

Chapter 3

Availability of Resources

3.1 A recurring issue in this inquiry, as in previous inquiries, was the need to ensure that NTRBs are adequately resourced – both in terms of financial and human resources – to be able to fulfil their statutory functions.

3.2 This chapter discusses the resource needs of representative bodies both in terms of funding and staffing. The chapter reviews the current funding arrangements for representative bodies; assesses the nature and extent of underfunding of NTRBs; and considers future funding options. In relation to staffing of NTRBs, the chapter assesses the professional staffing needs of representative bodies; and considers options to address those needs, especially the need to attract and retain professional and senior administrative staff.

Funding arrangements

3.3 Within the Department of Families, Community Services and Indigenous Affairs, the Office of Indigenous Policy Coordination (OIPC) provides financial resources to representative bodies from the appropriation of funds provided by the Commonwealth for this purpose. Funding is presently provided annually, except in exceptional circumstances where an NTRB may be under a grant controller or operating under possible withdrawal of recognition.

3.4 The bulk of this funding is committed from the start of the year, and funds held back for contingencies and emergencies make up only a small part of the program, approximately four per cent of the operational allocation. The OIPC funding conditions include mechanisms to ensure that OIPC receives regular information on grant expenditure and is able to take remedial measures to assist a representative body to address performance difficulties.¹

3.5 Funding for NTRBs is allocated for three broad areas, namely: operational plans; performance enhancement, such as staff training; and strategic claims, for example, contested litigation. These do not operate as separate programs but function as a 'pot' of total funding. While there is no set allocation set aside for emergency funding, such as future act matters, litigation or court matters, NTRBs may apply for additional funding in the case of unforeseen circumstances and funding is negotiated between the OIPC and the representative body.²

1 *Submission 1A*, p.21 (OIPC).

2 Advice from OIPC, 20 December 2005.

3.6 Recently the Minister for Immigration and Multicultural and Indigenous Affairs announced the intention of the Government to introduce multi-year funding of representative bodies, which will depend on the term of recognition of the NTRB. For example, a representative body with a six-year term would receive two triennial funding terms. The OIPC noted that:

The intention is that NTRBs would be funded for their core corporate costs – basically, their staff costs; the cost of keeping their doors open for that triennial period. Then, from year to year, we would review their plans in relation to the work they are doing on particular claims. That would give NTRBs and their staff a measure of certainty and security about continued funding.³

3.7 Details of funding for NTRBs since 2001-02 is provided in the table below.

Table 3.1: Funding for NTRBs: 2001-02 to 2005-06

| Year | Operational funding (a) | Additional funding | Total funding |
|-------------|--------------------------------|---------------------------|----------------------|
| | \$m | \$m | \$m |
| 2001-02 | 48 | 2.9 (b) | 50.9 |
| 2002-03 | 47.8 | 4.7 (b) | 52.5 |
| 2003-04 | 47.8 | 6.1 (b) | 53.9 |
| 2004-05 | 48.8 | 3.7 (b) | 52.5 |
| 2005-06 | 52.6 | 3.8 (c) | 56.4 |
| | 245 | 21.2 | 266.2 |

(a) Figures include ATSIC and ATSSIS supplementation in 2001-02 to 2004-05.

(b) Additional funding provided through the Capacity Building Program and the Strategic Priority Claims Resolution Program in 2001-02 to 2004-05.

(c) Additional funding for capacity building and major litigation.

Source: Submission 16, p.7 (Attorney General's Department); Attorney General's Department, *Tabled Document*, 29 November 2005.

3.8 As the table indicates, in 2004-05 NTRBs received \$52.5 million, including \$3.7 million in additional funding under the Capacity Building Program (CBP) and the Strategic Priority Claims Resolution Program. In 2005-06, a total of \$56.4 million is allocated for NTRB funding, including \$3.8 million in additional funding.

3 *Committee Hansard* 29 November 2005, p.6 (OIPC).

3.9 As indicated above, additional funding was provided to NTRBs from 2001-02 to 2004-05 under the Capacity Building and the Strategic Priority Claims Resolution Programs. The aim of the CBP was to implement a comprehensive capacity building program for representative bodies nationally.⁴ The CBP encompassed a number of areas of capacity building, including corporate and cultural governance; management and staff development; information technology; technical training; collaborative relationships and research; applied capacity building and building effective relationships between NTRBs and the OIPC. A total of \$11.4 million was provided to NTRBs under the program over its four years of operation.

3.10 Funding under the Strategic Priority Claims Resolution Program has been used to resource nationally important native title applications that were likely to be of significant value in establishing legal precedents.⁵ A total of \$6 million was provided under the four year program. The 2004-05 allocation was the final year of the four year additional funding for these two programs.

3.11 In 2005-06, the Commonwealth committed additional funding of \$15.6 million over the next four years for NTRBs to enhance NTRB performance through capacity-building activities and also funding for major litigation.⁶

NTRB funding in context

3.12 It is also important to view the funding of the representative bodies in the context of the wider native title system. Details of overall Commonwealth funding for the native title system are provided in table 3.2.

4 *Submission 1A*, p.25 (OIPC).

5 *Submission 1A*, p.26 (OIPC).

6 This funding is part of additional funding of \$72.9 million over the next four years allocated to the native title system, including additional funding for the Federal Court and the NNTT.

Table 3.2: Total funding of the native title system – 2001-02 to 2005-06 (the 2005-06 figures are estimates only)

| | 2001-02 | | 2002-03 | | 2003-04 | | 2004-05 | | 2005-06 | | Total | |
|------------------------|--------------|-------------|---------------|-------------|---------------|-----------|---------------|-------------|--------------|-------------|---------------|-------------|
| | \$m | % | \$m | % | \$m | % | \$m | % | \$m | % | \$m | % |
| AGs Policy advice | 4.9 | 4.9 | 5.7 | 5.4 | 5.9 | 5.3 | 5.4 | 4.9 | 6.6 | 5.9 | 28.5 | 5.3 |
| AGs Respondent funding | 6.0 | 6.0 | 8.05 | 7.6 | 9.89 | 8.8 | 6.99 | 6.3 | 7.7 | 6.9 | 38.63 | 7.1 |
| NTRBs** | 50.9 | 50.8 | 52.5 | 49.3 | 53.9 | 48 | 52.5 | 47.8 | 56.4 | 50.2 | 266.2 | 49.2 |
| Federal Court | 9.9 | 9.9 | 10.6 | 9.9 | 10.55 | 9.4 | 11.4* | 10.3 | 9.7 | 8.6 | 52.15 | 9.6 |
| NNTT | 28.4 | 28.4 | 29.6 | 27.8 | 32.0 | 28.5 | 33.8* | 30.7 | 31.9 | 28.4 | 155.7 | 28.8 |
| Total | 100.1 | | 106.45 | | 112.24 | | 110.09 | | 112.3 | | 541.18 | |

* 2004-05 figures for NNTT and Federal Court are estimates only.

** Figures include ATSIC and ATGIS supplementation in 2001-02 to 2004-05.

Source: Attorney-General's Department, *Tabled Document*, 29 November 2005.

