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REPORT OF THE NATIONAL NATIVE TITLE TRIBUNAL

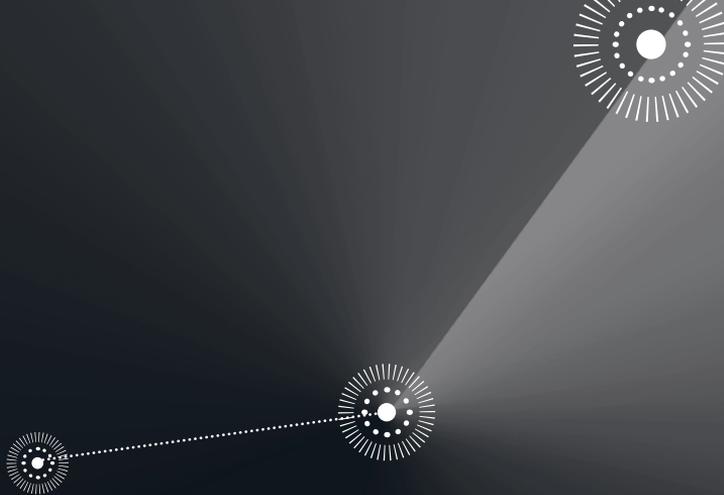
PART 5



This is the final piece of the constellation Iritjinga. Centaurus forms a part of the sky map where stars and the darkness between stars are used to assist navigation. The sky maps aligned with the landscape and allowed clans and groups to travel around country.

Dr R Bhathal: *Astronomy of the First People of Australia: From the Archives and the Indigenous Community* (pg. 5–6).





ESTABLISHMENT

The *Native Title Act 1993* (Cth) (NTA) establishes the National Native Title Tribunal (Tribunal) as an independent body with a wide range of functions. The Preamble to the NTA describes it as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders (Indigenous Australian peoples). The NTA is also intended to further advance the process of reconciliation among all Australians.

The NTA creates an Australia-wide native title scheme, the objectives of which include:

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

The NTA 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 Australian people.

FUNCTIONS AND POWERS

Under the NTA, the Tribunal, comprising the President and members, has specific functions in relation to:

- mediating in native title proceedings, upon referral by the Federal Court of Australia (Federal Court)
- arbitrating 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
- arbitrating applications for a determination of whether a future act must not be done, or may be undertaken and, if so, whether any, and what, conditions will apply
- assisting people to negotiate Indigenous Land Use Agreements (ILUAs), and helping to resolve any objections to registration of area or alternative procedure ILUAs
- assisting with negotiations to settle applications that relate to native title, and with statutory access agreement negotiations
- providing assistance under s 203BK of the NTA to representative bodies in performing their dispute resolution functions
- reconsidering decisions of the Native Title Registrar (Registrar) not to accept a native title determination application (claimant application) for registration

- upon referral by the Federal Court, conducting reviews on whether there are native title rights and interests
- conducting native title application inquiries as directed by the Federal Court, and
- conducting special inquiries under Ministerial direction.

The President may delegate to a member, or members, all or any of the President's powers under the NTA, and may arrange through the Federal Court CEO for the engagement of consultants in relation to any assistance, mediation or review that the Tribunal provides.

The President is responsible for managing the administrative affairs of the Tribunal with the assistance of the Federal Court CEO, who is empowered by the NTA to delegate his responsibilities under the Act to the Registrar, Deputy Registrar or staff assisting the Tribunal. The President may direct the Federal Court CEO regarding the exercise of his power to assist the President in managing the administrative affairs of the Tribunal.

Deputy Registrars and staff assisting the Tribunal are made available for that purpose by the Federal Court CEO. The organisation which includes any Deputy Registrars and the staff assisting the Tribunal is referred to in this report as the NNTT.

The NTA gives the Registrar specific responsibilities, including:

- assisting people to prepare applications and to help them, at any stage of a proceeding, in matters relating to the proceeding

- helping other people, at any stage of a proceeding, in matters relating to the proceeding
- considering claimant applications for the purposes of registering on the Register of Native Title Claims those applications which meet prescribed statutory conditions
- giving notice of applications to individuals, organisations, governments and the public in accordance with the NTA
- registering ILUAs that meet the registration requirements of the NTA, and
- maintaining the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements.

The Registrar may delegate to the Deputy Registrar, or to members of the staff assisting the Tribunal, all or any of the Registrar's powers. The President may direct the Registrar regarding the exercise of the Registrar's powers under Part 5 of the NTA, including to conduct certain searches and to keep and make available public records and information. The President also may appoint an acting Registrar if there is a vacancy in the office of Registrar, or if the Registrar is unable to perform the duties of the office for any reason.

THE PRESIDENT, MEMBERS AND THE NATIVE TITLE REGISTRAR

The President, other members of the Tribunal and the Registrar are appointed by the Governor-General for specific terms of no longer than five years. The NTA sets out the qualifications for appointment and defines the responsibilities of the President, other members and the Registrar.

The table below outlines the terms of the Tribunal's current statutory office-holders.

Table 5.1: Current Tribunal Statutory Office-Holders

NAME	TITLE	APPOINTED	TERM	LOCATION
Raelene Webb QC	President	1 April 2013	Five years	Perth
Helen Shurven	Member	Reappointed 29 November 2012	Five years	Perth
Dr Valerie Cooms	Member	4 February 2013	Five years	Brisbane
James McNamara	Member	31 March 2014	Five years	Brisbane

The office of Registrar is currently vacant. Robert Powrie was acting Registrar for the reporting period, as appointed by the President.

OFFICE LOCATIONS

The NNTT provides services and native title assistance in all Australian States and Territories from offices in Perth, Sydney, Melbourne, Brisbane and Cairns and the Federal Court registry in Canberra. The office of the President is located in Perth and, since April 2016, the acting Registrar has been co-located in Sydney and Canberra.

STRATEGIC VISION

VISION: SHARED COUNTRY, SHARED FUTURE

The vision for the NNTT is *Shared country, shared future*. This vision encompasses the President's vision of an organisation which:

- solves problems, working towards a shared country, shared future for all Australians – an organisation which looks for ways to do and to achieve things
- is outward looking and expansive in its thinking
- focuses on developing its staff and members, creating succession plans and career pathways
- motivates individuals and teams to strive for innovative and ground-breaking solutions that enhance the way things are done and create opportunities for growth, and
- is collegiate, and in which genuine respect for others – internally and externally – is always shown.

