

RESPONSE TO NOUS REVIEW RECOMMENDATIONS – NORTHERN LAND COUNCIL (NLC)

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 1-2)
Rec 1 The NLC should deliver more intensive and effective supervision and support for junior native title lawyers and commit to deliver stronger supervision of their work
Response Accepted. Yet to be implemented. The Northern Land Council had a number of senior staff departures within its legal branch over the 2024 calendar year. Replacing those staff members has proved to be challenging and as at November 2024, a number of vacancies have not been filled. As such it has not been able to establish nor commit to more intensive and effective supervision for junior native title lawyers. We are conscious of this feedback received and are reviewing management structures. Timeframes on our ability to commit to additional intensive supervision is largely dependent on the latest round of recruitment. Ongoing routine supervision and support provided to all lawyers in the branch will continue and we are exploring options with external providers with respect to maintaining adequate supervision.
Rec 2 The NLC should design and deliver training to support legal and anthropological staff to better understand their respective roles in native title.
Response Accepted. Yet to be implemented. This will be pursued once senior vacancies within the legal branch have been filled. The above said there is a degree of crossover between the roles of a lawyer and anthropologist in the claims process. Both professionals provide advice to the NLC and claimants on the group's composition; albeit from different perspectives.
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 3-5)
Rec 3 The NLC should create an internal facing assessment and prioritisation policy which includes the likelihood that land subject to a development application will be prioritised.

Response

Accepted.

Yet to be implemented.

The NLC will create an internal facing native title policy and procedure that addresses prioritisation by Q3 2025.

We note that there is no requirement in the *Native Title Act 1993* (Cth) (**NTA**) to develop such a document.

Rec 4 The NLC should publish information on the NLC website about the ways in which the NLC assesses and prioritises applications for assistance to improve transparency for Traditional Owners.

Response

Accepted.

Yet to be implemented.

The NLC will publish information on how it assesses and prioritises applications for assistance on its website by Q3 2025. We note that there is no requirement in NTA to develop such a document.

Rec 5 The NLC should consider how to resource and deliver native title outcomes in areas not subject to development claims in order to support more equitable outcomes

Response

Accepted.

Yet to be implemented.

The NLC is resource constrained in its ability to respond to and prioritises claims based on:

1. whether the claim area is subject to the threat of development; and
2. progressing strategically important claims.

Section 203B(4) of the NTA provides that native title representative bodies and service providers (**NTRB-SP**) must give priority to the protection of the interests of native title holders when determining their priorities and allocating its resources.

Where there is no threat of development or the claim does not support a broader strategy, a claim is progressed in line with a myriad of factors, including the resourcing the NLC has available.

In any event, this will be considered and developed in line with the development of an internal facing document developed in accordance with Recommendation 3.

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 6**)

Rec 6 The NLC should update the Complaints section of its website to include information on the process for handling complaints and the timeframes in which the complainant will receive a response.

Response

Accepted.

Partially implemented.

The NLC will update its website to include information on the complaints handling process.

The NLC has implemented new processes that align with the Commonwealth Ombudsman's Better Practice Guide For Complaints Handling whereby all complainants are acknowledged and notified that the NLC seeks to respond to their complaint within 30 business days.

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

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 7-9)**

Rec 7 The NLC should implement mechanisms to help create and maintain a culture where staff feel safe to give and receive feedback, and behavioural issues can be constructively managed.

Rec 8 The NLC should ensure that performance reviews are held annually to ensure staff have opportunities to develop and are adequately supported to deliver high quality work.

Rec 9 The NLC should improve its responsiveness to allegations of bullying and harassment, with managers to ensure that formal and informal reports regarding alleged incidents and/or patterns of behaviour are referred to the correct channels within NLC.

Response for Rec 7, 8, and 9

Accepted.

Partially implemented.

The NLC maintains a zero-tolerance approach to bullying and harassment.

Since the final report was released, the NLC has delivered mandatory psychosocial hazard training to all members of its senior and middle management group. The training has been focused on identifying current hazards within the workplace, developing managers abilities to effectively respond to those hazards and how to effectively assist staff when such challenges (including those relating to bullying and harassment) arise.

The NLC People and Culture Service is also developing a comprehensive management framework to roll out to the management team, outlining their obligations as managers (including their obligations on annual performance reviews).

Staff are encouraged to complete incidents reports regarding incidents and patterns of behaviour and the NLC will undertake more education activities with staff to ensure that they are aware of the appropriate channels to report bullying and harassment.

TOR 6 Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency. **(Rec 10-11)**

Rec 10 The NLC should prioritise the development and pro-active communication of a policy and related processes through which common law holders can elect to leave the TED PBC and establish their own PBC. These processes should be timely, transparent and efficient.

Response

Not accepted.

The NLC does not accept this recommendation on the following basis:

- PBC replacement is not a stand-alone NTRB-SP function under the NTA.
- Other NTRB-SPs across Australia do not publish policies on PBC replacement.
- The process required to authorise replacement of a PBC will depend on the traditional laws and customs of the particular common law holding group and ultimately be determined by the Federal Court.
- It is currently an administrative and logistical challenge each year to complete its core native title activities. Without significant additional funding and support, attempting to assist groups across at least 80 determinations to establish and operate their own PBCs is unviable and will undermine the NLC's core capacities as a Land Council and NTRB-SP.

If instructions are received from common law native title holders currently represented by Top End (Default PBC/CLA) Aboriginal Corporation RNTBC, NLC lawyers will assist in the establishment and transfer for their common law native title rights to a new PBC.

Rec 11 The NLC should prioritise the finalisation and implementation of a new NLC Repatriation Policy for cultural materials, including the process of obtaining and retaining consent for the collection of cultural materials.

Response

Accepted.

Partially implemented.

This recommendation is accepted and is being progressed by the NLC in multiple ways.

The NLC is close to finalising a policy on the repatriation of cultural objects and artefacts, including skeletal remains.

It is currently working with the Central Land Council and other parties on developing a framework on the return of claim materials and relevant anthropological and claim materials held by past staff and consultants engaged by the Land Councils with the intention of making those materials eventually available to claimants.

An overarching repatriation policy for other materials to claimants and PBCs (if applicable) will be worked through and we will aim to have this policy finalised by the close of 2026.

TOR 7 Extent to which each organisation has developed its planning for a post-determination environment. **(Rec 12-13)**

Rec 12 The NLC should develop and implement a process that enables regular feedback in relation to post-determination priorities of groups of common law holders of native title in the 86 determinations represent

Response

Not accepted.

Ultimately the post-determination priorities of groups of common law native title holder in the 86 determinations are matters for those common law native title holders and not within the NLC's role as a NTRB-SP.

The NLC intends to work with Top End Default to establish and maintain better representative structures for common law native title holders who have opted into using it.

As part of that process, there will be more opportunities for engagement with common law native title holders.

This will form part of the new strategic plan moving forward post CYU#1 Claim and will be worked on over an extended period.

Rec 13 The NLC should clarify the extent to which its post-determination services are available to independent PBCs, on what condition and what price.

Response

Not accepted.

The NLC disputes the role attributed to it in relation to post-determination matters.

The NLC will prioritise establishing formalised processes for Common Law Native Title Holders with determined claims to establish PBCs and transfer their native title rights from Top End Default.

Until the critical mass of PBCs is established, the post-determination services that are available to PBCs in the NLC's region can be managed on a case-by-case basis.