3.13 The table indicates that Commonwealth funding for the native title system was \$110 million in 2004-05 and is projected to be \$112 million in 2005-06. Representative bodies also receive the majority of the funding – averaging 49 per cent of total funding in the period 2001-02 to 2005-06.

3.14 Rio Tinto estimated that total Commonwealth, State and Territory expenditure on native title transactions between 1993 and 2004 was over \$926 million. However, the real cost to governments of the native title system is estimated at two to four times this amount, due to gaps in government expenditure data.⁷

Adequacy of NTRB funding

3.15 The adequacy of funding of representative bodies was commented on extensively during this inquiry, as in previous inquiries. Representative bodies emphasised that a lack of funding is a major factor limiting their ability to fulfil their statutory responsibilities. The Yamatji Aboriginal Corporation, reflecting much of the evidence, commented that:

Inadequate Commonwealth funding interferes with the ability of native title representative bodies to fulfil their statutory role...Insufficient funding also hinders NTRBs in the execution of their broader responsibilities of consultation, negotiation, and representation of native title interests (including non-claimant and future applications). NTRBs are the only bodies whose primary function is the protection of native title interests, and the work of NTRBs in protecting clients' and constituents' native title rights and interests is compromised by lack of funding. If NTRBs are restricted in

⁷ *Submission 18*, p.5 (Rio Tinto).

operation due to insufficient funding, the protection and recognition of native title interests is jeopardised.⁸

3.16 Other representative bodies also emphasised the importance of adequate funding for the effective operation of the native title system:

Adequate funding for NTRBs is essential to ensure that Indigenous people are able to fully enjoy their social, cultural, legal and political rights, and to ensure that the native title system operates effectively and efficiently for the benefit of all stakeholders. Inadequate funding directly influences the rate and success of native title agreements and mediation.⁹

3.17 Other key stakeholders including State Governments, industry groups, farmers' organisations, local government organisations and others commented on the underfunding of representative bodies and the effect this has on the functioning of the system.¹⁰ The Western Australian Government stated that:

... a lack of adequate funding for NTRBs is a fundamental factor affecting the capacity of NTRBs to fulfil their statutory responsibilities within WA. The continued under-resourcing of NTRBs negatively impacts all stakeholders in the native title process through delays and consequential costs to the process.¹¹

3.18 The Indigenous Land Corporation also argued that:

Anecdotally, we believe that [underfunding] is the case in a number of areas, particularly when there are many cases and caseloads regarding not only claims but also mining work and applications et cetera.¹²

3.19 Reports into the operation of representative bodies have also drawn attention to the importance of adequate funding of these bodies. The Parker report emphasised the need for NTRBs to be adequately resourced arguing that there are strong economic, efficiency, equity and social justice grounds for funding NTRBs to operate effectively.¹³ The Love-Rashid report recommended that NTRBs should be funded so that they have the capacity to fulfil their core functions, prioritise between competing service demands of their constituents and maintain appropriate standards of corporate governance.¹⁴

8 *Submission 29*, p.19 (Yamatji Aboriginal Corporation). See also *Submission 4*, p.16 (QIWG).

9 *Submission 38*, p.13 (Carpentaria Land Council).

10 See, for example, *Submissions 27*, p.2 (NSW Farmers' Association); *20*, p.1 (Minerals Council of Australia); *2*, p.1 (WA Local Government Association).

11 *Submission 22*, p.2 (WA Office of Native Title).

12 *Committee Hansard* 21 November 2005, p.3 (ILC).

13 G Parker *et al.*, *Review of Native Title Representative Bodies*, ATSIC, Canberra, 1995, pp.73-74.

14 Senatore Brennan Rashid, *Review of Native Title Representative Bodies*, ATSIC, March 1999, p.1.

3.20 Evidence to the inquiry indicated that NTRBs are central to the native title process and as such inadequate resourcing of these bodies can have a significant impact on the extent of progress being made in native title processes. Most importantly, insufficient resources prevent NTRBs being active players in the native title process, thereby creating backlogs and causing significant delays.

3.21 Submissions and other evidence noted that underfunding affects the capacity of NTRBs in a number of ways including:

- limiting their capacity to meet all demands placed on them in a timely manner;
- limiting their capacity to conduct both litigation and agreement-making simultaneously with the consequence that they must choose between these otherwise interrelated processes;
- limiting their capacity to undertake the process of resolving and reducing overlapping applications;
- hindering a proactive approach to native title claims;
- creating considerable pressures through onerous workloads;
- limiting the capacity to attract and retain capable and experienced staff and provide relevant training for staff; and
- limiting their capacity to act as effective project managers.¹⁵

3.22 The inquiry received many examples of the difficulties encountered by representative bodies due to underfunding. The Goldfields Land and Sea Council (GLSC) stated that its operational budget for 2003-04 was \$2.7 million. The Council applied for \$3.8 million. The Council stated that it has little more than two thirds of what it needs to conduct basic operations, a short fall of 28 per cent – 'these shortfalls increase as the system fails to recognise both the needs created by increasing workloads and increasing accountability requirements, and the basic causes of increased costs, such as inflation and general wage indexation'.¹⁶

3.23 NSW Native Title Services also noted the difficulties caused by underfunding:

Given the limited resources available to NSWNTS, at any time only a few claims can be funded for litigation and/or negotiation. Many meritorious native title claims are not prioritised because of lack of funds. Of the 55 native title claims current in NSW, only 12 (that is to say, 20%), are funded by NSWNTS at the present time.¹⁷

15 *Submissions* 15, pp.7-9 (ATSI Social Justice Commissioner); 29, pp.20-25 (Yamatji Aboriginal Corporation); pp.7-8 (Rio Tinto); 40, pp.13-15 (AIATSIS).

16 *Submission* 12, p.7 (GLSC). See also *Committee Hansard* 21 July 2004, pp.14-15 (KLC).

17 *Submission* 8, p.6 (NSWNTS).

3.24 Underfunding is also likely to be a potent source of political tensions among claimants, as NTRBs are forced to make potentially arbitrary decisions over which of many competing claims they progress.

3.25 Under-resourcing of representative bodies also affects industry, developers and others involved in the native title process. The Minerals Council of Australia stated that:

The experience of the minerals sector to date is that NTRBs are chronically under resourced, and in order to meet the requirements of the NT Act, minerals companies are obliged to meet the resourcing gap. Despite the best endeavours of individuals working within NTRBs, the lack of resourcing means that they are incapable of effectively carrying out their broad responsibilities.¹⁸

3.26 Rio Tinto also submitted that the funding constraints on NTRBs 'ultimately inhibit the effective operation of the native title system'.¹⁹

3.27 The Minerals Council stated the costs to minerals companies in meeting the funding gap to ensure that NTRBs can effectively perform their responsibilities can be significant. For example, the cost to one company in negotiating one agreement as part of the right-to-negotiate procedures under the NT Act over an 18 month period was \$2 million – the vast majority of which was provided to the NTRB so they could participate in the negotiations.²⁰

3.28 Underfunding of NTRBs also poses problems for State Governments. The Western Australian Government reported that it has experienced potential and actual delays when trying to progress native title due to the under-resourcing of NTRBs. An example was cited of an NTRB that had to withdraw its representation of a number of native title applications due to inadequate funding.²¹ Situations such as these lead to uncertainty and frustration for all native title stakeholders.