THE YEAR IN REVIEW

The 2016–17 financial year was one of consolidation for the NNTT, with the majority of the recommendations arising from the President's Review in 2014–15 (President's Review), having taken effect. As a newly invigorated national organisation the focus this year was on service delivery as well as client and stakeholder engagement. External factors, too, played a key role in the organisation's operations.

SIGNIFICANT DEVELOPMENTS

Client and stakeholder engagement

To build capacity within the native title system, the NNTT conducted numerous forums, information sessions, workshops and seminars across the country.

Continuing with its initiative to support and strengthen Prescribed Bodies Corporate (PBC), the NNTT convened meetings of the PBC Support Forum (forum) in Perth, Adelaide and Melbourne. This unique inter-agency forum brings together government and non-government bodies to identify ways to deliver more targeted support to PBCs through information sharing, strategic discussion and collaborative effort. Forum members include representatives from the Commonwealth Department of Prime Minister and Cabinet, the Commonwealth Attorney-General's Department, the National Native Title Council, the Office of the Registrar of Indigenous Corporations (ORIC), the Indigenous Land Corporation, Indigenous Business Australia, the Australian Institute of Aboriginal and Torres Strait Islander Studies, CEOs of native title representative bodies and service providers and members of PBCs. To facilitate discussion, the NNTT provided the forum with a draft discussion paper addressing the issues of post determination funding, support services for PBCs, and gaps in existing services.

Native title information sessions were delivered to the Broome Shire, the Looma Community, the Western Australian Department of Lands, the WA Water Corporation and Queensland Parks and Wildlife Services. In addition, the NNTT worked in collaboration with the Australian Local Government Association on a project designed to increase knowledge of native title issues in the local government sector and inform the development of relevant information resources.

President Raelene Webb QC and acting Registrar Robert Powrie delivered training in Canberra to approximately 60 staff from Commonwealth Government agencies with an interest in native title. The roles of the NNTT and the Federal Court, native title processes and managing native title in the post-determination environment were just a few of the topics covered.

The President, acting Registrar and Tribunal Members provided native title presentations to students and staff at various Australian Universities, including Deakin University, Southern Cross University, University of Adelaide, the university of Queensland and Victoria University.

At the request of the Central Desert Native Title Services, the NNTT undertook professional legal development training for lawyers in Western Australia's (WA) Native Title Representative Bodies (NTRBs). The NNTT, in collaboration with legal firm Gilbert + Tobin, facilitated a two-day program in March 2017, covering topics such as future act processes, the application of s 47B NTA and resilience in the workplace, from an agenda developed in consultation with the NTRBs. The workshops were attended by over 80 of WA's native title lawyers and the NNTT has received expressions of interest for similar training in other states.

Once again the demand for President Webb to speak at conferences and seminars throughout the year remained high.

President Webb delivered 17 presentations across Australia and internationally. Of note, was the President's Sir Frank Kitto Lecture, a prestigious event held annually at the University of New England (NSW). Her presentation *Whither native title?* considered the impact of the Mabo decision and the legislative response on the lives of Indigenous Australian peoples. She noted the continuing reluctance in some quarters to accept native title, and discussed the key priorities necessary to realise some of the hopes engendered by the Mabo decision.

In November, President Webb spoke at the Western Australian Bar Association's Colloquium in honour of retiring Chief Justice Robert French AC, tracing his Honour's contribution to native title in her paper 'No Mere Platitude. The influence of Chief Justice French on native title'. Chief Justice French was the inaugural President of the NNTT, served as a judge for 30 years firstly of the Federal Court, then as Chief Justice of the High Court.

As an internationally renowned speaker, President Webb has become a regular presenter at the Annual World Bank Conference on Land and Poverty in Washington DC. In this year's presentation, entitled *Management of native title – Australia's next "wicked" problem*, President Webb said that 'the way forward for Australia in managing native title to its fullest potential is to develop a unified framework which is both integrated and interactive, embodying partnerships between governments at all levels, native title holders, industry and the Australian community.'

In addition to a full load of mediation work, including approximately 218 mediation meetings throughout 2016-17, the NNTT's Tribunal Members Helen Shurven, Dr Valerie Cooms and James McNamara made a significant contribution to the wider native title system, providing assistance across the sector, authoring publications, attending and presenting at conferences and workshops and participating as members of key committees.

Among her many activities, Member Shurven co-authored two articles for the *Australasian Dispute Resolution Journal* with senior staff member Clair Berman-Robinson, and while on leave in Kota Kinabalu, gave a presentation to representatives from the Sabah Law Association interested in the operations of the NTA, and the role of the NNTT (the Chief Judge of Sabah has been calling for a Native Title Tribunal in the region), and finished out the year in Boston, where she undertook a course of study at the Harvard Negotiation Institute, 'Advanced Mediation Workshop: Mediating Complex Disputes'. She also convened two stakeholder meetings in NSW to discuss the complexities arising from the overlapping native title and Aboriginal Land Rights regimes, and presented on that topic at the Australian Disputes Centre.

Member Cooms continued as an active member on various Australian Human Rights Commission Committees as well as the AIATSIS Native Title Research Advisory Committee and the Indigenous Business of Australia's Housing Roundtable. In collaboration with ORIC, she assisted in dispute resolution (mediating issues within PBCs) and assisted with the establishment of PBCs. She also maintained her involvement in TAFE training programs for Indigenous youth.

During the reporting period, Member McNamara played a significant role in progressing ILUA negotiations throughout northern Queensland and the Torres Strait. At the request of the Torres Strait Regional Authority, Member McNamara worked with a number of communities to assist them to identify traditional boundaries and facilitated discussions between communities and the State of Queensland to resolve land tenure issues. A full list of the President's, other members' and acting Registrar's presentations is annexed to this report.

The NNTT's Research and Development Director, Dr Pamela McGrath continued to raise the profile of the NNTT with two publications: 'Native title anthropology after the Timber Creek decision', published in *AIATSIS' Land, Rights, Laws: Issues in Native Title*, and 'Providing public access to native title records: balancing the risks against the benefit', to be published in *The Court as Archive: Rethinking the institutional role of federal superior courts of record* (ANU Press).

In order to improve client services, the Cairns Office was renovated, to meet the needs of local stakeholders. The layout of the new office was designed to be more culturally acceptable to Indigenous Australian peoples by being more open and accessible and including a specially designed discussion area to facilitate interaction and communication.

