Review of Carpentaria Land Council Aboriginal Corporation, 2019-22

National Indigenous Australians Agency

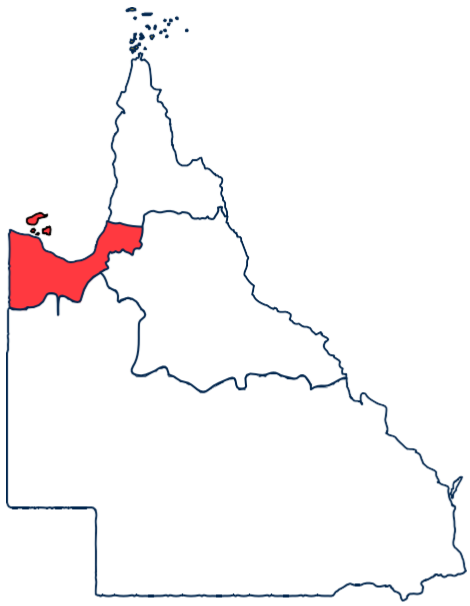
June 2024

Contents

1 Profile of the Carpentaria Land Council Aboriginal Corporation

The Carpentaria Land Council Aboriginal Corporation (CLCAC) provides native title services to the southern part of the Carpentaria Gulf region out of offices in Cairns and Burketown.

The CLCAC was established in 1982 as a community-based organisation and incorporated under the *Aboriginal Councils and Associations Act* in April 1984. The CLCAC has performed representative body functions since the *Native Title Act 1993* (Cth) (the NTA) commenced and was recognised as the Native Title Representative Body (NTRB) for the Carpentaria Gulf Representative Aboriginal/Torres Strait Islander Body (RATSIB) area in 2000, shortly after the requirement for representative bodies to be recognised was introduced. It subsequently became a Native Title Service Provider (NTSP) in 2011.



The Carpentaria Gulf RATSIB area, pictured right, covers 99,590 square kilometres (not including sea territory), accounting for about five per cent of Queensland. This is one of the smallest RATSIB areas in Australia.

There have been 11 determinations of native title within the Carpentaria Gulf RATSIB area since the passage of the NTA, two of which occurred between 1 July 2019 to 30 June 2022 (the Review period). As of 30 June 2022, there was one active claim in the Carpentaria Gulf RATSIB area. CLCAC was not listed as the representative for this claim, as the CLCAC briefs out all litigation work to external legal consultants.

As of 30 June 2022, there were four Prescribed Body Corporates (PBCs) within the RATSIB area, one of which was registered during the Review period. The CLCAC supported all four of these PBCs during the Review period, with a fifth PBC established in July 2022, just following the Review period.

The CLCAC received stable levels of base funding of about $2 million per annum from the National Indigenous Australians Agency (NIAA) during the Review period. PBC support funding from the NIAA was also stable at $216,000 per annum. The CLCAC also received additional demand driven funding for litigation during this time.

The CLCAC did not operate or have full or part ownership over any subsidiary entities. Unlike most other NTRB-SPs, the CLCAC's main purpose is not native title. Outside of its native title functions, the CLCAC operated a major Land and Environment Program, with 31 rangers across the RATSIB area. While the Land and Environment Program does not directly relate to the CLCAC's native title functions, the CLCAC does cross-leverage its native title and ranger program to save costs across the organisation.

The CLCAC has a representative board which consists of nine Directors (and nine alternates) who represent the nine language groups in the RATSIB area. Directors and alternates serve a term of two years and are eligible for re-election. The nine language groups in the region are Kurtijar, Gkuthaarn, Kukatj, Gangalidda, Kaiadilt, Lardil, Yangkaal, Waanyi and Garawa.

As of 30 June 2022, the organisation had three offices – in Burketown, Cairns and Normanton.

2 Scope of the Review

The NIAA has engaged Nous Group (Nous) to undertake an independent review of 13 NTRB-SPs.

The purpose of this Review was to assess the individual and comparative performance of NTRB-SPs in delivering native title outcomes for Aboriginal and Torres Strait Islander people and communities under the NTA over a time period of 1 July 2019 to 30 June 2022.

The Review is an opportunity to assess all the organisations over a consistent time period to understand performance during and post the COVID-19 pandemic and the extent to which organisations have addressed recommendations from previous organisational performance reviews.

The Terms of Reference (TOR) provided by the NIAA for the Review are to determine the 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
- 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
- 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
- performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation
- has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery
- is adequately supporting PBCs towards self-sufficiency
- has developed its planning for a post-determination environment.

The complete TOR are included in 5.7.3.

Methodology

Nous originally designed the methodology for the previous round of Reviews conducted from 2017 to 2021, which was reviewed at that time by NTRB-SPs and the NIAA. The methodology has been modified to incorporate lessons learned, streamline some previously repetitive elements, reflect current context and be consistent with the current TOR.

The method draws on a defined set of performance indicators under each TOR. These indicators combine qualitative and quantitative performance assessment and include external factors to account for the unique context within which each NTRB-SP operates, based on broader social and geographical factors that impact performance.

Nous used a mixed method approach to undertaking this Review, including an analysis of quantitative data on the progress of claims, Future Acts and Indigenous Land Use Agreements (ILUA), performance against milestones, budgetary performance and staffing. A list of the data and documents that informed the Review can be found at Appendix C.

The quantitative analysis was complemented by stakeholder interviews. As required by the NIAA, and in accordance with the TOR, this Review involved consultations with persons affected by the activities of each

NTRB-SP, including Traditional Owners, PBCs, staff of the Native Title Representative Bodies and Service Providers (NTRB-SPs), state governments, NIAA, the Federal Court and legal stakeholders. A list of the stakeholder consultations undertaken for this Review is set out in Appendix B.

A full description of the methodology and the performance indicators under each TOR was provided to each NTRB-SP. Nous used a variety of methods to contact stakeholders, including Traditional Owners, for feedback. The approach to stakeholder consultation for the Review was set out in the Consultation Plan, which was also provided to each NTRB-SP at the outset.

Limitations

Nous acknowledges that, despite best efforts to seek broad feedback:

- only a limited number of stakeholders provided feedback (see Appendix B for further detail)
- stakeholders who responded to the call for feedback were, in the main, those who were dissatisfied with the process or outcome of their native title claim.

Accordingly, Nous appreciates that the views of the consulted stakeholders may not be representative of the views of most stakeholders who actually interacted with, or used the services of, each NTRB-SP.

As part of the consultation process, Nous listened to the views of Traditional Owners across all regions of Australia, including Traditional Owners who were dissatisfied with the process or outcome of their native title claim.

These concerns and complaints have been acknowledged and reported (as communicated to Nous) as part of this Review.

It is acknowledged that Nous has not investigated or assessed the merits of these concerns, as part of this Review. This falls outside the scope of Nous' role and the TOR. Accordingly, no statement is made regarding the legitimacy of these concerns or complaints.

NTRB-SPs have been given the opportunity to view the draft reports and to provide feedback to Nous about the issues raised in them. They will also be given the opportunity to make a formal response at the time of publication.

3 List of abbreviations

Abbreviation	Meaning
AGM	Annual general meeting
Assistance Guidelines	Guidelines for Provision of Assistance in Native Title Matters
CEO	Chief Executive Officer
CLCAC	Carpentaria Land Council Aboriginal Corporation
CSEO	Community and Stakeholder Engagement Officer
FAN	Future Act notification
FY	Financial year
GGNTAC	Gangalidda and Garawa Native Title Aboriginal Corporation
GRAC	Gulf Region Aboriginal Corporation
IEO	Index of Education and Occupation
IRSD	Index of Relative Socioeconomic Disadvantage
LGA	Local government area
NIAA	National Indigenous Australians Agency
Nous	Nous Group
NTRB	Native Title Representative Body
NTRB-SP	Native Title Representative Body and Service Provider
NTSP	Native Title Service Provider
ORIC	Office of the Registrar of Indigenous Corporations
PBC	Prescribed Body Corporate
PLO	Principal Legal Officer
RATSIB	Representative Aboriginal/Torres Strait Islander Body
RNTBC	Registered native title bodies corporate
The CATSI Act	*Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)
The NTA	*Native Title Act 1993* (Cth)
The Review period	1 July 2019 to 30 June 2022

Abbreviation	Meaning
TOR	Terms of Reference

4 Executive summary of performance and recommendations

The summary and recommendations for each TOR are reproduced here as an overall summary. The detailed performance assessment against each Performance Indicator follows in section 5.

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.

During the Review period, the CLCAC achieved two native title determinations. The CLCAC also supported one active claim during the Review period which was subsequently determined in July 2022.

The CLCAC assisted all three claim groups mentioned above via brief out arrangements. Given its small size and location, the CLCAC has adopted a model of not retaining an inhouse litigation team but rather briefing out all its native title legal and anthropological work to private law firms. This model continued to serve it well through the Review period. The CLCAC's Principal Legal Officer (PLO) was responsible for overseeing legal functions and managing and supporting the external lawyers. There were no negative comments from the Federal Court and the average time to determination was 5.38 years, which was very close to the target of five years set by the Federal Court.

The CLCAC did not support the lodgement of any new applications during the Review period although research projects for three new claim areas were under consideration and consultation. The significant positive outcomes during the Review period and immediately after it meant that as at 26 July 2022, approximately 73 per cent of the RATSIB area was subject to a determination or application. The remaining claims in the area are small and will be relatively complex to progress.

During the Review period, the CLCAC received 30 Future Act notifications (FANs) and secured three ILUAs, one of which resulted in the surrender of native title.

The majority of Traditional Owners consulted by the Review held the CLCAC and the way it conducted its native title work in high regard. A small number of Traditional Owners raised concerns about the formation of claims which covered more than one language group and the subsequent friction between members of the PBCs. CLCAC noted that these decisions were arrived at through authorisation meetings on the basis of independent legal advice, with final decision-making the responsibility of the Federal Court. Other concerns raised by Traditional Owners in the region concerned dissatisfaction with the way royalties or other payments had been re-directed from individual small Aboriginal Corporations to PBCs following determination.

COVID-19 caused disruptions to the CLCAC's work, with many face-to-face meetings postponed or cancelled. However, CLCAC made good use of videoconferencing technology to engage with Traditional Owners and for communication between staff based at different offices during this time.

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.

The CLCAC's Guidelines for Provision of Assistance in Native Title Matters (Assistance Guidelines) state that assessment decisions are made by the CLCAC's Chief Executive Officer (CEO) or their delegate. However, during the Review period, the CLCAC Board assessed and prioritised applications for assistance. The Board did so appropriately, using a robust set of criteria detailed in the Assistance Guidelines. Ease of achieving a determination was the key criteria in decisions made during the Review period.

Decisions were made strategically, with claim groups sometimes agreeing to concessions such as reduction of claim area size or accepting ILUAs to avoid lengthy or difficult litigation with large corporate businesses. The CLCAC and external lawyers provided appropriate strategic input into these decisions.

While the prioritisation criteria were appropriate, the Assistance Guidelines document did not accurately reflect what occurred in practice, including the Board's involvement in decision making.

Clients and potential clients were generally aware of how they could seek assistance from the CLCAC. Traditional Owners consulted by the Review largely expressed satisfaction with the assessment and prioritisation process.

RECOMMENDATION 1

The CLCAC should review its assessment and prioritisation policy to ensure it is up to date and aligns with current practice, particularly in terms of the role the Board, rather than the CEO, plays as final decision maker for assessment decisions.

RECOMMENDATION 2

The CLCAC should make its assessment and prioritisation policy publicly available once its website has been restructured.

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.

The CLCAC engaged with clients and potential clients through a range of channels, including in-person meetings, social media posts and community noticeboards. While many of the CLCAC's native title staff were based in Cairns, the organisation maintained a strong regional presence through its ranger program and an office in Burketown.

The CLCAC leveraged multiple strategies to ensure it engaged with clients and potential clients respectfully and appropriately, including informal training opportunities with Traditional Owners and Board members, community engagement and targeted recruitment of staff with experience in remote areas and Aboriginal communities. The majority of the CLCAC's clients who engaged with the Review felt that the CLCAC engaged in a respectful and culturally appropriate manner.

The CLCAC employed a high profile local Traditional Owner related to the CLCAC CEO as a Community and Stakeholder Engagement Officer (CSEO), to attend and facilitate meetings and negotiate challenging issues across the RATSIB area as well as ensuring appropriate cultural engagement. The presence and facilitation of the CSEO at meetings was intended to ensure that clients and potential clients clearly understood the information required to make informed decisions. While many Traditional Owners consulted by the Review, including the Board Chair and Directors were very positive about the intent and effectiveness of the CSEO, there was a small and vocal group of Traditional Owners who very strongly held negative views about the CSEO's role. The Review found that the CSEO played an important role in facilitating respectful and transparent engagement between CLCAC staff and the Carpentaria Gulf community.

Traditional Owners in the CLCAC's RATSIB area had many opportunities to engage in decision-making processes through attendance at formal and informal meetings. There was significant communication from the CLCAC around meetings, including physical notices and posts on social media. Some Traditional

Owners from outside Burketown told the Review they were unaware of certain meetings or did not feel welcome or supported to attend these meetings. The CLCAC has advised that all members of the relevant PBCs and Traditional Owner groups were provided with sufficient notice and details of travel support.

During the Review period, the CLCAC did not receive any formal complaints regarding native title matters. There were no requests for internal review. Several informal complaints were received, mostly from the same small group of people and often relating to PBC issues that were not in the remit of the CLCAC. It was apparent to the Review that many complainants were unclear about the role of the CLCAC and at times held it responsible for the activities of PBCs in the region.

Following a recommendation in the previous Review (financial year (FY) 2015-16 to FY2017-18) that CLCAC should publish its internal review and complaints policy, the CLCAC advised that this is dependent on its website restructure, for which funding has been secured from NIAA, with an expected completion date of 30 June 2024. Publication of the policy on the CLCAC's website will assist in making constituents aware of how to make a complaint or request an internal review.

RECOMMENDATION 3

The CLCAC should extend its visibility, regular in-person presence and support across other settlements in its region, especially Doomadgee, Normanton and Mornington Island, to better understand their native title needs and improve communication.

RECOMMENDATION 4

To the extent that it is feasible in the light of poor quality telecommunications infrastructure, continue to work towards making greater use of videoconferencing capacity so that members can attend key meetings remotely from Doomadgee, Mornington Island and Normanton.

RECOMMENDATION 5

The CLCAC should make efforts to provide Traditional Owners with greater clarity about its role, including what it is and is not funded to do in relation to native title in the Carpentaria Gulf community, to ensure community expectations are appropriate and reasonable.

RECOMMENDATION 6

The CLCAC should proceed with plans to make its Internal Review Policy and Complaints Policy publicly available once the website has been restructured.

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.

The CLCAC's expenditure varied significantly from year to year due to fluctuations in litigation spending while the impact of the COVID-19 pandemic resulted in significant underspends. The CLCAC successfully negotiated with NIAA to retain its underspends.

The highest expenditure for the CLCAC was external consultant fees, due to the CLCAC's approach of briefing out all legal and anthropological work to external consultants. Project staff salaries were the second highest expenditure item.

The CLCAC employed a range of cost-saving actions during the Review period. It made concerted efforts to reduce costs in its general operations, including leveraging informal training, using its extensive ranger network to support activities where possible and negotiating with proponents to fund travel and meeting costs where appropriate. Claim group meeting processes were streamlined so that related meetings could be held on the same or next day to make best use of time for staff and claimants.

The CLCAC had appropriate processes in place for claim group meetings. It provided travel support, including fuel reimbursement and charter flights when roads were inaccessible. Some Traditional Owners consulted by the Review were unaware that travel support was available, despite CLCAC meeting notices including details of available travel support.

The remoteness of the Carpentaria Gulf region impacted the cost-effectiveness of the CLCAC. Some of the claim groups in the region were also relatively large, which impacted the efficiency with which the CLCAC was able to deliver services and the cost of supporting claimants to attend meetings.

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.

The CLCAC had clearly defined roles for its Board, Chairperson, CEO and senior staff. The Board was broadly responsible for the strategic direction of the CLCAC, while the CEO's role was implementing the Board's vision and directing the day-to-day operations of the CLCAC. Senior staff roles were described in the CLCAC Policy and Procedure Manual, though this had not been updated to reflect more recent changes in responsibility.

The CLCAC had a representative Board with an equal number of Directors from the nine recognised language groups in the RATSIB area. Each language group also had an alternate Director who would attend meetings in the Director's absence. During the Review period, Directors came from across the RATSIB area, with Directors based in Burketown, Mornington Island, Normanton and Doomadgee. While there were term limits of two years for Board Directors, there was no limit on the number of times a Director could be reappointed. A number of Directors had served on the Board for multiple years and the Board Chair had not changed in 15 years. The Review notes that factors such as seniority, cultural knowledge and leadership experience are important considerations in the nomination and election of Board Directors and Chairpersons. At the same time, the opportunity for renewal is also a consideration. CLCAC staff reported the Board undergoes natural renewal, and explained that during the Review period, four new Directors were elected to the Board. While the Office of the Registrar of Indigenous Corporations' (ORIC) Model Rulebook for Indigenous Corporations allows Directors to serve multiple terms and be re-elected, the Board might consider proposing term limits for Directors. This would support the natural renewal process.

The long tenure of many of the Board Directors provided consistency in the strategic direction of the organisation, maintained corporate knowledge and supported good team decision dynamics. However, the longevity of the Board also created issues with some Traditional Owners in the region. A small number of Traditional Owners told the Review that having only a single, longstanding representative for each language group meant certain families were consistently under-represented, particularly for groups outside Burketown. These Traditional Owners were also particularly critical of the role of the CSEO (see TOR 3), who had a close relationship to the CLCAC CEO and was perceived by these Traditional Owners to have undue influence over the Board.

The Review did not witness any evidence of inappropriate use of powers by the CSEO or any Board member. However, the nature of these concerns and the intensity with which they were raised, suggest that they should not be ignored. Greater consultation by CLCAC staff and Directors with groups outside Burketown would provide an opportunity to hear and respond to these concerns.

The CLCAC had an appropriate conflict of interest policy and staff reported that conflicts of interest were well managed and adhered to policy in practice. The overwhelming majority of staff who spoke with the

Review had positive feedback on the culture and work environment of the CLCAC. Staff reported that they were provided with appropriate on-the-job training opportunities, though this could be further improved.

