



Part 5: Report of the National Native Title Tribunal

Overview

Establishment

The *Native Title Act 1993* (Cth) establishes the Tribunal as an independent body with a wide range of functions. The *Native Title Act 1993* (Cth) is, itself, a ‘special measure’ for the advancement and protection of Aboriginal and Torres Strait Islanders (Indigenous Australians), and is intended to advance the process of reconciliation among all Australians.

The *Native Title Act 1993* (Cth) creates an Australia-wide native title scheme, the objectives of which include:

- providing for the recognition and protection of native title
- establishing a mechanism for determining claims to native title, and
- establishing ways in which future dealings affecting native title (future acts) may proceed.

The *Native Title Act 1993* (Cth) provides that the Tribunal must carry out its functions in a fair, just, economical, informal and prompt way. In carrying out those functions, the Tribunal may take account of the cultural and customary concerns of Indigenous Australians.

The President, Members and the Native Title Registrar

The President, other Members of the Tribunal and the Native Title Registrar are appointed by the Governor-General for specific terms of no longer than five years. The *Native Title Act 1993* (Cth) sets out the qualifications for appointment to, and respective responsibilities of, these offices.

Table 5.1 outlines Tribunal statutory office holders at 30 June 2023.

Office locations

The Tribunal maintains offices in Brisbane, Cairns, Melbourne, Perth and Sydney.

Functions and powers

Under the *Native Title Act 1993* (Cth), the Tribunal, comprising the President and Members, has specific functions in relation to:

- mediating in native title proceedings, upon referral by the Federal Court
- determining objections to the expedited procedure in the future act scheme
- mediating in relation to certain proposed future acts on areas where native title exists, or might exist
- determining applications concerning proposed future acts
- assisting people to negotiate Indigenous Land Use Agreements (ILUAs), and helping to resolve any objections to registration of ILUAs
- assisting with negotiations for the settlement of applications that relate to native title
- providing assistance to representative bodies in performing their dispute resolution functions
- providing assistance to common law holders and prescribed bodies corporate
- reconsidering decisions of the Native Title Registrar not to accept a native title determination application (claimant application) for registration
- conducting reviews concerning native title rights and interests (upon referral by the Federal Court)
- conducting native title application inquiries as directed by the Federal Court
- conducting special inquiries under Ministerial direction, and
- presiding at conferences in connection with inquiries.

TABLE 5.1: TRIBUNAL STATUTORY OFFICE HOLDERS, 30 JUNE 2023

NAME	TITLE	APPOINTED	TERM	LOCATION
The Hon. JA Dowsett AM QC	Acting President	27 April 2018; 27 April 2023	Five years; three months	Brisbane
Nerida Cooley	Member	11 February 2019	Five years	Brisbane
Glen Kelly	Member	10 March 2021	Five years	Perth
Lisa Eaton	Member	16 December 2022	Five years	Perth
Alex Ripper	Acting Native Title Registrar	27 February 2023	Five months	Perth

The President

The President is responsible for the management of the business of the Tribunal, including its administrative affairs, and the allocation of duties, powers and functions. The President is assisted by the CEO and Principal Registrar of the Federal Court. The CEO and Principal Registrar may delegate her responsibilities under the *Native Title Act 1993* (Cth) to the Native Title Registrar, or staff assisting the Tribunal. Staff assisting the Tribunal are made available for that purpose by the Federal Court.

The Members

The President and Members perform the functions of the Tribunal, with the support of the Native Title Registrar and staff. The Members also perform educational functions and assist the President in communicating with stakeholders.

The Native Title Registrar

The Native Title Registrar:

- assists people to prepare applications and to help them, and other persons in matters relating to proceedings in the Tribunal
- considers whether claimant applications should be registered on the Register of Native Title Claims
- gives notice of applications to individuals, organisations, governments and the public in accordance with the *Native Title Act 1993* (Cth)
- registers ILUAs that meet the registration requirements of the *Native Title Act 1993* (Cth)
- maintains the Register of Native Title Claims, the National Native Title Register and the Register of ILUAs, and
- maintains a publicly available record of section 31 agreements.

The Native Title Registrar is also actively involved in the mediation and educational functions of the Tribunal.