At year's end, it was reassuring to receive the results of the Stakeholder and Client Satisfaction Survey, which revealed that approximately 80 per cent of respondents were either very satisfied or satisfied with the overall service provided to them by the NNTT. They reported that the NNTT was easy to contact, provided accurate information, had an appropriate level of knowledge and took into account cultural and customary concerns of Indigenous Australian peoples. Ninety-two per cent of responders considered the NNTT's staff to be friendly and helpful.

Overall, respondents considered that the NNTT was performing well across its various services with the highest rating of 93 per cent given for native title searches and 90 per cent for the NTV mapping system, which were the most commonly accessed services.

External factors

External factors had a significant impact on the operations of the NNTT during the 2016–17 financial year.

On 24 August 2016, judgment in the first litigated native title compensation claim was handed down by Justice Mansfield of the Federal Court in *Griffiths v Northern Territory of Australia (No 3)* 2016 FCA 900 (*Griffiths*). This decision provided the native title community with some long awaited guidance as to principles underpinning, and the means of calculating, the quantum of native title compensation. The decision has been appealed to a Full Bench of the Federal Court and legal commentators predict that it will make its way to the High Court before the matter is finally resolved. Following the decision, three additional compensation claims were made to the Federal Court and provided to the NNTT for notification. A significant number of compensation claims are anticipated when the legal processes in *Griffiths* conclude.

Immediately following the *Griffiths* decision, the NNTT partnered with legal firm Gilbert + Tobin to deliver a series of stakeholder workshops entitled 'Practical Implications of the Griffiths Decision'. In total, the workshop series was delivered across six cities, Brisbane, Sydney, Melbourne, Adelaide, Perth and Darwin and was attended by 215 interested parties, mostly legal representatives from government, industry and native title bodies. The feedback was very positive and indicated an appetite for more NNTT led events in the future.

The Full Federal Court decision in *McGlade v Native Title Registrar & Ors* 2017 FCAFC 10 (*McGlade*) called into question the validity of Area Indigenous Land Use Agreements (Area ILUAs) that were not executed by all members of the registered native title claimant. In response to *McGlade*, the acting Registrar placed a 'moratorium' on Area ILUAs in the registration/notification stage that could be affected by the decision, while continuing to apply the registration test to those unaffected. The 'moratorium' was in place from February 2017 until June 2017 when amendments to NTA retrospectively validated otherwise invalid Area ILUAs and clarified the process by which Area ILUAs may be authorised in the future, and the persons who are required to sign or to be a party to Area ILUAs.

To assess the impact of the *McGlade* decision and to assist in the delivery of an informed policy response from the Attorney-General's Department, the NNTT conducted an audit of Area ILUAs registered between 17 September 2010 (the date of the previous authority in this matter, *QGC Pty Limited v Bygrave (No 2)* (2010) 189 FCR 412) and 2 February 2017, to determine how many agreements would be impacted. At least 125 were identified.

There was a great deal of interest from both the media and the native title community in the outcome of the *McGlade* decision, the conduct of the audit, consequences for affected Area ILUAs already on the register, those still awaiting registration testing and the proposed legislation. Dealing with these issues required the commitment of dedicated resources to manage the increased workload.

Mapping products

The NNTT's new Native Title Vision Platform, NTV+, generated a lot of excitement in the native title community this year. Upon request, the Geospatial services team made numerous presentations to stakeholders keen to explore the new platform. In early November, Geospatial Services Director Mark McInerney provided staff from the Western Australian Department of State Development an advance preview of the new features which included an intuitive interface, enhanced search functions and a variety of map backgrounds, including aerial imagery, and a choice of export formats. Demonstrations were also made to the PBC Support Forum, Commonwealth agencies in Canberra and to lawyers and other legal staff from the Cape York Land Council.

NTV+ was officially launched in January and by April statistics indicated that the majority of users had made the switch to the new platform.

Training

In 2016–17, the NNTT continued to deliver advanced training to all staff. As identified in the President's Review, advanced training is a key element of the NNTT's ability to deliver service of a high standard, at a client's first point of contact. In addition to core business, training encompassed Indigenous cultural considerations and the history of native title, so that all NNTT business is conducted within that context. Training utilises the expert knowledge held by the President, other members, acting Registrar and senior staff, as well as external service providers.

The program of advanced training is in addition to regular induction training for new staff and training undertaken by staff relevant to their specialty area.

Cultural respect

Cultural understanding and respect remains a high priority for the NNTT. Throughout the year, the NNTT instituted a number of initiatives to improve workplace culture and ensure a culturally safe workplace. These included:

- ongoing development of an Indigenous Employment Strategy, which will form part of the Federal Court's strategy
- supporting the development of a new Reconciliation Action Plan
- re-instituting the Indigenous Advisory Group (IAG)
- requiring training materials and research proposals with cultural content to be provided to the IAG for comment
- classifying all NNTT positions as Identified positions – employees are required to have effective communications skills and an understanding of the issues affecting Indigenous Australian peoples
- meeting the Australian Public Service Commission guidelines and ensuring the Aboriginal and Torres Strait Islander selection criteria are in all job descriptions
- ensuring all recruitment panels contain an Indigenous panel member (at level of position or above) and requiring recommended applicants to provide an Indigenous referee

- delivering compulsory cultural respect training to all staff
- commissioning an Organisational Culture Change Plan
- developing and delivering training to all staff on the impact of European settlement and the native title regime on Aboriginal and Torres Strait Islander people
- ensuring practices and procedures within the NNTT are delivered in a manner which is consistent with the requirements of the NTA, being beneficial legislation for Aboriginal and Torres Strait Islander people, and
- creating more culturally acceptable spaces for Aboriginal and Torres Strait Islander people in office redevelopment plans.

Creating efficiencies

The NNTT has an ongoing commitment to efficiency and throughout the reporting period revised and improved a number of business processes. To facilitate registration testing, the acting Registrar introduced concurrent processing, the use of plain English in all documentation, and regular reporting to the Federal Court in relation to notification and registration timeframes.

There have been improvements to the future act processes, including a revised case management approach to the expedited procedure inquiry process in WA. The NNTT's policies and practices library has been updated and transitioned to a new, user friendly format and the case management system (ICaFAMS) now includes automated templates for regular correspondence. Notification advertising is also being transitioned to in-house production to shorten timeframes and reduce costs.