RECOMMENDATION 7

The CLCAC Board should assess whether amendments to its Rulebook to limit consecutive terms would support a natural renewal process for Board Directorships.

RECOMMENDATION 8

The CLCAC should ensure that there is a clear statement of the role and responsibilities of the CSEO in CLCAC's native title functions.

RECOMMENDATION 9

The CLCAC should assess the advantages and disadvantages of proposing an amendment to the Rulebook to add one or two independent Directors to the Board.

RECOMMENDATION 10

Prioritise timely updates to the webpage so that stakeholders are made aware of important information such as changes to Board Directors.

TOR 6 | Extent to which each organisation is adequately supporting PBCs towards self-sufficiency.

PBC self-sufficiency was a strong focus for the CLCAC during the Review period. This was supported by clear aims in its corporate documentation and the establishment of the new PBC Development Support Unit.

The four PBCs in the RATSIB area were at different stages of their journey towards self-sufficiency, and the CLCAC adapted its approach and services based on the requirements and needs of each individual PBC. While most support was provided for administrative and compliance functions, the PBC support staff were active in looking for funding opportunities and in building internal capacity in the PBCs.

In FY2020-21, the CLCAC assisted two PBCs to successfully apply for grants totalling $2.8 million from NIAA through their Jobs, Land and Economy funding stream for strategic capacity building and economic development planning. Plans were underway to support grants for the other two PBCs.

While the CLCAC did not have formal service agreements in place with the PBCs it supported, its approach to providing tailored support for each PBC was considered appropriate by the Review. The CLCAC also did not have a formal policy in place for the return of cultural materials, although it had taken appropriate actions to manage the return where feasible. There remains an opportunity for the CLCAC to develop in these areas.

PBC Directors the Review spoke to were generally satisfied with the services provided by the CLCAC and found staff to be professional and courteous.

The CLCAC's ability to deliver positive outcomes for the PBCs was impacted by a lack of economic activity and high levels of social disadvantage in the Carpentaria Gulf region.

RECOMMENDATION 11

The CLCAC should document its approach to the return of cultural materials.

TOR 7 | Extent to which each organisation has developed its planning for a post-determination environment.

The CLCAC was well progressed in its planning towards a post-determination environment with a strong strategic approach developed and formalised through its Transition Plan (2017-2022).

Features of this plan included measurable key outcomes for each stage of transition, articulating the future role of the CLCAC's Economic Development Unit and the process the CLCAC will take to cease its native title functions.

The Transition Plan sets out a framework and timeframe to build the capacity of all PBCs. It also includes a potential restructure of the CLCAC's governance model to better suit the post-determination environment.

Given the timeframe of the Transition Plan has now expired, there is an opportunity for the CLCAC to either refresh it or develop a new Transition Plan that applies beyond 2022 and takes into consideration its future native title funding needs.

At the time of the Review the CLCAC had not progressed planning for compensation claims across the RATSIB area.

RECOMMENDATION 12

Proceed with plans to refresh or replace the post-determination Transition Plan to maintain its relevance and currency particularly in light of future funding needs as native title claims are finalised.

RECOMMENDATION 13

Engage with the NIAA to discuss the potential for the CLCAC to maintain financial sustainability once claim work is completed.

RECOMMENDATION 14

To ensure adequate preparation for the post-determination environment, formulate an estimate of the future claims load and the time for claim work to be completed in the region.

5 Performance assessment

This section assesses performance against the relevant performance indicators for each TOR. See 5.7.3 for the performance indicators.

5.1 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.

Summary

During the Review period, the CLCAC achieved two native title determinations. The CLCAC also supported one active claim during the Review period which was subsequently determined in July 2022.

The CLCAC assisted all three claim groups mentioned above via brief out arrangements. Given its small size and location, the CLCAC has adopted a model of not retaining an inhouse litigation team but rather briefing out all its native title legal and anthropological work to private law firms. This model continued to serve it well through the Review period. The CLCAC's PLO was responsible for overseeing legal functions and managing and supporting the external lawyers. There were no negative comments from the Federal Court and the average time to determination was 5.38 years, which was very close to the target of five years set by the Federal Court.

The CLCAC did not support the lodgement of any new applications during the Review period although research projects for three new claim areas were under consideration and consultation. The significant positive outcomes during the Review period and immediately after it meant that as at 26 July 2022, approximately 73 per cent of the RATSIB area was subject to a determination or application. The remaining claims in the area are small and will be relatively complex to progress.

During the Review period, the CLCAC received 30 FANs and secured three ILUAs, one of which resulted in the surrender of native title.

The majority of Traditional Owners consulted by the Review held the CLCAC and the way it conducted its native title work in high regard. A small number of Traditional Owners raised concerns about the formation of claims which covered more than one language group and the subsequent friction between members of the PBCs. CLCAC noted that these decisions were arrived at through authorisation meetings on the basis of independent legal advice, with final decision-making the responsibility of the Federal Court. Other concerns raised by Traditional Owners in the region concerned dissatisfaction with the way royalties or other payments had been re-directed from individual small Aboriginal Corporations to PBCs following determination.

COVID-19 caused disruptions to the CLCAC's work, with many face-to-face meetings postponed or cancelled. However, CLCAC made good use of videoconferencing technology to engage with Traditional Owners and for communication between staff based at different offices during this time.

5.1.1 TOR 1: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Native title outcomes including from facilitation and assistance, certification, notification, dispute resolution and other relevant functions

The CLCAC supported two determinations during the Review period

During the Review period, the CLCAC secured two determinations that native title exists, as shown in Table 1. One of these, the Gkuthaarn and Kukatj determination, was made following agreement by Traditional Owners to reduce the size of their native title claim in exchange for financial benefits following a protracted dispute with pastoralists.

Table 1 | Successful native title claims during the Review period, 1 July 2019 to 30 June 2022[1]

Claim	Federal Court file number	Date filed	Date of determination	Status	Legal representative
Gkuthaarn and Kukatj People	QUD29/2019	28/11/2012	29/09/2020	The claim was determined by consent and covers approximately 16,435 square kilometres of land between the Leichardt River and the Norman River.	P&E Law
Waanyi People #2	QUD747/2018	17/10/2018	22/09/2021	The claim was determined by consent and covers approximately 442 square kilometres of land in the western part of the RATSIB area. This claim adds to the land already determined under the Waanyi People's claim in 2010.	Chalk & Behrendt Lawyers and Consultants Pty Ltd

The CLCAC had one active claim during the Review period

The CLCAC had one active claim during the Review period, which was subsequently determined in July 2022, as shown in Table 2. It did not file any new claims during the Review period but subsequent to the Review period, on 25 November 2022, it lodged an additional claim for the Waanyi People (Waanyi People #3).

The CLCAC was planning further research in consultation with Traditional Owners in areas not yet subject to a determination

The CLCAC reported that it had begun planning further investigation across all undetermined sections of its RATSIB area. Staff reported that the claims remaining in the RATSIB area were small and complex.

At the time of consultations CLCAC had substantially progressed three ongoing research projects:

The intermediate area between existing determined Waanyi, Gangalidda and Garawa, and Gkuthaarn and Kukatj areas.

Gkuthaarn and Kukatj and Kurtijar research area.

Gkuthaarn and Kukatj and Tagalaka research area.

[1] National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed June 2023. http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx

Table 2 | Summary of active claims for the CLCAC at 30 June 2022[2]

Claim	Application type	Date filed	Status	Legal representative
Kurtijar People	Claimant	18/06/2015	On 26 July 2022, it was determined that native title exists in the entire determination area.	HWL Ebsworth Lawyers

The significant positive outcomes during the Review period and immediately after it means that approximately 73 per cent of the RATSIB area is subject to a determination or application. With fewer native title determinations in the pipeline, the CLCAC had greater scope to focus on developing PBC capability.

All claim work was briefed out to external law firms

Given its small size and location, the CLCAC has adopted a model of not retaining an inhouse litigation team but rather briefing out all its native title legal and anthropological work to private law firms. This model continued to serve it well through the Review period. The CLCAC PLO managed the native title functions. Beyond being suited to its size and location, the CLCAC's default position to brief out native title work ensured that the CLCAC could remain impartial and avoided perceived bias when conflicts between claim groups arose.

The CLCAC highlighted its native title roles and functions in each annual report

The CLCAC included brief descriptions of its certification, dispute resolution, notification and agreement making functions in each annual report. It also noted activities against its other functions, including providing regular newsletter updates to members and claimants, consulting regularly with Aboriginal communities in its RATSIB area and attending appropriate forums for addressing native title related matters.

Federal Court engagement with the CLCAC was generally positive

The Review did not identify any concerns from the Federal Court regarding the CLCAC's interaction with the Court. The Federal Court was aware that the CLCAC outsourced all its native title legal work.

Traditional Owners were generally satisfied with the native title outcomes achieved by the CLCAC

The majority of Traditional Owners who the Review spoke with held the CLCAC and the way they conducted their native title work in high regard. Staff reported that the legal consultants the CLCAC engaged had worked in the Carpentaria Gulf region for a long time and developed strong relationships with clients. The Review heard many times how the absence of an in-house legal team had been a significant advantage in building trust with the community.

However, a small number of Traditional Owners raised concerns about what they perceived to be CLCAC's decision to submit joint applications for, respectively, the Gkuthaarn and Kukatj peoples, and the Gangalidda and Garawa peoples. These concerns mainly revolved around subsequent PBC structures and governance, and the tensions that arose between members of different language groups. While some Traditional Owners understood that composition of claims followed the best evidence, they noted they would have preferred to have separate PBCs. External lawyers engaged by the CLCAC during the Review

[2] National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed November 2023. http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx

period explained that decisions regarding the composition of the claims and associated PBCs were made by Traditional Owners from the claim groups with full support from the anthropologist responsible for both claims. In both cases, the vast majority of Traditional Owners supported the proposal to submit the claims as lodged and register current PBCs.

Anthropological research

The CLCAC did not directly engage anthropological consultants for claims in the RATSIB area over the Review period

As mentioned above, the CLCAC engaged external lawyers to conduct all the legal and anthropological work for native title claims in the RATSIB area. As a result, the CLCAC did not directly engage anthropological consultants. The external lawyers were responsible for engaging external anthropologists to complete the anthropological work required for claims and then passed the costs on to the CLCAC. During the Review period all anthropological work was conducted by the same anthropologist, who is highly respected and has significant experience in the Lower Gulf region. The anthropologist was well regarded by Traditional Owners who spoke with the Review, including those who expressed some dissatisfaction with their claims. They spoke highly of the anthropologist's character and the quality and integrity of their research.

Future Acts and ILUAs

The CLCAC attentively delivered Future Acts and ILUAs to clients as part of its native title function

During the Review period, the Administration and Project Support Officer, with support from the PLO and the PBC Capacity and Economic Development Officers, was responsible for receiving and processing notifications of all proposed Future Acts.

The CLCAC provided a brief overview of its Future Act services in each annual report. During the Review period the CLCAC received 30 FANs and secured three ILUAs, one of which resulted in the surrender of native title, as shown in Table 4. The latter was related to a challenge over a contested area that was successfully navigated by the CLCAC and its representatives. In the Gkuthaarn and Kukatj claim, Traditional Owners ultimately agreed to reduce the area over which native title would be recognised in exchange for a range of rights and benefits.

Table 3 | ILUAs in the CLCAC region[3]

ILUA name	ILUA type	Subject matter	Date registered
Gkuthaarn and Kukatj People Tenure Resolution ILUA	Area Agreement	Tenure resolution, extinguishment	2/07/2020
Carpentaria Shire Council Gkuthaarn and Kukatj ILUA	Area Agreement	Government, infrastructure	2/07/2020
Gkuthaarn and Kukatj People and Ergon Energy ILUA	Area Agreement	Energy, infrastructure	5/06/2020

[3] National Native Title Tribunal. Register of Indigenous Land Use Agreements. 2023. Accessed June 2023. http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx

The CLCAC staff reported that they did not engage in any Future Act or ILUA negotiations that were unsuccessful. As at 30 June 2022, there were three active ILUA negotiations.

There was some resentment from clients where previous benefits had been transferred to PBCs

Client satisfaction with Future Act negotiation services and ILUA negotiations was generally positive, though the Review heard from a small number of vocal Traditional Owners who were dissatisfied with outcomes or who felt they had missed out on benefits from the process.

The Review understands that this dissatisfaction was due in part to agreements with mining companies or pastoral lessees that had previously been held by small Aboriginal corporations which were then re-negotiated with PBCs following native title determinations. Consequently, royalties and payments which had previously been distributed to these Aboriginal corporations were transferred to the recently established PBCs. Further details on complaints relating to funding being transferred to PBCs are provided under TOR 3.

Number of claims resulting in a determination of native title or ILUA settlement as a proportion of total filed claims

During the Review period the CLCAC focussed on claims already in progress

As shown in Table 4 and mentioned above, during the Review period the CLCAC filed no new claims, secured two determinations and one ILUA settlement resulting in surrender of native title in return for non-native title benefits. These numbers reflect the post-determination context of the Carpentaria Gulf RATSIB area.

Table 4 | Number of claims resulting in determination of native title or ILUA settlement for the CLCAC[4]

Period	Total number of claims filed-	Number of ILUAs resulting in extinguishment of native title or settlement	Number of determinations of native title
From 1 July 2019 until 30 June 2022	0	1	2
From establishment of the CLCAC until 30 June 2022	48*	4	11

** This figure includes claims in neighbouring RATSIB areas that overlap into the CLCAC's RATSIB area, non-claimant applications and applications filed for strategic purposes such as securing the right to negotiate before research was completed to construct the final claim.*

Number of claim groups the NTRB-SP has acted for or assisted via brief out arrangements in a native title determination application during the Review period

As noted earlier, the CLCAC briefed out its legal work to external legal firms. During the Review period, the CLCAC assisted three claim groups via brief out arrangements – the Waanyi people, Gkuthaarn and Kukatj people, and the Kurtijar people.

[4] National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed June 2023. http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx

According to both CLCAC staff and external commentators, the lawyers and anthropologists that the CLCAC engaged were highly experienced in native title and the lower Gulf region.

Proportion of claimable land within the RATSIB area not subject to a registered claim or a determination

The estimated size of the Carpentaria Gulf RATSIB area is approximately 99,590 square kilometres. A total of 73,115 square kilometres (excluding sea country) has already been claimed or determined and a further 2,390 square kilometres is currently under active claim.[5] Therefore, the estimated percentage of the RATSIB area already claimed or determined is approximately 73 per cent.

Average time between filing an application for a determination of native title to the date a determination is made

The average time to determination was very close to the Federal Court's target

For the two applications determined within the Review period, the average time in years between filing the claim and the determination being made was 5.38 years. This is reasonably close to the target of five years set by the Federal Court. The Gkuthaarn and Kukatj claim was active for 7.84 years, while the Waanyi People #2 claim was active for 2.93 years. As of 30 June 2022, the Kurtijar claim had been active for seven years. The claim was determined in July 2022, 7.11 years after it was filed and following a contested hearing after which the Federal Court reserved judgement for 18 months.

Number of common law native title holders/registered native title bodies corporate (RNTBC) the NTRB-SP has acted for in a native title compensation application proceeding

During the Review period, the CLCAC did not lodge any applications for native title compensation, preferring to take a cautious approach and assess the progress of claims made in other NTRB-SPs regions in Queensland. This is discussed further under TOR 7.

5.1.2 TOR 1: External factors

This section presents an analysis of factors that impacted on performance that were beyond CLCAC's control.

State government policy and legislation

The Queensland Government's position supported consent determinations across the Review period

In consultations for the Review, the Queensland Government expressed a position that it would consider all options to resolve native title by agreement (either through a consent determination or otherwise) prior to resorting to litigation. Its formal position placed importance on prioritising consent determinations. Historically, the Queensland Government has had a less accommodating position. However, at the time of consultations, Queensland Government representatives were seeking a more collaborative relationship, as demonstrated by the launch of "Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders" in July 2019, a process that culminated in the signing of Queensland's "Path to Treaty Commitment" in August 2022. The consultations leading up to this collective pledge

[5] CLCAC Native Title Unit. Total area claimed or subject to claim in RATSIB Area. 2023.

demonstrated that there is a need for all parties to progress native title with greater willingness, not be as adversarial and reframe engagements appropriately.

It was noted that the Queensland Connection Reports Guidelines, on the Queensland Department of Resources website, is dated November 2016 and requires a refresh to better reflect the change in attitude and developments in the jurisdiction.

No impacts were noted due to changes to state legislation

State legislation has the potential to interfere with the ability of an NTRB-SP to deliver native title outcomes effectively and efficiently. However, the Review did not note any specific impacts on the performance of the CLCAC.

Complexity of remaining claims

The complexity of remaining claims will have a significant impact on the CLCAC's ability to achieve native title outcomes

The complexity of claims determined to date has not had a significant impact on the CLCAC's ability to achieve native title outcomes. The CLCAC has historically prioritised more straight-forward claims. While some of these claims have been subject to opposition from pastoralists, the level of opposition has not been any greater than that faced by other NTRB-SPs. While approximately 73 per cent of the land in the CLCAC's RATSIB area is subject to a native title claim or determination, the remaining claims are expected to be significantly more complex.

CLCAC staff reported to the Review that native title groups are planning to lodge native title claims with the CLCAC over much of the remaining land in the RATSIB area. However, due to a range of factors, further claim work may take a significant amount of time.

History of previous claims

The CLCAC has historically prioritised relatively straightforward claims

Previous claims in the region did not impact the CLCAC's ability to achieve native title outcomes for clients. The CLCAC stopped servicing Central West Queensland after a shift in its RATSIB boundary in 2008. This change facilitated a more targeted, place-based approach to community engagement and native title claim progression in the Carpentaria Gulf region, allowing the CLCAC to prioritise relatively straightforward claims.

Complexity of land use and tenure

Complexity of land use and tenure did not significantly influence the CLCAC's capacity to achieve native title outcomes

The CLCAC's RATSIB area largely consists of pastoral land. It only contains one major resource operation, the New Century Mine. This meant there was relatively little opposition to native title claims, although there were two claims in the RATSIB area that faced opposition from pastoralists. One native title claim was actively opposed by pastoralists, resulting in a contested hearing in which the claimants prevailed and secured native title. The second claim involved negotiation of a settlement which resulted in the surrender of native title, in exchange for a range of benefits, over a portion of the claim that covered a pastoral company's leasehold. Overall, the complexity of land use and tenure has had a minor impact on the CLCAC's ability to achieve native title outcomes, especially compared with other RATSIB areas.

