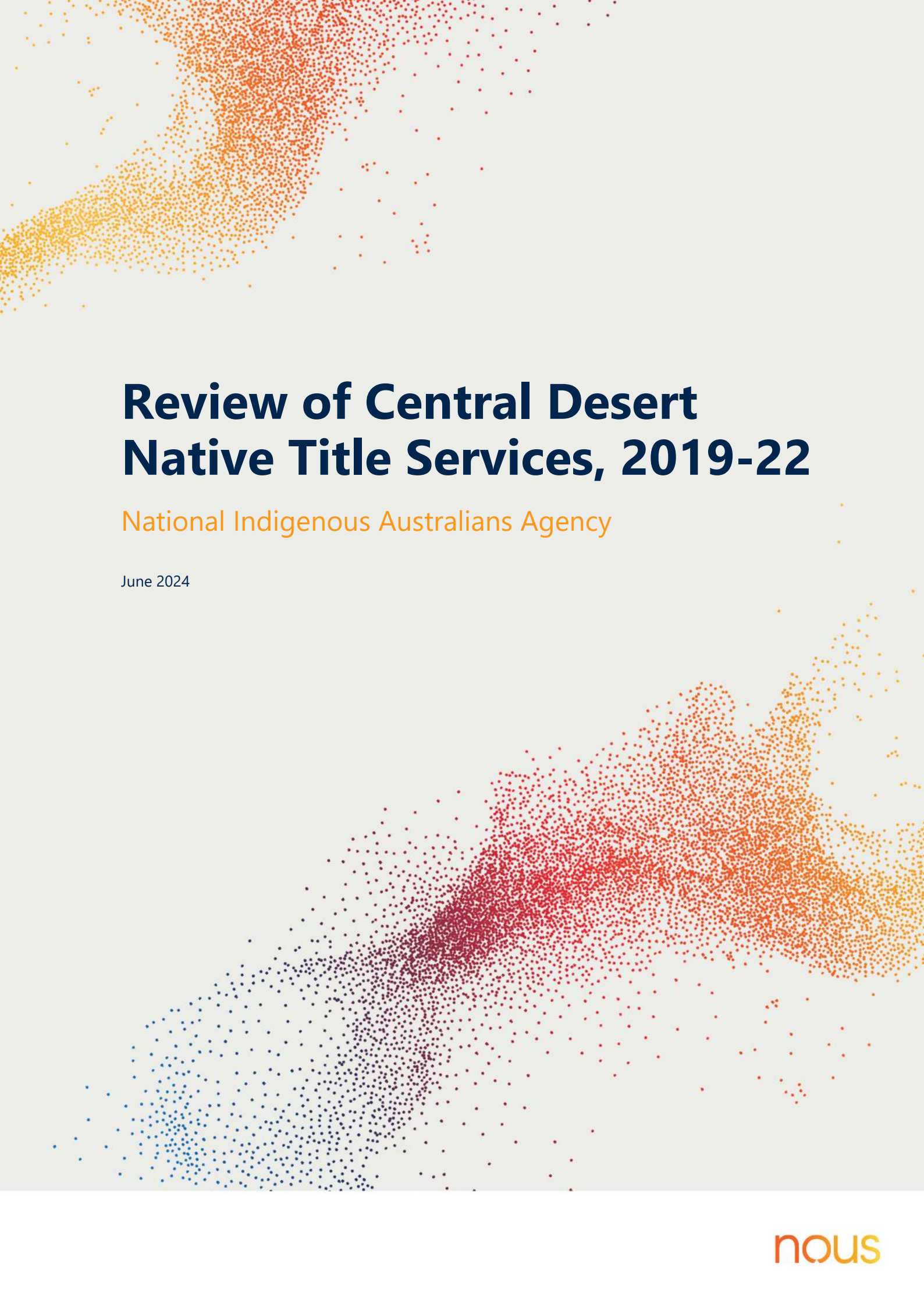




Review of Central Desert Native Title Services, 2019-22

National Indigenous Australians Agency

June 2024

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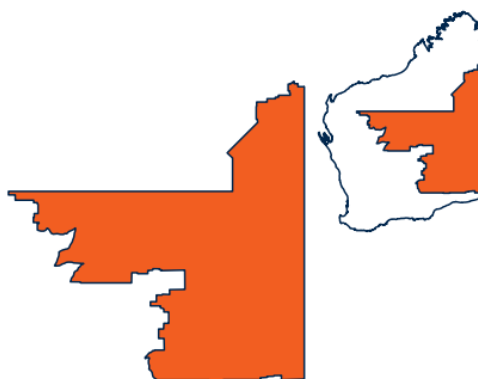
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1 Profile of Central Desert Native Title Services

Central Desert Native Title Services (CDNTS) is based in East Perth and provides native title services to the Central Desert region including north of Balgo and as far south as the border of the Goldfields region.

CDNTS, incorporated April 2007, is a Native Title Service Provider (NTSP) which services the Central Desert Representative Aboriginal/Torres Strait Islander Body (RATSIB) area in Western Australia. CDNTS assumed the native title functions of the Native Title Unit of the Ngaanyatjarra Council Aboriginal Corporation. The CDNTS RATSIB area, pictured below, covers 822,887 square kilometres, about one-third of Western Australia.

CDNTS is a company limited by guarantee and is registered with the Australian Charities and Not-for-profits Commission. CDNTS also wholly owns three subsidiary companies: Desert Support Services Pty Ltd (DSS) established in 2011, Rockhole Funds Management Pty Ltd (RFM) established in 2013 and Desert Accounting and Business Support Pty Ltd (DABS) established in 2021. The roles of these subsidiary bodies are discussed further under Term of Reference (TOR) 5.



CDNTS has a skills-based Board, with five Directors. The Board's role is to decide the strategic direction of CDNTS and to ensure that CDNTS acts in accordance with its funding conditions. Within CDNTS, the management team comprises: the Chief Executive Officer (CEO), Principal Legal Officer (PLO), Head Anthropologist, Operations Manager, Client Services Manager, Communications Manager, Work Health and Safety Manager, Human Resources (HR) Manager and Chief Financial Officer (CFO) (the HR Manager and the CFO sit in DABS). In June 2022, CDNTS had 25 employees (12 per cent of whom identified as Aboriginal).¹

There have been 36 determinations of native title within the CDNTS RATSIB area since the passage of the *Native Title Act 1993* (Cth) (the NTA). Four determinations of native title, one compensation resolution and one determination amendment occurred between 1 July 2019 and 30 June 2022 (the Review period). A further eight claims for determination of native title were lodged during the same period.

At the end of the Review period, there were 15 active claims in the Central Desert RATSIB area. CDNTS was acting for the applicants in eight of these claims. The areas of the seven claims that CDNTS does not act for lie mostly in the CDNTS RATSIB and adjoining RATSIB areas but outside the Western Desert Cultural Bloc.

There are 27 Prescribed Body Corporates (PBCs) within the RATSIB area. CDNTS has formal relationships with 20 of these and specifically provided assistance to 14 of them during the Review period. CDNTS received varied funding during the Review period. It was approved a total of \$8,894,531 in grant funding in financial year (FY) 2021-22, a decrease from \$9,519,531 in FY2020-21 but an increase from \$6,512,910 in

¹ CDNTS. Staff profile. 2022. Accessed August 2023.

FY2019-20. CDNTS supplemented grant revenue with \$336,576 of activity generated income in the period FY2019-20 to FY2021-22, accounting for 1.3 per cent of total revenue over the period.

2 Scope of the Review

The National Indigenous Australians Agency (NIAA) has engaged Nous Group (Nous) to undertake an independent review of 13 Native Title Representative Bodies and Service Providers (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 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 Appendix A.

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 NTRB-SP, 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
AICD	Australian Institute of Company Directors
CDNTS	Central Desert Native Title Services
CEO	Chief Executive Officer
CFO	Chief Financial Officer
DABS	Desert Accounting and Business Support Pty Ltd
DSS	Desert Support Services Pty Ltd
FAN	Future Act notification
FY	Financial year
HR	Human Resources
IDA	Indigenous Desert Alliance
ILUA	Indigenous Land Use Agreements
KPI	Key performance indicator
MOU	Memorandum of understanding
NIAA	National Indigenous Australians Agency
NNTT	National Native Title Tribunal
Nous	Nous Group
NTSP	Native Title Service Provider
NTPB-SP	Native Title Representative Body and 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
RFM	Rockhole Funds Management Pty Ltd
RNTBC	Registered native title bodies corporate
The NTA	<i>Native Title Act 1993</i> (Cth)

Abbreviation	Meaning
The Review period	1 July 2019 to 30 June 2022
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 CDNTS represented six successful claims, maintaining a high standard of achieving native title outcomes for its clients despite the impacts of COVID-19. CDNTS had eight active claims at the end of the Review period; a number of these claims have been determined since then. It also represented applicants in one successful compensation application during the Review period (the Pila Nature Reserve Traditional Owners compensation claim).