In compliance with the Australian Government Digital transition policy, the NNTT now creates, manages and stores the majority of its records digitally, allowing files to be shared and accessed seamlessly across the country.

Celebrating Mabo 25th anniversary

The NNTT embraced the 25th anniversary of Mabo this year, taking a lead role in key celebratory activities.

In February, the NNTT, the Federal Court of Australia and the Centre for Native Title Anthropology at the Australian National University co-convened a special event in Perth to recognise the contribution of anthropology and anthropologists to native title law. The event was attended by nearly 160 people and featured a program of 16 speakers, among them Federal Court judges, anthropologists and barristers. Each speaker provided a unique perspective on the importance of anthropological knowledge to the legal recognition of native title rights, and some of the joys and challenges of working with anthropologists. The event was opened by Justice Michael Barker, who is one of the National Coordinating Judges in the Court's Native Title National Practice Area, and the judge principally responsible for native title case management in Western Australia. The video and transcript from the event have been made available online.

With support from the judiciary, native title representative bodies and other native title stakeholders, the NNTT also published a 'pop-up' website in March 2017 to celebrate 25 years of native title recognition in Australia. The website traces the history of native title recognition from the early land rights movement to the historic Mabo decision in 1992. It explores the impact of the NTA and the many changes to both native title legislation and common law that have taken place over the quarter century to 2017. To support the 'pop-up' website and to generate interest across the native title sector, the NNTT utilised social media channels for the first time, including YouTube, Facebook and Twitter. The website has attracted over 2000 unique visitors each month, with interests peaking during the Mabo celebrations in early June. The website will be available for the remainder of 2017 and will continue to be updated with unique contributions as the year progresses.

Looking forward

The NNTT looks forward to consolidating and improving its performance and client/stakeholder satisfaction ratings in 2017–18. While demand for NNTT services and assistance has increased steadily year-on-year, the organisation's capacity to meet this demand and to provide satisfactory levels of service into the future will depend upon sufficient resources being made available for it to perform both mandatory and discretionary statutory functions.

THE WORK OF THE NNTT IN 2016–17

GENERAL OVERVIEW

Services and native title assistance are delivered to all Australian states and territories from offices in Perth, Sydney, Melbourne, Brisbane and Cairns and from the Federal Court registry in Canberra. Detailed information about statutory functions and trends, together with quantitative data for deliverables achieved by the Tribunal and the Registrar respectively, is set out below.

FUNCTIONS OF THE TRIBUNAL

FUTURE ACTS

Overview

A key function of the Tribunal, under subdivision P of the NTA is the resolution by mediation or arbitration of issues involving certain proposed future acts (primarily, in practice, the grant of exploration and mining tenements) on land where native title has been determined to exist or where native title might exist.

Table 5.2: Number of applications lodged with the Tribunal in 2016–17

FUTURE ACT	NT	QLD	WA	TOTAL
Objections to expedited procedure	22	103	1012	1137
Future act determination applications	n/a	2	19	21
Total	22	105	1031	1158

A future act which is governed by Subdivision P can only be done if the relevant government complies with the notification requirements set out in s 29(2) of the Act (s 29 notice).

As in previous years, most future act activity occurred in Western Australia, with the remaining future act activity occurring in Queensland and the Northern Territory.

Expedited procedure objection applications and inquiries

Under s 29(7) of the NTA, a government party may assert that the proposed future act is an act which attracts the expedited procedure (i.e. that it is an act which will have minimal impact on native title) and, as such, does not give rise to the procedural right for native title party/parties to negotiate. 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 1137 objection applications were lodged during the reporting period, approximately 89 per cent of which were lodged in Western Australia. The ratio of objections lodged to notices issued has reduced markedly, with approximately 26 per cent of notices attracting an objection in this period compared to 31 per cent in 2015–16.

A greater number of objection applications were lodged and a slightly greater number finalised (1035) than in the last reporting period. The number of active applications at the end of the reporting period stood at 615 which is 100 more than at the end of the previous reporting period (515). Approximately 465 objections were withdrawn after agreement was reached between the native title party and proponent and a further 228 objection applications were finalised due to the withdrawal of the tenement application by the proponent.

A total of 44 determinations in respect of objection applications were made during the reporting period, an increase of 33 per cent from the previous year. The expedited procedure was determined to apply on 30 occasions, an increase of approximately 43 per cent from the previous reporting period and on 14 occasions the expedited procedure was determined not to apply, an almost 17 per cent increase on the previous year.

Future act determination applications, negotiation and good faith requirements and inquiries

If a proposed future act does not attract the expedited procedure, the parties proceed to negotiate to gain the agreement of each native title party to the doing of the future act, either without conditions or subject to conditions. Any party may request Tribunal assistance in mediating amongst parties to obtain agreement. During the reporting period, 60 new requests for Tribunal mediation assistance in negotiating future acts were made; 39 per cent fewer requests than for the previous reporting period.

The NTA prescribes a minimum six-month period, including negotiation in 'good faith', to obtain the agreement of native title parties. After this period, any party to the negotiation may lodge a future act determination application. During the reporting period, 21 applications were lodged, five fewer than in the previous reporting period. The NTA requires that negotiations about a proposed future act must occur in 'good faith'. If there has been a failure to negotiate in 'good faith' by a party, other than a native title party, the Tribunal has no power to make a determination on the application. If any party asserts that negotiations in 'good faith' have not occurred, the Tribunal will hold a preliminary inquiry to establish whether or not that is the case. During the reporting period, there were four 'good faith' determinations. In three cases, the Tribunal determined that 'good faith' negotiations had not occurred and the parties were required to negotiate further before the matter could be brought back to the Tribunal for arbitration.

Twenty-three future act determination applications were finalised during the reporting period. In nine cases, the Tribunal determined that the future act may be done and in one case that the act must not be done. The remaining 13 future act determination applications were either withdrawn or dismissed. Three applications were withdrawn due to agreement being reached.

MEDIATION

Section 203BK(3) of the NTA provides that a Representative Aboriginal/Torres Strait Islander body may seek the assistance of the Tribunal in performing its dispute resolution functions, subject to reaching agreement for payment for the assistance. In the reporting period, the Tribunal provided assistance, under this section, in two instances.

No assistance in negotiating an agreement under s 86F of the NTA was provided during the period.

