



PART 5: REPORT OF THE NATIONAL NATIVE TITLE TRIBUNAL

Pilbara

OVERVIEW



Establishment

The *Native Title Act 1993* (Cth) (NTA) established the National Native Title Tribunal (Tribunal) as an independent body with a wide range of functions. The NTA is, itself, a ‘special measure’ for the advancement and protection of Aboriginal and Torres Strait Islander people (Indigenous Australians) and is intended to advance the process of reconciliation among all Australians. It is in keeping with the preamble and the extent of work still to be done, that the new vision statement for the Tribunal is ‘A Reconciled Future – where Country thrives on recognised native title rights and respectful relationships’.

The NTA creates a national native title scheme, the objectives of which include:

- providing for the recognition and protection of native title
- establishing mechanisms for determining native title claimant, non-claimant, revision and compensation applications, and
- establishing ways in which future dealings affecting native title (future acts) may validly 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 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 NTA sets out the qualifications for appointment to, and respective responsibilities of, these offices.

Table 5.1 outlines Tribunal statutory office holders as of 30 June 2024.

Office locations

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

Functions and powers

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

- mediating native title proceedings, upon referral by the Federal Court
- determining objections to the expedited procedure in the future act regime

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- mediating in relation to certain proposed future acts over areas where native title exists, or may 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 2024

Title	Term	Location
President Kevin Smith	Five years	Brisbane
Member Nerida Cooley	Five years	Brisbane
Member Glen Kelly	Five years	Perth
Member Lisa Eaton	Five years	Perth
Registrar Katie Stride	Five years	Brisbane



Back row: Member Glen Kelly; President Kevin Smith

Front row: Member Nerida Cooley; Member Lisa Eaton; Registrar Katie Stride

The President

The NTA provides that 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 of Australia. The CEO and Principal Registrar may delegate their administrative responsibilities under the NTA to the Native Title Registrar, or staff assisting the Tribunal.

The Members

The President and Members perform the functions of the Tribunal as defined by the NTA, 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 is delegated most of the administrative functions of the CEO of the Federal Court in relation to the Tribunal. They also hold certain statutory powers and responsibilities under the NTA including:

- providing assistance to people in preparing native title applications or parties to proceedings in the Tribunal
- considering whether claimant applications meet the requirements of the registration test in order to be registered on the Register of Native Title Claims
- giving notice of new, amended claim and compensation applications and of ILUAs to individuals, organisations, governments and the public in accordance with the NTA
- considering whether applications to register an ILUA meets the registration requirements of the NTA in order to be registered
- maintaining the Register of Native Title Claims, the National Native Title Register and the Register of ILUAs, and
- maintaining a publicly available record of section 31 agreements.

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

Staff capacity

The Tribunal has been through a significant restructure process during the reporting year and is building its staff numbers to fill vacant roles. It will continue to manage and monitor its workloads and create process improvements 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 Capability Framework has been developed to focus on key competencies for Tribunal staff to assist in developing a tiered training program and supporting managers to reinvigorate an individual performance and learning regime.

The Tribunal has increased in-person attendance at meetings, seminars and workshops, and with optional online attendance has been key to conducting our business, building key relationships and increasing the internal capacity of our staff. The Tribunal had a significant presence at the AIATSIS Summit in June 2024, presenting in various capacities at both plenary and concurrent sessions and providing information and geospatial guidance at a permanent information stall. Other staff attended and benefited from the exposure to related sessions and engagement with external colleagues.

Cultural acknowledgement

The Tribunal has continued to foster understanding and respect for Indigenous culture and cultural safety in the workplace. The Reconciliation Action Plan for the Federal Court of Australia and the National Native Title Tribunal has been identified as a key focus of area for review and reframing in the next reporting period. The Tribunal has participated in the Attorney-General's Department's (AGD) First Nations sub-group and also in an APS First Nations Employee Network meeting during 2023-24.

The Tribunal has continued to take the lead in organising celebrations in conjunction with the Federal Court to acknowledge and celebrate Sorry Day, Reconciliation Week and NAIDOC Week during the reporting period.

The Tribunal's year in review and stakeholder engagement

The 2023–24 financial year has been a period of consolidation for the work of the Tribunal following the appointments of Mr Kevin Smith as President and Ms Katie Stride as Registrar in July and August 2023 respectively. Under new leadership, a significant whole of organisation review and planning process was conducted. This resulted in a substantial restructure aimed at liberating capacity of the Executive and Members to provide strategic guidance and re-build capacity to provide complex assistance functions, providing for clearer succession and career pathways and fostering internal business support.