COVID-19

COVID-19 created disruptions and pressures for the CLCAC and its stakeholders while also prompting changes to ways of working

The CLCAC, like many other organisations, was forced to transition into new ways of working because of the COVID-19 pandemic and subsequent government requirements, some of which closed remote communities for long periods. The CLCAC proactively implemented a range of measures to mitigate the risks to staff, clients and community. These included:

- Creating a COVID-19 Pandemic Emergency Response plan to achieve a response proportionate to the risk for the different CLCAC locations and population groups.
- Investing in cleaning and sanitisation products and new sanitisation regimes.
- Working from home measures for CLCAC staff.
- Limiting face-to-face and site visits.

A majority of CLCAC staff agreed that the CLCAC successfully adapted to new ways of working in response to COVID-19. For example, COVID-19 outbreaks and associated restrictions meant that native title determination events such as the consent determination of Gkuthaarn and Kukatj were held through videoconference. Also, some staff reported that during this time they began using software such as Microsoft Teams to communicate with project officers regularly. Annual reports noted that the CLCAC region and communities remained free of COVID-19 for the first two years of the Review period.[6]

Nonetheless, COVID-19 caused significant disruption. CLCAC staff explained that due to the remoteness of the RATSIB area there were connectivity issues when trying to communicate with clients and potential clients. Moreover, low levels of digital literacy among some Traditional Owners meant that some meetings did not have as many people as there would have otherwise been. The CLCAC's annual reports stated that many face-to-face meetings were postponed or cancelled. For example, planned consultations with PBCs and native title holders to implement the CLCAC's Transition Plan for PBC support were delayed.

Staff training was also impacted. Where possible, training was delivered through alternative means such as video conferencing. In some cases, training was postponed and some staff commented that training was slow during the Review period. The FY2021-22 Annual Report noted that the Corporate Services Unit, which supported all administrative functions of the CLCAC, was short staffed due to illness and quarantine requirements, impacting the CLCAC's ability to achieve native title outcomes.[7] The subsequent lifting of COVID-19 restrictions has allowed completion of many activities and meetings that had been delayed.

Amount of funding

Total funding received was above average compared to other NTRB-SPs relative to size

Excluding PBC support and carry-forward funding, the CLCAC received approximately $7 million from the NIAA over the Review period. Funding relative to the size of the RATSIB area and number of claim groups represented during the Review period is presented in Table 5.

[6] CLCAC. Annual Reports 2019-20 to 2020-21.
[7] CLCAC. Annual Report 2021-2022.

Table 5 | Total funding relative to factors of interest

Factor of interest (denominator)	Ratio
CLCACs total land and land waters area: 99,590 square kilometres	$70.28 per square kilometre
Number of claim groups represented over the Review period: 3	$2.3 million per claim group

Compared to other NTRB-SPs, the CLCAC received a relatively high level of funding given the size of its RATSIB area and the number of claim groups it represented over the Review period. CLCAC staff reported that due to funding limitations, the organisation was unable to allocate resources to all identified priorities during the Review period.

5.2 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.

Summary

The CLCAC's Assistance Guidelines state that assessment decisions are made by the CLCAC's CEO or their delegate. However, during the Review period, the CLCAC Board assessed and prioritised applications for assistance. The Board did so appropriately, using a robust set of criteria detailed in the Assistance Guidelines. Ease of achieving a determination was the key criteria in decisions made during the Review period.

Decisions were made strategically, with claim groups sometimes agreeing to concessions such as reduction of claim area size or accepting ILUAs to avoid lengthy or difficult litigation with large corporate businesses. The CLCAC and external lawyers provided appropriate strategic input into these decisions.

While the prioritisation criteria were appropriate, the Assistance Guidelines document did not accurately reflect what occurred in practice, including the Board's involvement in decision making.

Clients and potential clients were generally aware of how they could seek assistance from the CLCAC. Traditional Owners consulted by the Review largely expressed satisfaction with the assessment and prioritisation process.

5.2.1 TOR 2: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Equity, transparency and robustness of assessment and prioritisation process

The CLCAC had a policy document to guide its assessment and prioritisation decisions during the Review period

The CLCAC's Assistance Guidelines used during the Review period is a written policy governing its assessment of applications for assistance. The Assistance Guidelines are included in a document that outlines the CLCAC's:

- roles and responsibilities under the NTA,
- claims assessment policy and process
- conflict resolution process
- procedures for ensuring confidentiality and avoiding conflicts of interest.

The Assistance Guidelines also cover processes for internal reviews and complaints, which are described in greater detail under TOR 3.

Section 3.4 of the Assistance Guidelines states that assessment decisions are made by the CLCAC's CEO or their delegate. Following the assessment, a minute of decision is to be prepared, summarising the claim and criteria the CLCAC considered when making their decision.

General assessment criteria in the Assistance Guidelines were robust and included:

- Compatibility of the native title matter with the CLCAC's Operational Plan.
- Potential success of the claim, incorporating extent of evidence behind the claim and known legal impediments.
- Coherence, that is the application represents the wishes of the relevant native title group as a whole.
- Existence of overlapping claims.
- Cost and benefit.
- Current state of preparation of the native title matter.
- Timing, including time frames associated with impending legislative change, statutory periods of limitation, court orders or aging witnesses.
- External resources, including funding from other parties.
- Other considerations, such as intra-Indigenous issues.

In practice, the CLCAC Board had a large role in prioritising claims, though this was not reflected in the Assistance Guidelines

CLCAC staff were familiar with the assessment process and reported that prioritisation decisions were endorsed by the CLCAC Board of Directors, informed by advice from the PLO. Staff reported that in the past, the CLCAC had prioritised claims based on ease of achieving determination.

Staff reported that the CLCAC Board was often quite strategic in its approach to claims, agreeing to concessions such as reduction of claim area size or accepting ILUAs to avoid lengthy or difficult litigation with large corporate businesses.

However, the Board's role in the assessment and prioritisation process is not referenced in the CLCAC's Assistance Guidelines. The Board is only mentioned once in the Assistance Guidelines, in relation to the need for a Director to take leave of a meeting if they had a conflict of interest. There is an opportunity for the CLCAC to update the Assistance Guidelines to better reflect current practice.

Prioritisation criteria ensured equitable and defensible decision making

The Review considered the CLCAC's Assistance Guidelines against the criteria developed by the Review for equitable resourcing and defensible decisions. The criteria were established prior to commencement of the Review and are based on the identification of good practice throughout the previous NTRB-SP Review (2017-2019). The criteria are set out in the Review's methodology and are shown in Table 6 alongside the relevant corresponding extract from the CLCAC's Assistance Guidelines document. All criteria were adequately addressed by the CLCAC.

Table 6 | CLCAC prioritisation policies

Prioritisation policy criteria	Relevant CLCAC Assistance Guidelines extract
Considerations such as Federal Court-imposed timelines and the service of section 29 notices that require the lodgements of claims within four months are expected to be built into the relevant prioritisation policies.	*Assessment of the merits of the application, 3.4.2 (g)* "Timeframes that may be imposed or arise from impending legislative change, statutory periods of limitation, court orders or the need to gather vital evidence from ageing witnesses may be taken into account, although none of them are determinative."
Clear description of the specific decision-makers for assessment and prioritisation decisions (for	*Assessment of the merits of the application, 3.4.1* "An application for assistance must be assessed by the CLCAC's CEO or delegated to an officer of CLCAC or external consultant

Prioritisation policy criteria	Relevant CLCAC Assistance Guidelines extract
example, Board, Board sub-committee, CEO and/or Executive).	who has no conflict of interest in relation to the relevant assistance.”
Clear description of processes and decision-makers for the conduct of internal reviews of prioritisation decisions (when requested).	*Internal review of CLCAC decision, 5.1.4* “The review will be conducted by an independent external legal practitioner…[who] will remit the Minute of Decision to CLCAC with recommendations to ensure that the Minute of Decision is remade in accordance with the proper application of these Guidelines. Any subsequent decision by the CLCAC will be final.”
Clear description of the circumstances in which matters may be briefed out prior to decision-making.	*Briefing out work, 7.4* “CLCAC may decide to allocate the matter to a private legal representative where: a. CLCAC does not have sufficient in-house resources to undertake the work required; b. CLCAC has a conflict of interest in relation to the work; or c. CLCAC considers it to be appropriate for any other reason in the circumstances… CLCAC may decide to allocate the matter to an external researcher where: a. CLCAC does not have sufficient in-house resources to undertake the work required; or b. CLCAC considers it to be appropriate for any other reason in the circumstances.”

Client and potential client awareness of the process

There is a general understanding in the region of the CLCAC’s assessment and prioritisation process

The CLCAC did not publish its Assistance Guidelines online or summarise them in other publications such as its Annual Report. Although less than optimal, this did not appear to be an issue as the CLCAC operates in a small regional community and was well known in the region, with the community knowing how to contact its offices.

Among the Traditional Owners the Review spoke with, most had a general understanding of how the CLCAC handled applications for assistance. They reported that the CLCAC prioritised the most straight forward claims first. This strategic approach was widely accepted by Traditional Owners consulted by the Review.

Nonetheless, there is an opportunity for the CLCAC to develop a public facing policy to improve the transparency of its prioritisation decisions. The CLCAC advised that this will be possible once its website is restructured. The CLCAC has secured funding from NIAA to restructure its website, with an expected completion date of 30 June 2024.

Traditional Owner satisfaction with the assessment and prioritisation process and its outcome

The Review did not hear from any Traditional Owners who were dissatisfied with the assessment process

The Review did not hear from any Traditional Owners who were dissatisfied with the CLCAC's assessment and prioritisation process. Complaints raised were generally in relation to the strategy adopted once the claims were accepted for assistance, for example, in relation to claim composition or reducing claim size to avoid litigation. These issues are discussed further under TOR 1 and TOR 3.

5.2.2 TOR 2: External factors

This section presents an analysis of factors that impacted on performance that were beyond CLCAC's control.

Number of claims relative to NTRB-SP size and resourcing

The CLCAC maintained a small internal team and used additional litigation funding for claims

As detailed under TOR 4, CLCAC was well resourced for its size. The discussion under TOR 4 includes a detailed breakdown of the level of native title expenditure per claimant group during the Review period.

The Review believes that this external factor had little impact on the CLCAC's performance.

5.2.3 TOR 2: Recommendations

RECOMMENDATION 1

The CLCAC should review its assessment and prioritisation policy to ensure it is up to date and aligns with current practice, particularly in terms of the role the Board, rather than the CEO, plays as final decision maker for assessment decisions.

RECOMMENDATION 2

The CLCAC should make its assessment and prioritisation policy publicly available once its website has been restructured.

5.3 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.

Summary

The CLCAC engaged with clients and potential clients through a range of channels, including in-person meetings, social media posts and community noticeboards. While many of the CLCAC's native title staff were based in Cairns, the organisation maintained a strong regional presence through its ranger program and an office in Burketown.

The CLCAC leveraged multiple strategies to ensure it engaged with clients and potential clients respectfully and appropriately, including informal training opportunities with Traditional Owners and Board members, community engagement and targeted recruitment of staff with experience in remote areas and Aboriginal communities. The majority of the CLCAC's clients who engaged with the Review felt that the CLCAC engaged in a respectful and culturally appropriate manner.

The CLCAC employed a high profile local Traditional Owner related to the CLCAC CEO as a CSEO, to attend and facilitate meetings and negotiate challenging issues across the RATSIB area as well as ensuring appropriate cultural engagement. The presence and facilitation of the CSEO at meetings was intended to ensure that clients and potential clients clearly understood the information required to make informed decisions. While many Traditional Owners consulted by the Review, including the Board Chair and Directors were very positive about the intent and effectiveness of the CSEO, there was a small and vocal group of Traditional Owners who very strongly held negative views about the CSEO's role. The Review found that the CSEO played an important role in facilitating respectful and transparent engagement between CLCAC staff and the Carpentaria Gulf community.

Traditional Owners in the CLCAC's RATSIB area had many opportunities to engage in decision-making processes through attendance at formal and informal meetings. There was significant communication from the CLCAC around meetings, including physical notices and posts on social media. Some Traditional Owners from outside Burketown told the Review they were unaware of certain meetings or did not feel welcome or supported to attend these meetings. The CLCAC has advised that all members of the relevant PBCs and Traditional Owner groups were provided with sufficient notice and details of travel support.

During the Review period, the CLCAC did not receive any formal complaints regarding native title matters. There were no requests for internal review. Several informal complaints were received, mostly from the same small group of people and often relating to PBC issues that were not in the remit of the CLCAC. It was apparent to the Review that many complainants were unclear about the role of the CLCAC and at times held it responsible for the activities of PBCs in the region.

Following a recommendation in the previous Review that CLCAC should publish its internal review and complaints policy, the CLCAC advised that this is dependent on its website restructure, for which funding has been secured from NIAA, with an expected completion date of 30 June 2024. Publication of the policy on the CLCAC's website will assist in making constituents aware of how to make a complaint or request an internal review.

5.3.1 TOR 3: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Respectful and transparent engagement

The CLCAC had several processes in place to support decision making and ensure transparent engagement with community

All CLCAC staff consulted by the Review recognised the importance of respectful and transparent engagement with clients and potential clients. Staff noted to the Review that they believed that the cohesion and trust the CLCAC had built with the community saved them time and money that would have been spent handling complaints and mediating conflict. The Review observed that CLCAC staff made efforts to ensure meeting participants understood the matters at hand and regularly paused to ask participants if they had further questions. CLCAC staff also provided ample opportunities for participants to provide input.

The CLCAC had several mechanisms in place to ensure its members and community had input into the organisation's decision making, noted in its Annual Reports.[8] Examples included:

- Applicant and claim group meetings, which provided an opportunity for stakeholders to provide input on the native title claims process for their community and communicate information on the matters related to progress of native title applications (such as recent court decisions and the legal context for native title). Meetings were advertised on the CLCAC's social media platforms, posted to members of the community and pinned on community notice boards.
- PBC meetings, which provided an opportunity for native title holders to provide input on the support provided by the CLCAC to the PBC and discuss matters related to their native title interests.
- The Representative Board, which provided a forum for the views of the community to be heard through language group representation (discussed further under TOR 5). The Board of Directors also held five meetings in FY2021-22, at which the CLCAC provided administrative support and advice to make informed decisions in the interests of the nine constituent language groups.
- Communication channels, which included regular updates via the CLCAC's social media pages and website related to activities being undertaken by the CLCAC (such as meeting notices and Rangers' activities), and quarterly newsletters (available online and in hard copy) that provided updates on both the CLCAC's broader activities and native title matters.[9]

These mechanisms provided stakeholders an opportunity to engage in decision-making processes, increase their understanding and trust in these processes, and ensure that client engagement was transparent. When appropriate, CLCAC also ensured that meeting outcomes and minutes were recorded and, when appropriate (not subject to solicitor-client privilege), made available at the next meeting.

The CLCAC's CSEO supported the CLCAC in its engagement with Traditional Owners

The CLCAC employed a CSEO to attend and, at times, facilitate meetings and negotiate contentious matters to ensure that Traditional Owners understood matters at hand and help them make informed decisions. The Review observed the CSEO facilitate the CLCAC's Board meeting and annual general meeting (AGM), supporting participants to understand presentations by CLCAC staff and other presenters, and guiding community members to ask clarifying questions.

There were polarised views among Traditional Owners about the CSEO's role and approach. Many Traditional Owners consulted by the Review, including the Board Chair and Directors and some PBC Chairs, relayed positive feedback about the CSEO's role and the positive impact he had on the CLCAC's engagement with Traditional Owners and cultural knowledge. The Review also found that the CSEO played

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[8] CLCAC. Annual Report 2021-22.
[9] CLCAC. Annual report 2021-22.

an important role in facilitating respectful and transparent engagement between CLCAC staff and the Carpentaria Gulf community.

However, a small number of Traditional Owners consulted by the Review expressed concerns about the CSEO and suggested, in their opinion, that he may have undue influence over the decisions made by the CLCAC.

This situation is further complicated by the CSEO's close relationship with the CEO of CLCAC, although the concerns raised against the CSEO did not suggest this relationship influenced the CSEO's activities in that role. In many cases, the Review noted that relevant concerns related to the conduct of PBCs rather than the CLCAC or the CSEO.

The Review acknowledges that the polarised views on the CSEO have, by extension, impacted the perception of the CLCAC among some Traditional Owners. Further discussion on the perception of the CSEO's role is provided under TOR 5.

Traditional Owners were mostly satisfied with engagement by the CLCAC, although some felt they had fewer opportunities to participate in decision making than others

Traditional Owners broadly reported that the CLCAC engaged with them in a respectful and transparent manner. However, some Traditional Owners consulted for the Review raised concerns that the CLCAC did not "collectively consult" people from Doomadgee, Normanton and Mornington Island. They suggested that Burketown people had greater input into the decision-making process.

A small number of Traditional Owners suggested that the CLCAC intentionally ignored the views of clients and potential clients in Doomadgee, Normanton and Mornington Island. They suggested that the CSEO had a significant role in causing the perceived preferential treatment of Burketown, since the CSEO lived in Burketown and worked out of the Burketown office. The Review found no evidence to support either of these suggestions. Nevertheless, dissatisfaction with the CLCAC was most significant in Doomadgee.

The CLCAC advised that major meetings (such as AGMs) were typically held in Burketown because of its central location and because it is the location of a CLCAC office with support staff able to assist with meeting logistics. Unlike other towns, Burketown had a community hall large enough to host large meetings with community members from across the region.

However, travel was sometimes challenging for Traditional Owners from other parts of the RATSIB area. Some Traditional Owners felt they were not adequately supported to travel to meetings. For native title claim and authorisation meetings, the CLCAC typically provided travel support through fuel reimbursement, commercial flights or charter flights if required. Details regarding travel support were included on meeting notices and advertised on community noticeboards and online.

The Review accepts that there was justification for big meetings to be held in Burketown. However, the Review believes there is also an opportunity for the CLCAC to improve its positive outreach into other communities in the RATSIB area. The Review understands that given there are housing constraints and workforce limitations in the remote areas of the Gulf, it would be reasonable that the CLCAC increase its visibility, presence and support through frequent visits, rather than establishing a permanent presence.

