that have never issued a future act notice. In all of these matters they ask, in effect, ‘Before we agree to your native title, we want you to give us a forgiveness for all of the things we have done wrong,’ without any aspect of compensation. They can do that because they are a party to the claim.

We feel that one of the things that is really hindering performance of native title in terms of getting recognition for traditional owners is, really, the whole way the system allows anybody who has a foot in the door to then use that for all sorts of ancillary purposes that really do not go to the heart of native title.

Mr McMULLAN—Can you assess how much extra costs for those sorts of matters impose on you—not so much those particular local government examples, but those extra matters coming in? Is there some way you can look at the extra costs that that imposes? It is an issue that everybody raises—not necessarily in the same words or with the same examples, but everybody says, 'We're proceeding in accordance with our priorities to put these cases forward and they get diverted by non-claimant applications, future act issues and other people coming in, and they take up a lot of our time and resources.' Is there some capacity to do it?

Mr Dore—Certainly, we could try and do a detailed analysis.

Mr McMULLAN—Do not waste anymore of your valuable resources doing some research.

Mr Dore—To be honest, off the top of my head, I would say that three-quarters of our time is taken up in dealing with those matters. Another area where we feel great frustration is when we research matters for connection purposes. We produce connection reports, we negotiate with the state. Make no mistake about it, the state puts these things through the mill. They look at them closely. They hire their own experts. Then one or the other parties will say: 'I want to see a full copy of the connection report. I want it analysed by my own person.' That may repeat itself quite a number of times over, and we say, 'Why?' particularly if those people are being funded by the public purse. Why put it through all of those things time and time again?

What is often lost in this whole process is that connection report material can often be quite sensitive. Of course, you have to explain the history of the particular group for which the claim is being made and how everybody fits into the family tree. Often, there are embarrassing matters that have to be revealed—who married the wrong way and had children who formed a certain branch of the tree or who had illegitimate children because of an affair. Everybody has to be fitted into the picture but, in doing so, sometimes very embarrassing information has to be revealed and people get very upset to think that is revealed time and time again—and for what purpose? We can never figure it out. That is another area that is placing burdens upon us and our clientele, and that is standing in the way of getting matters finished more quickly. I have probably said enough there to generate some questions, I imagine.

Mr Bellear—Martin has jumped on most of the points I had, but there are two other concerns that my board has raised, particularly in relation to the OIP position on its preference for native title services as opposed to rep bodies. The concern they have is that the Aboriginal governance of native title rep bodies is virtually preserved in the Aboriginal Councils and Associations Act. The native title services can be a company and there is no guarantee that the people appointed to directorship are going to be Aboriginal people. That is one. The other concern is that the courts do not pay particular attention to the Native Title Act. We had a case last week where one of the judges had ignored the Native Title Act in terms of what makes up an applicant. There really needs to be some consistency because, I think, seven out of 10 people had given instructions to do certain things. In the Native Title Act, it has to be the whole lot of the people who make up the applicant.

Generally, the funding is of great concern to us. We are grossly underfunded. There is always a chance for anybody to pick holes in the way that the rep bodies achieve outcomes. Four years ago the government commissioned the Love-Rashid report and they were told that we were grossly underfunded then. We have not had any major increases in funding since then, so how do they expect us to—

Mr McMULLAN—Have you have any real increase at all?

Mr Robinson—No. It has been maintained. There has been some funding for capacity building but the rep bodies do not actually see that money to be able to carry out their tasks.

Mr MELHAM—Do you have a view on multiyear funding? We were told by the Carpentaria Land Council that they were of the view that funding should be provided over a three-year period to enable organisations to recruit better and also for certainty.

Mr Robinson—I do not work within a native title representative body itself but I understand that triennial funding was introduced with the regazettal of NTRBs. I am not quite sure when that stopped. Reflecting on your question to Martin before about the resourcing of non-claimant applications, there was a particular application here in Queensland called the Koa application. It occurred up around Winton, where a non-claimant was actually funded and resourced—this is my understanding—by the Attorney-General's department. There was a native title representative body application to contest that particular case but they failed to attract any resources whatsoever to fight it specifically.

The last increase that native title representative bodies received was indexing in the last financial year. In terms of the capacity-building funding there was something like $16.4 million set aside back in about 2002. There was an application by native title representative bodies, particularly here in Queensland, to access that funding and for it to be shared equitably across the state between each of the rep bodies, but that was not to be the case. The Native Title and Land Rights Centre within ATSIC said, 'No, what we will do is hold onto that money and we will receive applications for the use of that money.'

Mr McMULLAN—Did you see any benefit from it as a result of the applications? Was capacity built?

Mr Bellear—We have got urgent needs for things here and now. If we are looking five years down the track we may get somebody better equipped to go to court or do something in the organisation. That is fine if you have got five years to wait, but we do not have that.

Mr McMULLAN—Give me an example of things you would like to be doing that you cannot do because of resources.

Mr Bellear—I would like to refit our organisation with proper computers. We have had applications in for funding. In the latest round of funding we were told that we could vary our budget, so we could take something offline to be able to prop it up and then we have got to work out which is more beneficial to the people we serve. If we can prop up the old computers and keep them going, we do that.

Mr McMULLAN—If you had to take money from other services to fund the computer upgrade—that is an interesting example to use—what would have to give? Would it be some support for some application or other?