Staff capacity

The Tribunal will continue to manage and monitor its workloads in the next reporting period to ensure that it is appropriately resourced in future years. Strategic planning and review will underpin this process, looking to the next decade of native title.

A relaxation of social distancing and travel restrictions imposed by COVID-19 has resulted in an increase in-person attendance at seminars and workshops, with online attendance remaining a significant feature of staff training throughout the reporting period. The Tribunal continues to consider how to strengthen staff capacity to respond to increased, and more direct contact with native title holders and prescribed bodies corporate.

Cultural acknowledgment

The Tribunal has continued to foster understanding and respect for Indigenous culture. The Reconciliation Action Plan for the Federal Court of Australia and the National Native Title Tribunal actively supports and acknowledges our obligations under the Reflect Reconciliation Action Plan 2019–20. Work has commenced on the Innovate Reconciliation Action Plan.

The Tribunal continues to participate in the celebrations involving all components of the Federal Court entity in the acknowledgment and celebration of Sorry Day, Reconciliation Week and NAIDOC week.

The Tribunal's year in review

The 2022–23 financial year has been a period of consolidation for the work of the Tribunal, building on the establishment of a consistent national practice for the management of future act applications in the previous reporting period and the introduction of the new post-determination assistance function. Significant work was undertaken during the reporting period to upgrade the Tribunal's case management system to ensure continued support and stability.

The Tribunal's engagement with stakeholders included contributions to the AIATSIS summit held in Perth. This year the Tribunal presented a paper on 'Supporting PBCs Through Dispute Resolution', which discussed the Tribunal's approach to its post-determination assistance function under section 60AAA of the *Native Title Act 1993* (Cth) and staffed an exhibition stall to assist stakeholders with enquiries about the Tribunal's services, deliver demonstrations of the Tribunal's online mapping and spatial data services, which is commonly known as Native Title Vision, and produce on-demand mapping products.

Various stakeholder engagement and training sessions were conducted both in person and virtually on the Tribunal's online mapping and spatial data services. Sessions were provided for law firms, prescribed bodies corporate, and state and Commonwealth agencies (Federal Court, AIATSIS and the Queensland Parliamentary Library).

The Tribunal's custodial spatial data continues to be freely available for third parties to use in their own systems, either by downloading the data, or by taking advantage of web map services. More information is available on the Tribunal's website.

The Tribunal's work in 2022–23

Future Acts

A primary function of the Tribunal is the resolution, by mediation or arbitration, of disputes relating to proposed future acts (generally, the grant of exploration and mining tenements) on land over which native title has been determined to exist, or over which there is a claim by a native title party as defined in sections 29 and 30 of the *Native Title Act 1993* (Cth).

Expedited procedure

Under section 29(7) of the *Native Title Act 1993* (Cth), the Commonwealth government, or a state or territory government as the case may be, may assert that a proposed future act is an act that attracts the expedited procedure (i.e. that it is an act which will have minimal impact on native title). Where a future act attracts the expedited procedure, it does not give rise to procedural rights to negotiate that would otherwise vest in native title parties. If a native title party considers that the expedited procedure should not apply to the proposed future act, it may lodge an expedited procedure objection application (objection application) with the Tribunal.

A total of 1,290 objection applications were lodged during the reporting period, compared to 1,765 previously reported. The number of active objections at the end of the reporting period was 792, compared with 979 at the end of June 2022. During the reporting period, the Tribunal finalised 1,478 objection applications compared to 1,551 in the previous period.

Approximately 582 objections were withdrawn following agreement between the native title party and the relevant proponent. A further 323 objection applications were finalised by withdrawal of the tenement applications. Seventy-two objection applications were subject to a Tribunal determination or dismissal during the reporting period. The expedited procedure was determined to apply in 16 cases, and on 22 occasions, the expedited procedure was determined not to apply.

As demonstrated in Table 5.2, Western Australia produces many more objection applications than does Queensland. This is due, at least in part, to policies adopted by the relevant state departments concerning the use of the expedited procedure.

Future act determinations

If the expedited procedure does not apply, or is not asserted by the state, the parties must negotiate in good faith about the proposed future act. Any party may request Tribunal assistance in mediating among the parties in order to reach agreement. There were 23 requests for mediation made in the reporting period.