CLCAC staff reported that for future general meetings CLCAC would like to send staff to Mornington Island, Doomadgee and Normanton to set up a video link so that community members could participate in meetings remotely. Staff advised that due to a lack of infrastructure in the region, this would only be possible with investment in mobile satellite solutions, which is currently outside the CLCAC's budget.

There is an opportunity for the CLCAC to clarify its role in supporting community members

Several community members engaged by the Review raised concerns about the level of support being offered by the CLCAC. For example, several Traditional Owners suggested that the CLCAC should be supporting Gangalidda Traditional Owners to establish a settlement at the site of the Old Doomadgee mission, on land held under native title. However, several of the suggestions made by Traditional Owners referred to types of support outside the remit of the CLCAC's role as an NTSP, such as funding the construction of new infrastructure. This suggests that the expectations of some community members do not align with the support that the CLCAC can actually provide, and it would be sensible for the CLCAC to clarify what it can and cannot fund or support.

Culturally appropriate engagement

The CLCAC continued to support culturally appropriate engagement, resulting in strong relationships with communities

While the CLCAC did not deliver formal cultural awareness training, the CLCAC's approach to service delivery was underpinned by cultural awareness, community connection and on-the-ground engagement. The organisation took steps to ensure that non-Indigenous staff understood the cultural operating environment. This approach focused on creating opportunities for staff to meet Traditional Owners, travel across the Gulf of Carpentaria region and develop a first-hand understanding of the region and its context. These steps included:

- **Leveraging in-house knowledge.** The CLCAC did not deliver a formal training program during the Review period. However, the Chair of the Board and the CSEO travelled to the Cairns office to deliver a presentation on the history and culture of the peoples in the CLCAC RATSIB area. Staff commented this was highly effective and the CLCAC was taking steps to produce a video recording of this presentation.
- **Engagement with Board members.** Staff also reported the Board was valuable in providing guidance around cultural protocols when working with specific communities.
- **Community engagement.** Direct community engagement is important to support culturally appropriate engagement. The CLCAC was seen as a grassroots organisation with deep connection and regular engagement with the community through its offices, its CSEO and its localised teams of rangers. Additionally, corporate staff were provided opportunities to attend meetings and meet Traditional Owners in their community. Traditional Owners did not raise concerns about the fact that most staff members are based in Cairns.
- **Recruitment.** The CLCAC made efforts to attract Aboriginal and Torres Strait Islander staff to its native title function by encouraging First Nations people to apply for advertised jobs and encouraging rangers to seek career paths within the CLCAC. Despite this, the CLCAC only employed one First Nations staff member in its native title function during the Review period. The CLCAC also aimed to hire people with direct experience working in remote areas and with First Nations communities.
- **Performance reviews.** Employees participated in annual performance development reviews that touched on professional development, general conduct and behaviours such as whether the employee had cultural awareness and understanding. These reviews provided employees and the CLCAC with regular feedback opportunities to improve employee professional development.
- **Courses and conferences.** As highlighted in the FY2021-22 Annual Report, Corporate Services staff attended the following training during the reporting period: AIATSIS Native Title Summit, National Indigenous Economic Development Forum and First Aid in Remote Situations.

While some Traditional Owners were critical of elements of the CLCAC's engagement as mentioned above, most reported that the CLCAC staff engaged with community members in a culturally appropriate manner.

Complaints

The CLCAC had a complaints management policy

The CLCAC had a complaints management policy, which was set out in Chapter 28 of the CLCAC Policy and Procedures Manual. The policy distinguished between formal complaints against Board Directors and formal complaints against employees. It set out a clear procedure to guide how complaints should be made and handled.[10] The procedure reflected a fair and transparent decision-making process, which included but was not limited to hearing complaints in full, the provision of reasons for decision-making and general timeliness.

All formal complaints were required to be made in writing and signed by the complainant. Complaints or grievances were, wherever possible, resolved to the satisfaction of all parties within a 30-day timeframe from the date of receipt of the complaint.

The CLCAC's process for dealing with formal complaints is summarised in Table 7.

Table 7 | CLCAC formal complaints handling procedure

Complaints against Board Directors	Complaints against staff members
• Mediation session between complainant and individual Director. If an agreement was reached, an outline of this agreement was prepared and provided to the complainant. • If an agreed outcome could not be reached through mediation, a report was supplied to both parties and the complaint formed an agenda item at the next meeting of the Board of Directors. • The complainant was advised in writing if the matter was to be referred to the Board of Directors Meeting and later advised of the decision reached and reasons for this decision.	• Mediation session between complainant and individual employee. If an agreement was reached, an outline of this agreement was prepared and provided to the complainant. • If an agreed outcome could not be reached through mediation, a report was supplied to both parties and a full investigation was prepared. • The CEO/delegate would conduct this investigation and could draw upon any relevant CLCAC files or documentation. This documentation would be supplied to the complainant unless there were risks (which were set out in detail in the CLCAC's policy). • A decision was then made by the CEO/delegate and a copy was provided, together with reasons, to both parties.

The CLCAC received no formal complaints and several informal complaints during the Review period. Informal complaints were dealt with through discussion with those involved.

Several complaints directed toward the CLCAC indicated a lack of clarity among Traditional Owners regarding the distinct responsibilities of the CLCAC and PBCs

The CLCAC received several informal complaints, with many coming from a small group of people. CLCAC staff noted that many of these complaints related to PBC issues, outside the remit of the CLCAC. Some Traditional Owners consulted for the Review directed frustration toward the CLCAC about investment decisions made by PBCs. Staff advised that the CLCAC tried to avoid getting involved if the complaint did not pertain to an issue within the CLCAC's remit.

[10] CLCAC. Policy and Procedure Manual. 2014.

Informed commentators explained that many of the complaints related to PBC investment decisions stemming from the history of Aboriginal Corporations in the RATSIB area. Prior to the registration of the current PBCs, community members were represented by Aboriginal Corporations in the region. Many of these Aboriginal Corporations held agreements with the New Century Mine through which they received royalty payments designed to be invested into the community. In some cases, when the PBCs formed, Directors from the previous Aboriginal Corporations were not elected to the new PBC Boards. This led to complaints from former Directors of Aboriginal Corporations who had previously held influence over the investment of royalty funds, who subsequently lost this influence when the new PBCs formed.

During the Review period one complainant published an on-line petition calling on the CLCAC to listen to and represent all native title holders in the region. Having accumulated 100 unverified online "signatures", with participation not restricted to Lower Gulf native title holders, the complainant called upon the National Native Title Tribunal to mediate discussions between the petitioner and the CLCAC. After consulting with the complainant, the CLCAC, ORIC and solicitors working in the region to understand the nature of the issue, the National Native Title Tribunal determined that it would dismiss the petition and not mediate discussions, effectively dismissing the complaint.

The CLCAC's complaints policy is not publicly available

In the previous Review of the CLCAC, it was recommended that the CLCAC make its internal review and complaints policy publicly available in online and hard copy format. Staff explained that these policies can only be publicised on the website once the website has been restructured. Staff reported that CLCAC has secured funding from NIAA for the website to be restructured in FY2023-24 and expect that these policies will be publicised on the website by 30 June 2024.

Internal review

There were no requests for internal review over the Review period

The CLCAC had no internal review requests over the Review period.

The CLCAC is responsible for providing and publicising a process for native title holders to request an internal review of decision-making undertaken by the CLCAC as a representative body under the NTA.[11] The CLCAC partially fulfilled this obligation as outlined in its Assistance Guidelines document. This document outlined the process that would be followed during an internal review of a CLCAC decision. Further, it stated that internal reviews were to be conducted by independent, external legal practitioners. However, this information was not publicly available.

Use of cultural materials

No stakeholders identified issues with the CLCAC's approach to its use of cultural materials

For all claim groups except the Waanyi people, the CLCAC maintained custody of the cultural materials used for native title claims. The materials were made accessible to lawyers and anthropologists working on each claim as required, with the approval of Traditional Owners. The Waanyi Native Title Aboriginal Corporation held the cultural materials used for claims relating to the Waanyi people. The Review received no evidence to suggest that cultural materials had been used inappropriately. Further detail on the return of cultural materials is available under TOR 6.

[11] Section 203BI of the NTA.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

5.3.3 TOR 3: Recommendations

RECOMMENDATION 3

The CLCAC should extend its visibility, regular in-person presence and support across other settlements in its region, especially Doomadgee, Normanton and Mornington Island, to better understand their native title needs and improve communication.

RECOMMENDATION 4

To the extent that it is feasible in the light of poor-quality telecommunications infrastructure, continue to work towards making greater use of videoconferencing capacity so that members can attend key meetings remotely from Doomadgee, Mornington Island and Normanton.

RECOMMENDATION 5

The CLCAC should make efforts to provide Traditional Owners with greater clarity about its role, including what it is and is not funded to do in relation to native title in the Carpentaria Gulf community, to ensure community expectations are appropriate and reasonable.

RECOMMENDATION 6

The CLCAC should proceed with plans to make its Internal Review Policy and Complaints Policy publicly available once the website has been restructured.

5.4 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.

Summary

The CLCAC's expenditure varied significantly from year to year due to fluctuations in litigation spending while the impact of the COVID-19 pandemic resulted in significant underspends. The CLCAC successfully negotiated with NIAA to retain its underspends.

The highest expenditure for the CLCAC was external consultant fees, due to the CLCAC's approach of briefing out all legal and anthropological work to external consultants. Project staff salaries were the second highest expenditure item.

The CLCAC employed a range of cost-saving actions during the Review period. It made concerted efforts to reduce costs in its general operations, including leveraging informal training, using its extensive ranger network to support activities where possible and negotiating with proponents to fund travel and meeting costs where appropriate. Claim group meeting processes were streamlined so that related meetings could be held on the same or next day to make best use of time for staff and claimants.

The CLCAC had appropriate processes in place for claim group meetings. It provided travel support, including fuel reimbursement and charter flights when roads were inaccessible. Some Traditional Owners consulted by the Review were unaware that travel support was available, despite CLCAC meeting notices including details of available travel support.

The remoteness of the Carpentaria Gulf region impacted the cost-effectiveness of the CLCAC. Some of the claim groups in the region were also relatively large, which impacted the efficiency with which the CLCAC was able to deliver services and the cost of supporting claimants to attend meetings.

5.4.1 TOR 4: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Expenditure on salaries (legal, anthropological, Board, CEO, human resources (HR), etc.), operations (travel, legal, offices, etc.) or other relevant items

NIAA base funding for the CLCAC was consistent over the Review period

The CLCAC received consistent levels of base funding and PBC support funding from the NIAA between FY2019-20 and FY2021-22 as shown in Table 8. A significant proportion of each year's income came from budget rollovers or advance payments for litigation to occur in future years.

Table 8 | Overview of the CLCAC's native title funding over the Review period[12]

Financial year	Base agreement	PBC support	Mid-year funding variation	Pre-paid demand driven funding	Total (ex GST)
Source	**NIAA**	**NIAA**	**NIAA**	**NIAA**	**Combined**
2019-20	$2.0 million	$216,000	$164,000	-	$2.4 million

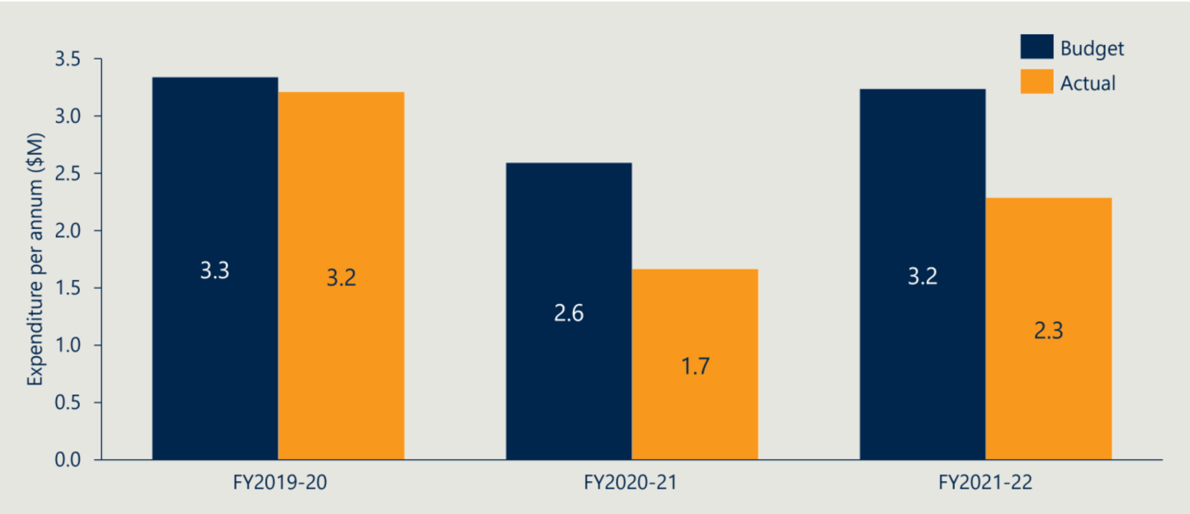
[12] Funding amounts provided by NIAA.

Financial year	Base agreement	PBC support	Mid-year funding variation	Pre-paid demand driven funding	Total (ex GST)
2020-21	$2.0 million	$216,000	$255,000	$560,000	$3.0 million
2021-22	$2.0 million	$216,000	-	-	$2.2 million

Annual expenditure for the CLCAC varied considerably from year to year

Total CLCAC expenditure (excluding GST) in FY2019-20 was approximately $3.2 million but dropped almost 50 per cent in FY2020-21 to $1.7 million. It then increased again to $2.3 million in FY2021-22. This was in part due to large sums attributable to litigation for claims in FY2019-20 and FY2021-22. As shown in Figure 1, expenditure was under budget for each year of the Review period. CLCAC staff reported that the COVID-19 pandemic resulted in significant underspends throughout the Review period leading to the observed difference between the CLCAC's budget and expenditure.

Figure 1 | CLCAC expenditure, FY2019-20 to FY2021-22[13]

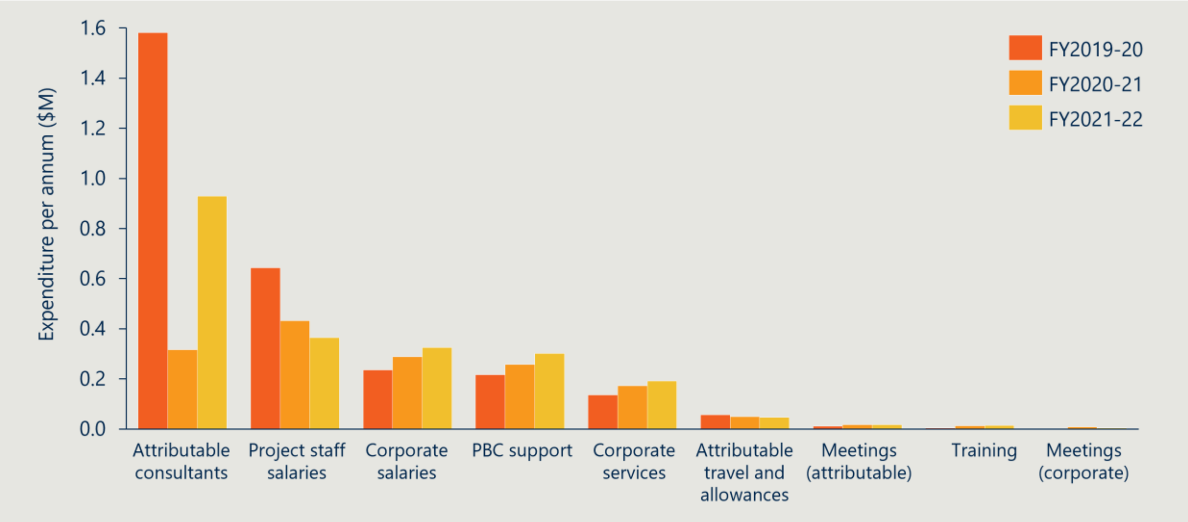


The highest expenditure item for the CLCAC was external consultants

As shown in Figure 2, the relative breakdown of key line items fluctuated across the period, in some instances due to the limiting effects of COVID-19 on certain travel and research engagements, and in other instances due to the progress of litigated claims through the native title system. External consultants consistently made up the greatest cost.

[13] CLCAC Operational Plan and Budget Reports for FY2019-20, FY2020-21 and FY2021-22.

Figure 2 | Select CLCAC expenditure, FY2019-20 to FY2021-22[14]



Cost-saving actions, strategies and/or discussions

The CLCAC made strong investments in some parts of its business to reduce costs in others

In addition to more traditional cost-saving measures, the CLCAC also initiated some more strategic ways of investments to make cost-savings in the long run.

Cost saving strategies included:

- Leveraging the ranger program for native title related activities, such as meeting support and skills development for future governance roles on PBC or CLCAC Boards.
- Fewer formal training programs – rather than generic training programs, CLCAC prefers to invest in more targeted training and leverages informal peer mentoring and on-the-job training, which is appropriate to its size.
- Negotiating with the NIAA to retain underspends due to COVID-19 to allow it to bolster its native title functions.

Appropriate processes for claim group meetings

The CLCAC used a number of strategies to ensure cost effective claim group meetings

Staff reported a number of strategies which the CLCAC employed to ensure the effectiveness and efficiency of claim group meetings. These included leveraging the CLCAC's ranger network in the region to support the arrangement and setup of claim group meetings, as noted above. Other strategies included:

- Holding related meetings on the same or next day to make best use of time for staff, Directors or attendees already present, for example, where CLCAC Directors held dual roles as PBC Directors.
- Using all opportunities available to save on travel costs, such as regularly requesting proponents to fund meetings and travel where possible so that the proponent paid for the travel costs of lawyers and Directors.

[14] CLCAC Operational Plan and Budget Reports for FY2019-20, FY2020-21 and FY2021-22.

Annual yearly expenditure per claimant group

Operational funding reports which showed the exact expenditure for each claimant group were not available to the Review for every financial year. The Review has divided the total attributable expenditure by the number of claimant groups served by the CLCAC to obtain an approximate average per annum figure as shown in Table 9. The mean expenditure varied significantly from year to year, in part due to litigated claims which absorbed significant financial resourcing during particular periods.