CDNTS was not involved in any ILUAs that were settled during the Review period, but it did negotiate a number of other agreements on behalf of clients. CDNTS also responded to a significant number of Future Act matters within the Review period, with expedited proceedings imposing additional requirements on the organisation. Further, the Tjiwarl compensation claims supported by CDNTS and other private representatives were negotiated through the Review period, resulting in a landmark ILUA settlement with the Western Australia Government in 2023, after the Review period. The Tjiwarl settlements set a precedent for post-determination native title outcomes for Traditional Owners.

Traditional Owners who were consulted as part of the Review were mostly satisfied with CDNTS's ability to deliver positive native title outcomes for its clients.

While CDNTS delivered a range of functions, native title claim processes were largely driven by the legal team, who were reported to have performed their native title functions well.

Throughout the Review, CDNTS had a relatively small anthropological research function, with a shortage of in-house anthropologists. The organisation was largely dependent on consultant anthropologists for more complex research activities.

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.

Assessment and prioritisation decisions regarding CDNTS's remaining native title claims were made at the senior levels of the organisation, with a focus on pursuing claims that were strong and supported by legal precedent. CDNTS had no public-facing policy on assessment and prioritisation on its website. However, given very few native title determination claims remain, a public-facing policy on assessment of native title determination claims is regarded as less of a priority going forward.

Traditional Owners who engaged with the Review were mostly satisfied with the process of how claims were assessed and prioritised, with only some disputes arising due to claim group membership issues.

As the majority of the CDNTS RATSIB area has had determinations of native title, future claim activity will be related to compensation claims for native title holder groups or PBCs. While the Review heard that CDNTS was positioning itself in a post-determination space, there was no formal or documented process

that articulated how CDNTS will look to prioritise compensation claims. The Review identified an opportunity to develop a new assessment and prioritisation policy for compensation. This will also be important for recognising that this native title function is one that causes concerns and issues across the NTRB-SP system.

RECOMMENDATION

1

Develop a formal assessment and prioritisation policy for compensation claims and embed processes to communicate this approach transparently to native title holders.

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.

Respectful, equitable and culturally appropriate engagement were all key pillars guiding the organisational culture of CDNTS. This was recognised by staff during the Review. CDNTS looked to have a strong regional presence throughout the RATSIB area and ensured that staff received high quality, and importantly, local cultural competency training.

Traditional Owners were largely positive about their engagement experiences with CDNTS. They identified some opportunities to further embed culturally safe practices as well as safe use of cultural materials; be more transparent; and ensure that all engagements are respectful. CDNTS had a thorough process for addressing complaints.

During the Review period, CDNTS had limited mechanisms for understanding client satisfaction and feedback outside the complaints process. However, CDNTS advised that since the Review period it has created a strategy to deepen client engagement, with a new senior position within the organisation: Client Services Manager. Further, CDNTS's Strategic Plan included a key performance indicator (KPI) to undertake client satisfaction survey and reviews. The Review heard from CDNTS that these activities were intended to ensure the Board and staff were aware of stakeholder feedback and any issues if, and where, they arise.

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.

Funding for CDNTS varied over the Review period. While total expenditure remained at similar levels each year (including staff expenditure) some expenses fluctuated, such as travel. This was not unexpected given external (the COVID-19 pandemic) and internal (staffing capacity) impacts.

CDNTS was highly conscious of its financial constraints and had clear policies to monitor spending, particularly given the CDNTS RATSIB area is large and servicing it can be challenging from a financial efficiency perspective. To navigate this, the organisation had a wide range of cost-monitoring and risk assessment strategies. Claim group meetings were carefully planned and documented by staff, and there were policies and procedures to support travel to and from claim group meetings to support a focus on cost effectiveness. CDNTS only used external consultants where required to leverage leading technical expertise.

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.

During the Review period, there were numerous changes to governance and management structures for CDNTS. While roles and responsibilities have always been well defined and aligned to best practice

corporate governance, changes were driven by an interest in supporting improved efficiency and effectiveness and creating a more positive organisational culture and a more productive way of operating. Stakeholders uniformly commented that at the end of the Review period CDNTS was in a much better place than previously.

In the CDNTS Policy Manual, the Disclosure of Conflict of Interest Policy clearly defined the parameters of addressing a conflicting interest within the Board of Directors. However, this policy did not apply to CDNTS staff members or those who may have been both native title holders and members of the CDNTS Board or staff. This creates a potential for conflicts of interests to emerge in the day-to-day decision-making of the organisation. An opportunity exists for CDNTS to develop and incorporate protocols to define the parameters of addressing a conflict of interest relating to CDNTS staff members and in day-to-day decision making of the organisation.

CDNTS had a subsidiary governance structure which sees two of its corporate functions – HR and finance – sitting in one of its subsidiaries, DABS. CDNTS advised that as a wholly owned subsidiary, DABS did not receive funding from the NIAA and that CDNTS’s statutory functions and corporate services operate with core funding provided by the Commonwealth in accordance with section 203FE of the NTA. There were mixed views on the effectiveness of this model, predominantly relating to perceived duplication of governance and reporting processes across DABS and CDNTS. The Review found that it was timely for CDNTS to review the delineation of functions and responsibilities between DABS and CDNTS, to explore how the organisation could have the most efficient structure.

The other subsidiaries, DSS and RFM, were seen to operate effectively and the Review found these subsidiaries to be appropriate given their functions. DSS supported Indigenous organisations to maximise the use and management of their lands. RFM was a low-cost Trustee service to Aboriginal groups who did not have sufficient funds to warrant a larger trustee service.

Most staff were guided by the well-established mission, vision and values in their day-to-day work. CDNTS experienced some workplace culture issues and dissatisfaction amongst staff early in the Review period. There was also significant turnover of senior staff and limited capacity for professional development and training. As a result of actions that were undertaken to address concerns, including changes made by CDNTS management since the Review period, the organisation has seen an uplift in workplace culture since 2022.

CDNTS has recognised that to maintain and sustain this trajectory it will be important to continue to monitor engagement and culture, especially given the competitive job market and high workloads of staff. CDNTS has embedded corporate culture and engagement as a KPI within its new Strategic Plan and has undertaken annual surveys for the last two years.

RECOMMENDATION

2

Review the delineation of functions and responsibilities between DABS and CDNTS, to explore how the most efficient subsidiary structure can be established.

RECOMMENDATION

3

Develop and incorporate protocols that define the parameters of addressing a conflict of interest relating to CDNTS staff members and in day-to-day decision-making of the organisation.

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

CDNTS and its subsidiaries have a large variety of services they provide to PBCs. At the end of the Review period, there was a small dedicated PBC Support Unit within the organisation, while financial and HR services for PBCs were supported through DABS and land management was supported through DSS. The majority of PBCs supported by CDNTS had a formal service agreement in place. As the current capacity and funding of the PBC Support Unit is relatively limited by the extent of funding provided to it, support does not extend beyond governance, compliance and administration.

PBC self-sufficiency varies according to the amount of funding each PBC can access and the skills and governance capabilities of PBC members. A small group of PBCs have greater natural resources and economic opportunities available to them. During the Review period, CDNTS provided services for both less independent and more self-sufficient PBCs and remained committed to having an advisory role for PBCs where requested. PBCs supported by CDNTS, DABS and DSS that engaged with the Review were mostly satisfied with the support they received, but they were looking to CDNTS for greater opportunity to build capability, to explore economic development opportunities and to connect with other PBCs across the RATSIB area.

The Review acknowledges that the activities and functions of the CDNTS PBC Support Unit were limited by funding; however, it considers that CDNTS could further explore opportunities for how the PBC Support Unit could better focus on capacity-building and self-sufficiency. This could include PBC forums or networks bringing together PBCs across the region and better linking the PBCs to external opportunities such as training for Directors in leadership. CDNTS could explore alternative funding or grants to support this development.