3.29 In response to concerns regarding underfunding of representative bodies, the OIPC pointed to governance issues that need to be addressed by NTRBs before funding increases are contemplated:

...we are still noticing substantial degrees of misuse of resources and mismanagement of resources. We would find it difficult to justify putting more money into a number of these organisations until we have a statutory framework that allows us to deal with underperformance, mismanagement

18 *Submission 20*, p.1 (Minerals Council of Australia).

19 *Submission 18*, p.8 (Rio Tinto).

20 *Submission 20*, p.2 (Minerals Council of Australia). See also *Submissions 8*, pp.18-19 (NSW Native Title Services); 29, pp.25-26 (Yamatji Aboriginal Corporation).

21 *Submission 22*, p.3 (WA Office of Native Title).

and corruption in a more timely and effective way than has been possible in the past.²²

3.30 In addition, the OIPC argued that demands for extra funding often come from parties, such as State Governments and mining companies, with a vested interest in the issue of funding allocations. The OIPC also noted that there are always more demands on government resources than there are available resources.²³

3.31 The Committee notes the concerns expressed by representative bodies and other stakeholders that suggest that NTRBs are under-resourced. The Committee believes that some targeted increase in funding is needed to enable representative bodies to fulfil their functions, and this is discussed later in the chapter.

Future funding options

3.32 A number of options for rectifying the funding problems of representative bodies were canvassed during the inquiry. These included increases in operational funding, targeted funding in specific areas, funding for future act processes, emergency funding, multi-year funding and the redistribution of funding between the various components of the native title system and between NTRBs.

Operational funding

3.33 As noted above, many representative bodies and other stakeholders argued for an overall increase in operational funding for NTRBs. The Committee asked several witnesses what level of funding was required, however, generally witnesses did not specify a specific amount of additional funding that they felt was required for NTRBs to operate effectively. For instance, the Association of Mining and Exploration Companies (AMEC) argued that:

... we are saying that there should be some expansion in funding because what we are seeing appears to be an under-funded process. I realise that governments do not have open chequebooks and someone is always going to have to make a decision as to what is the appropriate level of funding.²⁴

3.34 Similarly, the WA Office of Native Title stated that while it did not have 'a figure' as to what constituted adequate resourcing – '...what we confront is the desire to progress matters and we find that the rep bodies do not have the resources to be able to achieve that'. The Office suggested that some growth levels should be incorporated into the funding formula.²⁵

22 *Committee Hansard* 29 November 2005, p.18 (OIPC).

23 *Committee Hansard* 29 November 2005, p.17 (OIPC).

24 *Committee Hansard* 19 July 2005, p.8 (AMEC).

25 *Committee Hansard* 19 July 2005, pp.26,30 (WA Office of Native Title).

3.35 The NNTT did, however, offer some views on the question of adequacy of resourcing. The Tribunal stated that 'relevant resources' for NTRBs can be categorised as sufficient finance to enable, for example, negotiation and authorisation meetings to occur, advice to be obtained, and the text of any agreement to be prepared; adequate expert advice and other assistance to each party and institution; and adequate time to negotiate an agreement.²⁶

3.36 The two reviews referred to above were, however, more prepared to put a dollar figure on suggested increases in funding. The Parker report recommended that representative bodies should be adequately resourced to effectively represent native title claims. The report developed a number of models for the calculation of resources required to provide core operational support for NTRBs.²⁷ The Love-Rashid report in 1999 recommended that the funding levels for NTRBs should be increased to \$80.7 million in 1999-00, \$81 million in 2000-01 and \$85 million in 2001-02 to enable representative bodies to discharge their statutory functions. The report noted that the funding allocation for NTRBs in 1997-98 was \$47 million, however the funding required for that financial year was estimated to be \$67.6 million.²⁸ By way of comparison the budget for NTRBs Australia-wide has been in excess of \$50 million over the last three years.

Targeted funding

3.37 An alternative to general increases in operational funding is to increase the amounts provided in targeted funding for specific purposes. Targeted funding has the potential to encourage more effective use of those resources, especially through the development of improved management and administrative arrangements. As noted above, targeted funding has been provided to NTRBs through the Capacity Building and Strategic Priority Claims Resolution programs. Total funding of \$17.4 million was provided over a four-year period from 2001-02 to 2004-05 for these programs.

3.38 The OIPC pointed to the achievements of the Capacity Building Program in providing improved outcomes in terms of professional delivery of high standards and cost effective native title services. The ATSI Social Justice Commissioner noted that the program provides 'for the improvement of NTRB capacity to meet statutory requirements' but does not contemplate the role of NTRBs in support of the broader economic and social development goals of claimant groups.²⁹ The GLSC commented on the benefits of the Council's involvement with this program.³⁰

26 *Submission 23* p.5 (NNTT).

27 Parker report, pp.73-76.

28 Love-Rashid report, pp.72-75.

29 *Submission 15*, pp.15-16 (ATSI Social Justice Commissioner).

30 *Committee Hansard* 19 July 2005, p.68 (GLSC).

3.39 Similarly, the OIPC stated that the targeted funding provided to the Strategic Priority Claims Program has been successful in contributing to bringing order and certainty to native title outcomes.³¹

3.40 While funding for both programs ceased in 2004-05, funding for similar activities has continued, although not as separate programs. Funding for capacity building activities has continued under the performance enhancement component of NTRB funding and priority claims are funded under the strategic claims component of the funding allocation for NTRBs. Approximately \$3.3 million will be expended in NTRBs' capacity-building initiatives in 2005-06.³²

3.41 The Committee believes that the Commonwealth should review the adequacy of the level of targeted funding for capacity building activities.

Funding for future act processes

3.42 Submissions and other evidence argued that NTRBs do not have sufficient resources to meet their statutory responsibilities in future act management.³³ Accordingly, one option for addressing funding problems is to provide specific funding for dealing with future act processes.

3.43 The involvement of NTRBs in future act activity is one particular area of the native title process that requires flexibility to meet the demands of difficult-to-predict workloads. The experience of the Kimberley Land Council provides an illustration of these difficulties:

Recently the KLC submitted a draft operational plan that included entries corresponding to each of our native title claims, stating that we would respond to future acts as necessary and appropriate between July 2004 and June 2005. We felt unable to be any more precise, given that we are obviously unable to indicate in advance what or how many future acts will arise...We were duly informed that this aspect of our draft plan was not specific enough to satisfy our funders and that we had to effectively crystal ball gaze. Such a situation obviously significantly reduces our capacity to respond with any degree of flexibility, or effectively, to future acts.³⁴

3.44 NTRBs are usually unable to predict their involvement in future act activities as these processes are only sporadic and are also wholly dependent on the activities of proponents. It is therefore difficult for NTRBs to estimate their future funding requirements. The result is that NTRBs often remain under-resourced to take part in

31 *Submission 1A*, p. 29 (OIPC).