The *Native Title Act 1993* (Cth) prescribes a minimum six-month negotiation period. After that time, any party to the negotiation may lodge a future act determination application if no agreement has been reached. During the reporting period, 26 applications were lodged. If there has been a failure to negotiate in good faith by any party, other than a native title party, the Tribunal has no power to determine the application. If any party asserts that negotiations in good faith have not occurred, the Tribunal will hold an inquiry to establish whether that is the case. During the reporting period, there were two decisions of the Tribunal that one of the relevant negotiation parties had not negotiated in good faith.

Seventeen future act determination applications were finalised during the reporting period. In one application, the Tribunal determined that the future act may be done subject to conditions. In another eight applications, the Tribunal issued a determination that the future act may be done, seven of which were made on the basis that parties had reached agreement but were unable to formalise a section 31 agreement. The remaining applications were either withdrawn or dismissed.

Post-determination assistance

Since 1998, the Tribunal has had the power to assist, on request, an Aboriginal/Torres Strait Islander representative body in performing its dispute resolution functions, subject to entering into a costs agreement. This function is commonly referred to as

‘s203BK assistance,’ after the provision of the *Native Title Act 1993* (Cth) from which the power derives.

On 25 March 2021, the *Native Title Legislation Amendment Act 2021* (Cth) gave the Tribunal a new set of powers relating to post-determination disputes by introducing section 60AAA into the *Native Title Act 1993* (Cth). Section 60AAA provides that a registered native title body corporate or common law holder of native title may ask the Tribunal to provide assistance ‘in promoting agreement about matters relating to native title or the operation of this Act’ between:

- the registered native title body corporate and another registered native title body corporate
- the registered native title body corporate and one or more common law holders, or
- common law holders.

Throughout 2022–23, the Tribunal has continued to review and evaluate its policies, procedures and guidelines to support the new function established by section 60AAA. Generally, once the Tribunal receives a request for assistance, an officer will conduct preliminary conferencing with each of the relevant parties to understand the nature of the dispute, who should be involved, and what form the assistance should take. Depending on the matter, preliminary conferencing is followed by facilitation or information exchange, or it may move straight into mediation or another dispute resolution process.

In 2022–23, the Tribunal has conducted preliminary conferencing in relation to 21 requests received under section 60AAA. The Tribunal has conducted facilitation or information exchange in two matters and has provided mediation assistance in another. The Tribunal also received two requests for dispute resolution assistance under section 203BK from Aboriginal/Torres Strait Islander representative bodies.

TABLE 5.2: NUMBER OF APPLICATIONS LODGED WITH THE TRIBUNAL IN 2022–23

FUTURE ACT	NT	QLD	WA	TOTAL
Objections to expedited procedure	39	58	1,193	1,290
Future act determination applications	1	5	20	26
TOTAL	40	63	1,213	1,316

The Registers

The Native Title Registrar maintains three registers as follows:

The Register of Native Title Claims

Under section 185(2) of the *Native Title Act 1993* (Cth), the Native Title Registrar has responsibility for establishing and keeping a Register of Native Title Claims. This register records the details of claimant applications that have met the statutory conditions for registration prescribed by sections 190A–190C of the *Native Title Act 1993* (Cth). As at 30 June 2023, there were 110 claimant applications on this register.

The National Native Title Register

Under section 192(2) of the *Native Title Act 1993* (Cth), the Native Title Registrar must establish and keep a National Native Title Register, recording approved determinations of native title.

As at 30 June 2023, a total of 584 determinations had been registered, including 108 determinations that native title does not exist.

Map 1 Determinations Map (page 81) shows native title determinations as at 30 June 2023, including those registered and those not yet in effect.

The Register of Indigenous Land Use Agreements

Under section 199A(2) of the *Native Title Act 1993* (Cth), the Native Title Registrar must establish and keep a Register of Indigenous Land Use Agreements, in which area agreement, body corporate and alternative procedure ILUAs are registered. At 30 June 2023, there were 1,448 ILUAs registered on the Register of Indigenous Land Use Agreements.