ASSISTANCE IN NEGOTIATING INDIGENOUS LAND USE AGREEMENTS

During the reporting period the Tribunal received three assistance requests in negotiating ILUAs pursuant to s 24BF (body corporate agreements) and one pursuant to s 24CF (area agreements) of the Act. All of these requests were in Queensland.

FUNCTIONS OF THE NATIVE TITLE REGISTRAR

Table 5.3: Number of applications referred to or lodged with the Native Title Registrar for registration in 2016–17

NATIVE TITLE DETERMINATION APPLICATIONS	NSW	NT	QLD	SA	VIC	WA	TOTAL
Claimant (new)	4	4	13	0	0	5	26
Claimant (amended)	3	5	6	3	0	14	31
Non-Claimant	10	0	4	1	0	0	15
Compensation (new)	0	0	3	0	0	0	3
Compensation (amended)	0	0	0	0	0	0	0
Revised Native Title Determination	0	0	0	0	0	1	1
Total	17	9	26	4	0	20	76

CLAIMANT AND AMENDED APPLICATIONS: ASSISTANCE AND REGISTRATION

Sections 190A – 190C of the NTA confer upon the Registrar the responsibility of considering native title determination applications (claimant applications), and applications for certain amendments to a claimant application for acceptance for registration on the Register of Native Title Claims. To that end, the Federal Court CEO provides the Registrar with a copy of new or amended claimant applications and accompanying documents which have been filed in the Federal Court.

The Registrar considers the relevant applications against the requirements of the NTA. The Registrar may also undertake preliminary assessments of such applications, and draft applications, by way of assistance provided pursuant to s 78(1)(a) of the NTA.

During the reporting period, the Registrar received 26 new claimant applications, seven less than in the previous reporting period, and 31 amended applications, which was ten more than the year before. The majority of new applications and amended applications were filed in Queensland and Western Australia.

Fifty-two applications were considered for registration during the reporting period; 46 were accepted, and six were not accepted for registration following consideration of the claim in the application pursuant to s 190A of the NTA. This included 12 amended applications considered and accepted for registration pursuant to the test prescribed by s 190A(6A) of the NTA.

Excluding decisions made under s 190A(6A), 85 per cent of the applications were considered for registration within six months of receipt. The average time taken to apply the registration test to an application was approximately three and a half months.

Preliminary assessments of 13 applications were also provided during the reporting period.

INDIGENOUS LAND USE AGREEMENTS: ASSISTANCE AND REGISTRATION

Under ss 24BG(3), 23CG(4) and 24DH(3) of the NTA, the Registrar can provide assistance in the preparation of applications to register ILUAs. Often, this assistance takes the form of pre-lodgment comments upon the draft ILUA and the application for registration.

During the reporting period, assistance in the form of comments on draft ILUAs was provided on 28 occasions and on 78 occasions mapping assistance and related information pursuant to s 24BG(3) and s 24CG(4) of the NTA was provided to parties to assist them to prepare applications to register ILUAs.

Under the NTA, parties to an ILUA (whether a body corporate agreement, area agreement or an alternative procedure agreement) must apply to the Registrar in order for the agreement to be registered on the Register of Indigenous Land Use Agreements. 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.

There are 1174 ILUAs on the Register of Indigenous Land Use Agreements, the majority of which are in Queensland. This trend continued in the reporting period as 66 per cent of all agreements registered were in Queensland and, consistent with previous years, many provided for the exercise of native title rights and interests over pastoral leases.

Other registered ILUAs dealt with a wide range of native title related matters, including local government issues, mining, state-protected areas and community infrastructure such as social housing.

During the reporting period a total of 78 ILUAs (47 body corporate agreements and 31 area agreements) were lodged with the Registrar for registration. In the case of area agreements, this was a 67 per cent reduction from the previous reporting period (a likely consequence of the *McGlade* decision and subsequent moratorium on the registration of affected Area ILUAs). In the case of body corporate agreements, this was almost twice as many as in the previous reporting period.

Forty of the 78 applications to register ILUAs covered land and waters in Queensland, and 31 covered areas in Western Australia.

Thirty-four body corporate and 43 Area ILUAs were accepted for registration and entered onto the Register of Indigenous Land Use Agreements during the reporting period. One Body Corporate ILUA was not accepted for registration. The number of registration decisions in relation to body corporate agreements is similar to that of the previous reporting period; however, there were significantly fewer decisions in relation to area agreements.

Consistent with the previous reporting period, the average time taken to register an area agreement was less than five months where there was no objection or other barriers to registration; the average time taken to register a body corporate agreement was less than three months.

NOTIFICATION

During the reporting period a total of 51 native title determination applications were notified, compared with 39 in the previous reporting period. Thirty-one claimant applications were notified, compared with 24 in the previous year and 17 non-claimant applications were notified, three more than in the previous reporting period. Three compensation applications were also notified during the reporting period.

In addition, the Registrar gave notice in respect of seven amended applications.

Thirty-five Area ILUAs and 45 Body Corporate ILUAs were notified during the period. This represents a 59 per cent decrease in notification of Area ILUAs and a 31 per cent increase in Body Corporate ILUA notifications compared with the previous period.

OTHER FORMS OF ASSISTANCE

Assistance in relation to applications and proceedings

Section 78(1) of the NTA provides for the Registrar to give such assistance as s/he thinks reasonable to help people prepare applications and to help them at any stage of the proceeding; it also provides that the Registrar may help other people in relation to a proceeding. During the reporting period, assistance was provided pursuant to s 78 of the NTA on 191 occasions, which is 20 per cent less than the previous reporting period. Consistent with previous years, a significant number of the requests were for the provision of geospatial products.

Searches of registers

Pursuant to s 78(2) of the NTA, 1326 searches of registers and other records were conducted to assist applicants and respondents during the reporting period. The volume of this activity was similar to the previous period.

THE REGISTER OF NATIVE TITLE CLAIMS

Under s 185(2) of the NTA the 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 ss 190A – 190C of the NTA.

As at 30 June 2017, there were a total of 209 claimant applications on the Register of Native Title Claims. This number represents a decrease of 40 applications from the previous reporting period.

THE NATIONAL NATIVE TITLE REGISTER

Under s 192(2) of the NTA, the Registrar must establish and keep a National Native Title Register which records approved determinations of native title. During the reporting period, a total of 27 determinations of native title were registered on the National Native Title Register, a decrease of 37 per cent compared with the previous reporting period.