32 Advice from OIPC, 20 December 2005; *Committee Hansard* 29 November 2005, p.20 (OIPC).

33 *Submission 22*, p.4 (WA Office of Native Title); *Committee Hansard* 21 July 2004, pp.3,7, 10-11 (KLC). 'Future acts' refer to proposed activities or developments that may affect native title.

34 *Committee Hansard* 21 July 2004, p.4 (KLC). See also *Committee Hansard* 19 July 2005, p.74 (GLSC).

future act activities, necessitating the commitment of external funding – generally from proponents – to make any progress. Alternatively, funding for future act activities is drawn from other NTRB funding targeted at meeting other equally important statutory responsibilities.

3.45 The Association of Mining and Exploration Companies (AMEC) argued that NTRB funding should be split so that a specific amount is allocated to future act processes, and which can only be used for that purpose. The allocation should be made on the basis of the particular workload of the NTRB. The AMEC noted that at present NTRBs are not required to allocate a proportion of their funding to conduct future act negotiations for their claimant groups. The result is that NTRBs use the majority of their allocations to progress native title claims. As discussed above, this means that proponents are being expected to provide funds required by NTRBs to conduct future act negotiations as well as funding their own involvement in the future act processes.³⁵

3.46 The key problem associated with future acts is that this activity will vary from year to year. The Committee suggested that a pool of funds provided by the Commonwealth and possibly industry groups (with a fee levied on these organisations) that could be accessed by NTRBs when a future act application is inaugurated may be an option. The AMEC stated it would be 'happy to genuinely examine and participate in and see if it could be workable'.³⁶

3.47 The WA Office of Native Title commented on the 'pooling' option, arguing that the efficacy of the proposal would depend on the mechanism by which representative bodies accessed the funding, noting that future acts are difficult to plan for with any certainty.

Different future acts have different priorities for the proponents. If it were a pool of funds where the mechanisms to access were commensurate with the time frames necessary to be able to progress it, then that would be a worthwhile mechanism to enable those unknowns to be funded along the way to ensure that the rep bodies have got the money.³⁷

3.48 The Committee does not favour the AMEC proposal that NTRB funding be split allocating a specific amount to future act activities given the variation in future act activity from year to year, but believes that there should be additional funding for future act processes as well as other emergency or unforeseen situations.

Emergency funding

3.49 As noted above, the Committee considers that additional funding should be available for emergency or unforeseen situations. Submissions noted that unforeseen

35 *Submission 6*, p.2 (AMEC); *Committee Hansard* 19 July 2005, pp. 2,8-9 (AMEC).

36 *Committee Hansard* 19 July 2005, p.13 (AMEC).

37 *Committee Hansard* 19 July 2005, pp.25-26 (WA Office of Native Title).

situations, such as future act matters, litigation or court matters occur not infrequently and need to be responded to in a timely way.

3.50 As noted previously, the OIPC does not have a set funding allocation for emergency funding. NTRBs may apply for additional funding in the case of unforeseen circumstances and funding is negotiated between the OIPC and the representative body. The Committee believes that the Commonwealth, in conjunction with industry groups, should provide an additional 'pool' of funding for emergency situations such as these.

3.51 Evidence indicated that the process by which NTRBs are able to apply for emergency funding from the Commonwealth requires review and streamlining. The Committee understands that the OIPC has no guidelines in dealing with these situations and that matters are dealt with in an 'ad hoc' way at present.

3.52 The WA Office of Native Title stated that currently the process for applying for funds is a long drawn out process. The Office argued that the OIPC needs to be able to respond to these situations in a more timely fashion. The Office indicated that the Western Australian Government has experienced delays when trying to progress native title due to the under-resourcing of NTRBs. The Commonwealth Government's delayed response to one NTRB's application for additional funding of senior counsel, during a trial, left the Federal Court in the position of almost having to adjourn the trial indefinitely.³⁸

3.53 The Committee believes that the OIPC should put in place administrative procedures, including published guidelines, to respond to these matters in a timely way.

Multi-year funding

3.54 Representative bodies have argued that multi-year funding – at least triennial – should be introduced. The Committee notes the recent announcement by the Minister of the Government's intention to introduce multi-year funding of representative bodies and welcomes this initiative.

3.55 NTRBs argued that multi-year funding would assist in the development of their strategic planning and assist in attracting and retaining staff as they would be able to offer of longer term contracts – which is not possible under the current one-year funding arrangements. Longer term funding also reduces the amount of resources that the organisations need to devote to administrative matters associated with annual funding applications.³⁹

38 *Submission 22*, p.3 (WA Office of Native Title); Advice from WA Office of Native Title, 10 January 2006.

39 *Committee Hansard* 21 November 2005, pp.26-17 (Carpentaria Land Council); p.44 (Gurang Land Council). See also *Committee Hansard* 21 November 2005, p.62 (NNTT).

3.56 The Torres Strait Regional Authority already operates on a three-year funding cycle and budgets and sets priorities accordingly. The Authority commented that this funding arrangement means that it has 'a secure grant of funds which is predictable for the life of the strategic plan, and makes planning easier and more efficient'.⁴⁰

Redistribution of funding between native title organisations

3.57 Submissions commented on the perceived inequity in funding between representative bodies and other components of the native title system and argued that there should be a redistribution of funding within the system.

3.58 The ATSI Social Justice Commissioner noted that increases in the native budget across various components of the system in the 2001-2005 period showed that the increase in funding received by the Federal Court and the NNTT 'meant that these organisations were in a much better position to meet their goals and objectives compared with NTRBs'. This means that the goals and objectives of these institutions tend to dominate the native title system and consequently the way in which NTRBs utilise their scarce resources.⁴¹ The Goldfields Land and Sea Council (GLSC) argued that in terms of statutory responsibilities, NTRBs 'are by far the most poorly funded part of the system'.⁴²

3.59 Rio Tinto also noted the imbalance of funding between the NNTT and representative bodies arguing that NTRBs have a more demanding role in the operation of the Native Title Act than other statutory bodies and therefore viewed the current funding allocations 'as, at best, problematic'.⁴³

3.60 The Committee notes, however that representative bodies receive considerable Commonwealth expenditures and that they continue to receive the largest overall proportion of funding in the native title system. The Committee also notes that the proportion of funding received by the NNTT and the Federal Court has not changed substantially in recent years and that both organisations continue to provide various types of assistance to the representative bodies. The Committee acknowledges that there will be continuing debate over the total allocation of funding between the different components of the native title system.

Redistribution of funding between NTRBs

3.61 Submissions also drew attention to the disparity of funding between States based on the number of representative bodies in the particular State or Territory.

40 *Submission 7*, p.5 (TSRA).

41 *Submission 15*, pp.9-10 (ATSI Social Justice Commissioner).

42 *Submission 12*, p.8 (GLSC). See also *Submission 13*, p.5 (ALRM).

43 *Submission 18*, p.7 (Rio Tinto).

3.62 NSW Native Title Services noted that it performs the functions of the representative body for the whole of NSW and the ACT yet it receives, based on the current funding formula, only one-fifth to one-sixth of the total funding available for the management of native title matters compared with, for example, the seven Queensland representative bodies.⁴⁴

3.63 The Committee acknowledges that allocation of funding between bodies is a complex issue but believes that apparent inequities suggest that the issue of the funding allocation between States should be reviewed.