Table 9 | Average expenditure per claimant group[15]

Financial year	Total attributable expenditure (excluding PBC related)	Number of claimant groups	Mean expenditure per claimant group
2019-20	$2.3 million	3	$768,000
2020-21	$828,000	3	$276,000
2021-22	$1.4 million	2	$700,000

Travel assistance policies for claim group meetings

The CLCAC had travel assistance policies and procedures in place for claim group meetings

Section 24.8 of the CLCAC Policy and Procedure Manual addressed the CLCAC's policies for meetings – including claim group meetings – with Traditional Owners. This included broad guidelines around the circumstances in which Traditional Owners would be reimbursed, how to provide reimbursement and who had the authority to approve resourcing. Section 24.4 to 24.7 of the CLCAC Policy and Procedure Manual also covered staff travel policies, including for work purposes such as Traditional Owner meetings. This manual was for internal staff reference only.

Senior staff advised the Review that in practice, for native title claim or authorisation meetings, the CLCAC would usually provide travel support by way of fuel reimbursement, commercial flights or charter flights (where commercial flights were unavailable, distance was an issue, or inclement weather caused road closures). Details of available travel support, along with contact details for the CLCAC staff member responsible were included on the meeting notice. The notices were sent to all relevant Traditional Owners and, where appropriate, physical copies were posted on community noticeboards or advertised in the regional paper. Staff emphasised that newspaper notices were always run for authorisation meetings.

Appropriate rationale for use of external consultants

The CLCAC's use of external consultants was appropriate for its operational model

In practice, as already noted, the CLCAC contracted out all its legal and anthropological work to external consultants, which was an appropriate alternative to employing permanent staff, due to the organisation's small size. Whilst this was a unique approach among NTRB-SPs, it also had the benefit of enabling the CLCAC to remain independent from claim disputes and any perceived staff conflicts of interest. The Review heard that the contracted lawyers and anthropologists had extensive experience in native title and were held in high regard by the claimant groups they worked with.

[15] CLCAC Operational Plan and Budget Reports for FY2019-20, FY2020-21 and FY2021-22.

Section 7.4 of the CLCAC's Assistance Guidelines document describes circumstances in which the CLCAC may decide to brief out work. Additionally, sections 24.2 and 24.3 in the CLCAC's Policy and Procedure Manual provided guidelines on the process of procuring external consultant work.

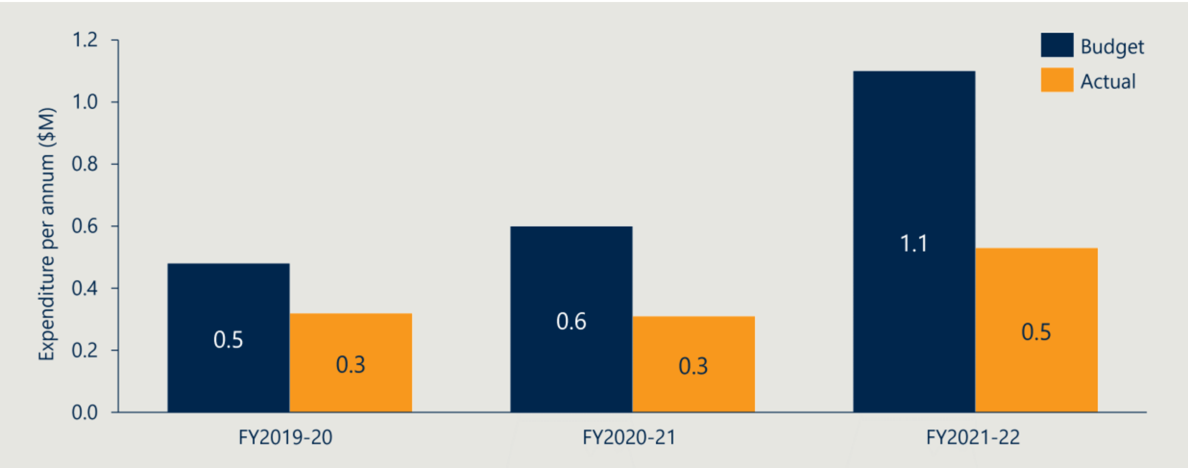
As shown in Table 10, total attributable fees for consultants during the Review period was almost twice total staff costs.

Table 10 | Attributable costs by type, FY2019-20 to FY2021-22

Financial year	Staff costs	Consultant costs (excluding litigation)	Consultant costs (litigated claims)	Consultant costs (total)
2019-20	$644,000	$318,000	$1.3 million	$1.6 million
2020-21	$432,000	$310,000	$7,000	$316,000
2021-22	$365,000	$535,000	$394,000	$928,000
Total	**$1.4 million**	**$1.2 million**	**$1.7 million**	**$2.8 million**

Figure 3 shows how projected consultant expenditure attributable to native title work excluding litigation was stable at about $500,000 to $600,000 per financial year. The seemingly larger amounts budgeted for FY2021-22 were due to advance payments for work to be completed in future financial years.

Figure 3 | CLCAC attributable consultant expenditure, excluding litigation [16]



As already noted, actual expenditure varied significantly from budgeted amounts, due to litigation costs as well as the travel disruptions caused by public health measures in response to the COVID-19 pandemic.

5.4.2 TOR 4: External factors

This section presents an analysis of factors that impacted on performance that were beyond CLCAC's control.

[16] CLCAC Operational Plan and Budget Reports for FY2019-20, FY2020-21 and FY2021-22.

Size of RATSIB area

The CLCAC's RATSIB area is small in size

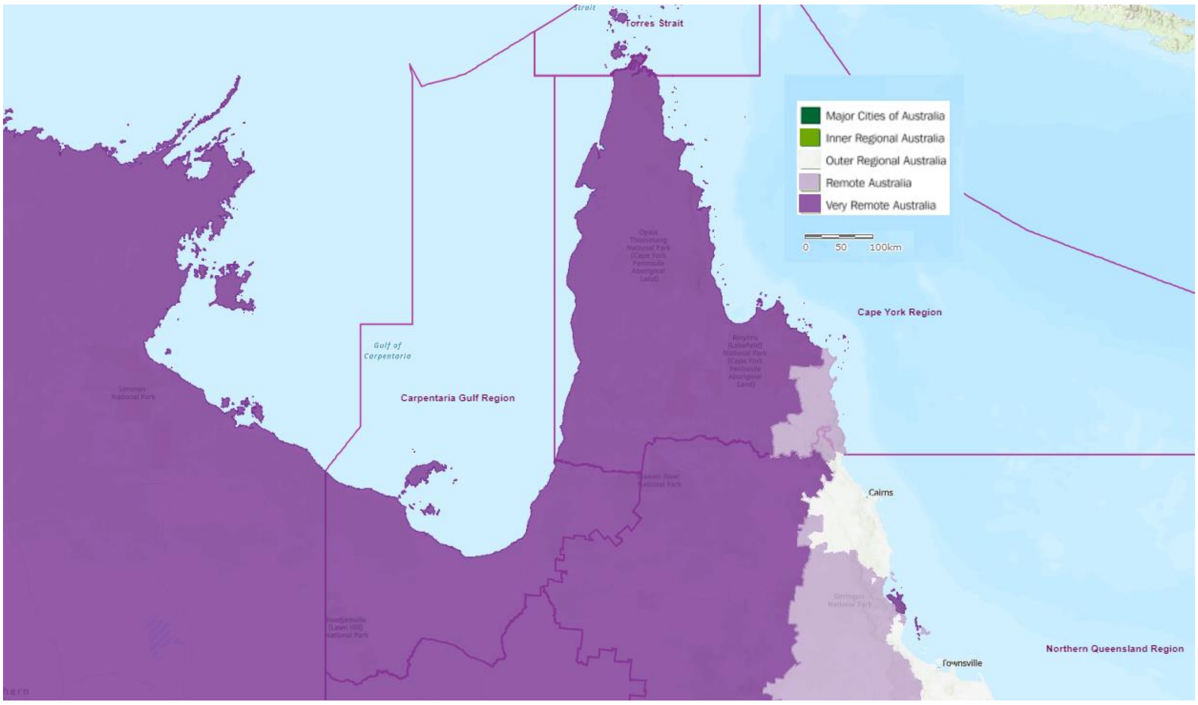
The CLCAC RATSIB land area covers just under 100,000 square kilometres,[17] which accounts for about 5.8 per cent of the land area of Queensland. This is the smallest among all NTRB-SPs. The Review did not encounter any evidence that the CLCAC's area had any negative impact on its ability to achieve native title outcomes.

Remoteness of RATSIB area

The remoteness had a significant impact on organisational cost-effectiveness

Under the Australian Bureau of Statistics remoteness classifications (ASGS 2016), the whole CLCAC RATSIB area was classified as very remote, as shown in Figure 4.

Figure 4 | Remoteness of CLCAC RATSIB area[18]



Remoteness impacts the cost-efficiency of an NTRB-SP's operations, as some costs are higher in remote areas than in regional or metropolitan areas, including:

- Claim meeting costs because of high claimant travel expenses, high accommodation costs and the inflated price of food and other incidentals in remote areas.
- Field costs for staff travel in remote areas.
- Vehicle maintenance costs and items such as Global Positioning System (GPS) or satellite phones for ensuring staff safety.
- Training costs, such as regular refresher courses on first aid for staff working in remote areas.

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[17] Native Title Vision. Queensland RATSIB areas. 2023. Accessed November 2023. https://nntt.maps.arcgis.com/apps/webappviewer/index.html?id=26957a5001854ce1a69e667872692460
[18] Native Title Vision. Queensland RATSIB areas with ARIA16 remoteness levels. 2023. Accessed November 2023. https://nntt.maps.arcgis.com/apps/webappviewer/index.html?id=26957a5001854ce1a69e667872692460

- Recruitment costs generated by difficulty in sourcing and retaining skilled candidates.

For this reason, the Review assesses that the remoteness of the region has had a significant impact on the ability of the CLCAC to achieve native title outcomes in a cost-effective manner.

Average number of people within a claim group

The size of claim groups may have had some impact on the CLCAC's ability to achieve outcomes

The number of members in each of the claim groups represented by CLCAC varied from 80 members in the smallest group to almost 550 in the largest group. Based on these figures, the CLCAC estimated that the average number of people within each claim group was about 285. While this was not as high as some other NTRB-SPs, this external factor nevertheless has had some impact on the ability of the CLCAC to achieve native title outcomes.

Interpreters

The CLCAC did not contract any interpreters during the Review period

Interpreters are neither required nor used in the Lower Gulf region due to the high level of English proficiency among community members. The use of interpreters had no impact on CLCAC during the Review period.

5.5 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.

Summary

The CLCAC had clearly defined roles for its Board, Chairperson, CEO and senior staff. The Board was broadly responsible for the strategic direction of the CLCAC, while the CEO's role was implementing the Board's vision and directing the day-to-day operations of the CLCAC. Senior staff roles were described in the CLCAC Policy and Procedure Manual, though this had not been updated to reflect more recent changes in responsibility.

The CLCAC had a representative Board with an equal number of Directors from the nine recognised language groups in the RATSIB area. Each language group also had an alternate Director who would attend meetings in the Director's absence. During the Review period, Directors came from across the RATSIB area, with Directors based in Burketown, Mornington Island, Normanton and Doomadgee. While there were term limits of two years for Board Directors, there was no limit on the number of times a Director could be reappointed. A number of Directors had served on the Board for multiple years and the Board Chair had not changed in 15 years. The Review notes that factors such as seniority, cultural knowledge and leadership experience are important considerations in the nomination and election of Board Directors and Chairpersons. At the same time, the opportunity for renewal is also a consideration. CLCAC staff reported the Board undergoes natural renewal, and explained that during the Review period, four new Directors were elected to the Board. While ORIC's Model Rulebook for Indigenous Corporations allows Directors to serve multiple terms and be re-elected, the Board might consider proposing term limits for Directors. This would support the natural renewal process.

The long tenure of many of the Board Directors provided consistency in the strategic direction of the organisation, maintained corporate knowledge and supported good team decision dynamics. However, the longevity of the Board also created issues with some Traditional Owners in the region. A small number of Traditional Owners told the Review that having only a single, longstanding representative for each language group meant certain families were consistently under-represented, particularly for groups outside Burketown. These Traditional Owners were also particularly critical of the role of the CSEO (see TOR 3), who had a close relationship to the CLCAC CEO and was perceived by these Traditional Owners to have undue influence over the Board.

The Review did not witness any evidence of inappropriate use of powers by the CSEO or any Board member. However, the nature of these concerns and the intensity with which they were raised, suggest that they should not be ignored. Greater consultation by CLCAC staff and Directors with groups outside Burketown would provide an opportunity to hear and respond to these concerns.

The CLCAC had an appropriate conflict of interest policy and staff reported that conflicts of interest were well managed and adhered to policy in practice. The overwhelming majority of staff who spoke with the Review had positive feedback on the culture and work environment of the CLCAC. Staff reported that they were provided with appropriate on-the-job training opportunities, though this could be further improved.

5.5.1 TOR 5: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Breakdown of roles, responsibilities and decision making between the organisation's Board, Chairperson, CEO and senior staff

The CLCAC had clearly defined roles and responsibilities for its Board and CEO

The roles and responsibilities of the CLCAC's Board, Chairperson and CEO were outlined in corporate documentation, including the CLCAC Constitution (which incorporates its rulebook), its Policy and Procedures Manual and the corporate governance chapter of each annual report.

The respective responsibilities of the CEO and Board Directors, as per the CLCAC Policy and Procedures Manual, are summarised in Table 11. According to the CLCAC Policy and Procedures Manual, the Board was broadly "responsible for setting policy and strategic direction and ensuring that the objectives of the CLCAC are carried out," while the CEO would "implement all resolutions made by the Board of Directors, attend to the day-to-day administration of the Corporation...[and]...direct and supervise all staff."

In addition to the duties of Board Directors, the CLCAC Board Chairperson had some additional responsibilities, including representing the CLCAC to external stakeholders, chairing meetings, ensuring rules were adhered to, leading the Board to effective decision-making as a team and making urgent decisions on behalf of the CLCAC when it was impractical to convene a Board meeting.

Executive staff would present briefs to the Board at Board meetings on their areas of responsibility but had limited interaction with them otherwise. Decisions were made by the CEO, or where relating to corporate services, the Deputy CEO.

Table 11 | Roles and responsibilities of Board and CEO[19]

Board responsibilities	CEO responsibilities
• Recommending and approving necessary policy and procedural frameworks for the CLCAC. • Communicating information about CLCAC activities and decisions to members and stakeholders. • Ratifying strategic and operational plans recommended by the CEO. • Ratifying budgetary measures that are consistent with CLCAC strategic and operational plans. • Being responsible for the overall financial management of the CLCAC. • Providing unbiased representation of members' interests. • Representing the CLCAC to the community at large. • Acting with integrity and responsibility in the execution of CLCAC business.	• Provide high level strategic and operational advice to the CLCAC's Board of Directors. • Support the operation and administration of the CLCAC's Board of Directors. • Consult with the Chairperson and Secretary to prepare the agenda and business papers for Board meetings. • Consult with the Corporate Services Manager to prepare and present the financial statements. • Recommend a yearly budget for Board approval. • Ensure that resolutions made by the Board of Directors are properly implemented. • When requested, represent the Chairperson and the CLCAC's Board of Directors at all levels of government and at community forums to promote the aspirations of the CLCAC membership. • Oversee the development and implementation of the CLCAC's strategic and operational plans. • Engage staff and professional external advisors to assist the CLCAC to carry out its functions and achieve its objectives.

[19] CLCAC. Policy and Procedure Manual. 2014.

Board responsibilities	CEO responsibilities
	• Delegate such of these powers and duties to other members of staff as he or she shall determine and after consultation with the Chairperson. • Work to secure ongoing resources and funding for the operations of the CLCAC and in relation to specific native title, land and sea management or economic development related projects supported from time to time by the Board. • Act as a strong advocate for the rights and interests of Indigenous people in the Gulf of Carpentaria region, particularly in relation to their rights and interests in land and waters. • Ensure that the organisation and its mission, programs and services are consistently presented in a strong, positive image to relevant stakeholders, and establish and maintain effective and efficient working relationships between the CLCAC and key external stakeholders.

The CLCAC's executive staff roles were well defined

The CLCAC's organisational structure had four executive positions reporting to the CEO: the Corporate Services Manager (also Deputy CEO), the Land and Environment Manager, the PLO and the PBC Capacity and Economic Development Manager. Role descriptions for the senior executive leadership team are summarised in Table 12.

Table 12 | Executive leadership responsibilities[20]

Executive position	Role description
Corporate Services Manager (deputy CEO)	Responsible for financial services, information technology and administration of the CLCAC. This includes strategic financial planning advice, records management, and necessary audit services and reports in respect to financial reporting requirements. This is in accordance with funding agreements with state and federal governments and other agencies, and maintenance of all other statutory returns.
Land and Environment Manager	Responsible for the planning, implementation, monitoring and reporting activities necessary to fulfil the land and sea management objectives of the CLCAC's strategic plan.
Principal Legal Officer	Responsible for logistics and the organisation of fieldwork necessary to carry out the native title objectives of the CLCAC's Strategic Plan. Also responsible for the facilitation and preparation of legal advice on behalf of Aboriginal groups within the region and for contracting specialist legal and ancillary services as required.
PBC Capacity and Economic Development Manager	Responsible for identifying, promoting and negotiating opportunities for investment, resource development and other commercial projects to benefit Traditional Owner groups and communities. Responsible for building capacity for Traditional Owners to take advantage of business and employment opportunities.

In the previous Review of the CLCAC, Nous recommended that the CLCAC clarify delegations, roles and responsibilities across key functions to ensure that the CEO was not overly involved in operational

[20] CLCAC. Policy and Procedure Manual. 2014.