Map 2 Indigenous Land Use Agreement Map (page 82) shows registered Indigenous Land Use Agreements as at 30 June 2023.

Claimant and amended applications

Sections 190A–190C of the *Native Title Act 1993* (Cth) require the Native Title Registrar to decide whether native title determination applications (claimant applications) and applications for certain amendments to claimant applications, should be accepted for registration on the Register of Native Title Claims. To that end, the CEO and Principal Registrar of the Federal Court provides the Native Title Registrar with a copy of each new or amended claimant application and accompanying documents that have been filed in the Federal Court.

The Native Title Registrar considers each application against the relevant requirements of the *Native Title Act 1993* (Cth). The Native Title Registrar may also undertake preliminary assessments of such applications, and draft applications, by way of assistance provided pursuant to section 78(1)(a) of the *Native Title Act 1993* (Cth). Where the Registrar does not accept a claim for registration, the relevant applicant may seek reconsideration by the Tribunal. Alternatively, the applicant may seek judicial review in the Federal Court.

During the reporting period, the Native Title Registrar received 25 new claimant applications, an increase of 10 compared to the previous year. In addition to new claims, the Native Title Registrar received 30 amended claimant applications, 11 more than the previous year.

There was an increase in the volume of registration testing in the reporting period. There were 42 applications considered for registration, eight more than the previous year. Of the 42 decisions, 30 were accepted for registration and 12 were not accepted. During the reporting period, eight applications were subjected to preliminary assessment before filing with the Federal Court. Three applications to the Federal Court, seeking judicial review of a decision to not accept an application for registration among other things, were made during the reporting period. One application was discontinued and the remaining two are currently being considered.

Non-claimant, compensation and revised determination applications

There was a decrease in the number of new non-claimant applications filed in the Federal Court during this reporting period, with five New South Wales applications, seven Queensland applications and one Victorian application filed in the Federal Court. There was a slight increase in revised determination applications with one application each in Queensland and Western Australia being referred to the Native Title Registrar in the reporting period, compared with only one in the previous year. The Native Title Registrar received one compensation application, a decrease compared to the previous year. That application was made in Northern Territory.

Indigenous land use agreements

Under the *Native Title Act 1993* (Cth), parties to an ILUA (whether a body corporate agreement, area agreement or alternative procedure agreement) may apply to the Native Title Registrar for inclusion on the Register of ILUAs. Each registered ILUA, in addition to taking effect as a contract among the parties, binds all persons who hold, or may hold, native title in relation to any of the land or waters in the area covered by the ILUA.

A total of 1,448 ILUAs are currently on the Register of ILUAs, the majority of which are in Queensland. Broadly, the ILUAs deal with a wide range of matters including the exercise of native title rights and interests over pastoral leases, local government activity, mining, state-protected areas and community infrastructure such as social housing.

TABLE 5.3: NUMBER OF APPLICATIONS REFERRED TO OR LODGED WITH THE NATIVE TITLE REGISTRAR IN 2022–23

NATIVE TITLE DETERMINATION APPLICATIONS	NSW	NT	QLD	SA	VIC	WA	TOTAL
Claimant (new)	0	12	9	0	2	2	25
Non-claimant	5	0	6	0	1	0	12
Compensation	0	1	0	0	0	0	1
Revised native title determination	0	0	1	0	0	1	2
TOTAL	5	13	16	0	3	3	40

TABLE 5.4: NUMBER OF APPLICATIONS LODGED WITH THE NATIVE TITLE REGISTRAR IN 2022–23

INDIGENOUS LAND USE AGREEMENTS	NSW	NT	QLD	SA	VIC	WA	TOTAL
Area agreements	1	0	4	1	0	0	6
Body corporate agreements	0	0	7	0	1	12	20
TOTAL	1	0	11	1	1	12	26

During the reporting period, the Native Title Registrar received 26 ILUAs, 15 fewer than in the previous year. Twenty-one body corporate and 13 area agreement ILUAs were accepted for registration and entered in the Register. One ILUA is currently in notification.

