



The Northern Territory of Australia

The Lands and Mining Tribunal

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The Hon Denis Burke MLA
Attorney-General
Parliament House
State Square
Darwin NT 0800

Dear Attorney-General

Pursuant to section 38 of the *Lands and Mining Tribunal Act*, I submit to you the Annual Report on the operations of the Lands and Mining Tribunal for the period 1 July 2000 to 30 June 2001.

During this period, the Tribunal's functions have been associated with compulsory land acquisitions under the *Lands Acquisition Act* and planning appeals under the *Planning Act*.

In providing this report, I advise that the Tribunal's office services have been 'outsourced' to the Office of Courts Administration and all financial statements and compliance with the financial Management Regulations have been vested with the CEO of that Unit. Therefore any financial and audit reports will be contained in the Annual Report of that body.

Yours faithfully

David Loadman
Chairperson

16 July 2001

Agency Access

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Chairperson David Loadman

Secretary/
Acting Deputy Registrar Kathy Wadrop

From the Chairperson:

This is the first annual report in respect of the first full year of operations of the Lands and Mining Tribunal.

The Lands and Mining Tribunal came into effect on 1 June 2000 with the appointment of the inaugural Chairperson, Mr David Loadman.

Pursuant to the provisions of the *Lands and Mining Tribunal Act*, other jurisdictions are capable of being vested in the Tribunal. The jurisdiction of the Tribunal currently is confined to:

- (a) Planning appeals from decisions of the Development Consent Authority;
- (b) objections to compulsory land acquisition by Minister for Lands, Planning and Environment.

Native Title Jurisdiction

The involvement of the Tribunal in discharging functions under the “Section 43A Provisions of the *Native Title Act* has of course not eventuated.

In order for the Tribunal to be vested with this jurisdiction it was necessary for the provisions to have been passed by the Senate. Despite being approved as prescribed by the Attorney-General of the Commonwealth, the Senate refused to pass the necessary provisions which would have vested the Tribunal with this jurisdiction.

Planning Act

Pursuant to section 5(1)(j) of the *Lands and Mining Tribunal Act* the Tribunal is charged with discharging the functions of the a Planning Appeals Tribunal. The power of the Tribunal to discharge this function is conferred by section 108 of the *Planning Act* NT.

A panel of mediators has been established to deal discretely with appeals under the *Planning Act* pursuant to the provisions of section 122(1) *Planning Act*. The panel of such mediators so appointed is Attachment A to this Report.

Eight appeals to the Tribunal have been noted to date. Of these appeals, 4 were resolved as a consequence of the compulsory mediation processes set out under Division 4 of the *Planning Act*.

The Tribunal was obliged to adjudicate and deliver written decisions in 2 matters. Of the 2 further matters, one is subject to the mediation process, The other was referred to the Tribunal for determination and is still in the submission stage.

Lands and Mining Tribunal Rules

The Rules governing proceedings before the Tribunal are contained in regulation Gazette 2000 No 51 and commenced on 25 October 2000. There was an amendment to the Rules published in regulation Gazette No 63 and they commenced on 10 January 2001.

Both the *Lands Acquisition Act* and the *Planning Act* have procedural provisions of their own, which in some instances over-ride the Rules.

Lands Acquisition

Pursuant to section 5 of the *Lands and Mining Tribunal Act*, the Tribunal has various specified functions.

In practical terms the Tribunal has become seized of and discharged functions specified in sub-section 5(1)(a), namely to hear and make recommendations about objections to the acquisition of land under the *Lands Acquisition Act*, including objections by registered native title claimants and registered native title bodies corporate.

Although section 37 of the *Lands Acquisition Act* provides for a reference to mediation in sub-section 4A, the Tribunal is unaware of any reference to mediation having occurred pursuant to those provisions.

Sub-section 4 *Lands Acquisition Act* refers to a reference to mediation by agreement. The Tribunal is not aware of any such a reference.

Section 37 *Lands Acquisition Act* is a “prescribed provision” pursuant to the provisions of section 36(5) *Lands and Mining Tribunal Act*. For that purpose and in compliance with section 36(3) the Chairperson has appointed a panel of mediators who are willing to act as mediators for the purpose of section 37 *Lands Acquisition Act*. A copy of that panel of mediators so appointed is Attachment A to this Report.

The Tribunal notes that, unlike appeals noted under the *Planning Act*, there is no compulsion either on the part of the Minister, any objector or the Tribunal to refer the issues to a mediator. The Tribunal has not pursued any amendment of the *Lands Acquisition Act* which might facilitate a reference to mediation because of views expressed by or on behalf of the Northern Land Council, Central Land Council and the Department of Lands, Planning and Environment to the effect that such compulsion would be nugatory.

The Tribunal is informed that His Honour Justice O’Loughlin of the Federal Court of Australia has indicated in matters proceeding before that Court that in respect of every determination for Native Title there shall be, as a primary or preliminary step in matters before that Court, a mediation exercise. The Tribunal has without success endeavoured to persuade the parties in matters

proceeding in the Tribunal to include those issues in the mediation referred to above.

The Tribunal was advised that there may be instances where a reference to mediation decreed by the Federal Court could be expanded to embrace matters referred to the Tribunal. Nothing has eventuated in that respect.

Administration

The Tribunal has issued Practice Directions dealing with those functioning jurisdictions it is required to discharge and referred to above.