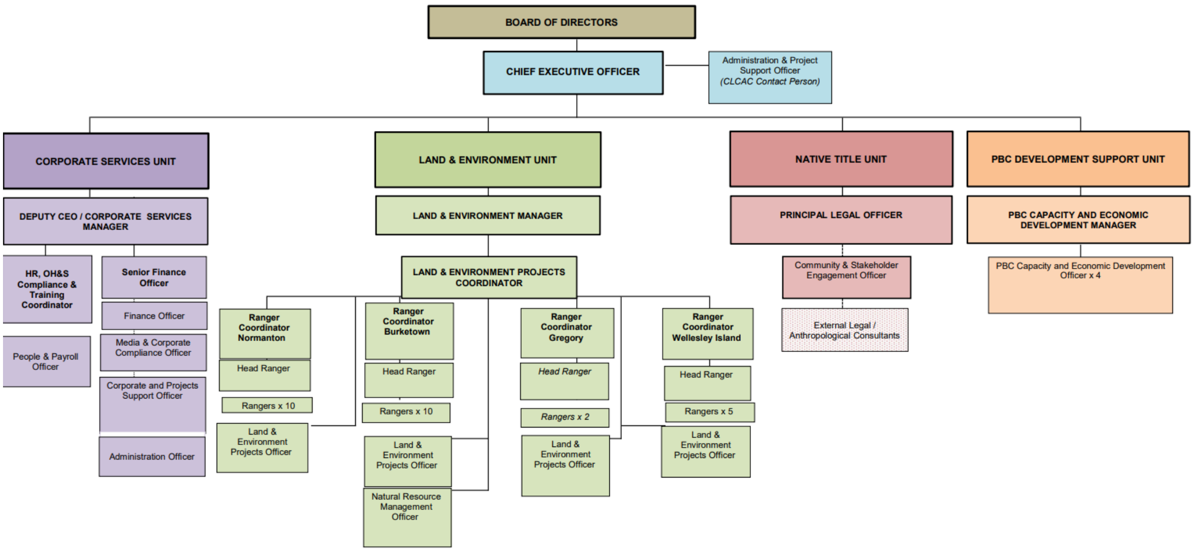
decisions that did not require executive input. The CLCAC reported that a review of the policy and procedures manual was underway and set to be completed by the end of 2024. It reported that it had greatly reduced the amount of involvement required by the CEO on day-to-day operational decisions through:

- the creation of its new Land and Environment Unit Manager position
- revising the role of the Regional Ranger Coordinator
- the creation of a PBC Capacity and Economic Development Unit Manager position.

As shown in Table 11 and Table 12 above, during the Review period the responsibilities of the leadership roles for the CEO, Board and executive staff were complementary and did not unnecessarily overlap or conflict.

While the roles of key personnel and units were formally outlined in the CLCAC Policy and Procedure Manual, some of these descriptions were no longer up to date, with some areas having merged or had adjustments to the responsibilities in their portfolio. However, staff the Review spoke with were clear as to which responsibilities sat with whom. The organisational structure as at 30 June 2022 is shown in Figure 5.

Figure 5 | The CLCAC's organisational structure, June 2022[21]



Board integrity and capability

The CLCAC had a representative Board of Directors

The CLCAC had a representative Board with one Director from each of the nine recognised language groups in the RATSIB area. Each language group also had an alternate Director who would attend meetings in the Director's absence. The current board consists of three Directors based on Mornington Island, three in Normanton, two in Burketown and one based in Doomadgee.

CLCAC staff reported that the representative Board model was important to the CLCAC's role and function as the NTSP for the area. The CLCAC Strategic Plan 2021-2025 outlined the importance of the representative Board model for the community and the organisation. Two of the four principles of the strategic plan related to the role played by the Board. These were:

[21] CLCAC. Organisational Chart. 2023 (unpublished).

1. CLCAC's Board will continue to maintain equal representation for each of the nine constituent Traditional Owner groups.
2. CLCAC's Board will continue to provide a credible and effective forum for regional discussion, planning and action.

Staff mentioned that the small size of the organisation and the RATSIB area made it easier for the Board to be cohesive – as the language groups were close together and would have frequent interactions, driving a level of understanding that might not be present in a larger area.

Clear governance documentation and processes supported effective operation of the Board

Rules and regulations for internal governance, including instructions for the composition of the Board were covered in the CLCAC constitution and rulebook. This included the eligibility rules for appointment as a Director or alternate Director, which required that they:

- be actual residents in the lower Gulf of Carpentaria
- be nominated and either appointed or elected by members who are primarily affiliated with the same Gulf Language Group as the nominee, appointee or elected; and
- give signed consent to act as a Director of the Corporation.

Members of the CLCAC appointed Directors and alternate Directors by resolution at the AGM. The Board met at least four times per year face to face (except through COVID-19 restrictions) with any additional meetings were conducted via teleconference. Attendance was documented and reported in each annual report.

The long tenure of some Directors strengthened the CLCAC's performance in some areas, but drew concerns from some Traditional Owners

While there were term limits of two years for Board Directors, there were no barriers to re-appointment. Some Directors had served on the Board for multiple years and the Chair of the Board had not changed in almost 15 years. The Review notes that factors such as seniority, cultural knowledge and leadership experience are important considerations in the nomination and election of Board Directors and Chairpersons. At the same time, the opportunity for renewal is also a consideration. CLCAC staff reported the Board undergoes natural renewal, and explained that since the Review period, four new Directors have been elected to the Board. While ORIC's Model Rulebook for Indigenous Corporations allows Directors to serve multiple terms and be re-elected, the Board might consider proposing term limits for Directors. This would support the natural renewal process.

It was often the case that Board members had family members who had previously served on the Board. This provided deep family connections and a strong rapport with local communities. Directors had close ties to the CLCAC, providing consistency in the strategic direction of the organisation and maintaining corporate knowledge. The Review noted that Directors worked well together.

The composition of the Board also supported skills development for future leaders, with at least three Board Directors also employed by the CLCAC as rangers and, with the exception of the Board Chair, all other Board Directors also serving as Directors of PBCs supported by the CLCAC.

From the executive management's perspective, this demonstrated the organisation's stability and the trust established between the CLCAC and the people it served. Senior staff also reported that the longevity of the Board had enabled it to take a long-term view and make good prioritisation decisions.

However, the longevity of the Board also created issues with a small number of Traditional Owners who reported to the Review that clan groups were diverse and having only a single, longstanding representative for each clan group meant certain families were consistently under-represented, particularly for groups outside Burketown.

In response, the CLCAC noted that it was not responsible for the appointment of Board members as CLCAC's Rulebook provides for representation at the language group level. Decisions regarding nominations for directorship are decisions for the language groups involved. Under the Rulebook, the CLCAC has no responsibility or power to prevent a member of a given family group being elected to the Board of Directors.

A small number of Traditional Owners reported being unaware of their language group's representative on the Board. The Review noted that the list of CLCAC Directors and Alternate Directors on the website had not been updated since November 2021.[22] CLCAC staff reported that the website was not updated in a timely manner due to a staffing vacancy. The Review notes that given the importance of this information, it would be good practice to prioritise keeping the website updated so that important information such as changes to Board Directors can be passed on to the community in a timely manner.

Some Traditional Owners raised concerns with the level of influence of the CSEO over Board proceedings and decisions

Some Traditional Owners were critical of the influence that the CLCAC's CSEO was perceived to have over the Board. Several Traditional Owners held the view that the CSEO's extensive influence in the Carpentaria Gulf region meant that he exercised too much influence over CLCAC Board decisions. His familial relationships with the CEO and with some Board Directors contributed to this perception.

Some Traditional Owners suggested to the Review that the CSEO had encouraged the CLCAC to invest funds in economic opportunities in Burketown, to the detriment of other parts of the RATSIB area. The Review notes that these economic investment decisions were in fact made by the Gangalidda Garawa Aboriginal Corporation (of which the CSEO is a Director) rather than the CLCAC. As discussed under TOR 3, the conflation of responsibilities between the CLCAC and PBCs suggested that greater community education about the CLCAC's role is warranted.

The Review witnessed one Board meeting in which the CSEO played an active facilitation role. The CSEO was one of several CLCAC staff who attended. The Directors of the Board did not express any concerns about the presence of the CSEO or his facilitation. The Review did not observe any attempt from the CSEO to influence Board decisions. The CSEO's facilitation role appeared entirely appropriate and had a positive impact on the Board meeting's proceedings.

The Board expressed its full endorsement of the position of the CSEO and acknowledged the importance of the role they undertake in CLCAC's operations, given their extensive experience and knowledge of native title processes and cultural protocols.

In summary, the Review saw no evidence that suggested the CSEO was inappropriately exercising his influence or any evidence that the CSEO's close family relationships jeopardised his integrity. Nevertheless, the perception that the CSEO wields too much influence over the CLCAC needs to be addressed. This is something that the organisation should acknowledge and address through greater interaction with community members in its RATSIB area, particularly outside of Burketown.

The addition of one or two independent Directors to the Board could provide a useful perspective

The Review notes that it is open to the Board to propose amending the current arrangements to include one or two additional Board Directors from outside the RATSIB area who have a good understanding of

[22] CLCAC Board of Directors. Accessed 4 April 2024. https://www.clcac.com.au/about/board

native title matters. The use of independent Board Directors is relatively common amongst NTSPs and could add some additional independent expertise.

The Review noted the view from the CLCAC that while it has functioned in more recent years as an NTSP, it was for many years prior to that an NTRB. Upon transitioning to an NTSP, the ORIC registrar and NIAA approved the continuation of CLCAC's representative Board arrangements as reflected in CLCAC's Rulebook. The CLCAC saw no reason to amend these arrangements.

Staff provided support to ensure Board Directors and constituents could make informed decisions

According to Board Directors consulted by the Review, CLCAC staff provided Board Directors and other constituents with the necessary background information for Directors and constituents to make informed decisions. CLCAC staff were available and present in all Director meetings and general meetings to provide information, answer questions and clarify any matters at hand. The Review witnessed that information was provided in an appropriate, neutral manner, with no intention of influencing the decision-making process.

Limited training opportunities were available to the Board during the Review period

The CLCAC recognised that governance training for Board Directors would be of great value to the needs of the organisation. However, plans for the Board to undertake training during the Review period had not been progressed due to the public health response to COVID-19 in regional Queensland. Strategic capacity building grants enabled several CLCAC Directors to attend governance training after the Review period through their PBCs. In the event that new Directors join the Board, governance training will become a higher priority.

Conflicts of interest

Conflicts of interest were handled appropriately by the CLCAC

The CLCAC's conflict of interest policy was detailed in chapter seven of its Policy and Procedures Manual for Board Directors and in chapter 18 for staff.

Where Board Directors became aware of potential for conflict of interest, they were expected to declare this to the Board and CEO. They were also required to register any interest they have with respect to a native title claim, application, or financial or business interest which may constitute a conflict of interest or potential conflict of interest. Staff were required to notify their unit manager immediately if they became aware of any real or perceived conflict of interest.

Staff confirmed that policies were followed in practice and that Board Directors would be asked to declare any conflicts of interest at the beginning of Board meetings. Additionally, Directors would voluntarily step out of the room for items in which they had a conflict of interest. In some cases, Directors were asked to step out of the room or remain silent by other Directors where a conflict of interest was perceived. According to staff, Directors always complied with these requests.

Culture and values

CLCAC's vision and values align with the organisation's native title function

The post-determination environment of the CLCAC's native title context is strongly reflected in its organisational vision, values, goals and principles, as shown in Table 13. In addition to caring for Country, there is a strong focus on community development, cohesion and service.

Table 13 | CLCAC's vision, values, goals and principles[23]

Pillar	Description
Vision	To be the leader of sustainable Indigenous community development in the lower Gulf region, where our people are self-determined and empowered to take control of Country, culture and their economic future.
Goals	• An accessible, responsive and well managed organisation. • Country is well managed. • Strong, sustainable region. • Obtain positive determinations of native title and assist PBCs.
Values	• Unity • Leadership • Integrity • Commitment
Principles	• CLCAC's Board will continue to maintain equal representation for each of the nine constituent Traditional Owner groups. • CLCAC's Board will continue to provide a credible and effective forum for regional discussion, planning and action. • CLCAC recognises the need to continue to strive for the recognition of native title and to assist Traditional Owners to protect and manage Country. • CLCAC will support the cultural and economic aspirations of Traditional Owner groups. • CLCAC will invest in the continued development of its people to build capacity within the region.

The CLCAC provided the Review with the results of a staff survey conducted in 2021, completed by roughly two thirds of their staff members. More than 90 per cent of respondents said they were proud to work at the CLCAC and that they believed their managers always or often demonstrated and promoted the CLCAC's values. A total of 86 per cent said they felt it was a good place to work and that they understood the relationship between their job and the goals of the CLCAC.

This was broadly consistent with the responses received in the Review's staff survey.

Most staff spoke highly of the CLCAC's work environment, although there were isolated reports of bullying

All staff members consulted by the Review had very positive reflections on the working environment. Several described the CLCAC as a great place to work. Some staff members shared with the Review specific examples of situations that had made them appreciate their workplace, including opportunities the CLCAC facilitated for non-Indigenous staff to engage in field work and feeling like part of a team working together to achieve outcomes for the community. Staff mentioned that the use of Microsoft Teams had facilitated easier communication between the Cairns and Burketown offices, and the Review heard no reports from staff about the division of staff between different locations causing challenges.

Staff reported that responses to staff concerns were supported by the guidelines documented in the CLCAC's policies. The CLCAC's Policy and Procedures Manual contained a number of sections relating to staff health and wellbeing, including chapter 19 on staff code of conduct, chapter 26 relating to staff

[23] CLCAC. Strategic Plan 2021-2025.

concerns and complaints, and chapter 27 which documented the CLCAC's policy on bullying and harassment. There was also an employee assistance program available to staff.

A small number of respondents to the Review's survey reported experiences of bullying or harassment at the organisation, although none claimed to have reported the incidents to the CLCAC. The Review did not receive any further evidence to suggest the presence of bullying or harassment at the CLCAC.

Financial management

Organisational financial governance was supported by clear policies and annual audit

Chapter 24 of the CLCAC Policy and Procedure Manual provided guidance about managing financial resources for all operational areas, including guidelines for delegation of financial authority and responsibility, record-keeping, procurement, travel allowance, asset management and insurance. Annual financial statements were incorporated into annual reports, which were published on the CLCAC website and available to the public. The CLCAC received unqualified audit reports by an independent auditor for all three years of the Review period.

Additionally, NIAA's funding for the CLCAC required the organisation to submit detailed reports on budgeted and actual expenditure for its operations and the CLCAC provided these half-yearly, though a number of these were submitted late with granted extensions.

Senior staff were generally very familiar with financial management policies and how the CLCAC's different income streams contributed to different parts of the organisation. They reported to the Review that roughly 35 per cent of corporate staff costs came from native title funding and that this was a generally accurate reflection of the proportion of staff time spent on native title activities.

Training and professional development

Staff training and development was covered by a number of the CLCAC's formal policies

Staff training and professional development was covered very briefly in chapter 16 of the CLCAC's Policy and Procedure Manual, which stated that "activity is focussed on meeting CLCAC needs and enabling employees to progress in their careers". This was supplemented by separate performance development review guides for managers and employees, intended to ensure that employee responsibilities were clearly documented, with a formal structure in place to promote dialogue between staff and managers. The annual performance development review document included separate sections on training objectives and career development.

Managers reported that these documents were used in practice and that all staff were able to discuss training during their annual performance reviews. Managers said they had been instructed to complete aspiration interviews with all staff and develop individual training matrices in that process.

The CLCAC provided staff with a number of formal training opportunities

The CLCAC aimed where possible to deliver training to its staff. The CLCAC employed three staff who were qualified to deliver training as required (although these staff also had other roles). However, senior staff acknowledged that the organisation did not provide a large volume of training during the Review period, partly due to a lack of available resources to support training programs and partly due to the COVID-19 pandemic. During lockdowns in response to the COVID-19 pandemic, the CLCAC found it difficult to deliver training virtually, as the IT infrastructure was often unreliable across the region. Additionally, as stated under TOR 4, the CLCAC's preference was to invest in targeted development rather than generic training.

However, there were still some development opportunities which were available to staff during this time, including:

- A week-long all staff on-Country camp in September 2019, where staff had the chance to participate in cultural knowledge and team building activities.
- Skills training in resilience, dealing with difficult behaviour, communication and engagement.
- Opportunities to conduct Certificate IV training with Queensland tertiary education providers.
- Formal cultural awareness training as part of the induction program for all new staff. Many staff who responded to the Review survey said they found this training to be extremely useful to their work at the CLCAC. Cultural training is discussed in further detail under TOR 3.

The CLCAC was able to negotiate with the NIAA to provide additional native title funding for the professional development of staff starting in FY2023-24.

Staff felt the CLCAC cared about their development but also saw opportunities for improvement

About 70 per cent of responses to the CLCAC's 2021 internal staff survey agreed or strongly agreed that there was continuous investment in the skills of employees. However, in their free text responses staff also indicated that they wanted more opportunities to learn from one another about the work that other teams were doing. Some staff mentioned that processes for working together across the organisation could be improved. Additionally, there were a small number of comments about the desirability of clearer documented guidance on how tasks were expected to be completed across the business, from small purchases to engagements with external stakeholders.

The Review noted that the CLCAC's existing Policy and Procedures Manual is almost ten years old, and though some parts of the document had been updated more recently, other parts could also be updated to reflect what is happening in practice across the organisation.

Indigenous recruitment and pathways have been a key focus for the CLCAC

Staff reported that the CLCAC encouraged Aboriginal and Torres Strait Islanders to apply for every advertised position. Recruitment was also targeted at people who had experience working in remote communities, people who had experience working with Traditional Owners and those familiar with the local region. While the CLCAC made considerable efforts to attract Aboriginal and Torres Strait Islander employees, only one First Nations staff member worked in the CLCAC's native title function during the Review period. However, all staff in the CLCAC's ranger program were Indigenous and this meant that CLCAC as a whole had around 55 to 65 per cent Indigenous staff across the Review period.

Level of staff turnover

CLCAC's native title staff had moderate levels of staff turnover during the Review period

Native title staff comprised a small portion of total staff. Native title staff numbers have stayed relatively stable year on year. As shown in Table 14, the CLCAC had moderate levels of staff turnover in its native title functions during the Review period. CLCAC staff reported that due to workforce constraints, the organisation struggled to recruit new staff and had vacant positions at the end of each financial year.

Table 14 | Level of staff turnover for native title staff across the Review period

Financial year	Total staff (funded through native title)	Staff turnover	Vacant positions at financial year end
2019-20	13	8%	2
2020-21	10	10%	1
2021-22	12	17%	3

5.5.2 TOR 5: External factors

No external factors have been identified for TOR 5.

5.5.3 TOR 5: Recommendations

RECOMMENDATION 7

The CLCAC Board should assess whether amendments to its Rulebook to limit consecutive terms would support a natural renewal process for Board Directorships.