RECOMMENDATION

4

Explore additional mechanisms and funding opportunities (for example, PBC networks and forums, and PBC grants) that would allow the PBC Support Unit to increase its focus on capacity-building and self-sufficiency, in addition to its focus on governance, compliance and administrative support.

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

CDNTS is well progressed towards a post-determination environment – only six per cent of the RATSIB area is awaiting a claim to be made, with a further two per cent of the RATSIB area not on claimable land.

CDNTS's new Strategic Plan, developed shortly after the Review period, identified a priority to shift its roles and functions to align with this post-determination environment. This includes an increased focus on delivering economic outcomes for First Nations people (including through compensation claims), as well as supporting PBCs to build their own capacity and capability to create sustainable outcomes for First Nations communities (as supported by the Review's recommendations under TOR 6).

Alongside the new Strategic Plan, CDNTS developed an Operational Plan to guide short- and medium-term priority initiatives for the organisation, as well as KPIs to monitor implementation through discussions facilitated by the Board and Executive.

The Review sees an opportunity for CDNTS to engage with PBCs and clients to confirm that the organisation's priorities align with their future aspirations as a PBC. This will strengthen the organisation's strategic focus on delivering outcomes "with" and "for" First Nations people. CDNTS could undertake a formal period of engagement and review to strengthen relationships with the PBCs in its region to fully

understand community aspirations for social, cultural and economic development. This process of engagement will help CDNTS identify how it can strategically support PBCs into the future to take advantage of any opportunities arising from their native title rights and interests.

RECOMMENDATION

5

Engage with all PBCs to understand their aspirations in a post-determination environment and ensure alignment with CDNTS's new Strategic Plan.

5 Performance assessment

This section assesses performance against the relevant performance indicators for each TOR. See Appendix A 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 CDNTS represented six successful claims, maintaining a high standard of achieving native title outcomes for its clients despite the impacts of COVID-19. CDNTS had eight active claims at the end of the Review period; a number of these claims have been determined since then. It also represented applicants in one successful compensation application during the Review period (the Pila Nature Reserve Traditional Owners compensation claim).

CDNTS was not involved in any ILUAs that were settled during the Review period, but it did negotiate a number of other agreements on behalf of clients. CDNTS also responded to a significant number of Future Act matters within the Review period, with expedited proceedings imposing additional requirements on the organisation. Further, the Tjiwarl compensation claims supported by CDNTS and other private representatives were negotiated through the Review period, resulting in a landmark ILUA settlement with the Western Australia Government in 2023, after the Review period. The Tjiwarl settlements set a precedent for post-determination native title outcomes for Traditional Owners.

Traditional Owners who were consulted as part of the Review were mostly satisfied with CDNTS's ability to deliver positive native title outcomes for its clients.

While CDNTS delivered a range of functions, native title claim processes were largely driven by the legal team, who were reported to have performed their native title functions well.

Throughout the Review, CDNTS had a relatively small anthropological research function, with a shortage of in-house anthropologists. The organisation was largely dependent on consultant anthropologists for more complex research activities.

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

CDNTS represented six successful claims, maintaining a high standard of achieving native title outcomes for its clients despite the disruptive impacts of COVID-19

CDNTS has performed well in achieving native title outcomes for clients since its establishment. Within the Review period, CDNTS:

- filed **eight native title applications** for native title
- achieved **four successful native title consent determinations** with a judgment that native title exists
- achieved **one successful native title variation determination**
- filed **four applications for native title compensation claims**, including achieving **one positive compensation decision**
- had no claims leading to a determination that **native title does not exist**.

The details of these determinations achieved during the Review period are outlined in Table 1.

Table 1 | Determinations achieved by CDNTS 1 July 2019 to 30 June 2022²

Claim (Federal Court file no)	Date filed	Determination date	Judgment
Kultju (WAD225/2018)	28/5/2018	30/10/2019	Native title exists in the entire determination area. • Covers the Barwidgee and Wonganoo pastoral leases. • Native title holders developed a standard ILUA for mining or petroleum tenure purposes.
Manta Rirrtinya (WAD298/2019)	29/5/2019	24/4/2020	Native title variation approved to include areas covered by exploration licences. • Determination orders for the initial claim included non-exclusive native title rights for areas of unallocated Crown land which were covered by exploration licences at the time the claimant application was made on 13 September 2017. • Exclusive native title covers the whole determination area except for a small portion which overlaps a pastoral lease.
Untiri Pulka (WAD472/2019)	19/9/2019	27/7/2020	Native title exists in the entire determination area. • Native title holders recognised to have exclusive possession, occupation, use and enjoyment of the area.
Nangaanya-ku (Part A) (WAD460/2018)	9/10/2018	29/11/2021	Native title exists in the entire determination area. • Native title holders developed a standard ILUA for mining or petroleum tenure purposes.
Pila Nature Reserve (WAD174/2021)	28/7/2021	15/6/2022	Native title exists in the entire determination area. • Native title application made under new section 47C. • Covers the Pila Nature Reserve (formerly known as the Gibson Desert Nature Reserve).
Pila Nature Reserve Traditional Owners	18/9/2020	15/6/2022	Compensation is payable. • Compensation agreement will run for term of ten years alongside native title rights.

² 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>

Claim (Federal Court file no)	Date filed	Determination date	Judgment
Compensation Claim (WAD222/2020)			The Agreement sees the Reserve jointly vested and managed by the Warnpurru Aboriginal Corporation and the Conservation and Parks Commission under the <i>Conservation and Land Management Act</i>, providing economic, social and cultural benefits for Aboriginal communities in the area.

While CDNTS delivered a range of functions, the claim process was largely driven by the legal team. This team was led by a PLO who oversaw all legal operations and a Senior Lawyer who had responsibility for native title matters and coordinated the day-to-day legal functions of CDNTS's native title operations. Two junior lawyers provided support across the CDNTS's legal team.

Overall, comments from staff interviewed, including those not within the legal team, indicated that the CDNTS's legal team performed its native title functions well.

CDNTS had eight active claims at the end of the Review period, including the subsequently successful landmark Tjiwarl Compensation Claims

At the end of the Review period, CDNTS had eight active claims, which are listed in Table 2.

Table 2 | Active claims for CDNTS at 30 June 2022

Case name	Federal Court file no.
Nangaanya-ku Part B	WAD460/2018
Tjiwarl (Aboriginal Corporation) registered native title bodies corporate (RNTBC) Compensation Claim	WAD141/2020
Tjiwarl Claim Group Compensation Claim	WAD142/2020
Kapi Tjiwarl Compensation Claim	WAD18/2021
Gingirana #3	WAD230/2020
Gingirana #4	WAD269/2020
Martu #3	WAD170/2021
Upurli Upurli Nguratja	WAD281/2020

Since the end of the Review period, CDNTS has achieved four successful outcomes relating to the active claims listed in Table 2. This includes the landmark Tjiwarl compensation proceedings, which consisted of three separate compensation claims by the Tjiwarl people (WAD141/2020, WAD142/2020 and WAD269/2020) that commenced in June 2020 (the Tjiwarl Compensation Claims). CDNTS played a critical support role collecting native title holder witness statements and expert evidence on behalf of Tjiwarl native title holders. The Western Australian Government and the Tjiwarl Aboriginal Corporation reached an historic settlement for the three native title compensation claims in May 2023.

Stakeholders who were consulted during the Review commented that the Tjiwarl Compensation Claims had “set the standard” for compensation claims, with the settlement providing certainty for Tjiwarl, the Western Australian Government and industry in how tenure, heritage and environment was managed within the determination area. Independent assessments of the Tjiwarl Compensation Claims found they had provided a foundation to guide other native title groups to reach similar outcomes.³ This included a high amount of monetary compensation, inclusion of Tjiwarl ownership in decision-making over water and land rights, and support for socio-economic expansion and opportunity.

The Martu #3 determination saw CDNTS support Jamukurnu-Yapalikurnu Aboriginal Corporation and the Martu people of the Western Desert in achieving recognition of native title rights to a number of small to medium blocks along the western boundary of Martu Ngurra (country). Stakeholders consulted as part of the Review were highly complimentary of CDNTS’s services, citing that CDNTS was consultative and proactive in sharing information about the progress of the claim and matters that were arising.