Other funding options

3.64 The OIPC suggested that further options could be explored in order to widen the base of funding from an applications-driven grants model to a more flexible funding model. These options include:

- NTRBs receiving loans to fund negotiations, with such loans to be repaid from incomes generated by agreements, for example, income streams from mining agreements on Indigenous land; and
- amending the Native Title Act to allow for representative bodies to charge for certain services provided to non-native title parties, that is, a limited application of the 'user-pays' principle.⁴⁵

3.65 The Committee did not receive sufficient evidence during the inquiry on these suggestions but believes that the options could be further considered.

Funding conditions

3.66 Some submissions and other evidence argued that the terms and conditions of the current funding agreements are overly restrictive and limit the operational flexibility of representative bodies.⁴⁶ The Kimberley Land Council argued that the ability of representative bodies to function effectively 'is increasingly stymied by ever more controlling grant conditions placed upon them. NTRBs are fettered through grant conditions in what work they can do, how and when they can do the work and who they can employ to do the work'.⁴⁷

3.67 The ATSI Social Justice Commissioner noted that the grant conditions stipulate that the purpose of funding is to enable NTRBs to perform functions and

44 *Submission 8*, pp.3,17-18 (NSWNTS). Details of the funding formula were not provided in evidence to the inquiry.

45 *Submission 1A*, p.29 (OIPC).

46 See OIPC, *General Terms and Conditions for Funding Agreements Relating to Native Title*, May 2005.

47 *Committee Hansard* 21 July 2004, p.3 (KLC). See also *Committee Hansard* 19 July 2005, p.72 (GLSC).

exercise powers in accordance with the NTA and the NTRBs' strategic plans. The funding agreement prevent NTRBs from using funds to cover costs associated with economic development or land management activities from native title agreements. The Commissioner argued that limiting funding to native title outcomes 'restricts the capacity of NTRBs to utilise mechanisms outside of the NTA for this purpose'.⁴⁸

3.68 The Commissioner also argued that the funding is subject to a high level of discretion by the OIPC in relation to withdrawal of funding or termination of agreements. The Commissioner questioned whether it is appropriate for NTRB funding to exist entirely at the discretion of the OIPC, given that NTRBs have Commonwealth Ministerial recognition, duties under the NTA, and operate under Ministerially-approved strategic plans.⁴⁹

3.69 The Committee believes that NTRBs should be subject to funding conditions that ensure accountability for the considerable public outlays that they receive. The Committee considers that it is not unreasonable that funding for NTRBs is limited to native title outcomes in line with their statutory functions. As discussed in chapter 2, an extension of funding to economic development or land management activities as suggested by the Social Justice Commissioner would considerably extend the functions of representative bodies.

Conclusion

3.70 The Committee notes the concerns expressed by NTRBs and other stakeholders arguing that underfunding of representative bodies is seriously limiting their ability to fulfil their statutory functions. The Committee believes that representative bodies need to be adequately funded to undertake their important responsibilities. The Committee notes that the Commonwealth provides in excess of \$50 million each year to NTRBs to provide services to native title claimants. Any under-resourcing of NTRBs will, however, negatively impact not only on representative bodies but also on other stakeholders in the native title process through delays and consequential costs to the process.

3.71 While it is difficult to establish what level of funding would constitute an 'adequate' amount for representative bodies, the Committee believes that some funding increases are necessary. In particular, the Committee supports the targeted application of additional resources for capacity building activities. The Committee notes the success of the former Capacity Building Program in providing improved outcomes in terms of professional and cost-effective delivery of services. The Committee is pleased to note that approximately \$3.3 million will be spent on capacity building initiatives this financial year but believes that the adequacy of this funding should be reviewed.

48 *Submission 15*, p.12 (ATSI Social Justice Commissioner).

49 *Submission 15*, p.13 (ATSI Social Justice Commissioner).

3.72 The Committee also considers that the Commonwealth, in conjunction with industry groups, should consider providing an additional 'pool' of funding for emergency situations, such as future act matters, litigation or court matters. The Committee further believes that the OIPC should put in place administrative procedures, including published guidelines, to respond to these matters in a timely way. The Committee also believes that the Commonwealth should ensure that funding provided to the Office of the Registrar of Aboriginal Corporations will provide NTRBs with adequate training and support that will be required as a result of the introduction of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005.

3.73 In addition, the Committee is of the view that the Commonwealth should review the level of operational funding provided to NTRBs to ensure that representative bodies are adequately resourced and able to fulfil their statutory obligations.

Recommendation 5

3.74 The Committee recommends that the Commonwealth immediately review the adequacy of the level of funding provided by the OIPC to NTRBs for capacity building activities including management and staff development, and information technology.

Recommendation 6

3.75 The Committee recommends that the Commonwealth, in conjunction with industry groups, consider providing additional pooled funding for emergency and unforeseen situations, such as future act matters, litigation or court proceedings; and that the OIPC develop guidelines and procedures that will enable funding to be available in these situations in a timely fashion.

Recommendation 7

3.76 The Committee recommends that the Commonwealth ensures that the level of funding available to the Office of the Registrar of Aboriginal Corporations provides NTRBs with adequate training and support to meet the requirements of the introduction of the new corporate governance regime under the Corporations (Aboriginal and Torres Strait Islander) Bill 2005.

Recommendation 8

3.77 The Committee recommends that the Commonwealth immediately review the level of operational funding provided to NTRBs to ensure that they are adequately resourced and reasonably able to meet their performance standards and fulfil their statutory functions.

Staffing of NTRBs

3.78 This section considers the staffing needs of representative bodies, especially the difficulties experienced by NTRBs in attracting and retaining professional staff. It also considers a number of options to address these staffing issues.

3.79 The basic structure of a representative body in terms of key staff was set out in the Parker report. The report noted that representative bodies need to establish a critical mass of core staff and management to operate effectively. While noting that there would be variations between representative bodies on the basis of workload and other factors, the review stated that a recommended minimum human resource base would include, for example, a manager or director, a financial administrator or accountant, an anthropologist, another research specialist, a legal officer, a research officer, a field officer and a secretarial position. The recommendation of the review in terms of staffing resources was that every representative body should be funded, at levels directly related to workloads, to establish a core critical mass of staff and management.⁵⁰

3.80 The OIPC estimates that nationally there are approximately 450 staff positions available in NTRBs, although not all positions are currently filled. This includes 76 lawyers and 45 positions for native title anthropologists (as at 2004). The OIPC noted that there necessarily remains a high reliance on external consultants, which despite the cost implications, enables people with experience and expertise to be available across the system. The OIPC noted that there are approximately 100 anthropological consultants engaged by NTRBs. Other consultants engaged by representative bodies include lawyers, mediators, historians and linguists.⁵¹

3.81 More than fifty per cent of all NTRB staff are Indigenous, including twelve of the 17 NTRB chief executives, representing 71 per cent of CEOs. While some 57 per cent of non-legal staff are Indigenous, only seven per cent of lawyers working in NTRBs are Indigenous (as at December 2004).⁵²

3.82 Evidence indicated that NTRBs have considerable difficulty in recruiting and retaining professional and senior administrative staff. There are a number of reasons for this including: remoteness and the often harsh conditions in many locations; professional isolation; stress from lack of resources compared to the tasks at hand; and oppositional and confrontational strategies at times from other stakeholders. Relatively inexperienced staff have often found themselves in complex and difficult areas of litigation and negotiation which can impose added pressures and lead to staff 'burn-out'.⁵³ Management problems and other pressures can also affect staff morale.