Notifications

The Native Title Registrar carries out a key function in respect of notification of native title determination applications and ILUAs. During the reporting period, 25 native title determination applications were notified, compared with 38 in the previous year. These applications comprised of 10 claimant applications, 12 non-claimant applications, 2 revised determination applications and one compensation application.

A total of 25 ILUAs were notified during the period.

Assistance

Section 78(1) of the *Native Title Act 1993* (Cth) authorises the Native Title Registrar to give such assistance as they think reasonable to people preparing applications and at any stage in subsequent proceedings. That section also provides that the Native Title Registrar may help other people in relation to those proceedings.

During the reporting period, such assistance was provided on 160 occasions. As in previous years, the requests comprised of provision of geospatial products and review of draft native title determination applications.

Under sections 24BG(3), 24CG(4) and 24DH(3) of the *Native Title Act 1993* (Cth), the Native Title Registrar may provide assistance in the preparation of ILUA registration applications. Often, this assistance takes the form of comments upon the draft ILUA and the application for registration, as well as mapping assistance. During the reporting period, assistance was provided on 35 occasions. Such assistance must be distinguished from the assistance given by the Tribunal in the negotiation of such agreements. See sections 24BF, 24CF and 24DG of the *Native Title Act 1993* (Cth).

Pursuant to section 78(2) of the *Native Title Act 1993* (Cth), 2,156 searches of registers and other records were conducted during the reporting period, a slight increase in requests from the previous year.

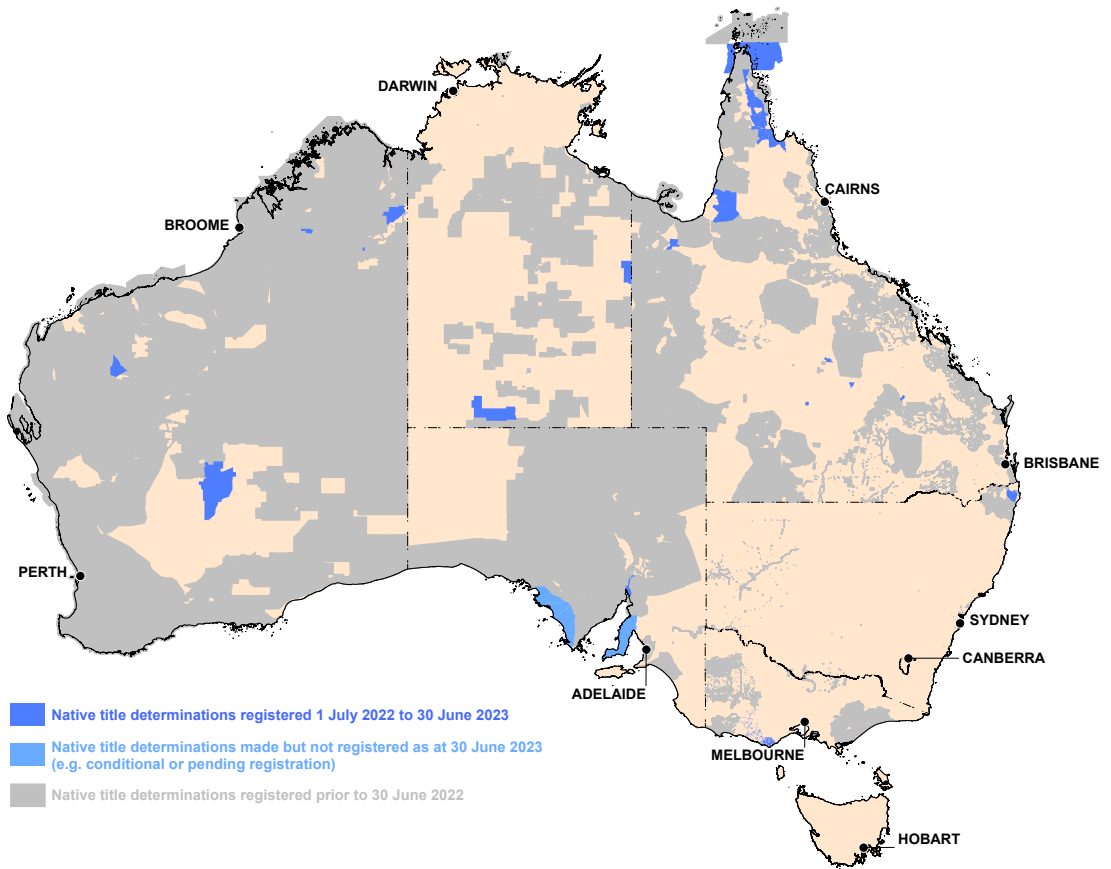
National progress

The 584 registered determinations as at 30 June 2023 cover a total area of 3,865,290 square kilometres or 50.3 per cent of the land mass of Australia and approximately 175,455 square kilometres of sea (below the high water mark).