Traditional Owners engaged during the Review were mainly satisfied with CDNTS’s ability to deliver native title outcomes

Most stakeholders were positive in their assessment of CDNTS’s performance as it relates to delivering native title outcomes. Although the Review did not engage with all groups, Traditional Owners from most claims determined within the Review period were consulted.

“The result is an agreement which fundamentally cements our people in decision making processes for all matters affecting our Country.”

PBC representative

Overall, Traditional Owner groups demonstrated a sense of appreciation for CDNTS’s services in delivering native title outcomes. Most clients who participated in the Review noted that the legal team, led by the PLO, provided efficient facilitation and assistance services throughout the application process, along with ensuring timely compliance with Federal Court processes and demonstrating strong cultural competence to build relationships with communities.

“We have a longstanding relationship with CDNTS, but they recently helped us work with applicants on that new claim. They did a great job.”

PBC representative

Since the last Review, some Traditional Owners acknowledged the work done by the CDNTS legal team to remedy ongoing dissatisfaction regarding the outcome of *Murray on behalf of the Yilka Native Title Claimants v State of Western Australia (No 5) [2016] FCA 752 (the Yilka claim)* in 2011.

A small number of stakeholders voiced some frustrations with CDNTS’s performance. For example, one stakeholder referenced a delay in proceedings (and significant costs incurred) because of CDNTS’s perceived tardiness in responding to an overlapping boundary. Another commented that CDNTS was unwilling to change or reconsider its advice or activities regarding claim group membership or boundaries once its initial advice had been provided. The Review is unable to comment on the validity of these views.

³ Ashurst. Native title compensation Not much to see but plenty happening below the surface. 11 July 2022. Accessed August 2023. <https://www.ashurst.com/en/insights/native-title-compensation-not-much-to-see-but-plenty-happening-below-the-surface/>
Lexology. Native title compensation: we’re off to the High Court again. 2 August 2023. Accessed August 2023. <https://www.lexology.com/library/detail.aspx?g=7d10d1d1-a304-46c2-8232-ea852f78a293#:~:text=Pitta%20Pitta%20Compensation%20Claim%20%E2%80%93%20Queensland&text=The%20claim%20relates%20to%20hundreds.and%20mining%20interests%20in%20Queensland>

Anthropological research

CDNTS had a relatively small anthropological function that seeks to advance native title outcomes

CDNTS's approach to seeking recognition of native title was focused on gathering comprehensive evidence to establish clear connection to Country and therefore improving the probability of a successful outcome. It did not file a claim unless the evidence and research to support the claim was strong and it was confident that the claim included the right people and covered the right Country.

The CDNTS duty statements⁴ outlined that the anthropological function was responsible for assisting in the delivery of services to CDNTS's clients including in the areas of:

- the collection, collation, storage and distribution of clients' cultural knowledge and information
- genealogies
- heritage surveys
- cultural mapping
- Indigenous engagement and organisation.

One area of activity for CDNTS in terms of research has been research into an area of unallocated Crown land, immediately south of the Wiluna #3 determined lands. CDNTS will convene an authorisation meeting to discuss the research subsequent to the Review period.⁵

Throughout the Review period, CDNTS had a shortage of in-house anthropologists and the organisation was largely dependent on consultant anthropologists for complex research activities. Staff appreciated the deep expertise that experienced consultant anthropologists with an affiliation to a particular area or region can bring.

Some CDNTS staff commented that there were opportunities to improve the research methods adopted by the organisation with respect to native title claims, however, this was limited due to the capacity constraints of a small team; at the end of the Review period there was only one anthropologist and they were relatively new to the organisation. Staff also noted that CDNTS was struggling to attract native title anthropologists, with reductions in anthropology courses challenging the availability of native title anthropologists.

Future Acts and ILUAs

CDNTS responded to a significant number of Future Act matters within the Review period, with expedited proceedings imposing additional requirements

CDNTS followed a consistent process to support its obligations in responding to Future Act notifications (FANs). During the Review period, CDNTS received 900 FANs, including 640 section 29 notices (

⁴ CDNTS. CDNTS Duty Statements. Accessed August 2023.

⁵ CDNTS. CDNTS Annual Report (2021-2022).

Table 3).

This included a large number of expedited Future Acts, which imposed additional requirements on CDNTS to engage with the Future Act process and support its clients to benefit from potential Future Act agreements. Under section 237 of the NTA and under the Western Australia *Mining Act 1978*, a native title claimant group affected by a Future Act can object to the expedited procedure statement within four months of the notification day and provide CDNTS with instructions about their preferred course of action.

Several Traditional Owners commented that CDNTS provided rigorous legal advice making many attempts to engage Traditional Owners in the Future Act process, despite the significant workload associated with it.

Table 3 | Number of FANs received and ILUAs registered with the National Native Title Tribunal (NNTT)

Financial year	FANs					
	All notifications	Section 29 notifications (expedited)	Section 29 notifications (not expedited)	Objections to expedited procedure lodged	Section 24 notifications received	Section 24 objections lodged
2019-20	294	185	4	64	35	6
2020-21	276	219	1	29	25	2
2021-22	330	226	5	40	51	8

CDNTS did not register an ILUA during the Review period, but it negotiated a number of other agreements on behalf of clients

During the Review period, CDNTS was not required to negotiate any ILUAs; however, it negotiated 61 agreements between Traditional Owners and licensees of mining tenements as preferred executed agreements.

As mentioned, CDNTS also notably supported three compensation claims for Tjiwarl Aboriginal Corporation during the Review period, which ultimately resulted in settlement of the Tjiwarl Palyakuwa ILUA between Tjiwarl Aboriginal Corporation and the Western Australian Government.

Table 4 provides a summary of the agreements CDNTS has helped negotiate in the region during the Review period.

Table 4 | Number of agreements registered and executed with NNTT, FY2019-20 to FY2021-22

Financial year	Agreements			
	Section 31 agreements executed	ILUAs executed and registered	Native title party preferred agreement executed	Agreements in development
2019-20	0	0	13	0
2020-21	0	0	21	0
2021-22	0	0	27	0

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

CDNTS supported six determinations but no ILUA settlements during the Review period

As shown in Table 5, during the Review period CDNTS filed eight new claims, secured four determinations, resolved one compensation claim and one variation of a determination area, showing positive and timely determinations for the Review. Remaining claims had not yet been determined at the conclusion of the Review period.

Table 5 | Number of claims resulting in determination of native title or ILUA settlement for CDNTS⁶

Period	Total number of claims filed	Number of ILUAs	Number of successful claims
From 1 July 2019 until 30 June 2022	8	0	6

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

CDNTS does not typically use brief out arrangements to support the delivery of native title functions

Consultations with CDNTS staff revealed that they typically did not brief out determination applications and external lawyers were only used where necessary. In general, even where external experts such as anthropologists were used, cases were still managed by the CDNTS's legal team. During the Review period, three external lawyers were contracted to assist on three different native title applications. They were engaged a total of eight separate times.

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

A very small percentage of claimable land within the RATSIB area was not subject to a registered claim or determination

The CDNTS RATSIB area spans 822,887 square kilometres. An assessment undertaken eighteen months after the Review period, in early 2024, found that CDNTS had supported native title determinations across 71 per cent of the RATSIB area, with a further 11 per cent of determination outcomes being represented by other service providers. Approximately nine per cent (73,390 square kilometres) of the RATSIB area was under claim. Given two per cent of the total RATSIB area was deemed as unclaimable land, only six per cent of the total RATSIB area remained not yet under claim (51,097 square kilometres).⁷

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

CDNTS's average time between filing an application to final determination of native title was quicker than most NTRB-SPs

The age of active claims at 30 June 2022 is shown in Table 6. For the six determinations that took place during the Review period, the average time between the filing of the application to the date of determination was 1.5 years. For all the claims from the inception of CDNTS until 30 June 2022, this figure was 5.6 years.

⁶ National Native Title Tribunal. [Native Title Applications, Registration Decisions and Determinations](#). 2023. Accessed June 2023.

⁷ CDNTS. CDNTS Annual Report 2022.

The Federal Court has set a claim resolution target of five years for all claims lodged since 2011. For claims lodged before 2011, this target was ten years.⁸ The performance of CDNTS during the Review period was far above these benchmarks.