50 Parker report, pp.66-67.

51 *Submission 1A*, pp.26-27 (OIPC). See also *Submission 32*, p.33 (NTRB Lawyer Professional Development Project); Anthropos Consulting, *Capacity of Anthropologists in Native Title Practice*, April 2004, p 4.

52 *Submission 32*, pp. 37,197 (NTRB Lawyer Project).

53 *Submissions 1A*, p.27 (OIPC); 23, p.7 (NNTT); 18, p.9 (Rio Tinto). See also *Committee Hansard* 19 July 2005, p. 28 (WA Office of Native Title); pp.35-36,43 (Yamatji Aboriginal Corporation).

3.83 The Indigenous Land Corporation noted that:

...underfunding is not the whole problem. It may be from not having a proper management regime. It may be the political pressure. It may be the elected body to the NTRB not having the capacity and then putting pressure on the PLO and then on the CEO of the organisation without understanding that things cannot happen automatically...That would produce burn-out as much as being heavily underfunded would.⁵⁴

3.84 Representative bodies also often lack the resources to provide the necessary support and training to new staff.

3.85 One submission noted that NTRBs will take years to develop critical levels of administrative competence, not merely to perform their functions adequately 'but to provide a work environment in which trained professionals will feel comfortable and will remain without unduly high levels of turnover. It is doubtful whether many bodies outside the Northern Territory have yet achieved those basic goals'.⁵⁵

3.86 The problem of attracting and retaining staff is illustrated in the experience of the Torres Strait Regional Authority.

[A] real resource issue relates to the attraction and retention of qualified professional staff. This office has operated with inadequate staffing levels for over two years as a result of the [Native Title Office] NTO's inability to recruit appropriately qualified staff. Staff also tend to remain no longer than 2-3 years, primarily due to the remoteness and the often difficult issues associated with native title. This obviously significantly impairs the NTO's ability to perform its functions.⁵⁶

3.87 Submissions and other evidence also noted that a consequence of inadequate funding is that NTRBs have limited capacity to compete in the marketplace to recruit skilled and experienced staff.⁵⁷ The Queensland Indigenous Working Group (QIWG) stated that:

When we do advertise for people, we are fighting against each other to get the people who are available. That is the way it is. If we were to pay lawyers and anthropologists a decent wage, they would find working with us more attractive. At the moment, most of them get more money out of going out as consultants.⁵⁸

54 *Committee Hansard* 21 November 2005, p.5 (ILC).

55 *Submission* 11, p.5 (Mr J Basten QC).

56 *Submission* 7, p.5 (TSRA).

57 *Submission* 18, p.9 (Rio Tinto). See also *Committee Hansard* 21 November 2005, p.31 (Carpentaria Land Council).

58 *Committee Hansard* 21 November 2005, p.51 (QIWG).

Lawyers

3.88 A recent report by Richard Potok in conjunction with the Castan Centre for Human Rights Law at Monash University into the professional development needs of NTRB lawyers highlighted the difficulties in the recruitment of in-house lawyers and the retention of those lawyers.⁵⁹

Profile of NTRB lawyers

3.89 The report provides a snapshot of current NTRB lawyers (as at December 2004) and illustrates a number of recruitment and retention issues. The report found that:

- Numbers – there were 76 lawyers working in the NTRB system (40 were males and 36 were female). During the period of the study a total of 89 lawyers worked in the NTRB system – 13 of these lawyers had left by 31 December 2004; and since 1 January 2005, a further 13 have left the system.
- Indigenous lawyers – there were five Indigenous lawyers (representing 7 per cent of NTRB lawyers nationwide).
- Age – the age of NTRB lawyers ranged from 24 to 64 years, with the average age being just under 38 years.
- Length of experience – the national average length of time the current NTRB lawyers had been practising in the system was 3.6 years. In addition:
 - the average length of experience varied considerably from State to State, with a low of 2.4 years in NSW to a high of 5.8 years in the Northern Territory;
 - 16 NTRB lawyers, or around 20 per cent, had worked at more than one NTRB; and
 - nationally, the average length of time that lawyers had been working at their current NTRB is 2.8 years.⁶⁰

3.90 The report found that usually very few qualified law applicants apply for positions with NTRBs and a considerable proportion that do apply for positions are exiting lawyers at other NTRBs. Recruitment is a particularly serious issue in smaller towns and cities, where more than half of the current lawyers are located. The report highlighted the substantial financial costs incurred where NTRBs are unable to recruit sufficiently qualified lawyers to fill vacant positions. In addition to the financial costs and reduced capacity generally, consequences of recruitment delays include interruption to claims and negotiation processes as well as adverse effects on relationships with clients.

59 *Submission 32*, pp.1-6 (NTRB Lawyer Project).

60 *Submission 32*, pp.33-43 (NTRB Lawyer Project).

3.91 Retention of lawyers is also a problem. There is a high turnover of NTRB lawyers – in the six months from October 2004 to March 2005, around one in four lawyers left the system. The consequences of such high turnover include significant financial costs and other consequences including loss of corporate knowledge and history, employment of inexperienced lawyers, delays in progressing matters, and impaired relationships with clients and other parties. The report found that retention rates of NTRB layers are affected by factors including lack of career paths, disillusionment with outcomes, onerous workloads, remote workplace locations and dissatisfaction with the level of access to resources.⁶¹

3.92 The research project found that there is a need within the NTRB system, in relation to lawyers, for proactive recruitment strategies, professional development opportunities and improved support structures. NTRB lawyers indicated that high turnover of legal staff and lack of coordinated systems for sharing information inhibit the delivery of legal services by NTRBs. Valuable corporate knowledge is lost or not utilised, and many lawyers are left feeling overwhelmed and dissatisfied.

3.93 The report noted that at present, recruitment typically occurs on a reactive basis – vacant positions are advertised after NTRB staff have given notice. Moreover, there is no structured system for developing expertise and only informal methods for facilitating communication among NTRB lawyers. Individual lawyers develop their own networks of contacts and mentors and their own systems of sharing information. The research found that the consequences of high turnover, recruitment difficulties (due to, among other things, a shrinking pool of experienced native title lawyers) and lack of structured support mechanisms are delays, duplication of work, less than optimum outcomes for all parties and undue stress for individual lawyers (which itself leads to further high turnover and recruitment difficulties).