Mr Bellear—Yes. We would be looking at probably $30,000 to put in a new server and replace the computers that need fixing, which is quite a substantial amount to take away from a claim.

Mr McMULLAN—In terms of lack of resources, there are always two things in parallel. One is of course that there is not enough money. But the other is that, even with the money, it is always hard to find and attract an anthropologist with expertise. We would need to look at something about training as well. What is your view about that?

Mr Bellear—Certainly there is a limited number. When we do advertise for people, we are fighting against each other to get the people who are available. This is the way it is. If we were to pay lawyers and anthropologists a decent wage, they would find working with us more attractive. At the moment, most of them get more money out of going out as consultants.

Mr Dore—If I could pick up the point that was mentioned earlier, certainly three-year funding cycles would be of benefit because, at the moment when you recruit staff or try to recruit staff, you can offer them at most a 12-month contract, because you are never certain that you are going to have the funds past the next financial year. So that makes it doubly hard to get people, on top of the fact that there are very few people with substantial skills from a legal point of view in native title who have not been snapped up somewhere else. Certainly the whole unstable nature of the business is not easy. People look at it and think, 'I can go and get a job with a big city firm and it will probably be safer and my long-term career prospects are probably better.' So it is our inability to cope in terms of offering the same sorts of wages and offering the same sort of job security that is a real difficulty. There is always going to be a problem with skilled people out there but when you add those extra problems it becomes extremely difficult, not just difficult.

CHAIR—Would you like to make a further submission, Mr Robinson?

Mr Robinson—I think we have covered a lot of it in the submission that we provided last year. Just on the subject of funding, I think there is not a recognition of resourcing increased work activity. The Miller review is a good example whereby the government engaged Miller to undertake a review into these operations. What came out of that review was a recommendation to us to increase administration in terms of developing more detailed strategic plans, operational plans and so forth. But there was no forthcoming additional funding to counteract, I suppose, what was a significant workload in preparing those documents and preparing those plans and the detail that they had to provide them in.

Mr McMULLAN—Are there other examples of areas of increased demand? You mentioned the administrative burden. Do you find at different times an upsurge of future acts, state government initiatives or whatever that create an extra flow of work? I am not talking about Queensland specifically. I am just wondering from a Queensland perspective. What is driving an increase in workload, which you have to try to meet from with existing resources? What are the drivers of that increased workload?

Mr Bellear—The courts certainly dictate which claims they want taken forward, which ones you have got to do work on. Sometimes they make it a bit difficult. There is also the reg test. The inconsistencies in how they apply registration tests cause us a hell of a lot of work, considering that they only really need sufficient evidence to register the claim—it is not a court process that they are engaging in.

Mr Dore—If I may just pick up on that point, it is not just the amount of information and bureaucracy that seems to have found its way into application of the reg test but also when it is applied. For example, you find out that a certain portion of your claim suffered an extinguishing lease in the year 18-whatever, so you want to take that part out of your claim. You amend your claim in the Federal Court and that triggers the registration test again. So there is a lot of waste of time and money happening for the National Native Title Tribunal to be retesting something for no benefit or purpose.

The same thing occurs when you have deceased applicants. Unfortunately we have that situation quite often because, naturally, people tend to put forward applicants who are seniors or elders, out of respect for them and because it is culturally appropriate. Unfortunately, when you appoint the older age demographic, you have got to expect that you will have a fair number of deaths. Even amending the claim to remove a deceased applicant's name from the claim will trigger the registration test. It is all a pointless waste of money.

Sometimes that means you then have to spend a lot of money, because the tribunal's attitude is, 'We must reg test every time and we must be satisfied of authorisation every time.' I am not saying that the tribunal is not following the letter of the direction of the Native Title Act, but it seems like a huge waste of effort and everyone's time when the efforts could be concentrated towards getting results rather than dealing with bureaucracies.

Mr McMULLAN—Do we need to fix the act to solve that problem?

Mr Dore—I believe you would need to make some changes to the act about when the registration test applies, yes.

Mr McMULLAN—That relates to the issue which has been recurrent, which I think is in your written submission. I read it a few days ago, so I may be mixing it up with another one. Certainly this has been regularly raised: the problem for native title rep bodies when prescribed bodies corporate are being set up, when there are expectations that they will be involved in assisting them to be established but there are limitations on the capacity to do so and some resource issues anyway. The examples I have in mind are not Queensland examples. You might be able to tell me it is not a problem here or raise some Queensland examples that will illustrate that point or establish that issue. That is something that we have been looking at both directly and indirectly. What is the experience here?

Mr Dore—Our experience is that under our funding conditions I believe the figure is $50 that we are allowed to spend postdetermination on assisting a group with their PBC. That is ridiculous; it will not even buy the stamps to call a meeting by letter. Obviously as we get closer to the determination it is desirable to have a PBC set up. Many of the groups in our area already have corporations, but they are not suitable to be PBCs. We found that quite a few in our area

were incorporated before the date. There is a cut-off date, and you have to be incorporated after that to qualify. Many of them fall before that date, so many of them need new corporations.

We try and assist as best we can. We try and build those sorts of discussions into meetings we are having for other native title purposes as well so that there is an economy there. Setting them up and getting them incorporated is one thing, but once you have got a determination these are the bodies that are then going to be dealing with future acts and negotiating their native title agreements, ILUAs and all the rest of it—and we are not allowed to help them.