Table 6 | Age of active claims at 30 June 2022⁹

Less than 1 year	1 to 3 years	3 to 5 years	5 to 8 years	More than 8 years
1	4	1	0	0

Number of common law native title holders/RNTBCs the NTRB-SP has acted for in a native title compensation application proceeding

CDNTS was successful in one native title compensation application, setting a new standard for native title claims in the region

During the Review period, CDNTS submitted four applications for native title compensation. This included the landmark Tjiwarl Compensation Claims (as discussed above), which were all successfully mediated to settlement in 2023 (after the Review period ended) with support from CDNTS’s legal team.

On 15 June 2022, the Federal Court recognised the exclusive native title rights and interests of the Traditional Owners of the Pila Nature Reserve (Federal Court file no. WAD174/2021). This was achieved alongside the concurrent Pila Nature Reserve Traditional Owners Compensation Claim (Federal Court file no. WAD222/2020) – an agreement which would run for term of ten years alongside native title rights.

“We are switching our focus to compensation claims now – the Tjiwarl case has really set the bar and we are all very proud of that milestone in terms of what it will do for post-determination native title outcomes, as well as the effort that we put into the claims.”

CDNTS staff member

The Pila Nature Reserve was the first claim to be led using the recently enacted provisions of section 47C of the NTA. The determination provides compensation for the Pila Nature Reserve – making it one of the few successful compensation claims across any RATSIB area during the Review period. The settlement package sets aside \$7.5 million over ten years to support the joint management activities over the reserve, providing training opportunities for the Traditional Owners at Patjarr, Warburton and surrounding communities.

Internal and external stakeholders engaged as part of the Review commented on the significance of these compensation claims both for CDNTS and for the native title landscape more broadly in negotiating post-determination compensation outcomes for Traditional Owners where mining or land use by industry is prevalent.

5.1.2 TOR 1: External factors

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

⁸ Justice Berna Collier. Prioritisation of Native Title Cases in the Federal Court of Australia. 2011. Accessed 20 September 2023. <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-collier/Collier-J-20110527.rtf>

⁹ 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>

State government policy and legislation

The Western Australian Government had a strong desire to settle and determine all claims in the region under Closing the Gap priorities

The Western Australian Government’s position was to achieve consent determinations for the state, with an increased willingness to progress native title claims more quickly under Closing the Gap priorities and the Western Australian Implementation Plan.¹⁰ It is important to note that this stance has evolved from the historically adversarial approach taken by the Western Australian Government, which was a strong theme that impacted CDNTS’s ability to deliver native title outcomes during the previous Review period (FY2014-15 to FY2016-17).

While the Western Australian Government’s positive attitude towards achieving consent determinations was on balance a positive indicator, CDNTS staff emphasised the importance of continuing to ensure a strong level of due diligence was applied to claims that were strongly backed by research and to ensure functional and inclusive claim groups.

State policy and legislation have had some impact over both native title land determinations and compensation claims

Within Western Australia’s context, a range of state legislation was directly or adjacently related to CDNTS’s native title activities, as outlined in Table 7.

Table 7 | Relevant Western Australian legislation

Legislation	Overview	Impact
<i>Aboriginal Cultural Heritage Act 2021 (WA)</i>	There has been significant commentary on the Western Australian <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> . In response, the Western Australian Government has decided to repeal the <i>Aboriginal Cultural Heritage Act 2021</i> (despite it only coming into effect on 1 July 2023) and revert to the previously repealed <i>Aboriginal Heritage Act 1972 (WA)</i> with some amendments.	Moderate – The redesign and subsequent repeal of the <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> has caused confusion across communities, with CDNTS often having to explain these adjacent policy changes during native title processes.
<i>Mining Act 1978 (WA)</i>	The Western Australian Government asserts that the expedited procedure applies to all exploration tenement applications lodged under the <i>Mining Act 1978 (WA)</i> , such as Exploration and Prospecting Licences.	Moderate – Western Australian Government policies around expedited procedure imposed some pressures on CDNTS but did not substantially act as a barrier to achieving outcomes for its native title parties.

¹⁰ Western Australian Government, Closing the Gap WA Implementation Plan, 2021.
<https://www.wa.gov.au/government/publications/wa-government-closing-the-gap-implementation-plan-2023-2025>

Complexity of remaining claims

The few remaining claims in the CDNTS RATSIB area are complex – its strategic and robust approach to progressing claims must be sustained to ensure successful outcomes

Stakeholders who were consulted during the Review noted that as most claims have been progressed to a successful determination of native title, the future focus on compensation must still be balanced by achieving successful determinations in the remaining complex claim areas.

As outlined in the CDNTS Annual Report 2022, the few remaining claims within the CDNTS RATSIB area are increasingly complex. CDNTS believes that these will require greater time and resources.¹¹ The Review supports the position of staff and leadership that CDNTS should continue to embed its robust approach to research and legal services in progressing native title claims to ensure successful outcomes, despite external pressures to expedite the claim process.

History of previous claims

While the Wongatha claim still resonates among some Traditional Owners, there have been increasing levels of trust in the native title claim process

As mentioned in the previous Review, the Wongatha claim¹² left a legacy of distrust in the south-west of the RATSIB area, where the most complex native title claims exist. Harrington-Smith on behalf of the Wongatha People v Western Australia (No 9) (the Wongatha case) was a claim of native title in and beyond the Goldfields region that was dismissed in 2007 by the Federal Court, finding that the claim of native title was not proven; it was not a determination that native title does not exist. It was represented by the former neighbouring NTRB, Goldfields Land and Sea Council, but it left a legacy of distrust in the CDNTS region too. CDNTS advised the previous Review that it held off working on claims over and around the dismissed Wongatha claim until the Yilka claim was settled. The Yilka claim tested a number of issues that were relevant to any new claims being brought in the area of the Wongatha claim, particularly the State's arguments relating to abuse of process. With Yilka now determined, CDNTS advised the previous Review that research was underway and progressing positively in the region to file claims that were previously part of the Wongatha area. The fallout of the dismissed Wongatha claim in the CDNTS RATSIB area was not as significant an influence on CDNTS's operating environment in comparison to the Goldfields region, but it was still influential, as many potential claimants in the region were close to the Goldfields region, where potential overlapping claims exist.

During the Review, stakeholders did reflect on the legacy of the Wongatha case. However, they also mentioned a noticeable effort from CDNTS to work with stakeholders impacted by this case across claim groups to file claims over lands that were previously part of the Wongatha area.

Complexity of land use and tenure

While Indigenous groups in the Central Desert have been relatively cohesive, overlapping claim groups caused some challenges

For many communities across the CDNTS RATSIB area, there were strong connections to culture and beliefs across what was known as the "Western Desert Cultural Bloc", with many Traditional Owners

¹¹ CDNTS. CDNTS Annual Report (2021-2022).

¹² Harrington-Smith on behalf of the Wongatha People v Western Australia (No 9) [2007] FCA 31 (Wongatha) was represented by the Goldfields Land and Sea Council.

consulted during the Review referring to “desert mob” as a unifying connection to land, culture and language. This included the notion of “Tjukurrpa”, the term used to describe a body of beliefs which included the stories of creation, the evidence of that creation in the land, and the actions and activities of the dreamtime beings.

However, some communities across the CDNTS RATSIB area bring a long history of community closures and displacement of Aboriginal families. In some instances, this created tensions over land ownership within CDNTS’s RATSIB area. During the Review, some stakeholders referenced difficulties arising from overlapping claims such as for the Yugunga-Nya People or claims that overlap both CDNTS’s and Native Title Services Goldfields RATSIB areas.

COVID-19

CDNTS’s face to face operations were impacted by COVID-19; however, the organisation found opportunities to adapt to these challenges and continue to deliver strong outcomes

CDNTS, like many other organisations, was forced to transition into new ways of working due to the COVID-19 pandemic and subsequent government restrictions. This included restrictions on CDNTS staff travelling into communities to deliver support as part of claim processes, as well as limitations around bringing claim groups together for meetings. These restrictions resulted in some delays to claim processes.

However, staff consultations revealed that CDNTS responded to mandated government requirements and community preferences during the pandemic and implemented a range of measures to work in virtual environments where possible. While some staff reflected that managing stakeholder relationships and meetings virtually was significantly more challenging, many staff cited the resilience of the organisation in adapting to these challenges to maintain momentum in native title claims processes, such as achieving determination of the Untri Pulka claim (despite not being able to have the determination ceremony on Country).