As at 30 June 2017 there were:

- 385 determinations of native title registered
- 321 determinations that native title exists, and
- 64 determinations that native title does not exist.

A map of registered native title determinations as at 30 June 2017 is set out in Map 1.

THE REGISTER OF INDIGENOUS LAND USE AGREEMENTS

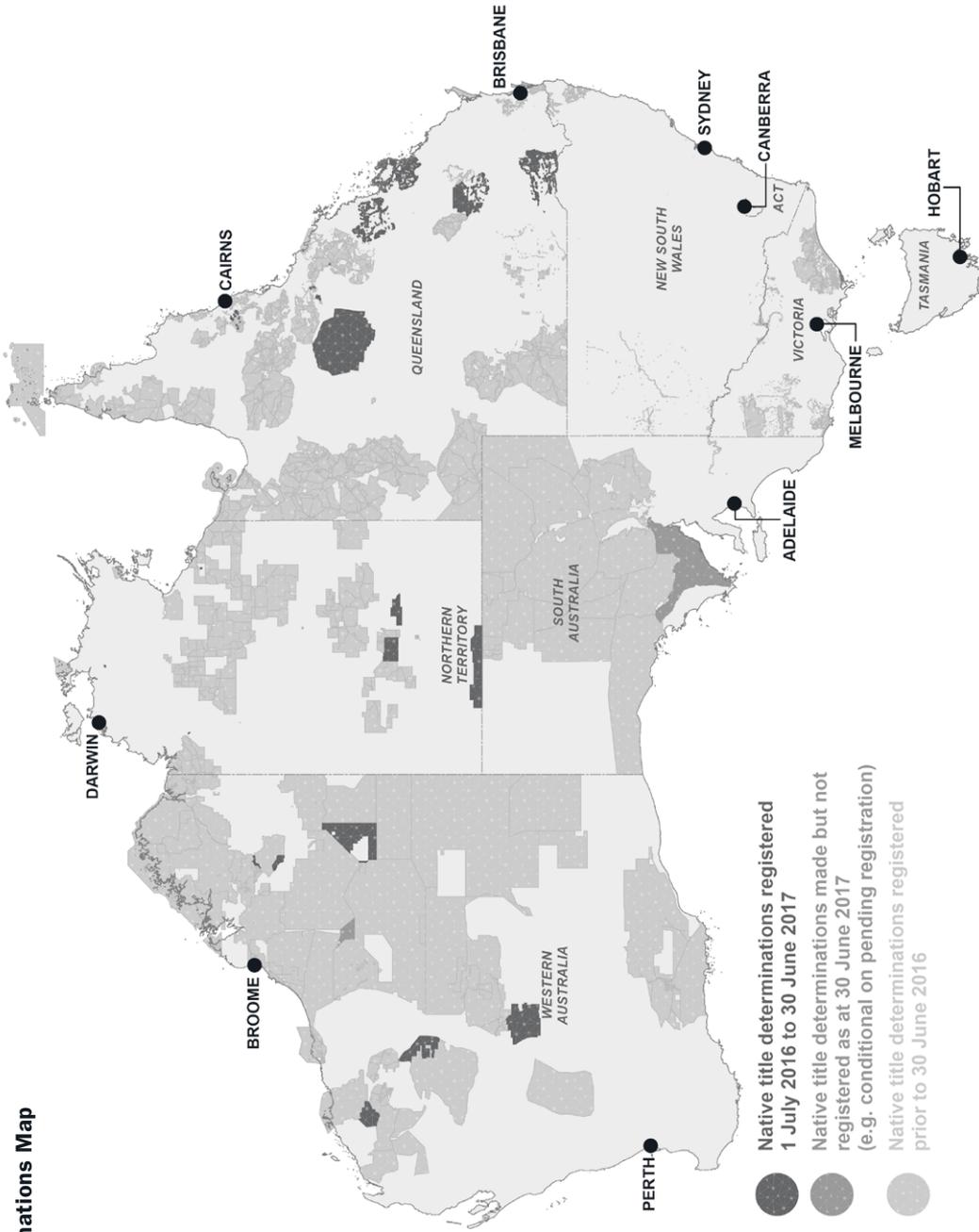
Under s 199A(2) of the NTA, the Registrar must establish and keep a Register of Indigenous Land Use Agreements, on which area agreement, body corporate and alternative procedure ILUAs are registered. During the reporting period, 77 new ILUAs were registered. No ILUAs were removed from the Register. At 30 June 2017, there were a total of 1174 ILUAs registered on the Register of Indigenous Land Use Agreements.

MAPS

The 385 registered determinations as at 30 June 2017 covered a total area of about 2,589,285 sq km or 33.7 per cent of the land mass of Australia and approximately 100,028 sq km of sea (below the high water mark). Two determinations yet to take effect (one in South Australia and one in Western Australia) were still awaiting registration at 30 June 2017. Upon registration, these determinations will increase the area to approximately 2,626,924 sq km or 34.2 per cent of the land mass of Australia and approximately 100,217 sq km of sea: see Map 1.