Four conditional consent determinations, (*Wilson, on behalf of the Wirangu People v State of South Australia (No 2)* [2022] FCA 1460, *Wilson on behalf of the Wirangu People and Weetra on behalf of the Nauo People v State of South Australia* [2023] FCA 60, *Sansbury v State of South Australia (Narungga Nation Native Title Claim)* [2023] FCA 196, and *Weetra-Height on behalf of the Nauo People v State of South Australia* [2023] FCA 454) are still awaiting ILUA registration. Upon registration, these determinations will increase the areas determined to about 3,890,133 square kilometres or 50.6 per cent of the land mass of Australia and approximately 176,058 square kilometres of sea (see Map 1).

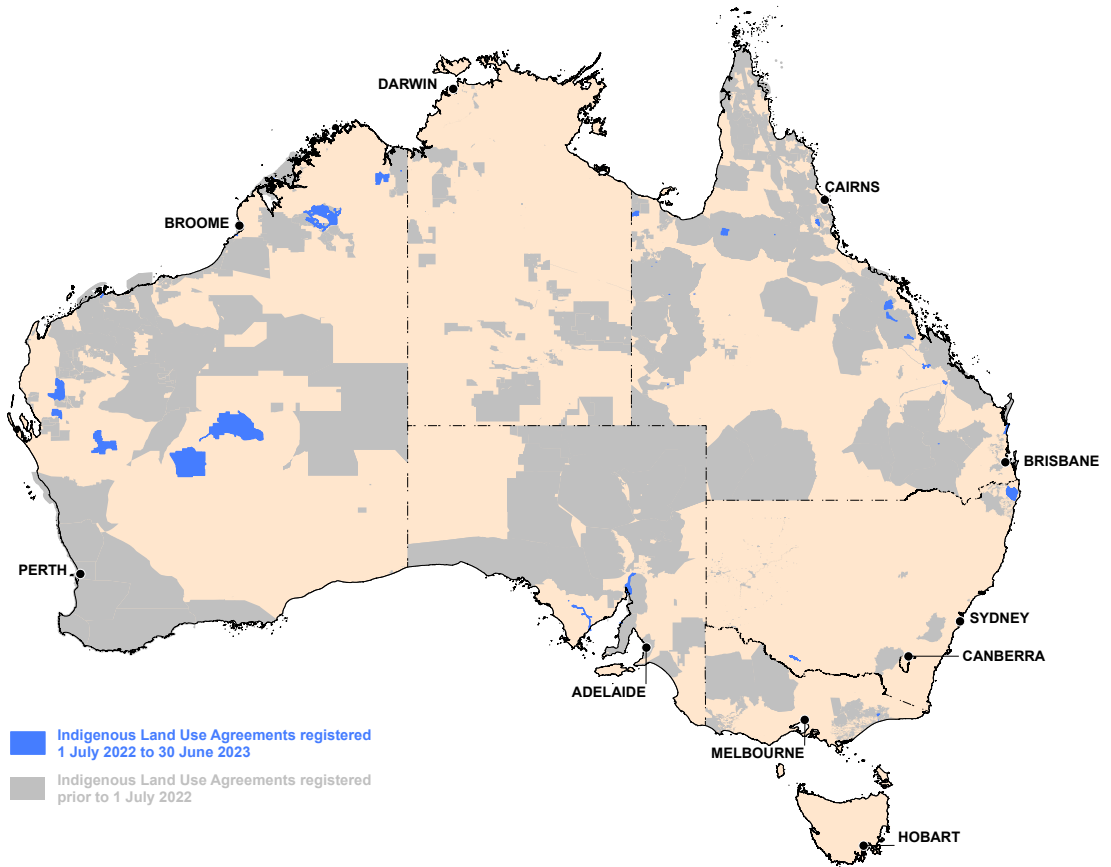
Registered ILUAs cover about 2,744,396 square kilometres or 35.7 per cent of the land mass of Australia and approximately 51,429 square kilometres of sea (see Map 2).