CDNTS developed a range of COVID-19 planning documents and policies to ensure staff had clear direction on operations and mechanisms to navigate government mandated restrictions when working with clients and claims.

Amount of funding

CDNTS received relatively consistent funding throughout the Review period, but staff felt resourcing was a key constraint given the remoteness of its operations and clients

CDNTS staff highlighted resourcing as a key enabler of achieving native title outcomes across the CDNTS RATSIB area, and felt that client liaison, PBC support, anthropological research and legal teams all remained under-resourced.

Table 8 | Total funding relative to factors of interest, FY2019-20 to FY2021-22¹³

Factor of interest (denominator)	Ratio
CDNTS’s total land area: 822,887 square kilometres	\$22.25 per square kilometre

¹³ These estimates are calculated based on the total funding received from the NIAA, excluding PBC support, between 1 July 2019 and 30 June 2022, which was \$22.8 million.

Factor of interest (denominator)	Ratio
Number of active claims at 30 June 2022 (3) and number of determinations during the Review period (5): 8	\$2,289,386.37 per claim

CDNTS's funding appears to be broadly in line with other NTRB-SPs during the Review period; however, the Review acknowledges that the amount of funding received has had a moderate impact on CDNTS's ability to achieve native title outcomes for clients.

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

Assessment and prioritisation decisions regarding CDNTS's remaining native title claims were made at the senior levels of the organisation, with a focus on pursuing claims that were strong and supported by legal precedent. CDNTS had no public-facing policy on assessment and prioritisation on its website. However, given very few native title determination claims remain, a public-facing policy on assessment of native title determination claims is regarded as less of a priority going forward.

Traditional Owners who engaged with the Review were mostly satisfied with the process of how claims were assessed and prioritised, with only some disputes arising due to claim group membership issues.

As the majority of the CDNTS RATSIB area has had determinations of native title, future claim activity will be related to compensation claims for native title holder groups or PBCs. While the Review heard that CDNTS is already positioning itself in a post-determination space, there is no formal or documented process that articulates how CDNTS will look to prioritise compensation claims. The Review identified an opportunity to develop a new assessment and prioritisation policy for compensation. This will also be important for recognising that this native title function is one that causes concerns and issues across the NTRB-SP system.

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

Prioritisation of remaining native title determination claims was largely made at the senior levels of the organisation; however, an opportunity exists to consider a strategic approach to compensation claims

CDNTS has a strategic approach to sequencing its remaining native title determination claims. Staff cited the need to balance the aspirations of claim groups with internal resourcing and process obligations. Broadly speaking, CDNTS's claim sequencing approach throughout the Review period was consistent with a typical method of targeting the strongest claims. Staff cited that the perceived strength of a claim was typically influenced by existing legal precedent, the extent to which the claim group membership was well defined and the extent to which the claim's boundaries were clear. For example, the Review heard that the connection report for the Untiri Pulka claim was perceived to be relatively strong, as many of the Traditional Owners lived close to the site and used it regularly for cultural practices.

CDNTS viewed this approach as developing a firmer legal position through precedent and as a tool for developing the capability of its junior lawyers and anthropologists in native title to prepare them to take on more complex claims. Some staff did cite challenges with CDNTS managing overlapping claims, which were more complex and required ongoing management. During the Review period decisions regarding the prioritisation of certain native title claims was driven by the PLO, in consultation with the CEO and other senior staff.

CDNTS staff noted that there will need to be a refreshed approach to assessment and prioritisation of requests for assistance regarding compensation claims, which were indicated to be a strategic focus in line with CDNTS's Strategic Plan 2023-2026.¹⁴

Given the majority of the CDNTS RATSIB area has had native title determined, future claim activity will be largely related to compensation claims for native title holder groups or PBCs. While the Review heard that CDNTS was positioning itself in a post-determination space, there was no formal or documented process that articulates how CDNTS will look to prioritise upcoming compensation claims.

Looking ahead, there is an opportunity for CDNTS to design and formalise an assessment and prioritisation policy specifically for compensation claims across the RATSIB area. The policy could explain the request for assistance process effectively to clients and improve the robustness and the transparency of its prioritisation decisions through clear criteria and protocols. The Review recognises the desire to remain flexible in CDNTS's approach to supporting compensation claims, therefore the policy should reflect this ambition. This recommendation would align with CDNTS's new Strategic Plan, which has identified a clear priority to shift its roles and functions to align with a post-determination environment (as discussed under TOR 7).

Client and potential client awareness of the process

Despite CDNTS not having a public-facing policy on assessment and prioritisation, Traditional Owners did not express dissatisfaction over how CDNTS communicated application and prioritisation decisions

CDNTS's decision making processes relating to assessment and prioritisation of requests for assistance were not publicly available. As mentioned above, decisions around prioritisation processes were kept largely in-house as an exercise between the Executive and the CEO, and claimant groups had little input into this process. While the level of awareness among Traditional Owners as to how CDNTS prioritises applications for assistance was expectedly low, there was no indication that claim groups were dissatisfied with the current decision-making approach.

Most Traditional Owners and PBC representatives consulted were aware of the prioritisation of native title activity to focus on compensation claims, given much of the CDNTS RATSIB area had been determined. CDNTS staff noted that there was still extensive engagement with all clients and potential clients to explain the native title claim approach and to help manage their expectations of claims (including timeframes for outcomes).

The Review found that CDNTS placed an increased emphasis on engaging with Traditional Owners to respond to questions from clients about the claim process, as well as to explain decisions relating to prioritisation of claims. One PBC stakeholder commented that in the initial phases of the application process, CDNTS was heavily involved both in the research relating to the Connection report and through face-to-face meetings with claim groups to communicate findings from field work and assessment of the claim. Further, staff referenced a recent example of taking a more active role in getting anthropologists to maintain an on-the-ground presence in communities and explain Connection reports to claim groups, helping build transparency around decision-making and assessment of existing claims.

¹⁴ CDNTS. Strategic Plan 2023-2026. https://www.centraldesert.org.au/images/CDNTS_Stratplannew.pdf

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

Traditional Owners were somewhat satisfied with the process, with some disputes arising due to claim group membership issues

In consultations for the Review there was no indication that clients were dissatisfied with the ability of CDNTS to respond to applications for assistance efficiently. Some stakeholders consulted during the Review noted that CDNTS took a “risk-averse approach” to ensure clarity on both the legal precedent of the claim and claim group membership. This approach was described as having significant evidence from early research activities before proceeding to authorisation.

However, a small number of stakeholders had a less favourable view of CDNTS’s assessment process. Some stakeholders noted that they saw CDNTS as providing preferential treatment to certain family groups and choosing not to involve certain stakeholders for the sake of efficiency. As discussed under TOR 1, the Wongatha claim, which was dismissed by the Federal Court in 2007, created some complexity in how CDNTS prioritised and assessed claims during the Review period.

CDNTS advised that research was underway and progressing positively in the region to file claims that were previously part of the Wongatha area. However, some stakeholders acknowledged the complexity of the research given the prevalence of overlapping claims. There have also been some disputes about claim group membership outcomes from CDNTS’s research. Stakeholders suggested that CDNTS should continue to exercise a risk averse approach when filing claims to ensure that the correct family groups are included.

Consultations with CDNTS staff revealed awareness of this frustration in more complex claims among Traditional Owners. Senior staff suggested the organisation was looking to better understanding and validating these perspectives. Staff also noted that as the demand for compensation claims increases, CDNTS will need to ensure strong relationships with claim groups to avoid tension and dissatisfaction.

5.2.2 TOR 2: External factors

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

Number of claims relative to NTRB-SP size and resourcing

CDNTS was required to assess and prioritise a number of claims under a lean resourcing model

On a per-claim basis, considering determinations achieved within the Review period and active claims to be determined, CDNTS received on average \$2,289,386.37 per claim.¹⁵ The funding for CDNTS’s native title activities during the Review period was mostly consistent and did not significantly impact its ability to progress native title claims. However, stakeholders highlighted that resourcing constraints and turnover of staff was a major challenge for CDNTS, which occasionally led to delays in processes and outcomes for Traditional Owners.

¹⁵ Calculated based on the total number of claims filed during the Review period divided by the total native title funding during the Review period. This is based on six claims determined during the Review period and eight claims still active at 30 June 2022.

5.2.3 TOR 2: Recommendations

RECOMMENDATION

1

Develop a formal assessment and prioritisation policy for compensation claims and embed processes to communicate this approach transparently to native title holders.

