

RESPONSE TO NOUS REVIEW RECOMMENDATIONS – KIMBERLEY LAND COUNCIL (KLC)

TOR 1 Extent to which each organisation has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19. (Rec 1)
Rec 1 The KLC should develop a document with options available to Traditional Owners who are concerned about the governance of their PBC to address the dissatisfaction of Traditional Owners where significant tensions between groups have arisen as a result of the claim process or determination.
Response Accepted. Implemented in part. Communications materials on this issue will be developed for distribution to PBCs and native title holders in the current financial year subject to funding being available. KLC also notes that it has communicated with the Minister for Indigenous Affairs, ORIC and NIAA on reforms which are urgently required to improve the options available and their effectiveness.
TOR 2 Extent to which each organisation assesses and prioritises applications for assistance in a manner that is equitable, transparent, and robust, and is well publicised and understood by clients and potential clients. (Rec 2)
Rec 2 Ensure that where applications for assistance are refused, the applicants are always provided with an explanation of the prioritisation process and clearly articulated reasoning for the decision including an accurate plain English record of the decisions made and the reasoning behind them.
Response Accepted. Implemented. The KLC provides all applicants for assistance with written explanations of the decision regarding their application, communicated in plain English. A process of continuous monitoring and improvement is in place to ensure these outcomes are communicated appropriately.
TOR 3 Extent to which each organisation deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints. (Rec 3-4)
Rec 3 Develop written protocols and guidelines to document the KLC's culturally appropriate engagement strategies, including protocols by which meetings will be run.
Response Accepted. Implemented. KLC's Native Title Services Unit has comprehensive internal guidelines and protocols regarding the organisation, planning and implementation of a broad range of on-ground activities, including native title claim group meetings, PBC AGMs, PBC directors' meeting, and other forms of community engagement.

Rec 4 Develop more culturally sensitive approaches to advising Traditional Owners on privacy considerations which may limit access to genealogical information.
Response Accepted. Implemented. KLC has developed communication materials regarding family tree requests and distributes these broadly.
TOR 4 Extent to which each organisation performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.
Rec Nil recommendations
TOR 5 Extent to which each organisation has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery. (Rec 5-7)
Rec 5 Monitor and develop strategies to mitigate the risk that the restructured Board arrangements may be seen by Traditional Owners to be a means of centralising influence in a small number of representatives.
Response Accepted. Noting that KLC does not agree that the governance structure centralises influence, but only that it recommends ongoing communication with its members about the governance structure. Implemented in part. While KLC accepts this recommendation to the extent it requires monitoring and development of a strategy, KLC is not aware (other than through the Nous Report) of the existence of a perception that the current governance structure has created centralised influence. This presents a challenge in identifying the stakeholders it should communicate with on this issue and the most appropriate communication mechanism. Pending clarification on this point, KLC will continue to provide information to its members and other stakeholders through the KLC website and other communications channels about the membership and structure of the Representative Council and Executive Board.
Rec 6 Communicate regularly to Traditional Owners about the implementation of recommendations made by the inquiry into the KSDCT.
Response Accepted. Implemented in part. KLC's response to the recommendation is ongoing. Public communications will commence once appropriate internal arrangements are in place (including communications with staff). The timeframe for this is expected to be from early 2025.
Rec 7 Develop a policy and communication materials to demonstrate to the community the separation between KLC and its wholly owned subsidiary KSD.

Response Accepted. Implemented in part. KLC's response to this recommendation will occur in coordination with its response to recommendation 6. The timeframe for this is expected to be from early 2025.
TOR 6 Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency. (Rec 8-9)
Rec 8 Ensure ongoing mechanisms to collect feedback from client PBCs through a formal, regularly conducted process.
Response Accepted (subject to resources and prioritisation). Yet to be implemented. While KLC has conducted extensive engagement with members and other Kimberley Traditional Owners in the past to collect feedback, these have not yet been put in place for PBCs. Development of the feedback tool will be subject to available resources, and may not occur until the 2025-2026 financial year.
Rec 9 Ensure the Return of Cultural Materials Policy is updated in line with the Tommy on behalf of the Yinhawangka Gobawarra v State of Western Australia (No 2) [2019] FCA 1551 ruling.
Response Accepted. Noting that the cited case is authority regarding issues of client legal privilege in documents following a determination of native title. Implemented. The policy is being reviewed by a KLC board subcommittee supported by an expert working group of KLC staff.
TOR 7 Extent to which each organisation has developed its planning for a post-determination environment. (Rec 10-11)
Rec 10 Consider how indicators of the KLC development in a post-determination environment can be more clearly documented and communicated, and assign responsibility for tracking and monitoring progress.
Response Accepted (subject to resources and prioritisation). Implemented in part. KLC has undertaken extensive communications in 2024 about its activities to support native title post-determination, including a Kimberley Forum at Gambanan on 22 August and the publication of a range of special updates and reports on issues of concern to Kimberley Traditional Owners such as water and cultural heritage. Assignment of responsibility for tracking and monitoring has not yet occurred and will be subject to identification of resources to support this in the next financial year.
Rec 11 Seek ways to better communicate the role of the KLC in the post-determination world in supporting, and not competing, with PBCs.

Response

Accepted (subject to resources and prioritisation).

Implemented in part.

The KLC's response to this recommendation is being implemented in concert with the response to recommendation 10.