The Tribunal has established a website which contains the Tribunal's Decisions, Practice Directions, Rules, Panels of Mediators and Forms.

Ms Jennifer Minns is appointed to the office of Registrar of the Tribunal. A secretary, the acting Deputy Registrar, who effectively attends to the duties on a day to day basis of the Registrar has been appointed to assist the Chairperson. No further staff have been appointed by the Chairperson because of the absence of the section 43A jurisdiction already referred to, and otherwise because the discharge of the work is currently catered for by the existing staffing situation.

The Tribunal was assisted by the services of Jenni Daniel-Yee when first established. Ms Daniel-Yee discharged the functions of the Registrar and assisted in establishing the initial procedures which govern the Tribunal's function.

The Chairperson and Ms Daniel-Yee were and are assisted by the energetic and dedicated attention given to the Tribunal and its several functions by Kathy Wadrop, the acting Deputy Registrar.

Financial Statements

Because of the curtailment of the Tribunal's staffing at the instance of the Chairperson for reasons set out above, the financial aspects of the Tribunal's operations are in the hands of the Office of Courts Administration. The financial statements relating discretely to the Tribunal will be published by that Unit as part of its duties.

Function

Initially the Tribunal regularly convened hearings in relation to matters filed with it pursuant the *Lands Acquisition Act* for the purposes of issuing directions in respect of matters referred to it. As a matter of practice there evolved a procedure whereby orders were made pursuant to signed consent minutes lodged by the relevant parties with the Tribunal. The decisions of the Tribunal to date in respect of proceedings under the *Lands Acquisition Act*

and at the request of the relevant parties have involved the Tribunal in making those decisions on written material lodged. There has not been any oral ventilation of issues other than those occurring at formal directions hearings.

Formal hearings have been fixed in 4 matters in respect of issues to be determined in those matters.

In respect of appeals under the *Planning Act*, the position is governed by section 129 of that Act. Save for a power in the Tribunal conferred by section 129(2), by virtue of which the Tribunal is empowered to hear evidence, it is directed to determine the Appeal in the absence of the parties and in regard to the material referred to in the section. That has hitherto been the practice of the Tribunal.

Performance Measurement

From its inception in 1 June 2000 to 30 June 2001 the following new matters were received at the Tribunal.

Planning Act	8
Lands Acquisition Act	31

Of these matters, the following number have been finalised

Planning Act	6
Lands Acquisition Act	13

Over this period a timeline has been established. The Tribunal's average turnover for cases to be dispensed with, from date of filing to decision, has been 3 ½ months.

Chairperson's Travel or attendance at Conferences

The Chairperson attended a seminar in relation to Native Title issues convened by the Federal Court and attended by other "native title users". Some discussion of the functions of the Tribunal occurred at that meeting

On 23 February 2001, at the invitation of the NT Minerals Council (Inc) the Chairperson attended the Native Title Workshop "Making Sense Of It All" and delivered a short paper on the functions of the Lands and Mining Tribunal.

Chairperson's other activities

At the request of the Office of Courts Administration and upon being appointed by the Attorney-General, the Chairperson sat as the Anti-Discrimination Commissioner in 2 proceedings listed for hearing in that jurisdiction. A decision is yet to be handed down in the one completed matter. The other matter has been adjourned.

The Chairperson sat as a relieving Magistrate on several short term appointments from July 2000 to March 2001.

In March 2001 the Chairperson of the Tribunal was re-appointed a permanent Stipendiary Magistrate. The Chairperson will discharge his duties as the Chairperson in conjunction with discharging his duties as a Stipendiary Magistrate.

Attachment A

LANDS AND MINING TRIBUNAL

PANELS OF MEDIATORS

Panel for Lands and Mining Tribunal Act Section 36(3)

Panel for Planning Act Section 122(1)

NAME	Phone Number	Workplace
Barker-Hudson, Brydget	Ph: 89481828 Fax: 89483221	NT Dept Primary Industry & Fisheries PO Box 42828 Casuarina NT 0811
Brears, John	Ph: 89418948	Sumarto Pty Ltd GPO Box 3521 Darwin NT 0801
Collier, Nardine	Ph: 89526566 Fax: 89530876	Bowden Collier & Deane PO Box 8245 Alice Springs NT 0871
Elliott, Peter	Ph: 89413070 Fax: 89419978	Edmund Barton Chambers GPO Box 3650 Darwin NT 0801
Fitzgerald, Tony	Ph: 89860050 Fax: 89850001	Resolve PO Box 36506 Winnellie NT 0821
Franklin, Anthony	Ph: 89459989 Fax: 89452560	Franklin de Ionno PO Box 42526 Casuarina NT 0811
Leahy, Elizabeth	Ph: 89819517 Fax: 89819517	Darwin Dispute Resolution Centre GPO Box 21944 Darwin NT 0801
McIntyre, Patrick	Ph: 89413373 Fax: 89417018	John Toohey Chambers GPO Box 3348, Darwin NT 0801
Storey, Matthew	Ph: 8999 1444 Fax: 8999 1466	Office of the NT Anti-Discrimination Commissioner LMB 22, GPO, Darwin NT 0801

Mediators are on both panels, for the Planning Act and the Lands and Mining Tribunal Act, unless indicated otherwise.