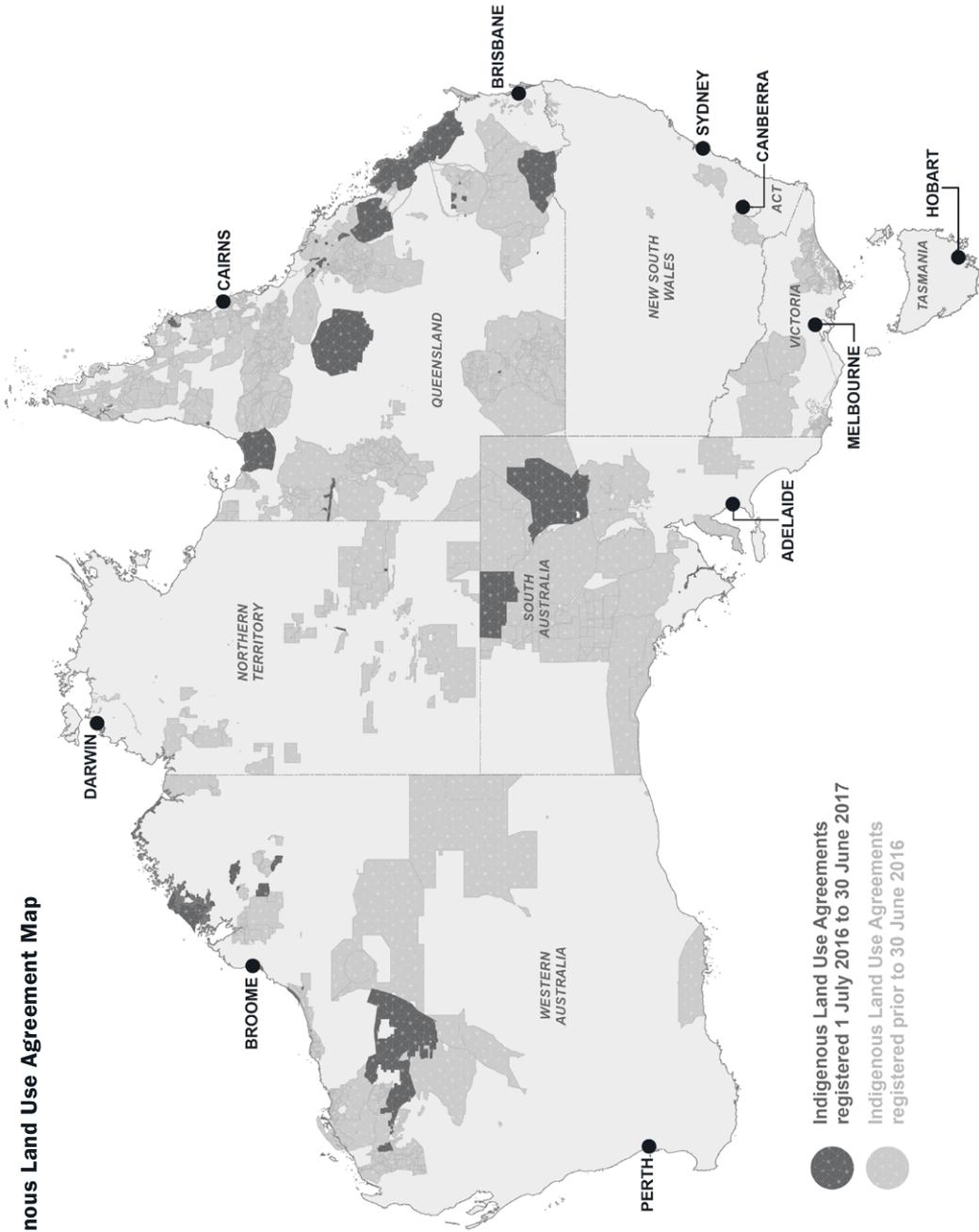
Registered ILUAs cover about 2,298,746 sq km or 29.9 per cent of the land mass of Australia and approximately 24,108 sq km of sea: see Map 2.

Map 1: Determinations Map



Spatial data sourced from and used with permission of: Landgate (WA), Dept. of Natural Resources & Mines (Qld), © The State of Queensland, Land & Property Management Authority (NSW), Dept of Lands, Planning & the Environment (NT), Dept for Planning, Transport & Infrastructure (SA), Dept of Environment and Primary Industries (Vic) and Geoscience Australia, Australian Government, © Commonwealth of Australia.

Map 2: Indigenous Land Use Agreement Map



Spatial data sourced from and used with permission of: Landgate (WA), Dept. of Natural Resources & Mines (Qld), © The State of Queensland, Land & Property Management Authority (NSW), Dept. of Lands, Planning & the Environment (NT), Dept. for Planning, Transport & Infrastructure (SA), Dept. of Environment and Primary Industries (Vic) and Geoscience Australia, Australian Government, © Commonwealth of Australia.

Geotrack Number: GT2017/1023

MANAGEMENT OF THE TRIBUNAL

TRIBUNAL GOVERNANCE

The President has statutory responsibility for the administration of the NNTT which she discharges through the NNTT's key governance group, the Board of Management. The Board is the organisation's key leadership, planning and accountability forum, supporting the President and Registrar in discharging their responsibilities under the NTA. It is accountable for setting the strategic direction of the NNTT, and is collectively responsible for the success of the organisation.

The Board is chaired by the President and includes the Registrar, Deputy Registrar and a member (currently Member Shurven). The Board met five times during the reporting period.

The President and other members also met regularly in Members' Meetings.

FINANCIAL REVIEW

The Federal Court's appropriation includes funding for the operations of the NNTT. This funding is set out as sub-program 1.1.2 in the Court's Portfolio Budget Statements. \$10.876 million was allocated for the NNTT's operations in 2016–17.

The financial figures at Appendix 1 are the consolidated results for the courts and the NNTT.

A summary of the NNTT's revenue and expenditure for 2016–17 is set out in the following Operating Statement.

Table 5.4: Financial Operating Statement

OPERATING STATEMENT FOR YEAR ENDING 30 JUNE 2017				
PROGRAM 1.1.2 NATIONAL NATIVE TITLE TRIBUNAL	AMENDED BUDGET	ACTUAL \$'000	ACTUAL \$'000	VARIATION \$'000
Revenue		10,876	10,883	7
Service receipts		0	7	7
Total revenue		10,876	10,890	14
Expenses staff and office holders		9,897	8,758	1,139
Supplies and services		979	997	-18
Total Expenses		10,876	9,755	1,121
Operating Result		0	1,135	1,135

The NNTT managed its financial resources carefully throughout the reporting period and at 30 June 2017 recorded a surplus of \$1.135 million, most of which related to savings in staff salaries.

EXTERNAL SCRUTINY

JUDICIAL DECISIONS

The Full Federal Court decision in *McGlade v Native Title Registrar & Ors* 2017 FCAFC 10 had a significant impact on the Registrar's capacity to notify and register area ILUAs from February 2017 to June 2017. See Year in Review section of this report for further details.

ACCOUNTABILITY TO CLIENTS

The NNTT maintains a Client Service Charter (Commitment to Service Excellence) to ensure that service standards meet client needs. No complaints that required action under the Charter were received during the reporting period.

MEMBERS' CODE OF CONDUCT

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. While the Registrar is subject to the APS Code of Conduct, this does not apply to Tribunal members except where they may be, directly or indirectly, involved in the supervision of staff.

Tribunal members have voluntarily adopted a code of conduct, procedures for dealing with alleged breaches of the members' voluntary code of conduct and an expanded conflict of interest policy. During the reporting period, there were no complaints under either document.