Twenty-five stakeholder engagement and educative presentations sessions were conducted both in-person and virtually by Tribunal officers. These included the President's addresses at the Centre for Native Title Anthropology conference, the Supreme Court ACT land rights summit, AIATSIS and the Planning Institute Australia. The Registrar and members of her staff have presented regional information sessions about claims in notification at Townsville, Queensland and Geelong, Victoria. She has also addressed the Attorney-General's Department native title team, the Native Title Senior Officers' meeting, AIATSIS and played a key leadership role in the Commonwealth Native Title Committee. The Tribunal has driven a focused agenda to enhance native title sector capacity in partnership with the other key Commonwealth agencies. It has also contributed to the Preservation of Evidence national working group.

Member Lisa Eaton has presented at Lexis Nexis native title conferences on future act and mediation topics and at the AIATSIS Summit. Member Glen Kelly has presented a lecture at the University of Western Australia, presented at the Danjoo Summit and in relation to section 60AAA of the NTA at the AIATSIS Summit.

The Post-Determination Dispute team has actively collaborated with ORIC and the National Native Title Council and has presented at all the regional PBC Forums on the Tribunal assistance available to common law holders and their corporations.

The Geospatial team continues to demonstrate the Tribunal's online mapping and spatial data services for several stakeholders and at Federal Court training sessions for junior practitioners.

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.

The Tribunal's work in 2023–24

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 NTA.

Expedited procedure

Under section 29(7) of the NTA, the Commonwealth government, or a state or territory government, may assert that a proposed future act is an act that will have minimal impact on native title and therefore should be fast-tracked through the expedited procedure. 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 1,097 objection applications were lodged during the reporting period, compared to 1,290 previously reported. The number of active objections at the end of the reporting period was 982, compared with 792 at the end of June 2023. During the reporting period, the Tribunal finalised 868 objection applications compared to 1,479 in the previous period.

Approximately 351 objections were withdrawn following agreement between the native title party and the relevant proponent. A further 271 objection applications were finalised by withdrawal of the tenement applications. One hundred and five objection applications were subject to a Tribunal determination or dismissal during the reporting

period. The expedited procedure was determined to apply in 12 cases, and on eight occasions, the expedited procedure was determined not to apply.

As demonstrated in Table 5.2, Western Australia produces many more objection applications than any other jurisdiction. 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 34 requests for mediation made in the reporting period.

The NTA 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, seven 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 three decisions of the Tribunal that one of the relevant negotiation parties had not negotiated in good faith.

Fifteen future act determination applications were finalised during the reporting period. Five of these applications did not proceed to a determination because the parties reached agreement. There were no applications in which the Tribunal determined that the future act may be done subject to conditions. In six applications, the Tribunal issued a determination that the future act may be done, all of which were made on the basis that the parties had reached agreement but were unable to formalise section 41A (State Deed) agreement. The remaining applications were either withdrawn or dismissed.

Post-determination assistance

The Tribunal has been actively providing assistance to common law native title holders and Registered Native Title Bodies Corporate (RNTBCs) since the commencement in March 2021 of the provision under section 60AAA of the NTA.

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.

To date this assistance function has not been resourced with additional funding and was established with a skeleton staff and limited remit to undertake assistance on country or face-to-face with participants. As of 1 July 2024, the Tribunal's assistance to common law holders and RNTBCs under section 60AAA is to be resourced with some recurrent funding for the following four years.

With the prospect of resourcing, policy and process development is now being ratified and a dedicated post-determination team established, which includes Aboriginal and Torres Strait Islander Liaison staff. There is ongoing evaluation of process, models of facilitation / mediation and outcomes, as well as capability amongst RNTBCs and common law holders and the nature and scope of post-determination disputes.

The Tribunal's assistance model is underpinned by the principles of agreement making and consensus building. Assistance is provided by Tribunal officers and Members and includes facilitation to build capacity, dispute resolution, technical and system support, information exchange between participants or with other relevant bodies or agencies. Some requests may receive assistance through more than one of these options. The post determination team responds also to general post determination enquiries and complaints which may lead to referrals to other bodies or agencies. Since the commencement of section 60AAA, assistance has been provided predominantly online, but with additional resourcing, it is envisaged that more effective assistance can be provided to common law holders and RNTBCs in person and on-country.

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In 2023–24, the Tribunal responded to 68 requests for assistance received under section 60AAA, 45 of which were one-off post-determination related enquiries. The Tribunal conducted preliminary conferencing with participants in 20 matters. Throughout the reporting period, facilitation or information exchange continued in two matters and mediation assistance continued in two other matters. Mediation assistance in two matters, initiated in previous reporting periods, has been finalised this reporting period.