Anthropologists

3.94 Commissioned research for the National Native Title Tribunal (NNTT) on the availability of anthropologists for native title work indicates that in 2004:

- anthropologists working within NTRBs are younger and less experienced than for the profession as a whole – the majority (58 per cent) of NTRB anthropologists were under 40 years of age, and the younger NTRB anthropologists (under 30 years of age) were overwhelmingly female. Less than 30 per cent of NTRB anthropologists had more than five years experience in native title work, and a quarter had less than one year's experience.
- these anthropologists are often required to perform tasks outside the scope of their professional role.

61 *Submission 32*, pp.2-4 (NTRB Lawyer Project).

- anthropologists working within NTRBs are less likely to have higher degrees – less than 30 per cent of NTRB anthropologists had higher degrees.⁶²

3.95 The research found that only thirty per cent of NTRB anthropologists saw native title work as enhancing their careers in anthropology, while forty per cent of consultant anthropologists were of the view that native title work actually limited their anthropological careers.

3.96 The research indicated that there was a shortage of suitably qualified and experienced anthropologists in NTRBs, which was borne out by the preponderance of younger, relatively inexperienced anthropologists in those organisations. Some NTRBs have difficulty in attracting and retaining qualified staff, and a number of positions are not filled. As noted above, the report found 45 positions exist around Australia for anthropologists, although not all positions were filled (as at 2004). The report noted that the widespread knowledge within the profession regarding the difficulties in working in these environments, and the fact that relatively few current practitioners see native title as an attractive career option impacts further on the choices of those who are looking for work as anthropologists within NTRBs. The report stated that similar issues are likely to impact on the availability of consultant anthropologists, with many NTRBs finding it difficult to attract these anthropologists.⁶³

3.97 The difficulty in attracting anthropologists was borne out in evidence to the inquiry. A representative of the QIWG stated that 'there is a limited pool of experienced anthropologists available for this kind of work in Australia, but it was also my experience that we did not have adequate funding to be able to employ those anthropologists as much as we needed.'⁶⁴ The NNTT, reflecting on the commissioned research referred to above, also stated that:

...there does seem to be a very limited number of suitably qualified and experienced people to do the work – that, for the most part, the better qualified and more experienced people are older males towards the end of their careers...At the other end of the spectrum younger, much less experienced and less qualified females were, for the most part, working for representative bodies.⁶⁵

3.98 The OIPC stated that the shortage of anthropologists in native title work has created difficulties for NTRBs in meeting time limits imposed by the Federal Court, and may also affect the quality of work performed.⁶⁶

62 Anthropos report, pp.1-2.

63 Anthropos report, pp.4-5.

64 *Committee Hansard* 21 November 2005, p.55 (QIWG).

65 *Committee Hansard* 21 November 2005, p.61 (NNTT).

66 *Submission* 1A, p.28 (OIPC).

Addressing staffing issues

3.99 Evidence to the inquiry pointed to a number of options to address the professional staffing needs of NTRBs. The OIPC suggested that for smaller NTRBs, one response may be the development of strategies for pooling resources, creating economies of scale and experience through mechanisms such as sharing staff where neighbouring NTRBs lack a full complement of particular professional staff. The Carpentaria Land Council suggested that pooling of resources has several advantages and should be further explored.

We have done it with a couple of them [rep bodies], sharing a couple of positions and technology...If the other office has it, we get to use it. But that has not really been formalised or fully explored with all rep bodies the way it could be.⁶⁷

3.100 Another option suggested by the OIPC to achieve needed economies would be the amalgamation of the existing number of NTRBs in some States. As discussed in chapter 2, pooling resources may be a step towards amalgamation. The OIPC argued that the development of fewer but larger representative bodies may provide the 'critical mass' and professional work environment to attract and retain high calibre staff.⁶⁸

3.101 Native Title Services Victoria, drawing on its own experience, stated that:

NTSV has also sought to establish a critical mass that creates a dynamic of in-house team work and mutual support. It is our observation that other small NTRBs around the country often fail to achieve this and become excessively reliant on one or two key staff whose eventual departure for whatever reason, results in serious organisational instability.⁶⁹

3.102 Rio Tinto also suggested the possible secondment of expert government staff to NTRBs or the establishment of a government-sponsored centre of excellence from which NTRBs could draw expertise as required. The centre of excellence could be established as part of a law department of a university and would aim to develop the legal capacity of NTRB lawyers and provide for career development for lawyers working in the native title area.⁷⁰

3.103 Submissions also noted that the development of standardised criteria for use, on a national basis, in the recruitment of representative body staff could provide consistency of standards in recruitment and also assist in developing nationally consistent approaches to the professional roles of staff.⁷¹ The OIPC has recently

67 *Committee Hansard* 21 November 2005, p.31 (Carpentaria Land Council).

68 *Submission* 1A, p.28 (OIPC).

69 *Submission* 5, p.4 (NTSV).

70 *Submission* 18, p.9 (Rio Tinto); Advice from Rio Tinto, 9 January 2006.

71 *Submissions* 5, pp.4-5 (NTSV); 1A, p.28 (OIPC).

engaged a consultancy to assist representative bodies in developing improved staffing and recruitment practices.⁷²

3.104 The issue of the salary differentials paid to senior staff of NTRBs was raised in evidence.⁷³ The OIPC stated that it commissioned a consultant to undertake a survey to provide baseline data on salary levels across NTRBs. The OIPC noted that the survey 'showed that there was significant variation in salaries and they could not all just be explained by the difference between remote locality NTRBs and city based NTRBs'. The OIPC pointed out that the option of establishing a scale of salaries, similar to that determined by the Remuneration Tribunal, to establish some consistency across the spectrum has been discussed with CEOs of NTRBs who indicated 'no enthusiasm' for the idea.⁷⁴

3.105 The OIPC indicated that the Office continues to monitor the situation in relation to salary levels and stated that the financial reporting system for representative bodies now provides greater transparency in this regard with information on salaries paid to different types of professionals required to be provided – 'so it will be evident if there are significant variations'. The funding agreement with each NTRB also requires that if they propose to fill the senior positions of Chief Executive Officer, Principal Legal Officer and Chief Finance Officer the representative body needs to consult with, and provide details of, the terms and conditions pertaining to the positions to the OIPC.⁷⁵

3.106 In relation to the recruitment and retention of NTRB lawyers, the Potok report proposed a number of recommendations to address this issue.⁷⁶ With regard to recruitment, the report argued that steps should be taken to increase the number of applicants for NTRB legal positions by promoting opportunities to work in the NTRB system. The following strategies were proposed:

- introduce an NTRB student placement program, to raise awareness among law students of opportunities to work in the NTRB field;
- focus on promotion of careers in NTRBs to practising lawyers, to raise awareness of opportunities for work in the system;
- engage a dedicated NTRB human resources manager, hosted by an independent university-based centre or commercial enterprise, to coordinate recruitment and retention strategies across the NTRB system; and
- promote native title work to barristers and consultant legal practitioners, to expand the pool of external counsel in native title matters.

72 Advice from OIPC, 20 December 2005.

73 *Committee Hansard* 21 November 2005, pp.38-39 (Gurang Land Council).

74 *Committee Hansard* 29 November 2005, p.10 (OIPC).

75 *Committee Hansard* 29 November 2005, p.11 (OIPC).