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.

Summary

Respectful, equitable and culturally appropriate engagement were all key pillars guiding the organisational culture of CDNTS. This was recognised by staff during the Review. CDNTS looked to have a strong regional presence throughout the RATSIB area and ensured that staff received high quality, and importantly, local cultural competency training.

Traditional Owners were largely positive about their engagement experiences with CDNTS. They identified some opportunities to further embed culturally safe practices as well as safe use of cultural materials; be more transparent; and ensure that all engagements are respectful. CDNTS had a thorough process for addressing complaints.

During the Review period, CDNTS had limited mechanisms for understanding client satisfaction and feedback outside the complaints process. However, CDNTS advised that since the Review period it has created a strategy to deepen client engagement, with a new senior position within the organisation: Client Services Manager. Further, CDNTS's Strategic Plan included a KPI to undertake client satisfaction survey and reviews. The Review heard from CDNTS that these activities were intended to ensure the Board and staff were aware of stakeholder feedback and any issues if, and where, they arise.

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

Respectful engagement was a clear value of CDNTS

CDNTS recognises the importance of dealing with clients in a respectful and transparent manner. As highlighted in the CDNTS Annual Report (2021-2022), a core value for the organisation was to "focus on what matters most – decisions are made and communicated with rigour and reason for maximum impact".¹⁶ The CDNTS Code of Conduct clearly stated the ethical behaviour which CDNTS staff must conduct themselves with when engaging with clients.¹⁷ This stated that CDNTS staff should:

- be committed to ethical behaviour
- deal with all members of local communities honestly, fairly and not offend or embarrass individuals or groups
- not discriminate against any person on the basis of sex, sexuality, marital status, pregnancy, race, physical impairment, intellectual impairment, or age
- not intimidate, bully, or harass any person

¹⁶ CDNTS. CDNTS Annual Report (2021-2022).

¹⁷ CDNTS. CDNTS Code of Conduct. Accessed October 2023.

- be aware of situations that may cause a tension between their CDNTS work and private roles and in such cases give priority to the CDNTS role
- ensure that CDNTS mechanisms are in place to deal promptly and efficiently with the handling of complaints and concerns.

Employees exemplified these values and behaviours. During consultations, staff members commented on their strong desire to make a difference for Traditional Owners and provide a high-quality service. Employees were aware of the need to engage in a respectful manner at all times with their clients and community.

CDNTS staff aimed to be clear and transparent in communicating information to clients

CDNTS staff valued the importance of being open and transparent with their clients. The Review found there were no formal documents which informed staff of how to communicate in an effective manner, however it was seen as a core value that guides the actions and behaviours of CDNTS staff. In consultations, CDNTS staff commented on approaches their teams undertook to remain clear and transparent. This included:

- Seeing the value in building long-term engagement and relationships.
- Knowing the importance of checking and clarifying information with clients, rather than assuming.
- Focusing on longevity and continuity as an approach to engagement.
- Making decisions to ensure processes are done with communities, rather than commercially.
- Spending face to face time in the community.

Throughout consultations, CDNTS staff showed their understanding of the importance of providing high-quality communication. As they understand it their role was to distil and communicate policy changes, complex information and details of native title to claimants, as well as all native title holders. Many senior, junior and newer staff saw communication as a “really important” part of maintaining their relationships with clients. CDNTS used a large variety of mechanisms to communicate to clients, including by phone, email and through Microsoft Teams. However, a stronger emphasis was placed on providing in-person information.

Traditional Owners were mostly satisfied with the level of transparency and communication they received from CDNTS

Most stakeholders reported that CDNTS engaged them in a professional manner. This professionalism was shown in claim meetings, phone calls and one-on-one interactions staff had with Traditional Owners. The Review found that CDNTS for the most part did not over-service particular Traditional Owners but provided each client with the right level of support and information to suit their needs. PBCs that had regular communication with CDNTS reported that they were able to build strong relationships with key staff members that were built on respect. Other strengths clients commented on included CDNTS:

- sharing information about the progress of a claim proactively
- considering and managing matters and issues before they escalated
- being responsive to their claim queries and concerns
- remaining highly consultative and transparent when discussing information about a claim
- having a recognisable brand and being easily accessible to clients in or around Perth.

Pointedly, a large proportion of Traditional Owners acknowledged that CDNTS staff have provided a high level of customer service considering the high workload and pressure during the Review period.

While CDNTS showed a strong commitment to communicating key aspects of a determination, a small number of Traditional Owners indicated that they would like to see greater investment in the personal and cultural requirements of family groups throughout claim processes, rather than a sole focus on achieving timely outcomes.

"They are very available, have dialled into a few meetings and are keen to attend as many meetings as possible. Good having two lawyers doing it instead of just one. Both lawyers play separate roles in meetings. One will have a go at presenting stuff and the other will answer hard questions. The new lawyer seems to be learning quick. Legal team are building good rapport and relationships."

CDNTS client

Culturally appropriate engagement

CDNTS tried to have a strong regional presence throughout the Central Desert area

CDNTS aimed to maintain a strong regional presence throughout the communities it served. Despite funding constraints and the remoteness of the CDNTS area, the organisation undertook around 100 trips per year. This was done in a cost-effective manner which allowed them to make a high number of trips with limited funds. Kalgoorlie was used as a base for CDNTS to hold equipment and car hires before travelling through to more remote communities. This effort was noted by clients. A PBC stakeholder noted that CDNTS undertook quarterly "roadshows" to connect with PBCs and community members, and that there was "never a trip we don't see someone from CDNTS". Similarly, CDNTS staff members commented on their efforts to attend a high number of meetings in the community to maintain "a presence" with clients.

The Review period saw a high level of cultural events for Traditional Owners and an increase in the number of CDNTS face-to-face engagements from 267 trips (from 2016 to 2019) to 327 trips in the Review period (July 2019 to June 2022).¹⁸

There are opportunities to expand the CDNTS regional presence into the future. A long-term stakeholder explained that while some CDNTS staff were present in Central Desert communities, there were many non-client-facing staff members who were not. The Review found that allowing all CDNTS staff to have client-facing opportunities could create a stronger presence and allow all CDNTS staff to deeply understand the clients they serve first-hand. CDNTS advised that it formally committed to giving all staff opportunity for on-Country experiences and cultural sessions with Traditional Owners, and this was captured in the recently developed Strategic Plan as a KPI.

"[Sometimes it feels like] CDNTS thinks they have done their job, so they just get up and leave. This has upset us because the meeting was big and there were many family groups with some conflicts."

CDNTS client

Further, CDNTS could consider bolstering its community liaison function by introducing identified positions that would work on community engagement and with PBCs and clients.

Encouragingly, CDNTS noted it had recently taken steps to deepen client engagement with the creation of a new senior position of Client Services Manager, shortly following the Review period. This position would be responsible for expanding CDNTS's service offerings to PBCs and assisting them to build capacity towards self-sustainability.

¹⁸ CDNTS. CDNTS Annual Reports (2017-2022).

There was an appropriate level of cultural competency training available for CDNTS staff members

CDNTS staff members were given comprehensive training as part of the induction process to ensure they were culturally competent. This initial training involved both online and face to face components, such as watching relevant modules and reading key documentation relating to culturally safe practices. According to the Cultural Connection and Practices information document, staff were introduced to key aspects of Indigenous culture including social networks, death and mourning, communication, going out on Country, building relationships and increasing cultural knowledge.¹⁹ Additionally, CDNTS holds an annual all-staff workshop, inviting a PBC group to present a cultural awareness session.

The Review found the combination of detailed documentation and first-hand cultural experience with Traditional Owners offered a strong and engaging approach for learning. In particular, they allowed CDNTS staff to learn closely about the clients they serve, rather than being offered generic or broader cultural training.

Staff members had a strong consensus in consultations and the CDNTS staff survey that the cultural training provided was delivered to a high quality. One staff member regarded the training as “one of the best I’ve been to”.²⁰ CDNTS offered this training consistently to staff, with most respondents to the Review staff survey indicating they had received the training. As a result, a high proportion of the CDNTS staff were confident CDNTS behaved in a culturally sensitive way towards clients during the Review period.