Table 5.2: Number of applications lodged with the Tribunal in 2023–24

Future Act	NT	QLD	WA	Total
Objections to expedited procedure	34	46	1,017	1,097
Future act determination applications	1	1	6	8
Total	35	47	1,023	1,105

The Registers

The Native Title Registrar maintains three registers as follows:

The Register of Native Title Claims

Under section 185(2) of the NTA, 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 NTA. At 30 June 2024, there were 96 claimant applications on this register.

The National Native Title Register

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

At 30 June 2024, a total of 616 determinations have been registered, including 114 determinations that native title does not exist.

Map 1 (page 108) shows native title determinations at 30 June 2024, including those registered and those not yet in effect.

The Register of Indigenous Land Use Agreements

Under section 199A(2) of the NTA, the Native Title Registrar must establish and keep a Register of ILUAs, in which area agreement, body corporate and alternative procedure ILUAs are registered. At 30 June 2024, there were 1,487 ILUAs registered on the Register of ILUAs.

Map 2 (page 109) shows registered Indigenous Land Use Agreements at 30 June 2024.

Claimant and amended applications

Sections 190A–190C of the NTA 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 NTA. 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 NTA. 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 16 new claimant applications, a decrease of nine compared to the previous year. In addition to new claims, the Native Title Registrar received 19 amended claimant applications, 11 less than the previous year.

Table 5.3: Number of applications referred to or lodged with the Native Title Registrar in 2023–24

Native Title Determination applications	NSW	NT	QLD	SA	VIC	WA	Total
Claimant (new)	0	2	7	0	1	6	16
Non-claimant	15	1	6	0	0	0	22
Compensation	0	0	1	0	0	0	1
Revised native title determination	0	0	0	0	0	1	1
Total	15	3	14	0	1	7	40

Table 5.4: Number of applications lodged with the Native Title Registrar in 2023–24

Indigenous Land Use Agreements	NSW	NT	QLD	SA	VIC	WA	Total
Area agreements	1	4	10	3	0	0	18
Body corporate agreements	0	4	10	2	0	13	29
Total	1	8	20	5	0	13	47

There was a corresponding decrease in the volume of registration testing in the reporting period. There were 25 applications considered for registration, 17 less than the previous year. Of the 25 decisions, 21 were accepted for registration and four were not accepted.

During the reporting period, five applications for preliminary assessment of native title applications were received.

Non-claimant, compensation and revised determination applications

There was a significant increase in the number of new non-claimant applications filed in the Federal Court during this reporting period, with 15 New South Wales applications, one Northern Territory application and six Queensland applications filed in the Federal Court. One revised determination application was filed in Western Australia during the reporting period, compared with two in the previous year. The Native Title Registrar received one compensation application, as in the previous year. That application was made in Queensland.

Indigenous land use agreements

Under the NTA, 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 1,487 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.

During the reporting period, the Native Title Registrar received 47 ILUAs, 21 more than in the previous year. Twenty-one body corporate and 17 area agreement ILUAs were accepted for registration and entered in the Register.

Section 31 deeds

Since the 2020–21 reporting year, the Tribunal has been required to maintain a record of all deeds of agreement provided to it from future act negotiation parties pursuant to section 31 of the NTA. During the 2023–24 reporting year, 57 section 31 deeds were recorded by the Tribunal. A total of 240 deeds have been recorded by the Tribunal since it took on that statutory function.

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, 50 native title determination applications were publicly notified, compared with 25 in the previous year. These applications comprised 23 claimant applications, 26 non-claimant applications, no revised determination applications and one compensation application. A total of 41 ILUAs were notified during the period.

Assistance

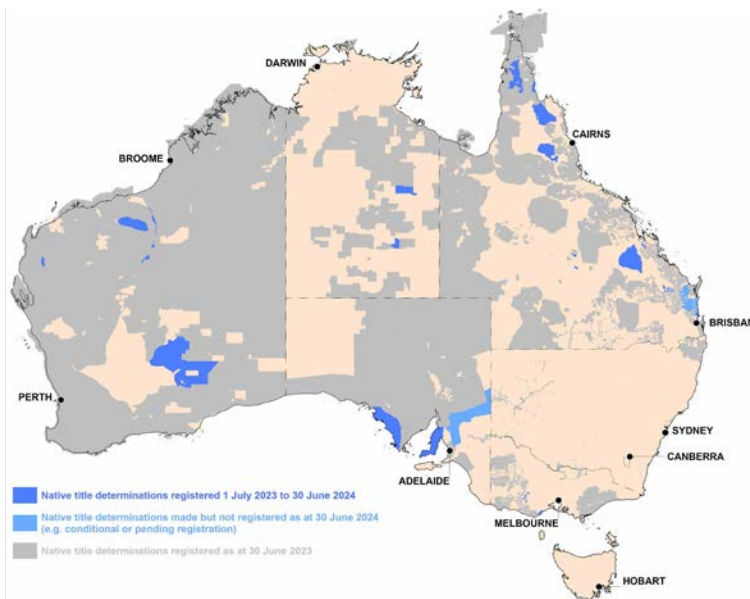
Section 78(1) of the NTA authorises the Native Title Registrar to give such assistance as they think reasonable to people preparing applications and at any stage in subsequent proceedings. That section also provides that the Native Title Registrar may help other people in relation to those proceedings.