76 *Submission* 32, pp.3-5 (NTRB Lawyer Project).

3.107 In relation to retention, the report argued that steps should be taken focusing on the professional development of NTRB lawyers and enhancing support structures and programs available to them. A number of strategies were proposed including to:

- develop an induction manual and induction training program to be undertaken by new recruits within their first six months, on issues such as client communities, cross-cultural and multi-client matters;
- establish an ongoing training program to expand the areas of expertise of NTRB lawyers in legal, cultural and commercial contexts;
- offer scholarships for post-graduate study to further enhance skills in particular areas, such as mining law and practice, mediation and negotiation, and environmental law and advocacy;
- arrange secondments to commercial law firms, to provide opportunities for the development of commercial practice skills;
- provide management training for senior NTRB lawyers; and
- implement performance evaluation systems, to assist in the identification of NTRB lawyers' professional development needs.

3.108 The report also proposes that a number of strategies should be introduced to improve the work environment of NTRB lawyers through the development of support structures, including:

- establishing a dedicated NTRB information service, to facilitate greater communication among NTRB lawyers, provide access to a precedents database and circulate relevant advice to all NTRB lawyers;
- building relationships with law firms, to enhance the professional support available to NTRBs;
- creating an NTRB mentoring and alumni network;
- providing training opportunities for NTRB non-legal managers, to enhance management and leadership skills generally; and
- providing professional development opportunities to NTRB field officers, to improve communications between NTRB lawyers and their clients.

3.109 A number of initiatives are already being undertaken to address staffing issues. The National Native Title Tribunal is involved in a number of training and other projects to assist NTRBs staff. The Tribunal is engaged in an Indigenous Facilitation and Mediation research project. This is a collaborative project with AIATSIS to undertake research into Alternative Dispute Resolution (ADR) systems in Indigenous communities. The aim is to determine the needs of those communities and their NTRBs for specialised training in ADR and to meet the need for Indigenous

mediators in native title dealings. The program will train NTRB staff and others in mediation and facilitation skills to deal in particular with intra-Indigenous issues.⁷⁷

3.110 The Tribunal is also jointly funding a Mentoring Anthropologists project with the OIPC. The mentoring project brings together five senior anthropologists with five junior anthropologists employed by NTRBs to provide mentoring assistance. A report on the project identified the need for mentoring and professional development of NTRB anthropologists to overcome issues such as lack of experience and skills, professional isolation, and lack of meaningful career paths. The report also found that mentoring cannot operate effectively on a stand-alone basis and must complement staff development programs and wider programs of NTRB capacity building and institutional reform more generally.⁷⁸

3.111 The Potok report noted that a pilot NTRB student placement program was undertaken over the 2004-05 summer break with 18 students from various east coast universities placed at nine NTRBs around the country. The report stated that feedback from both the students and the supervisors was 'overwhelmingly positive', with many NTRBs eager that the program be replicated.⁷⁹

3.112 In 2005, the University of Western Australia's School of Social and Cultural Studies commenced a graduate program in native title and cultural heritage. The course aims to equip graduates with theoretical, analytical and practical skills in the fields of native title and cultural heritage anthropology. The WA Office of Native Title has provided financial assistance towards the establishment of the course. It also offers scholarships to people working in the native title field to participate in the course.⁸⁰ An initial start has also been made in providing scholarships for post-graduate study with two NTRB lawyers currently undertaking post-graduate studies under a newly-created Rio Tinto-NTRB scholarship program.⁸¹

Conclusion

3.113 Evidence to the inquiry indicated that NTRBs have considerable difficulty in attracting and retaining professional and senior administrative staff. It was emphasised in evidence that unless representative bodies are able to attract and hold high calibre staff in these professional areas, they will have great difficulty in effectively performing their statutory functions and servicing native title clients.

77 *Submissions* 23, pp.7-8 (NNTT); 40, pp.6-7 (AIATSIS).

78 Anthropos Consulting, *Pilot Mentoring Project for Junior NTRB Anthropologists*, June 2004, pp.1-4.

79 *Submission* 32, pp.3,53 (NTRB Lawyer Project).

80 *Submission* 37, p.5 (WA Office of Native Title). See also *Committee Hansard* 19 July 2005, pp.28,43 (WA Office of Native Title/Yamatji Aboriginal Corporation).

81 *Submission* 32, p.4 (NTRB Lawyer Project).

3.114 The Committee believes that there needs to be a concerted effort by the Commonwealth and representative bodies in the recruitment and retention of professional staff. A number of initiatives have been undertaken in these areas and the Committee welcomes these developments. The Committee considers, however, that a number of further initiatives should be undertaken including the development of standardised criteria for use nationally in the recruitment of representative body staff. Other initiatives that should be implemented include the development of a national recruitment strategy to address issues relating to the professional staffing needs of NTRBs, including the promotion of more Indigenous peoples to positions within NTRBs. The Committee notes that the development of a national recruitment strategy would also provide benefits to other Indigenous organisations facing similar difficulties to that of NTRBs in recruiting and retaining staff.

3.115 The Committee further believes that more attention needs to be paid by representative bodies to the professional development needs of their staff and a greater emphasis needs to be given to the 'pooling' of staff resources across NTRBs. The Committee also considers that the salary differentials of senior staff in NTRBs needs to be closely monitored by the OIPC and that regulation in this area should be considered if significant differentials continue to be a feature of salary packages.

Recommendation 9

3.116 The Committee recommends that the OIPC, in close consultation with NTRBs, develop standardised criteria for use in the recruitment of representative body staff; and that these criteria be used nationally to provide consistency in standards of recruitment.

Recommendation 10

3.117 The Committee recommends that the Commonwealth investigate the feasibility of:

- **the secondment of expert government staff to NTRBs;**
- **the establishment of a centre of excellence to develop the legal capacity of NTRB lawyers and from which NTRBs could draw expertise as required; and**
- **the provision of scholarships for post-graduate study to further enhance skills in areas of relevance to the work of NTRBs.**

Recommendation 11

3.118 The Committee recommends that the Commonwealth implement a national recruitment strategy to address the professional staffing needs of NTRBs and that this strategy:

- **promote the status and positive image of work in NTRBs;**
- **focus on promotion of careers in NTRBs to the professions;**
- **introduce an ongoing NTRB student placement program; and**

-
- **promote the employment of Indigenous people to positions in NTRBs.**

Recommendation 12

3.119 The Committee recommends that representative bodies focus on the professional development needs of NTRB professionals and enhance the support structures and programs available to them, including:

- **developing a formal induction training program for new recruits;**
- **establishing ongoing training programs to further enhance skills in particular areas;**
- **creating a mentoring system; and**
- **implementing performance evaluation systems to assist in the identification of professional development needs.**

Recommendation 13

3.120 The Committee recommends that the OIPC continue to monitor the salary differentials provided to senior professional staff of NTRBs; and introduce a scale of salaries to provide consistency across the system if significant differentials continue to apply.

Recommendation 14

3.121 The Committee recommends that representative bodies investigate the feasibility of implementing a system of 'pooling' of professional staff in situations where an NTRB may lack a full complement of particular professional staff.