RECOMMENDATION 8

The CLCAC should ensure that there is a clear statement of the role and responsibilities of the CSEO in CLCAC's native title functions.

RECOMMENDATION 9

The CLCAC should assess the advantages and disadvantages of proposing an amendment to the Rulebook to add one or two independent Directors to the Board.

RECOMMENDATION 10

Prioritise timely updates to the webpage so that stakeholders are made aware of important information such as changes to Board Directors.

5.6 TOR 6 | Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency.

Summary

PBC self-sufficiency was a strong focus for the CLCAC during the Review period. This was supported by clear aims in its corporate documentation and the establishment of the new PBC Development Support Unit.

The four PBCs in the RATSIB area were at different stages of their journey towards self-sufficiency, and the CLCAC adapted its approach and services based on the requirements and needs of each individual PBC. While most support was provided for administrative and compliance functions, the PBC support staff were active in looking for funding opportunities and in building internal capacity in the PBCs.

In FY2020-21, the CLCAC assisted two PBCs to successfully apply for grants totalling $2.8 million from NIAA through their Jobs, Land and Economy funding stream for strategic capacity building and economic development planning. Plans were underway to support grants for the other two PBCs.

While the CLCAC did not have formal service agreements in place with the PBCs it supported, its approach to providing tailored support for each PBC was considered appropriate by the Review. The CLCAC also did not have a formal policy in place for the return of cultural materials, although it had taken appropriate actions to manage the return where feasible. There remains an opportunity for the CLCAC to develop in these areas.

PBC Directors the Review spoke to were generally satisfied with the services provided by the CLCAC and found staff to be professional and courteous.

The CLCAC's ability to deliver positive outcomes for the PBCs was impacted by a lack of economic activity and high levels of social disadvantage in the Carpentaria Gulf region.

5.6.1 TOR 6: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Satisfaction of PBCs/RNTBCs supported by the NTRB-SP

PBCs felt relatively satisfied with the support provided by the CLCAC

PBCs consulted during the Review spoke positively of the CLCAC. One PBC commented the CLCAC has been very important for PBC members. They reported that a claim was completed quickly with significant support and advice from the CLCAC.

CLCAC staff consulted during the Review also spoke positively about the relationship the CLCAC had with PBCs. They commented that PBCs were supported to be self-sufficient but knew the CLCAC was there for them if they need it.

> "They [PBCs] relish their independence but feel safe in making decisions knowing the land council is here supporting them."
>
> CLCAC staff

Percentage of PBCs/RNTBCs supported by the NTRB-SP who have had intervention from ORIC or other regulator

The Review understands no PBCs supported by the CLCAC received a formal intervention from ORIC (or other regulator) during the Review period.

Progress towards self-sufficiency for PBCs/RNTBCs supported by the NTRB-SP

Developing the self-sufficiency of PBCs was a key strategic goal of the CLCAC

PBC self-sufficiency was a strong focus for the CLCAC during the Review period. As outlined in its corporate documentation, a key goal for the CLCAC was to "support and foster PBC's to be self-sufficient, charting and managing their own direction".[24]

During the Review period, the CLCAC established the PBC Development Support Unit, focussed on supporting PBCs to fulfil compliance requirements, and develop and pursue economic opportunities. The PBC Development Support Unit contained the PBC Capacity and Economic Development Manager and two dedicated PBC support officers. The unit had the following three priorities:

1. Facilitate and enable PBCs and native title holders to engage in the wider Gulf economy.
2. Increase the wellbeing of Aboriginal communities and native title holders by supporting economic independence through investment in commercial enterprises that produce financial returns and employment, training and supply chain opportunities.
3. Assist and enhance Gulf PBCs and native title holders ability to achieve economic self-sufficiency to enable Aboriginal people and their businesses to meet their needs independently of welfare and government grants.[25]

The CLCAC advised the Review that PBC support officers were constantly looking for funding opportunities for PBCs and working with PBCs to identify opportunities to build internal capacity. Staff noted that the CLCAC wants to ensure that PBCs are well supported to leverage their native title for economic opportunities and be self-sufficient into the future. CLCAC staff emphasised the importance of pursuing economic opportunities for PBCs, rather than the CLCAC itself and that the CLCAC did not want to be in competition with PBCs for economic opportunities. As noted in the FY2021-22 Annual Report:

> [The CLCAC] *will increasingly be directed toward the work of its PBC Capacity and Economic Development Unit, in particular, supporting native title PBCs to develop good, robust governance structures, increase capacity and work toward becoming financially independent of government funding support through the development of sustainable commercial enterprises.*[26]

The CLCAC provided tailored support based on the needs of PBCs

CLCAC staff aimed to guide PBCs to develop governance strategies, improve capacity and meet reporting obligations with the aim of PBCs progressing to becoming more independent and financially sustainable organisations. During the Review period, the CLCAC supported all four PBCs in its RATSIB area for functions under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (the CATSI Act). It also helped PBCs comply with regulations and maintain corporation records and emails.

Staff reported that some PBCs would become self-sufficient more quickly than others. The support the CLCAC provided to each PBC varied significantly based on its level of independence. The CLCAC tailored its approach to supporting PBCs depending on size, maturity and the opportunities relating to mining activity. The main economic opportunities for PBCs in the region came from the New Century Mine and tourism which is mostly centred around Burketown.

Two PBCs with greater access to economic opportunities were further progressed toward self-sufficiency. In FY2020-21, the CLCAC secured two large grants through the NIAA's Jobs, Land and Economy funding stream for strategic capacity building and economic development planning for the Gangalidda and

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[24] CLCAC. Strategic Plan 2021-2025.
[25] CLCAC. Transition Plan for the Commencement of Post-Determination Service Delivery 2017-2022.
[26] CLCAC. Annual Report 2021-22.

Garawa Native Title Aboriginal Corporation (GGNTAC) and the Gulf Region Aboriginal Corporation (GRAC). The CLCAC received and administered a grant totalling $1.788 million to support GGNTAC and another grant totalling $1.052 million to support GRAC. The CLCAC's FY2021-22 Annual Report stated that the CLCAC was investigating similar grant opportunities for the other two PBCs.[27]

The CLCAC's assistance to the PBCs more progressed towards self-sufficiency was focussed on enabling them to:

- receive and respond to FANs
- create and/or maintain a Future Act and native title holder database
- hold community and PBC meetings
- comply with CATSI Act obligations.

The remaining two PBCs had fewer and less significant economic opportunities. The CLCAC provided tailored support to these PBCs to support progress towards self-sufficiency, including by:

- facilitating a capacity building and economic development Director's workshop
- conducting Directors and community meetings
- developing financial and governance policies and processes on advice from the PBCs' accountant
- assisting with the implementation of ILUA commitments arising from the Gkuthaarn and Kukatj consent determination, including liaising with the Department of Resources to facilitate the transfer of Aboriginal freehold lands.

There were challenges associated with PBC support

As noted above, the CLCAC had two PBC support officers who assisted PBCs with core financial management and governance activities. This was a one-to-two PBC support staff-PBC ratio, which was a high level of dedicated support staff relative to other NTRB-SPs. Other individuals across the CLCAC (including the PLO, and Capacity and Economic Development Manager) regularly interacted with PBCs regarding Future Acts and ILUA negotiations.

CLCAC staff reported that there were challenges in providing PBC support due to the need to provide travel support for PBC Director meetings. The CLCAC provided support for PBCs to hold Director meetings, including supporting Directors to attend. Due to the remoteness of the RATSIB area, the cost of supporting one PBC Director meeting could be up to $40,000. While the CLCAC pursued cost-savings measures, such as coordinating Director meetings to coincide with CLCAC meetings or proponent meetings to reduce travel costs, this meant that much of the CLCAC's PBC support budget was dedicated toward holding meetings, rather than supporting PBCs to comply with requirements.

NTRB-SP's progress in returning cultural materials to PBCs/RNTBCs and Traditional Owners

The CLCAC did not have a formal policy in place for return of cultural materials

During the Review period, the CLCAC did not have a formal policy in place for the return of cultural materials. Instead, its approach was documented in the organisation's Information Management Policy. The document outlined that:

> *Information provided by clients shall be treated as confidential, maintained in a secure environment and released only with the consent of the providers. Sensitive cultural information will be stored*

[27] CLCAC. Annual Report 2020-21.

according to Aboriginal protocols relating to gender and clan groupings, where such restrictions are requested. All information researched on behalf of the CLCAC and clients remains the intellectual property of the Corporation and those groups in partnership.

If anyone requested access to material, the CLCAC would seek approval for its release. Similarly, if a PBC determined that it would like access to materials on an ongoing basis, the CLCAC would work with the PBC to determine the form in which materials would be returned (hard copies or digital copies) and ensure full approval was provided by owners of the materials.

During the Review period, the CLCAC held almost all native title claim materials on behalf of the Traditional Owners that were involved in claim processes. External lawyers held the materials they needed to support a claim, with materials from previous native title matters held by the CLCAC. The Waanyi Native Title Aboriginal Corporation was an exception to this, holding the native title materials from their own claim, having received funding to establish an archive. Staff noted the CLCAC was still in discussion about who owns the materials, especially for claim groups containing more than one language group. Further, some PBC's did not have an office and hence had no capacity to store cultural materials themselves. These factors complicated the storage and return of cultural materials. CLCAC staff reported that native title holders have not requested cultural materials to be returned and are generally content for the CLCAC to hold cultural materials. No external stakeholders commented on the CLCAC's approach to returning cultural materials to PBCs.

Percentage of PBCs/RNTBCs supported by NTRB-SP with formal service agreements in place with NTRB-SP

The Review understands that none of the PBCs supported by the CLCAC during the Review period have formal service agreements in place.

Satisfaction of PBCs/RNTBCs with the process of negotiating service agreements between the NTRB-SP and the PBC/RNTBC

The CLCAC had a service agreement approach that is appropriate for its region

The CLCAC's approach to service provision for PBCs during the Review period was the development of a PBC Basic Support Work Plan and budget with the PBC. This was endorsed at a Directors meeting and passed by resolution. While not a formal service agreement, the workplan detailed what the PBC Basic Support funds would be spent on, and other details of support the PBC would like from the CLCAC PBC Capacity Development team, in a formal manner. An example of a work plan sighted by the Review contained:

- a commentary on the current status of the PBC's internal capacity to be self-sustaining
- how the CLCAC will assist the PBC to ensure compliance with the CATSI Act and other relevant legislation
- how the CLCAC will assist the PBC to build internal capacity.

The previous Review recommended the CLCAC implement service agreements to clearly articulate the types and levels of support the CLCAC will provide to PBCs. The Review accepts that the CLCAC's current approach provides the necessary level of planning and agreement for PBC support.

5.6.2 TOR 6: External factors

This section presents an analysis of factors that impacted on performance that were beyond CLCAC's control.

Extent to which self-sufficiency for PBCs/RNTBCs is achievable

A lack of industry activity and low socioeconomic and educational profile in the CLCAC RATSIB area limited self-sufficiency for some PBCs

The level and nature of economic activity in a RATSIB area is one of the key determinants of the extent to which self-sufficiency is achievable. Natural resources and associated industrial activity can result in agreements with substantial monetary compensation for PBCs. These additional resources for PBCs can support more growth, training and ultimately impact on the extent to which they can become self-sufficient. As noted in the CLCAC's FY2021-22 Annual Report, the Southern Gulf region's economic base was dominated by beef, mining, fishing and tourism. The Century Mine at Lawn Hill, owned by MMG Limited during the Review period, was reopened in August 2018 and recommenced operations throughout the Review period with a focus on zinc-rich tailings.[28] However, these operations have an end date and internal stakeholders noted this will have a significant impact on the ability of two PBCs to achieve self-sufficiency in the future.

Another determinant of the extent to which self-sufficiency is achievable is the socioeconomic profile of the RATSIB area. A summary of the socioeconomic and educational profile of the local government areas (LGAs) within the region are outlined in Table 15. A low Index of Relative Socioeconomic Disadvantage (IRSD) decile indicates the highest levels of socio-economic disadvantage. A low Index of Education and Occupation (IEO) score indicates the highest levels of educational disadvantage.

Table 15 | IRSD and IEO scores for LGAs in the CLCAC RATSIB area[29]

LGA	2021 IRSD	2021 IEO scores
Doomadgee	1	1/5
Burke (includes Burketown and Gregory)	3	2/5
Mornington	1	1/5
Carpentaria (includes Normanton)	1	1/5

The low socio-economic profile, together with the small and dispersed population, means that the level of literacy and numeracy in CLCAC's RATSIB area is generally low compared to more urbanised areas of Queensland. The educational profile of the LGAs, represented by the IEO are also low relative to other parts of the country. This is likely to make it difficult for PBCs to achieve self-sufficiency.

[28] CLCAC. Annual Report 2021-22.

[29] Australian Bureau of Statistics. SEIFA by Local Government Area (LGA). 2023. https://www.abs.gov.au/statistics/people/people-and-communities/socio-economic-indexes-areas-seifa-australia/latest-release

5.6.3 TOR 6: Recommendations

RECOMMENDATION 11

The CLCAC should document its approach to the return of cultural materials.

5.7 TOR 7 | Extent to which each organisation has developed its planning for a post-determination environment.

Summary

The CLCAC was well progressed in its planning towards a post-determination environment with a strong strategic approach developed and formalised through its Transition Plan (2017-2022).

Features of this plan included measurable key outcomes for each stage of transition, articulating the future role of the CLCAC's Economic Development Unit and the process the CLCAC will take to cease its native title functions.

The Transition Plan sets out a framework and timeframe to build the capacity of all PBCs. It also includes a potential restructure of the CLCAC's governance model to better suit the post-determination environment.

Given the timeframe of the Transition Plan has now expired, there is an opportunity for the CLCAC to either refresh it or develop a new Transition Plan that applies beyond 2022 and takes into consideration its future native title funding needs.

At the time of the Review the CLCAC had not progressed planning for compensation claims across the RATSIB area.

5.7.1 TOR 7: Assessment of performance

This section presents an assessment of performance against the performance indicators for this TOR. To see the performance indicators please see Appendix A.

Adequacy of post-determination strategic planning

The CLCAC's approach to post-determination is articulated in its Strategic and Transition Plans

The CLCAC's approach to post-determination strategic planning was guided by its Strategic Plan 2021-2025 and Transition Plan 2017-2022. A key goal of the Strategic Plan was to "develop and implement a sustainable business model that will provide the financial investment required to carry our vision, objectives and programs forward in a post-determination environment".[30]

Based on extensive consultation over a two-year period, the Transition Plan set out a framework and timeframe for the CLCAC to 2022. The Transition Plan recognised the deliberate and successful strategy which the CLCAC had in place since 1996 to support its progression of native title claims and its native title functions. However, as native title claims are completed, the CLCAC recognised it was increasingly more important to consider its role as a service provider in the native title post-determination environment. It highlighted the changing context in which the CLCAC is operating and the concurrent growing pressures on all PBCs to effectively perform statutory functions, become financially independent and implement economic development and community projects on behalf of the native title communities they represent.

The CLCAC Transition Plan was established to assist PBCs and native title holders to understand the role of the CLCAC in the post-determination environment. The CLCAC staff undertook consultations with Directors from the three PBCs that it supported at the time to ascertain their views on the role of the CLCAC in relation to post-determination service delivery. From these consultations, a list of directives was formed:

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[30] CLCAC. Strategic Plan 2021-2025.

- Gulf PBCs and claim groups wish CLCAC to assist with the gradual development of PBC capacity.
- Gulf PBCs want to undertake economic and development projects in addition to performing their statutory functions.
- All native title groups in the Gulf region wish to continue to manage their land and sea resources on a regional basis and for CLCAC to continue to host the Indigenous ranger program.

These directives were incorporated by CLCAC into the Transition Plan. Key features of the Transition Plan are demonstrated in Table 16.

Table 16 | Key features of the Transition Plan[31]

Feature	Description
The Post Determination Service Delivery Model	This section included detailed planning for a post-determination service delivery model to ensure PBCs are supported in the post-determination environment. This is further explored below.
Measurable key outcomes for each stage of transition	This included a list of key outcomes for each year to determine how PBCs have progressed towards self-sufficiency and the level of support the CLCAC has given them. During the Review period (year three of the Transition Plan), key outcomes included that the CLCAC is responsible for the delivery of PBC Core Functions only as required and new PBC projects have been identified and commenced.
Plan to build capacity	During initial consultations, it was agreed the CLCAC should develop a plan to build capacity gradually in the PBCs. This section provided a framework to build capacity over a five-year period.
Economic Development and Business Support Services	The CLCAC planned to have completed all transitional activities by 2022, by which time it estimated that PBCs in the Gulf region would have been fully established and operational. This section formally documented the timeframe for PBC independence and self-sufficiency.
Role of the Economic Development Unit	The plan outlined key priorities of the Economic Development Unit: • Identifying and facilitating delivery of key business and economic development projects and initiatives. • Providing business, commercial and strategic planning support to PBCs. • Advocating on behalf of Traditional Owners and communities of the Southern Gulf region for projects and initiatives that develop the region's economy sustainably.
Proposed governance structure to support post-determination work	The CLCAC planned for several changes to its governance structures to facilitate an increased role for PBCs into the future. Changes included the introduction of recognised PBC Director roles on the CLCAC's Board and a proposed amendment to the CLCAC's membership eligibility requirements to require membership in a Gulf PBC.
Challenges for the CLCAC in providing post-determination services	This section outlined the challenges for the CLCAC in providing post-determination services including adequate funding, adequate information technology systems, effective and efficient change management to transition to its new purpose and function, and cultural change within the organisation to reflect the changed purpose and functions.
Ceasing native title functions	This section outlined the process the CLCAC will take to cease native title functions including consulting with CLCAC members and staff, consulting with the Australian

[31] CLCAC. Transition Plan for the Commencement of Post-Determination Service Delivery 2017-2022.

Feature	Description
	Government regarding funding and delivery, and identifying the legal requirements for ceasing.

The Transition Plan also demonstrated the proposed transitional staff structure the CLCAC would adopt to provide key post-determination services (including positions currently funded and those not funded).