Some corporations may have income from deals they have been able to do with mining companies and the like. Some will not. Some groups in our area were in difficulty with the registrar's office recently for not calling AGMs. They did not call AGMs. They did not have the money to post out the letters. We have some very real, fundamental, grassroots problems with setting up organisations that are meant to deal with letting their communities know about future acts. They have an obligation under the act to consult and no money to do it with. It is a very real problem for some.

Mr McMULLAN—They expect you to do it, don't they?

Mr Dore—Yes, because we are the people that they are dealing with. They cannot go to legal aid and ask—it does not fall within legal aid's charter. And, even though strictly speaking it does not fall within our charter, it is related to native title. It is a PBC for native title purposes, so naturally there is an expectation that we should be able to assist.

Mr MELHAM—In your submission you mentioned that ATSIS was no longer going to provide funding for the work of QIWG. Your submission was dated May 2004. Where is your funding coming from now? Did they go ahead with that?

Mr Robinson—Yes, they did go ahead with that. We are not been funded at all by the Commonwealth.

Mr MELHAM—So is it all state money?

Mr Robinson—Yes. We are provided funding through the state. It is a shared funding arrangement across a couple of departments within the state. We put a submission to the Commonwealth, to Amanda Vanstone, seeking a shared funding arrangement between the Commonwealth and the state because some of the stuff that we do impacts on Commonwealth legislation as well. They certainly have a responsibility in terms of what—

Mr MELHAM—How long is your funding for? Is it just on an annual basis with the state?

Mr Robinson—The situation is that the Queensland Indigenous Working Group has a protocol arrangement with the Queensland government. That was developed in early 1999. There are a number of, I suppose, projects within that protocol that we interact or are engaged with government on in terms of policy development and legislative review. It is from that that across Queensland, because the native title representative bodies are members of QIWG, we can then provide a collective or state-wide response to any particular issue or policy in relation to native title, land and natural resource management issues or cultural heritage issues. But our

main funding now comes from the department of natural resources and the Department of Local Government and Planning here in Queensland.

The question was asked before about the increased workload of NTRBs. Back in 2000, I think, or when the Beattie government came to power after Borbidge was in power in Queensland, the Borbidge government had wiped their hands of native title totally. In terms of mineral exploration in this state there had developed a backlog. It was basically frozen; there were something like 1,200 exploration permit applications. What QIWG has done since then is to negotiate an Indigenous land use agreement—what they call a state-wide model ILUA—which facilitated the clearance of that particular backlog when Labor came to power in Queensland.

Since then we have also negotiated on the repeal of the Queensland legislation and reverting back to use of the Commonwealth act. What we also did was to engage with the state and the Queensland Resources Council here in Queensland to develop what is called the native title protection conditions that attach to use of the expedited procedure in mineral exploration here in Queensland. Those particular conditions and the state-wide model ILUA were endorsed by the native title representative bodies, and they have carriage of those particular issues out in the field.

CHAIR—Thank you very much for the comprehensive nature of your submission. As you can probably see, with the scope of our particular committee inquiry, hearing from your group that represents the representative bodies is obviously very useful. I would like to clarify a couple of things. We have had submissions from others that talk about the issue of respondent parties and the funding of respondent parties. You mentioned individuals and their capacity—you used the example of a dinghy. Are you talking about individuals or are you talking about the nature of an individual that may be represented by Recfish or Sunfish or something like that?

Mr Dore—There are parts in the Mandingalbay Yidinji Gungganji claim in the North Queensland region which covers some small islands off the coast which are national park, where there were in the order of 35 individual recreational users who filed form 5 applications with the court and were allowed to become parties. There are some who are more organised. An example of the organised parties is the Queensland Allied and Lapidary Crafts Association. They are fossickers, and the Fossicking Act allows there to be either club licences—whereby if you are a member of a registered club you are covered by their fossicking licence—or individual fossicking licences. We find that the fossickers become respondent parties to many of our claims.

Again, it is a matter which we feel is inappropriate, because the Fossicking Act in Queensland says that unless you are in a designated fossicking field, and there are only two of those in the state, then what you need is the permission of the landholder: you have to have the licence either through being a club member or through holding an individual licence at stage 1. Stage 2 is that you then have to ask for permission from the landholder, and that permission can be withheld. There is no obligation to give it; there is no obligation to give it with conditions.

So, in reality, what right are they trying to protect? They do not have an automatic right to go fossicking; they have to ask for permission every time and the permission can be refused. So why do they get to be involved in a native title claim on the basis that once you get your determination then the status of native title holders will be equated with that of landholders for

the purposes of asking permission? So what? They can ask us permission once we have a determination. Why are they in there holding up our claims and wanting us to sign ILUAs that guarantee them a yes? Again, it is a form of blackmail.

CHAIR—On behalf of the committee I will undertake to look at those examples just to see if they have been funded through the federal process and I will supply that back to you. It would also be very useful if you could provide an example, perhaps on notice. You gave the example of the shire basically using the process of becoming a party to negotiate away sins of the past, simply because they were members of the proceedings. Can you provide an example on notice? I am happy to look that up, if one exists. I accept what you are saying, but it would be useful to put my finger on a case where we can actually demonstrate that that is the case.

Mr Dore—The only difficulty I might have is that most of the examples are still in mediation and I am not sure whether I would be in breach of the mediation rules if I gave details.