ONLINE SERVICES

The NNTT maintains a website at www.nntt.gov.au. During the reporting period, further online functionality of NNTT services was expanded in relation to statistical and geospatial information.

AUSTRALIAN HUMAN RIGHTS COMMISSION

Under s 209 of the NTA, the Aboriginal and Torres Strait Islander Social Justice Commissioner must report annually on the operation of the Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

The NNTT continues to assist the Commissioner as requested in this exercise.

ANNEXURE

PRESIDENT'S PRESENTATIONS

President Raelene Webb's presentations: 1 July 2016 to 30 June 2017

DATE	TITLE	EVENT	ORGANISERS
4 August 2016	Ethical choices for native title lawyers: adversarial, responsible, moral activist or relational?	Southern Cross University, Research Week	Southern Cross University, Gold Coast campus
5 August 2016	The next wicked problem in native title: managing rights to realise their potential	Southern Cross University, Public Lecture	Southern Cross University, Gold Coast campus
24 August 2016	Post Determination issues – looking to the future of native title	Federal Court Judges Native Title Workshop	Federal Court, Sydney
6 September 2016	Whither native title?	Sir Frank Kitto Lecture	University of New England, NSW
9 September 2016	Native title and the National Native Title Tribunal	University of Adelaide, Lecture	University of Adelaide
14 September 2016	Opportunities for NNTT assistance in NSW	NSW Native Title Federal Court NSW Registry, Presentation	Federal Court NSW Registry
12–14 October 2016	Governance challenges in the implementation of mining agreements	AMPLA conference	AMPLA
27–28 October 2016	New and emerging trends in native title valuation cases	Victorian Bar National Conference	Australian Bar Association & Victorian Bar
08 November 2016	The how, when, where and why of effective Indigenous engagement	Annual Northern Territory Major Projects Conference, Darwin	Expotrade Australia
11 November 2016	The past, present and future of native title	Commonwealth Bank Information Session	Commonwealth Bank, Sydney
24 November 2016	No mere platitude: the influence of Chief Justice French on native title	French Colloquium	Western Australian Bar Association

DATE	TITLE	EVENT	ORGANISERS
23 March 2017	Management of native title – Australia's next 'wicked' problem	Annual World Bank Conference on Land and Poverty 2017: Responsible land governance – Towards an evidence-based approach, Washington DC	World Bank
2 June 2017	25 years on from Mabo	25th Anniversary Mabo Symposium	Mer Gedkem Le (TSI) Corporation RNTBC & Torres Strait Regional Authority
7 June 2017	Exercising native title rights and interests, presentation and panel discussion	National Native Title Conference, Cairns	AIATSIS
15 June 2017	Insights from the NNTT	Native Title Conference, Brisbane	Legalwise Seminars
20 June 2017	Developing with dialogue	Developing Northern Australia Conference 2017, Progress, Growth and Investment	Office of Northern Australia, Association for Sustainability in Business
28 June 2017	Management of native title – Australia's next 'wicked' problem	National Indigenous Economic Development Forum	Akolade Australia

ACTING NATIVE TITLE REGISTRAR'S PRESENTATIONS

Robert Powrie's presentations: 1 July 2016 to 30 June 2017

DATE	TITLE	EVENT	ORGANISERS
17 August 2016	Native title and the National Native Title Tribunal	Professional development workshop for a delegation of Sri Lankan judges	Deakin Law School
25 August 2016	Australian legal system in context	Foundation Law Students Presentation	Victoria University
6 November 2016	The past, present and future of native title	Commonwealth Bank Information Session	National Native Title Tribunal and Commonwealth Bank
27 March 2017	On time, on budget, on point	Innovation and Excellence in Courts Conference	Supreme Court of Victoria and Australasian Institute of Judicial Administration
6 April 2017	Native title and the National Native Title Tribunal	Native Title Information Session	National Native Title Tribunal and Commonwealth Government Agencies

MEMBERS' PRESENTATIONS

Helen Shurven's presentations: 1 July 2016 to 30 June 2017

DATE	TITLE	EVENT	ORGANISERS
19 August 2016	Mediating native title issues	Presentation to the Sabah Mediation Association and Federal Court Sabah	Sabah Mediation Association
5 September 2016	Looma Community information session	Looma Community information session	Looma Community
6 & 7 September 2016	Native title Workshops	Shire of Broome Workshops	Shire of Broome
12–14 September 2016	Telephone mediation: the next 10 years	National Mediation Conference	National Mediation Conference Committee
4 & 11 October 2016	Mediation in native title: Resolving disputes in a statutory framework	DOL Training Workshops	Department of Lands (DOL) (WA)
7–11 November 2016	Using technology with multi party disputes: Some observations from a Tribunal	Law and Courts in an Online World conference	Cowen Centre/ Victoria University Melbourne
16 March 2017	Using ADR to assist land dispute negotiations in NSW	Evening Seminar Series	Australia Dispute Centre
21 March 2017	Native title mediation	NTRB Lawyers' Workshop	NNTT
15 & 22 May 2017	Mediation in native title	Water Corporation Training Workshops	Water Corporation
9 June 2017	Tribunals and self-represented parties	COAT Conference, Sydney	Council of Australasian Tribunals
21 June 2017	Mediating complex disputes	Seminar in Boston	Community Dispute Settlement Center

Dr Valerie Cooms' presentations: 1 July 2016 to 30 June 2017

DATE	TITLE	EVENT	ORGANISERS
07 December 2016	Keynote address	Launch of the Social Justice and Native Title Report 2016	Australian Human Rights Commission
28 March 2017	Quandamooka Nation	Common Futures Conference	Australian Indigenous Governance Institute
11 April 2017	Native title	Presentation to UQ InspireU Law Students with Member McNamara	University of Queensland
26 May 2017	Sorry Day	Sorry Day – Still Bringing Them Home ... Twenty Years Later	Link-Up Queensland Aboriginal Corporation

James McNamara's presentations: 1 July 2016 to 30 June 2017

DATE	TITLE	EVENT	ORGANISERS
16 August 2016	Land Board Tenure Portal	Presentation and Discussion to Department of Natural Resources and Mine with Mark McInerney, Geospatial Director	National Native Title Tribunal
11 October 2016	Practical implications of the Griffith decision	NNTT Compensation Workshop	National Native Title Tribunal
11 April 2017	Native title	Presentation to UQ InspireU Law Students with Member Cooms	University of Queensland