The CLCAC will shift its service offering to better meet its clients' future needs

In the Transition Plan, the CLCAC recognised that its current service delivery model and organisational structure must change as it nears the completion of native title claims in its region.[32] It seeks to become a provider of choice for PBCs and Traditional Owners through offering services such as:

- Providing corporate and administrative support to PBCs as required.
- Communicating information regarding native title, land and environment programs, and economic development opportunities in a culturally appropriate manner through a range of media.
- Being an advocate for the Gulf Aboriginal community.
- Providing for the conduct of research into Gulf Language Group traditional laws and customs, history, culture, language, genealogy and further developing cultural resources to service the needs of PBCs.
- Providing land and regional environmental services.
- Assisting PBCs to develop and manage cultural and community programs, providing delivery support and evaluation services, and developing partnerships.
- Providing support to PBCs in identifying economic development opportunities and business support.

Staff confirmed that the CLCAC followed the Transition Plan during the Review period. While the Transition Plan set out a timeframe to build capacity in Gulf PBCs over a five-year period (ending in 2022), the Review understands implementation is ongoing. During the Review period, the CLCAC fulfilled some components of this plan, but due to the complexity of remaining claims and groundwork required to support PBCs to become self-sufficient, not all outcomes were achieved as outlined in the Plan.

CLCAC staff noted that the development of a refreshed Transition Plan is subject to funding constraints and discussions with NIAA. Consultations with PBCs from previous years will also need to be revisited.

The Transition Plan noted that the CLCAC intended to redesign the organisational structure to better suit the post-determination environment (see Figure 6).

[32] CLCAC. Transition Plan for the Commencement of Post-Determination Service Delivery 2017-2022.

Figure 6 | CLCAC Future Service Delivery Model as set out in its Transition Plan [33]

CLCAC staff acknowledged that financial challenges will emerge as the organisation transitions into a post-determination environment

CLCAC staff acknowledged that as the CLCAC transitions to a post-determination environment, the funding it receives to progress native title claims will reduce. This will put pressure on the CLCAC, since the funding it received for its native title functions was used to employ approximately half of its staff during the Review period. The basic infrastructure provided by native title funding helped to support the Land and Environment program, and vice versa. For example, the CLCAC arranged PBC Director meetings to coincide with ranger meetings to reduce the travel costs for PBC meetings. The CLCAC has also used administration staff, employed through its native title funding, to support the administration of its Land and Environment Program.

Although the CLCAC was aware of the challenges, staff could not provide detail about how the CLCAC would maintain financial sustainability once claim work was completed.

The CLCAC monitored the implementation of the Transition Plan with the Board responsible for tracking progress

It was noted in the Transition Plan that "ongoing review, monitoring and evaluation of CLCAC's performance will be critical and used to inform each stage of the five-year plan". The Board was responsible for leading implementation (and monitoring of implementation) with the expectation that there was ongoing engagement with and endorsement by native title holders and clients, PBCs and CLCAC's members. The CLCAC proactively documented its progress against Transition Plan activities in its current Operational Plan.

[33] CLCAC. Transition Plan for the Commencement of Post-Determination Service Delivery 2017-2022.

The CLCAC continued to investigate the possibility of compensation claims in its region

The CLCAC had not yet commenced compensation claims in the region during the Review period. CLCAC staff noted the CLCAC investigated compensation claims following the *Northern Territory v Griffiths* [2017] FCAFC 106 (the "Timber Creek compensation claim") outcome.[34] CLCAC staff advised that they are taking a slow approach to this and are in the process of consulting with Traditional Owners to identify their desires to progress compensation claims.

The CLCAC reported that following the Review period, it has been developing a Regional Compensation Strategy and has continued to provide legal advice to PBCs regarding the best course of action in this space.

The economic potential of compensation claims varies across the region. Some areas have limited economic value but still hold substantial cultural value while other areas with mining or agricultural activity have the potential to contribute economic value to native title holders.

5.7.2 TOR 7: External factors

This section presents an analysis of factors that impacted on performance that were beyond CLCAC's control.

Progress towards a post-determination environment

Despite some ongoing native title claim work, the CLCAC was well progressed towards a post-determination environment

With approximately 73 per cent of its claimable land determined and all nine language groups holding native title rights (eight as at conclusion of the Review period)[35], the CLCAC has been planning for a post-determination environment since well before the Review period. As discussed under TOR 1, the remaining claims are small and complex and not always high priority for Traditional Owners.

The CLCAC previously estimated (for the previous Review[36]) that all claims would be finalised over the next two years however CLCAC advised the current Review that it is not possible to provide an estimate of time to finalisation due to a range of variables including the outcome of research and legal advice, and available funding.

5.7.3 TOR 7: Recommendations

RECOMMENDATION 12

Proceed with plans to refresh or replace the post-determination Transition Plan to maintain its relevance and currency particularly in light of future funding needs as native title claims are finalised.

RECOMMENDATION 13

Engage with the NIAA to discuss the potential for the CLCAC to maintain financial sustainability once claim work is completed.

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[34] *Northern Territory v Griffiths*. 2017. Federal Court of Australia. FCAFC 106.
[35] CLCAC. Annual Report 2021-22.
[36] Review of Performance as a Native Title Representative Body: Carpentaria Land Council Aboriginal Corporation. Summary Report March 2021.

RECOMMENDATION 14

To ensure adequate preparation for the post-determination environment, formulate an estimate of the future claims load and the time for claim work to be completed in the region.

Appendix A Project Terms of Reference and performance indicators for individual reports

The methodology for the Review was developed by Nous against the TORs, as discussed in the Scope of the Review, see section 2. For each TOR the methodology listed a number of performance indicators and external factors to ensure a consistent approach across all the NTRB-SP reviews and to enable a comparison of performance. The TOR and associated performance indicators and external factors are listed below.

1. Focussing on the period 1 July 2019 to 30 June 2022 and addressing developments since the previous Review of each organisation the Service Provider will:

   a. Review and assess the extent to which each organisation:

      i. 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.

      Performance indicators:

      - Native title outcomes including from facilitation and assistance, certification, notification, dispute resolution and other relevant functions.
      - Anthropological research.
      - Future Acts and ILUAs.
      - Number of claims resulting in a determination of native title or ILUA settlement as a proportion of total filed claims.
      - Number of claim groups the NTRB-SP has acted for or assisted via brief out arrangements in a native title determination application during the Review period.
      - Proportion of claimable land within the RATSIB area not subject to a registered claim or a determination.
      - Average time between filing an application for a determination of native title to the date a determination is made.
      - Number of common law native title holders/RNTBCs the NTRB-SP has acted for in a native title compensation application proceeding.

      External factors:

      - State government policy and legislation.
      - Complexity of remaining claims.
      - History of previous claims.
      - Complexity of land use and tenure.
      - COVID-19.
      - Amount of funding.

      ii. 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.

Performance indicators:

- Equity, transparency and robustness of assessment and prioritisation process.
- Client and potential client awareness of the process.
- Traditional Owner satisfaction with the assessment and prioritisation process and its outcome.

External factors:

- Number of claims relative to NTRB-SP size and resourcing.

iii. 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.

Performance indicators:

- Respectful and transparent engagement.
- Culturally appropriate engagement.
- Complaints.
- Internal review.
- Use of cultural materials.

External factors:

No external factors have been identified for TOR 3.

iv. Performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.

Performance indicators:

- Expenditure on salaries (legal, anthropological, Board, CEO, HR, etc.), operations (travel, legal, offices, etc.) or other relevant items.
- Cost-saving actions, strategies and/or discussions.
- Appropriate processes for claim group meetings.
- Annual yearly expenditure per claimant group.
- Travel assistance policies for claim group meetings.
- Appropriate rationale for use of external consultants.

External factors:

- Size of RATSIB area.
- Remoteness of RATSIB area.
- Average number of people within a claim group.
- Interpreters.

v. Has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery.

Performance indicators:

- Breakdown of roles, responsibilities and decision making between the organisation's Board, Chairperson, CEO and senior staff.
- Board integrity and capability.
- Conflicts of interest.
- Culture and values.

- Financial management.
- Training and professional development.
- Level of staff turnover.

External factors:

No external factors have been identified for TOR 5.

vi. Is adequately supporting Prescribed Body Corporates towards self-sufficiency.

Performance indicators:

- Satisfaction of PBCs/RNTBCs supported by the NTRB-SP.
- Percentage of PBCs/RNTBCs supported by the NTRB-SP who have had intervention from ORIC or other regulator.
- Progress towards self-sufficiency for PBCs/RNTBCs supported by the NTRB-SP.
- NTRB-SP's progress in returning cultural materials to PBCs/RNTBCs and Traditional Owners.
- Percentage of PBCs/RNTBCs supported by NTRB-SP with formal service agreements in place with NTRB-SP.
- Satisfaction of PBCs/RNTBCs with the process of negotiating service agreements between the NTRB-SP and the PBC/RNTBC.

External factors:

- Extent to which self-sufficiency for PBCs/RNTBCs is achievable.

vii. Has developed its planning for a post-determination environment.

Performance indicators:

- Adequacy of post-determination strategic planning.

External factors:

- Progress towards a post-determination environment.

2. The Service Provider will provide the following reports, reflecting the Service Provider's independent views, to assist with Agency decision-making:

   a. An individual report for each organisation reviewed, including recommendations on what changes, if any, the organisation could make to improve its performance against each of the criteria listed in 1(a) above.

Appendix B Stakeholders consulted

The Review held consultations in person and virtually with a range of stakeholders in relation to the CLCAC's performance. The Review's approach to consultations was documented in the Consultation Plan, provided to all NTRB-SPs in advance of the Review. Nous used various approaches to engage with stakeholders who might wish to be involved with the Review. Surveys were distributed on behalf of the Review by the CLCAC to all staff and to Traditional Owners. Where feasible, notices were placed in relevant newspapers and other media to inform Traditional Owners of the opportunity to speak to the Review.

Face-to-face consultations took place in the week commencing 23 October 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- over 35 Traditional Owners including:
    - clients who have been represented by the CLCAC (including members of PBCs)
    - potential clients in the CLCAC's RATSIB areas
- the Federal Court of Australia
- the NIAA
- representatives of the Queensland Government
- CLCAC staff and contractors, including:
    - current CLCAC staff
    - CLCAC Board Directors.

Appendix C Documents reviewed

Category	Description
Annual reports	CLCAC Annual Report 2021/22 CLCAC Annual Report 2020/21 CLCALC Annual Report 2019/20
Policies	CLCAC Alcohol and/or Drugs Policy and Procedure 2023 CLCAC Employee Assistance Program Policy and Procedure 2021 CLCAC Firearms Policy and Procedure 2021 CLCAC Risk Management Policy 2019 CLCAC Policies and Procedures Manual 2014 CLCAC Working with Children Policy and Procedure (Blue Card) CLCAC Performance and Development Review Policy and Procedure
Operational and performance documents	CLCAC Consultants Report July 2021 – December 2021 CLCAC Consultants Report July 2020 – June 2021 CLCAC Consultants Report July 2019 – June 2020 CLCAC Consultants Report July 2019 – December 2019 CLCAC Operational Plan July 2022 – December 2022 CLCAC Operational Plan July 2021 – June 2022 CLCAC Operational Plan July 2020 – June 2021 CLCAC Operational Plan July 2019 – December 2019 CLCAC Performance Report July 2022 – December 2022 CLCAC Online Performance Report on Key Performance Indicators July 2022 – December 2022 CLCAC Key Performance Indicators Report July 2019 – December 2019
Financial documents	CLCAC Budget Report July 2022 – December 2022 CLCAC Budget Report July 2021 – June 2022 CLCAC Budget Report July 2020 – December 2020 CLCAC Budget Report July 2019 – December 2019 CLCAC Native Title Program Funding Financial Report July 2021 – June 2022 CLCAC Native Title Program Funding Financial Report July 2020 – June 2021 CLCAC Native Title Program Funding Financial Report July 2019 – June 2020 CLCAC Financial Report July 2021 – June 2022 CLCAC Financial Report July 2020 – June 2021
COVID-19 planning documents	CLCAC Pandemic Emergency Management Plan 2020
Other	CLCAC Strategic Plan 2021-2025 CLCAC Transition Plan for the Commencement of Post-Determination Service Delivery 2017-2022 CLCAC Business Continuity Plan 2021 CLCAC Administration Staff Survey 2021 CLCAC Rangers Survey 2021

Category	Description
	CLCAC Fraud and Corruption Control Plan 2021 CLCAC Risk Management Handbook 2019 CLCAC Constitution CLCAC Guidelines for Provision of Assistance of Native Title Matters CLCAC Information for provision to Nous compiled by CLCAC PLO CLCAC Organisational Chart CLCAC Work Health and Safety Manual

Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 17.

Table 17 | Glossary

Term	Meaning
Applicant	Any person or persons who have been authorised as the selected representative(s) of a native title claim group in native title or determination proceedings.
Client	Any individual or group being provided assistance by a Native Title Representative Body and Service Provider (including assistance with claims, research and/or PBC support).
Connection evidence	Evidence to establish connection of the native title group to the area over which they have lodged a claim. This evidence must demonstrate that the group have continued to observe and acknowledge, in a substantially uninterrupted way, the traditional laws and customs that give rise to their connection with the claim area, from the time of the proclamation of sovereignty to the present day.
Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (the CATSI Act)	The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) is the law that establishes the role of the Registrar of Indigenous Corporations and enables Aboriginal and Torres Strait Islander groups to form Aboriginal and Torres Strait Islander corporations.
Determination	A decision by the Federal Court or High Court of Australia. A determination is made either when parties have reached an agreement (consent determination) or following a trial process (litigated determination). In the context of the Review, a "positive" determination is where the court finds that native title exists and a "negative" determination is a finding that native title has been extinguished or does not exist.
Extinguishment	Occurs over a defined area when Australian law does not recognise the existence of native title rights and interests because of legislation or common law precedent. Extinguishment can be whole or partial.
Future Act	A legislative or non-legislative act in relation to land or waters that may impact on the ability of native title holders to exercise native title rights; either through extinguishment or creating interests that are wholly or partly inconsistent with the continued existence of native title.
Indigenous Land Use Agreement (ILUA)	A voluntary, legally binding agreement governing the use and management of land or waters over which native title exists or might exist. The conditions of each Indigenous Land Use Agreement are determined by way of negotiations between native title holders and other interest holders (such as a state or mining company). These negotiations are often facilitated by Native Title Representative Bodies and Service Providers.
National Native Title Tribunal (NNTT)	An independent statutory body established under section 107 of the *Native Title Act 1993* (Cth) to assist people in resolving native title issues by: a) mediating between the parties to native title applications at the direction of the Federal Court b) acting as an arbitrator in situations where the people cannot reach agreement about certain Future Acts

Term	Meaning
	c) helping people to negotiate Indigenous Land Use Agreements. The National Native Title Tribunal maintains three registers relating to native title applications, determinations and Indigenous Land Use Agreements. It also maintains databases regarding Future Act matters and geospatial tools.
Native title	The communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders in relation to land and waters, possessed under traditional law and custom, by which those people have a connection with an area which is recognised under Australian law (section 223 of the *Native Title Act 1993* (Cth)).
Native Title Act 1993 (Cth) (the NTA)	The *Native Title Act 1993* (Cth) established the procedure for making native title claims and is the primary piece of Australian Government legislation allowing Indigenous Australians to seek rights over land and waters arising from their original ownership under traditional law and custom.
Native Title Representative Body (NTRB)	Recognised organisations which are funded by the Australian Government to perform functions to assist native title groups in a specific region, according to the provisions in Part 11 of the *Native Title Act 1993* (Cth).
Native Title Service Provider (NTSP)	Organisations funded by the Australian Government to perform all or some of the same functions as Native Title Representative Bodies in areas where Native Title Representative Bodies and Service Providers have not been recognised in law.
Native Title Representative Bodies and Service Providers (NTRB-SPs)	Native Title Representative Bodies and Service Providers refers to the cohort of Native Title Representative Bodies and Native Title Service Providers that are being evaluated by the Review.
Non-claimant application	An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.
Pastoral leases	A pastoral lease is a title issued for the lease of an area of Crown land to use for the limited purpose of grazing of stock and associated activities. It is a limited property right and does not provide the leaseholder with all the rights that attach to freehold land. Native title rights often co-exist with pastoral lease rights.
Post-determination	At a claim level, refers to the period following a determination that native title exists. At a Native Title Representative Body and Service Provider life cycle level, refers to the period following the resolution of all active applications within a Representative Aboriginal/Torres Strait Islander Body area.
Prescribed Body Corporate (PBC)	A body, established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), nominated by native title holders which will manage their native title rights and interests once a determination that native title exists has been made.
Registration test	The registration test is a set of conditions applied to the claims made in native title determination applications. The Native Title Registrar, or the Registrar's delegate, applies the test. If a claim satisfies the conditions of the registration test, details of the application are entered on to the Register of Native Title Claims. Once an application is registered, applicants can exercise the procedural rights stipulated in the Future Act provisions of the *Native Title Act 1993* (Cth).
Representative Aboriginal/ Torres Strait Islander Body (RATSIB) area	The area over which a Native Title Representative Body and Service Provider holds jurisdiction.

Term	Meaning
Terms of Reference (TOR)	Refers to the Terms of Reference provided by the National Indigenous Australians Agency which govern the scope of the project. These can be found in 0.
Traditional Owners	Individuals of Aboriginal and/or Torres Strait Islander descent who identify as being a descendant of persons that occupied a particular area prior to European settlement.

This document refers to the functions of NTRB-SPs outlined under the NTA and captured in Table 18.

Table 18 | NTRB functions under the NTA

Reference	Function	Detail
s203BB	Facilitation and assistance	NTRB-SPs provide assistance to native title interest holders in relation to native title applications, Future Acts, agreements, rights of access and other matters.
s203BF	Certification	NTRB-SPs certify applications for native title determinations and certify the registration of ILUAs.
s203BF	Dispute resolution	NTRB-SPs promote agreement and mediate disputes between native title groups.
s203BG	Notification	NTRB-SPs ensure that people with a possible native title interest are informed of other claims and of Future Acts and the time limits for responding to these.
s203BH	Agreement making	NTRB-SPs can be a party to ILUAs or other agreements.
s203BI	Internal review	NTRB-SPs have a process by which clients can seek a review of decisions and actions they have made and promote access to this process for clients.
s203BJ	Other functions conferred by the *Native Title Act 1993* (Cth) or by any other law	These are largely concerned with cooperation between NTRB-SPs, consulting with Aboriginal and Torres Strait Islander communities, and providing education to these communities on native title matters.

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