CHAIR—Indeed. See what you can do. We will certainly be able to make that general observation. What percentage of your funding goes into anthropology research for connectivity—connection reports and those sorts of things—across the board? I understand that there is no unique answer to that; you are representing a range of different bodies over a range of different circumstances. But what is it in broad terms?

Mr Dore—That would be difficult for me to answer accurately without checking some figures.

Mr Whalley—But you know, though.

Mr Dore—We will take it on notice, anyway.

Mr Whalley—I can refer back to the time when I worked with Russell at the Central Queensland Land Council. I was one of the staff anthropologists there responsible for contracts. I think we managed to scrape through about 10 per cent. We were looking at research budgets of anywhere between $150,000 and $200,000 per year. We were always looking for other funding sources. This is where I would amplify the point that Mr McMullan made about anthropologists. I agree with the essential point that there is a limited pool of experienced anthropologists available for this kind of work in Australia, but it was also my experience that we did not have adequate funding to be able to employ those anthropologists as much as we needed. I say that for the historical context. Most parts of Australia, apart from the Northern Territory, some of the desert areas and Cape York, had no anthropological research. Anthropological research is detailed long-term participatory observation research. The longer the research, the surer you can be of the findings that you get from the field.

In native title, we do not have the capacity to gauge anthropologists on that basis. You would be trying to get as many days as you can in a budget cycle to get that anthropologist out in the field, often from a standing start in terms of working in areas in local Queensland. No anthropological research had been done in most of Queensland south of the gulf and the cape. So, when you look at that in a historical context, they provide a number of impediments to the development of the evidence necessary to support the applications that are not of the NTRB's making.

CHAIR—If you could you take on notice to find some broad indicators about what percentage of the budget goes on those sorts of issues, I would appreciate it; if you cannot, I accept that. Mr Dore, you touched on the trickle affect before in terms of the need for the prescribed bodies corporate during and after a determination to do certain things even just to start it off. Clearly, you have indicated—as have a number of other submissions—that they really are not in any position, irrespective of the stamps, to start providing for that process. What capacity do the representative bodies then have to cofund them? They have to help them along and lend resources. Is there much bleed in terms of the resources that you would have to provide them just by the very circumstances they find themselves in?

Mr Dore—The difficulty is that we are strictly controlled by our funding conditions and contract, and so if something is not in the budget we are not allowed to spend money on it. What gets approved in the budget is our core work of trying to get native title determinations, so there is occasionally a little bit of money that we put in the budget for helping claims that are nearing finalisation for helping to set up their PBCs, but we are talking hundreds, not hundreds of thousands, as might be needed to do a proper job. Obviously, whilst you are in the predetermination stage, the rep body is receiving things like future act notices, and we are dealing with those because that is our role. But the moment the determination comes, that role for that particular area that is determined will become the PBC's. Some of the people involved have a reasonable understanding of matters, but others are very new to the whole business and the whole process. We are dealing with groups who would be lucky to have a telephone, let alone a fax and a computer. How are they supposed to process notices and hold consultations with their groups, when the only way of contacting them is by sending a letter out—always assuming that they can afford the 20c a copy at the local newsagency to photocopy and the 50c stamp to go on it? We are talking really basic problems like that.

CHAIR—Thank you for your submission. I am sure we will be preparing some questions on notice through the committee if you would be so good as to reply to those. We would most appreciate it.

Mr Dore—I was wondering if it is appropriate for me to tender a copy of the submissions we made about technical changes to the Native Title Act.

CHAIR—Certainly.

Mr Dore—As I said, they do, to some degree, overlap with the issues we have been talking about today.

Mr McMULLAN—You mentioned that earlier. I was going to ask you about that. Thank you.

Mr Robinson—On behalf of the people on this side of the table, Chair, I thank you and your members very much for inviting us here.

CHAIR—No worries. Thank you very much.

[2.35 pm]

NEATE, Mr Graeme John, President, National Native Title Tribunal

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. You are obviously very experienced in the matters of committees. I now invite you to commence your brief presentation, after which we will move to general discussion and questions.

Mr Neate—Mr Chairman, I thank you and members of this committee for the invitation to appear today in relation to your inquiry into native title representative bodies. Senator Scullion, I also congratulate you on your recent appointment as chair of this committee and look forward to working with you and the other members of the committee. The National Native Title Tribunal provided a written submission to the committee for the purpose of this inquiry on 5 August 2004. That submission is structured around your terms of reference. Because the written submission was made more than 15 months ago, it may assist the committee if I highlight the main points made in that submission and provide some supplementary material, including some updated statistics. I commence with some general observations.

Representative bodies are a fundamental component of the native title system and are vital in providing Indigenous people with a means of exercising their rights under the Native Title Act. For many Indigenous groups, their local representative body is the principal source of advice or representation on native title matters. The tribunal has commented on previous occasions about the interdependence of elements of the native title system and in particular the importance of native title representative bodies within the system. Properly functioning representative bodies are important for the practical administration of significant parts of the Native Title Act, the resolution of claimant applications and the negotiation of future act outcomes and Indigenous land use agreements. They are not just important for the people they represent. The tribunal's ability to perform its functions is influenced by the capacity of representative bodies to perform their statutory functions and their willingness to engage in particular negotiations either as parties or as the representatives of Aboriginal peoples or Torres Strait Islanders.