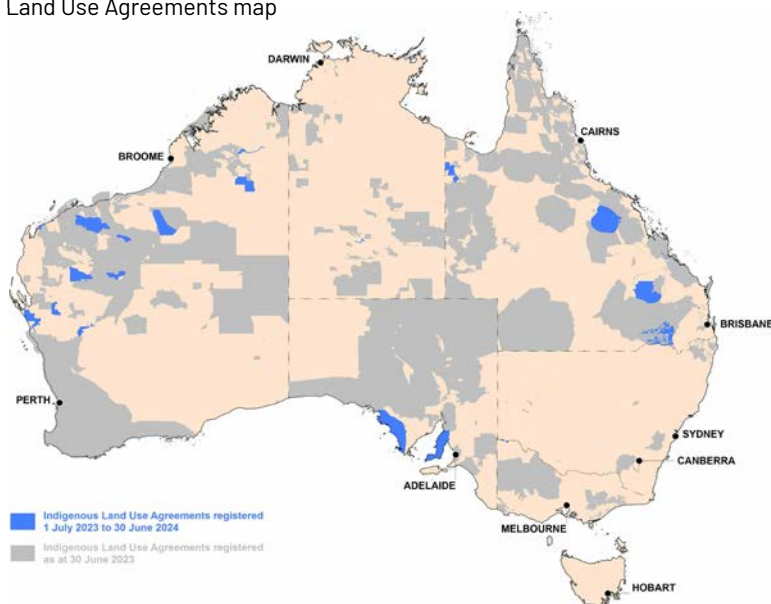
During the reporting period, such assistance was provided on 125 occasions. As in previous years, the requests comprised of provision of geospatial products and review of draft native title determination applications.

Under sections 24BG(3), 24CG(4) and 24DH(3) of the NTA, 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 136 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 NTA.

Pursuant to section 78(2) of the NTA, 2,099 searches of registers and other records were conducted during the reporting period, a slight decrease in requests from the previous year.

Map 1: Determinations map



Map 2: Indigenous Land Use Agreements map

National progress

The 616 registered determinations at 30 June 2024 cover a total area of 4,004,167 square kilometers or 52.1 per cent of the land mass of Australia and approximately 176,055 square kilometers of sea (below the high-water mark).

Three conditional consent determinations, (*Branson on behalf of Ngadjuri Nation #2 Native Title Claim v State of South Australia* [2023] FCA 715, *O'Donnell on behalf of the Wilyakali Native Title Claim v State of South Australia* [2023] FCA 1000 and *Douglas on behalf of the Kabi Kabi First Nation Traditional Owners Native Title Claim Group v State of Queensland (No 5)* [2024] FCA 645) are still awaiting

ILUA registration to take effect. Upon registration, these determinations will increase the areas determined to about 4,032,357 square kilometers or 52.4 per cent of the land mass of Australia and approximately 176,119 square kilometers of sea (see Map 1).

Registered ILUAs cover about 2,780,701 square kilometers or 36.2 per cent of the land mass of Australia and approximately 51,980 square kilometers of sea (see Map 2).

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. \$8.535 million was allocated for the Tribunal's operations in 2023–24.

Appendix 1 of the Federal Court Listed Entity Annual Report 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 2023–24.

Table 5.5: Financial operation statement

Year ending 30 June 2024	Budget (\$'000)	Actual (\$'000)	Variance (\$'000)
Appropriation			
Total revenue	8,462	8,535	73
Total expenses	8,462	8,021	441
Surplus/Deficit	0	541	514

External scrutiny

Freedom of information

During the reporting period, three requests were received one was withdrawn 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 93 documents released in response to three freedom of information access requests 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 NTA 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 voluntary code of conduct for Members, however it is in need of review. This process will be undertaken in 2024–25. 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 NTA, the Tribunal also established a publicly available record of section 31 agreements.

Australian Human Rights Commission

Under section 209 of the NTA, 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 NTA 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.