MAP 1: DETERMINATIONS MAP



Spatial data sourced from and used with permission of: Landgate (WA), Dept of Resources (QLD), Dept of Customer Service (NSW), Dept of Infrastructure, Planning & Logistics (NT), Dept of Planning, Transport & Infrastructure (SA), Dept of Environment, Land, Water & Planning (VIC), and Geoscience Australia, Australian Government. Reference to ACT also includes Jervis Bay Territory. © Commonwealth of Australia.

MAP 2: INDIGENOUS LAND USE AGREEMENTS MAP



Spatial data sourced from and used with permission of: Landgate (WA), Dept of Resources (QLD), Dept of Customer Service (NSW), Dept of Infrastructure, Planning & Logistics (NT), Dept of Planning, Transport & Infrastructure (SA), Dept of Environment, Land, Water & Planning (VIC), and Geoscience Australia, Australian Government. Reference to ACT also includes Jervis Bay Territory. © Commonwealth of Australia.

Management of the Tribunal

The President, in consultation with the Members, the Native Title Registrar and Team Managers, sets the strategic direction for the Tribunal. The relatively small size of the Tribunal militates in favour of informal, rather than formal consultation. On the other hand, its geographical dispersal increases reliance on the use of electronic means of communication.

Financial review

The Federal Court's appropriation includes funding for the operation of the Tribunal. This funding is set out as sub-program 1.1.2 in the Court's Portfolio Budget Statements. \$8.209 million was allocated for the Tribunal's operations in 2022–23.

Appendix 1 shows the consolidated financial results for both the Court and the Tribunal.

Table 5.5 presents the financial operating statement, summarising the Tribunal's revenue and expenditure for 2022–23.

TABLE 5.5: FINANCIAL OPERATING STATEMENT

YEAR ENDING 30 June 2023	BUDGET (\$'000)	ACTUAL (\$'000)	VARIANCE (\$'000)
Appropriation			
Total revenue	8,209	8,207	-2
Total expenses	8,209	7,321	888
Surplus / Deficit	0	886	886

External scrutiny

Freedom of Information

During the reporting period, four requests were received under the *Freedom of Information Act 1982* (Cth) for access to documents. The Tribunal publishes a disclosure log on its website, as required by the *Freedom of Information Act 1982* (Cth). The disclosure log lists 10 documents released in response to one freedom of information access request processed during the reporting period.

Accountability to clients

The Tribunal maintains a Client Service Charter (Commitment to Service Excellence) to ensure that service standards meet client needs. During the reporting period there were no complaints requiring action under the Charter.

Statutory office holders

The *Native Title Act 1993* (Cth) deals, in a general way, with issues concerning the behaviour and capacity of Members. While the Native Title Registrar is subject to the Australian Public Service Code of Conduct, this does not apply to Tribunal Members, except where they may be, directly or indirectly, involved in the supervision of staff.

There is a voluntarily code of conduct for Members, however it is in need of review. This process will be undertaken in the course of 2023–24. During the reporting period, there were no complaints concerning Members.

Online services

The Tribunal maintains a website at www.nntt.gov.au. The website enables online searching of the National Native Title Register, the Register of Native Claims, and the Register of Indigenous Land Use Agreements. Native title spatial information and data can also be accessed online through Native Title Vision. As a result of the amendments to the *Native Title Act 1993* (Cth), the Tribunal also established a publicly available record of section 31 agreements.

Australian Human Rights Commission

Under section 209 of the *Native Title Act 1993* (Cth), the Commonwealth Minister may, by written notice, direct the Aboriginal and Torres Strait Islander Social Justice Commissioner to report to the Commonwealth Minister about the operation of the *Native Title Act 1993* (Cth) or its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

The Tribunal continues to assist the Commissioner as requested.