I now move to some specific aspects of your terms of reference—first, the structure and role of native title representative bodies. The tribunal's written submission notes that the Native Title Act is not prescriptive with regard to governance structures of native title representative bodies and that current representative bodies are incorporated under various acts. As a result, there is a variety of representative body structures. Native title funding is generally available only to representative bodies recognised under the Native Title Act. However, under section 203FE of the Native Title Act, Commonwealth moneys may be granted to a person or body to enable that person or body to perform relevant functions where there is no representative body. As the committee would be aware, there are now three bodies which are not native title representative bodies but which perform many of the functions of native title representative bodies in significant areas of Australia. Those bodies are New South Wales Native Title Services Ltd, Native Title Services Victoria Ltd and Queensland South Native Title Services Ltd.

The tribunal makes no submission with respect to the preferable structure or form of governance of bodies to deliver relevant services under the Native Title Act. Rather, we say that, whatever legal form is considered desirable for representative bodies, the important thing is that each body is able to deliver and does deliver the range of services to native title claimants. In terms of service delivery, it is appropriate to distinguish between representative bodies and other native title service bodies. I remind the committee that the Native Title Act appears to limit the range of functions that may be usefully performed by bodies other than representative bodies. In particular, it appears that it may not be possible for bodies such as New South Wales Native Title Services Ltd, Native Title Services Victoria Ltd and Queensland South native Title Services Ltd to exercise all of the functions of a representative body.

There are many references in the Native Title Act to 'the' or 'a' representative Aboriginal/Torres Strait Islander body or bodies. The phrase 'representative Aboriginal/Torres Strait Islander body' is defined in section 253 to mean a body that is recognised under section 203AD. Those references in the Native Title Act to the representative body do not include a reference to other bodies funded to perform the functions of a representative body. The practical implications of that distinction are highlighted in the following three examples.

First, there are many provisions of the act that require various bodies to give notice to the relevant representative body. Such notices need not be given to other funded bodies, as they are not a representative body for the purpose of the act—see, for example, section 22EA(1)(d). Second, it would appear that bodies other than representative bodies are not able to provide certification in relation to Indigenous land use agreement registration applications and native title applications. I cite sections 24CK and 190C(4)(a) respectively. Third, applications may be made under section 69 to the Federal Court for the removal of an Indigenous land use agreement from the register of Indigenous land use agreements by a representative body, not another funded body.

Those restrictions clearly inhibit the range of services that bodies other than representative bodies can provide to Aboriginal people within their areas. The point is made in submission No. 8 by the New South Wales Native Title Services Ltd and in submission No. 1A by the Office of Indigenous Policy Coordination. I thought it worth highlighting because the tribunal is involved in registration testing and registering claimant applications, and in the registration of Indigenous land use agreements.

The solution may be to recognise each native title services body as a representative body—assuming, of course, that they satisfy the other statutory requirements and are willing to be so recognised. Alternatively, if such bodies are to be more than short-term or interim bodies, pending the establishment or recognition of other bodies as representative bodies, consideration might be given to amending the act to clarify, or if necessary to provide, that such bodies are representative bodies for the purpose of selected provisions of the Native Title Act. Such amendments, if appropriate, would have to take into account the fact that not all funded bodies may be given all the functions of a representative body under the act.

I now move to resources available to native title representative bodies. Many of the submissions made to this inquiry have highlighted the perceived inadequacy of resources available to native title representative bodies to perform their various functions under the Native Title Act. The pressures on and priorities of representative bodies vary from place to place and

time to time, with their capacity to deliver influenced by a range of circumstances. Those circumstances include whether claimant applications are being mediated or are in trial in the Federal Court, and the volume of future act notices and negotiations for their regions.

The tribunal believes that it has an important role in assisting native title parties and their representatives by contributing to their capacity to ensure they are effective participants in the process. The aim is to create a native title environment that is conducive to agreement making. The tribunal provides a range of assistance to representative bodies by way of capacity building and other services, either directly or in collaboration with others such as the Australian Institute of Aboriginal and Torres Strait Islander Studies and OIPC. Examples of the forms of assistance and capacity-building projects are provided in paragraphs 36 to 44 of the tribunal's written submission.

It is not the role of the tribunal to judge whether particular native title representative bodies are appropriately resourced or are applying their resources to essential priorities. That judgment is for the OIPC and the responsible minister. Nevertheless, the tribunal submits that the Australian government needs to examine the level of resources available to representative bodies and, if necessary, to increase them to ensure an appropriate relativity of resources between the various institutions within the native title system. No doubt the report of this committee will help inform such an examination. I will now turn to the interrelationships with other organisations, including strategic planning and setting priorities, claimant applications pursued outside the native title representative body structure and non-claimant applications.

The tribunal continues to have regular contact with representative bodies in relation to a range of matters and at various levels and in various forums. Members, case managers and other staff of the tribunal are in daily contact with people in representative bodies. One significant area of cooperative work is the ongoing process of regional planning. The tribunal is able to work with representative bodies in many regions, along with relevant governments and major parties, to develop priorities for the resolution of claimant applications and work plans or timetables for dealing with claimant applications across a region. Where this approach works well in conjunction with the Federal Court, the resources of the parties and bodies—including representative bodies—can be put to optimal use to achieve outcomes. Examples of the types of productive interactions between the tribunal and representative bodies are described in paragraphs 54 to 66 of the tribunal's written submission.

Finally, I take this opportunity to provide some updated statistics to the committee. Paragraph 68 of the tribunal's written submission provides a state-by-state breakdown on the numbers and percentages of claims that are unrepresented or are represented by a representative body other than a native title representative body or are represented by a representative body. Those figures were at the beginning of May 2004. The figures I provide today are at 18 November 2005. As you can see, the numbers have changed somewhat. The number of active claimant applications has dropped from 625 to 580, while the national percentage of claimant applications represented by representative bodies or native title services bodies has increased from 64 per cent to 73 per cent.

Paragraphs 79 and 82 of the tribunal's written submission provide figures in relation to active non-claimant applications as of 1 June 2004 and the number of native title determinations of the Federal Court involving non-claimant applications. As at 17 November 2005 there were 35

current non-claimant applications, of which 32 were in New South Wales, one was in Queensland and two were in Western Australia. The 35 non-claimant applications constitute five per cent of the current 628 native title applications. The majority of current applications are claimant applications—580—and the remaining 13 applications are compensation applications. As at 17 November 2005 there were 13 native title determinations of the Federal Court involving non-claimant applications. That number has not changed since May 2004. Eleven of those determinations were in New South Wales and two were in Queensland.

These are my opening statements. If the committee wishes to ask me any questions I would be pleased to attempt to answer them. If necessary I will take questions on notice and provide an answer in writing to the committee.

Mr McMULLAN—Thank you. It is a very helpful report. Thank you for the update. In one sense it is a pity it took us so long to get to your report but in the process we have got an update, so that was very handy. You referred—I think in writing but certainly in what you just said—to the need to address relativity of resources. I do not want to drag you into saying this person ought to get more or whatever, but do you find in the conduct of your tribunal that an imbalance of resources interferes with your capacity to get to agreements?

Mr Neate—It can do and, as I mentioned in my opening statement, these things can vary over time as well as between representative bodies. If, for example, a representative body is engaged in litigation in the Federal Court it is common for most of its resources to be directed to the conduct of that litigation. So any other mediation activity is either suspended or of lower priority. Similarly, if there are other activities taking place to support claimant applications so that, for example, resources are diverted or directed to region-wide research projects, then that is where the resources go and mediation activity is put on hold or delayed while that activity is completed.

In the latter case, of course, that activity is directed ultimately to resolving matters, preferably by agreement, so it is a precondition to active mediation occurring. I heard in the previous session reference made, I think by members of this committee, to the volume of future act work. If in some regions there is a spurt of future act notices being issued, particularly if groups are wanting to lodge objections to the use of the expedited procedure, then a call has to be made about how many resources go into that.

Part of the tribunal's difficulty in making any sort of global assessment about the adequacy or otherwise of resources is that each rep body has a range of matters to deal with and they have to make choices about priority of spending. Our priorities might not match theirs for sound or explicable reasons. So the short answer to your question is, yes, it does affect our capacity to do our work. If a representative body lacks the resources to participate in a mediation program because it has prioritised resources elsewhere, then it appears to us that they lack resources to engage, when in fact it may be more a matter of emphasis or priority rather than a global question of adequate resources.

Mr McMULLAN—You spoke in your opening remarks—and I think it is also referred to in your submission—about the importance of rep bodies assisting Indigenous people to exercise their rights, which is a statement of the obvious. I am not drawing anything from that of itself but, however well conducted they are, what I am having a bit of difficulty with is the

compatibility between that concept and the native title services model. I can see that some of them do quite a good job in some circumstances—I am not being critical of individuals—but we seem to be creating a position where someone else is exercising your rights for you rather than you exercising your rights. In a rep body you are essentially exercising your own rights because you are meeting and resolving and determining to go certain ways. If an expert body acts on your behalf, it is saying, 'Your rights are being exercised but, in effect, not by you.'

Mr Neate—I do not know what examples you have in mind, but I must say I had assumed that native title services bodies, exercising whatever functions have been conferred on them under the act by way of their funding guidelines, would be acting on instructions.

Mr McMULLAN—I am really talking about the governance. My experience is that they act in accordance with instructions, too. Yes, that would be a serious allegation, which I am not making. I am making a point about the governance of the organisation.

Mr Neate—I suppose the only observation I would make, and it is perhaps not directly responsive to your question, is that, as I understand it, native title services have been established to provide a range of professional services to advance the interests of their constituents, whereas native title representative bodies, particularly those with locally based governance regimes, are more likely to reflect the concerns of local groups and communities and, probably, are more likely to see a component that is more policy oriented or more political as part of their work—something which, directly, a native title services body would not. This committee will be aware, I am sure, of various expressions of disquiet over the years about how community based organisations sometimes prefer some groups over others. It is said sometimes that they do not favour funding groups whose claims might otherwise have merit. So there are arguments both ways about the appropriateness of those sorts of governance structures for the purpose of performing functions under the Native Title Act.

Mr McMULLAN—I think I have only one other question, because most of the other issues were pretty well covered in your submission or in what you had to say. It is a much more minor point but it relates to something important, which is the availability of quality staff—the other side of the resource equation. There was some reference earlier to the tribunal assisting in a professional development program—I think it was for lawyers. Can you tell me where that is and what happened? Was it just for lawyers or was it for other skills as well?

Mr Neate—There are two projects, one of which the tribunal is more directly involved with than the other. The first related to anthropologists and had two facets. The first was to commission some research on the availability of anthropologists to conduct native title work. In fact, Mr McMullan, this built on an exchange that you and I had some years ago about where these people were going to come from. I recall on that occasion you suggested I should be approaching the vice-chancellors rather than, say, ATSIS or ATSIC. So we commissioned this research, and I can provide a copy of the report to the committee, if required. It came up with a number of interesting findings. One was that there does seem to be a very limited number of suitably qualified and experienced people to do the work—that, for the most part, the better qualified and more experienced people are older males towards the end of their careers, many of them in senior academic positions. At the other end of the spectrum younger, much less experienced and less qualified females were, for the most part, working for representative bodies.

Interestingly, a sizeable proportion of the people surveyed did not think that native title practice was conducive to the advancement of their careers as anthropologists. Overall, some of the more junior anthropologists thought that, when the real crunch came to prepare connection reports and so on, it was always the consultants who got to do the interesting work, rather than them. Coupled with that, we conducted with others a mentoring program to assist junior anthropologists to improve their skills. A report was published on that which shows some of the difficulties in this sort of work. Again, if it would assist the committee, I can provide a copy.

Regarding the training of lawyers, there was a project initiated and largely driven by Mr Richard Potok, and the tribunal along with others provided some funding to stage 1 of that, just to do a scoping exercise to see whether a regime ought to be instituted for the skilling up of native title representative body lawyers. I am not sure if it has been made available to this committee, but the report on that scoping study was published in April this year, I think. I am not sure whether that project has proceeded to a later stage, but the tribunal is not involved in the follow-up.

Mr McMULLAN—Thank you. I did not realise I was treading such a familiar path. I had forgotten!

Mr MELHAM—Are you able to advise the committee whether the funding to native title rep bodies is on an annual basis?

Mr Neate—I am advised it is. I think the tribunal's funding is now on a four-year basis—we are currently in the first year of a four-year cycle—but it may well be that rep bodies are funded annually.

Mr MELHAM—That is what we believe to be the case. I am interested in your view, because the Carpentaria Land Council and others have submitted that they feel that multi-year funding should be introduced as that might be better for them in terms of retaining their professional employees. Do you have a view about that one way or the other? If not, that is fine.

Mr Neate—I will chance my arm on this. It seems to me that, in an environment as dynamic as native title still is, it is easier for all of us to plan ahead if we have a reasonably clear indication of what our likely appropriation is to be from year to year. We are used to three-year and now four-year cycles. I say—and this comes up particularly in Senate estimates hearings—that it is not easy to predict what your respective workloads will be two or three years out, but nonetheless we are subject to appearing before Senate estimates and sometimes additional estimates to justify our expenditure. We provide annual reports, which this committee looks at. We are constantly in the spotlight in terms of not only what we have done but how our projections are tracking. I think overall it is becoming easier to predict, though not with as great a precision as we would like. But, for the tribunal's part, it is easier to recruit and plan with a longer term financial budget in place.

CHAIR—I have several questions—some are for clarification and some are in relation to some comments you made in your opening submission, Mr Neate. You mentioned that, in terms of the funding for the native title representative bodies, there may have been some scope to have a look at the nature of the funding and maybe make some adjustments, depending on where they were up to. I had a submission today in regard to pay scales for similar positions—for example,

for the position of CEO of an organisation. I understand that the difficulty may lie in the fact that one position may be as CEO of a land council, which has slightly different processes from a native title representative body, but you could take that into consideration in answering the question. When you do this assessment, would you be taking into consideration the fact, which has been put to me, that there have been different pay scales for the same positions in those organisations? Do you think there is some scope to try to convince people that these positions should be similarly funded? It was put to me today that perhaps the reason for the differences was simply that those bodies had made that choice—they basically did not get any more money from one or the other but the way they allocated their resources within that budget said, 'We think it is more important to pay our CEO this much and not pay so much to the other people'. Could you comment on that?

Mr Neate—I am not sure that I can say anything in an informed fashion. I am not aware of the pay scales that representative bodies pay, nor indeed of how they reach those scales. Also, I am not sure whether your question is directed to relative pay scales as between representative bodies or as between representative bodies generally and, say, the tribunal.

CHAIR—No, it was between representative bodies generally.

Mr Neate—All I can say is that when the tribunal engages people, including professional staff, we have Australian Public Service pay scales. There is some latitude at some levels in terms of AWAs but, by and large, we pay within the range of what the Public Service Act provides. I am afraid I cannot say how the representative bodies go about that.

CHAIR—This question may, again, be for A-G's. I am not sure if you can shed some light on it. A couple of the applicant parties have said that some of the respondent parties are almost mischievous or of nuisance value, because of the nature of the parties. They are either represented by a single representative group—and we still have individuals—or they are of such a nature that they cannot expect to have a real outcome and people wonder why they have been able to make application. There is also the fact that, apparently—according to what has been put to me—they are actually being funded through that process. Can you throw any light on those circumstances—how that would be selected—or is that in fact a question for A-G's?

Mr Neate—The answer to your question would, I think, best come from the Attorney-General's Department but I will make a couple of brief observations. The provisions of the Native Title Act regarding who can be a party are fairly broadly cast, and the Federal Court has interpreted fairly broadly the amount of interest that one needs in order to establish that one's interests could be affected by a determination of native title. The consequence of that is that it is relatively easy for a person or a body to acquire party status in relation to a claimant application. Those parties who wish to can apply to the federal Attorney-General for funding, and there are funding guidelines which the department applies. I understand that in recent years those guidelines, whilst not having changed, have been administered far more rigorously. Also, it is becoming more difficult for respondent parties to obtain funding—or their funding programs and so on are being scrutinised much more closely than perhaps was the case in the past. Beyond that, I really cannot provide this committee with any information.

Mr MELHAM—The guidelines were extant, weren't they, at the time of the 1998 amendments?

Mr Neate—Yes, I think they were, because the act changed then in terms of who was to be funded and the source of funding. You might recall, Mr Melham, that before 1998 applicant groups had a wider range of sources of funding, and the 1998 amendments made it such that primarily, if not exclusively, funding went through representative bodies, so there were a number of adjustments to the funding regime. I understand from an announcement made in September this year by the federal Attorney-General that the government is looking at the respondent funding regime at the moment as one of six elements of a reform package for the native title scheme. Again, it may be that officers of the department can provide more information.

CHAIR—We had a submission today from Mr Budby, on behalf of a group. That submission generally reflected his frustration about effectively being only an observer and not getting access to the process. He was able I think to demonstrate quite a long history—I do not want to get into the details—of having a different view on things from the land council that was representing them. In the Northern Territory we have two land councils, the Northern Land Council and the Central Land Council, and they seem to do that quite well. In Queensland, despite Mr Budby's concerns, there seem to be quite a large number of smaller representative bodies, if you like. Noting the frustrations expressed by Mr Budby, do you think, from the tribunal's perspective, that it is more useful to deal with an effective larger body or with smaller bodies that may have the capacity to represent smaller issues or groups, like the one Mr Budby represents?

Mr Neate—It is not possible to answer that question in those terms. I am not critical of the question, but the histories and experiences of representative bodies vary so enormously around the country that I am not sure that one can make that sort of assessment at all, let alone just from the tribunal's perspective. A better informed answer would probably pick up on some of the issues behind Mr McMullan's question earlier about the appropriate form of governance. On the one hand, you might say bodies representing smaller regions may be more responsive to the needs of local communities than state-wide bodies. On the other hand, the Aboriginal Legal Rights Movement, for example, in South Australia has striven valiantly, and I think with a good deal of success, to incorporate traditional decision-making processes at various levels in its work. I do not think that one can say that one or two state-wide bodies within a jurisdiction necessarily function any better than half a dozen, as is the approximate situation in this state and in Western Australia.

Mr MELHAM—It depends on the different personalities too, I would imagine.

Mr Neate—There are a range of issues and a range of histories. I will give a very brief background on some factors in this state, for example. For many years after the Native Title Act began operating, there was no representative body in the north-west of this state, in the Mount Isa region, which is a highly mineralised province and an area where there is a lot of future activity. There were various native title claims lodged by groups in that area and when the Carpentaria Land Council was given representative body recognition for that area that was south of the gulf where it had operated previously—so as to include the Mount Isa region—it inherited a number of native title claims, which clearly it had not lodged on behalf of groups and about which it new nothing. That was in 2000, I think

The representative body decided to commission some baseline regional research on whether these claims had merit such that the rep body would support some or all of the claim groups and, indeed, on whether other claims should be made in that region. That process has taken some

years and the final implementation of it is still occurring, which has meant that that particular representative body has functioned in that part of its expanded region in a particular way, having regard for the fact that there was not a rep body there previously. They inherited a set of circumstances and had to then find a way of devoting their limited resources to progress those claims in the best way.

In the southern part of this state, the previous representative body had its recognition withdrawn in the middle of this year, and a native title services body has been put in its place. As far as the tribunal is concerned, we were able to do very little in that region while the representative body, in its final year or so, was coping with the problems it had. The new native title services body, which as I understand it was initially funded for six months from 1 July, has tried to put in place a program to deal with issues in that area and to develop a strategy for the region. I guess one could tell a story or describe a range of factors for every representative body around the country which would be unique to that representative body.

CHAIR—My final question goes to some research that you conduct from time to time. You have quite a range of papers that you produce as a tribunal. There seems to be a common theme of concern about the distributions of benefits from any native title process at the end of the day—whether from a mine or a pastoral lease—and about the fact that effectively that is up to the community. It is very divisive and it is something that does not follow much of a process. For example, in the Northern Territory, the ABA has a set process under the Aboriginal land rights act, but in Queensland and Western Australia the processes can differ from area to area and from outcome to outcome. Have you done any research into the variety of arrangements that are currently in place in Australia and internationally? Where would I look to try to find some of that sort of research about how and when that occurs?

Mr Neate—We have not commissioned research precisely on that topic, but about a year ago we had a report prepared that essentially dealt with what makes agreements endure. We were concerned as a tribunal that, although many agreements were being negotiated, the time had come to step back and see how many of those agreements had actually lasted the distance once people had signed off. We engaged two consultants to prepare a report which, among other things, looked at the factors which make agreements successful and those which make for agreements which might falter. One of the features that was raised was the importance, in the negotiations, of having a very clear scheme for the distribution of benefits under the agreement so that everybody understood what they were to be and, I guess, had a say in how that would occur. My recollection is that the researchers cited various agreements that they had access to and so on to illustrate that point. I could certainly make a copy of that report available to you, and it may be that by tracking through footnotes and so on you will be led to some other sources that more directly answer your question.

CHAIR—Thank you very much, Mr Neate. As there are no other questions, that concludes today's hearings. I thank everyone for their attendance and cooperation today, and I declare the hearing closed.

Committee adjourned at 3.12 pm