However, there remain further opportunities to embed cultural capability during the recruitment and onboarding process, to ensure employees are supported to deliver culturally sensitive services. For example, there were no formal screening processes to assess the cultural capability of current and potential employees. The Review found that cultural capabilities had not been formalised as a key assessment factor for new candidates and those going through the recruitment process, nor were current CDNTS employees assessed on their cultural competency and capability in performance reviews. The Review noted that cultural competency was generally included in CDNTS job criteria and there was an informal process of asking cultural competency questions during staff interviews.

Staff demonstrate cultural competency through strong, community-based relationships that deepen their understanding of clients’ needs

Many of the community engagements CDNTS led were relationship-based. CDNTS legal and PBC staff were assigned to specific claimants to maintain a relationship. This allowed claimants to have a secure contact at CDNTS and build a long-term relationship with them. Some Traditional Owners were highly satisfied with this approach, as they had been able to develop strong, trusted relationships with staff. The positive feedback for CDNTS engagement stated that CDNTS staff:

- showed a strong investment in building and re-building relationships with communities through learning and understanding family history and cultural protocols
- built strong rapport and relationships with specific people in the community
- enabled clients to feel supported and instilled a sense of trust
- demonstrated proactive and inclusive communication

¹⁹ CDNTS. CDNTS Cultural Connection and Practice information. 2023. Accessed September 2023.

²⁰ CDNTS. CDNTS Staff Survey 2021. Accessed September 2023.

- used their support to create meaningful outcomes (for example, clients grow their capacity for economic growth activities).
- adhered to cultural protocols to the best of their ability during consultations.

Traditional Owners were largely positive about CDNTS, but they identified some opportunities to further embed culturally safe practices

Broadly, the Review found that CDNTS engaged with Traditional Owners and claim groups in a culturally appropriate manner, due to significant experience in working with Traditional Owners across the Central Desert region in native title matters. Stakeholders specifically referenced the longstanding relationships that CDNTS has established.

Nonetheless, the Review found opportunities for CDNTS to further embed cultural requirements in engagement protocols. Whilst CDNTS policies and procedures detailed how CDNTS staff could approach local consultations, there was a lack of detail on the level and variation of engagement across communities.

Due to the complexity of claims and the complexity of family group dynamics, stakeholders noted a range of challenges that CDNTS must continue to navigate, including:

- Ensuring that it engages with the right person from a legal point of view; however, sometimes communities felt this was not fully culturally appropriate (for example, having a Traditional Owner provide evidence because they had proficient literacy skills, although they were not the culturally appropriate person to share information).
- Providing Traditional Owners with clear guidance as to the long-term legal and cultural implications of sharing cultural evidence if in the event that the claim is dismissed.
- Finding more opportunities for CDNTS staff to consider Indigenous ways of thinking and how they may be incorporated into existing practice.
- Distinguishing the needs of Traditional Owners separately from the needs of PBCs.

Some Traditional Owners felt that CDNTS sometimes did not approach the correct Traditional Owner for information, which was discomfiting and risked going against cultural protocol. The Review found that CDNTS for the most part did not over-service particular Traditional Owners but provided each client with the right level of support and information to suit their needs. Many stakeholders noted that CDNTS was often required to navigate complex and tense family group dynamics and they encouraged CDNTS to be responsive to these tensions in a culturally safe and empathetic manner where possible.

Complaints

CDNTS had a thorough process for addressing complaints

CDNTS placed a strong importance on receiving and handling feedback from clients. As the CDNTS policy manual states:

*As part of our commitment to continually improving service to clients, Central Desert has established a process for addressing client feedback. Our Compliments and Complaints process ensures we handle feedback in a consistent way, and that we act on it appropriately.*²¹

²¹ CDNTS. CDNTS Compliments, Complaints and Suggestions Policy. Accessed October 2023.

The manual described key aims for CDNTS staff to consider so that discussions were led professionally and openly, and client relationships were maintained.

When a complaint was made, staff dealt with it through an internal review process, which included the following steps:

- The complaint is recorded in the Central Desert complaints register and the CEO is informed.
- A copy of the complaint is provided to the relevant staff member/s and their direct supervisor.
- Complainants will receive acknowledgement of complaints within 14 days.
- That the internal investigation and decision will occur within three months of receipt of the complaint.
- A reviewer will be assigned to the case and review appropriate documents and information to inform a decision.
- The CEO will write to the complainant to provide them with the outcomes of the investigation.

The CDNTS website provided a clear outline of how to lodge a complaint. This included key timelines of a complaint, contact information and the differences between complaints, internal reviews and external reviews. The Review found that this information was transparently shared with clients, as most claimants were aware of how to make a complaint to CDNTS.

CDNTS received two complaints during the Review period

During the Review period, two complaints were made by clients about CDNTS (see Table 9). Board members were made aware of the complaints.

Table 9 | Number of complaints received by CDNTS directly during the Review period

Type	FY2019-20	FY2020-21	FY2021-22
Complaints received directly by CDNTS	1	0	1

Since the Review period, all complaints have been addressed and appropriate actions taken. Those who made a complaint directly to CDNTS noted that they were “somewhat” satisfied with how it was resolved.

The Review noted that some clients were unhappy with their experience with CDNTS but had not made formal complaints as they believed that CDNTS did not want to hear from their clients about what could be improved.

Internal review

CDNTS had no requests from clients for internal review during the Review period

CDNTS has a thorough internal review policy which aligns with the requirements under the NTA. According to CDNTS an internal review could be actioned if a claimant was unsatisfied with and was affected by the outcome of a decision or action made by CDNTS.²² The grounds for an internal review included that:

²² CDNTS. CDNTS Internal review Policy. Accessed September 2023.

- a breach of the rules of natural justice occurred in connection with the making of the decision (for example, the applicant was denied the opportunity to be heard in relation to the original decision)
- procedures that were required by law to be observed in connection with the making of the decision were not observed
- the person who purported to make a decision did not have jurisdiction to make the decision or was not allowed to make the decision within the organisational structure of the CDNTS
- the decision was not authorised by the NTA.
- the making of the decision was an improper exercise of the power conferred by the NTA.
- the decision involved an area of law, whether or not that area appears in the written reasons for the decision
- the decision was induced or affected by fraud
- there was no evidence or other material to justify the making of the decision
- the decision was otherwise contrary to law.

Since the previous Review this policy has been updated and published on CDNTS's website.

Use of cultural materials

CDNTS has adequate policies and procedures to handle cultural materials

CDNTS has clear policies outlining how cultural materials (including digital and physical formats) should be collected, stored and used throughout the determination process. This process involves discussion with the PBC to agree on terms and conditions for the ownership and use of the materials through a memorandum of understanding (MOU). This document is discussed further under TOR 6.

Some Traditional Owners raised feedback regarding the safe use of cultural materials

Despite these processes and policies, some Traditional Owners were not fully satisfied with how cultural materials were obtained through engagements, as they believed they were obtained in a manner that went against cultural protocols around sharing sacred information.

Since the native title process sees Traditional Owners having to navigate both western and Indigenous systems of knowledge, this was not always reflected in engagements with CDNTS. Other concerns certain Traditional Owners had with the process included:

- Feeling used for providing their information – giving away significant personal family tree information and not understanding where it went.
- Feeling as though CDNTS staff only wanted to “cherry pick” certain information to strengthen claims, making some Traditional Owners feel that what they have contributed was not being acknowledged.
- Not having their oral history and verbal information considered as useful evidence for a claim.

“The people had given a lot of cultural information over in the hope they would get a result and put their necks on the chopping block culturally. Senior people from that claim group were severely punished because they had given away cultural knowledge without being given a result.”

PBC stakeholder

The Review heard from some Traditional Owners who thought that CDNTS may not understand the cultural significance of oral history, personal information and stories. They believed that while collecting and using cultural materials was addressed under policies, the engagement and communication around

these processes were not. This feedback was limited to a small number of stakeholders. The Review accepts that CDNTS was committed to providing a level of service that saw all clients have their cultural materials respected.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

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

Funding for CDNTS varied over the Review period. While total expenditure remained at similar levels each year (including staff expenditure) some expenses fluctuated, such as travel. This was not unexpected given external (the COVID-19 pandemic) and internal (staffing capacity) impacts.

CDNTS was highly conscious of its financial constraints and had clear policies to monitor spending, particularly given the CDNTS RATSIB area is large and servicing it can be challenging from a financial efficiency perspective. To navigate this, the organisation had a wide range of cost-monitoring and risk assessment strategies. Claim group meetings were carefully planned and documented by staff, and there were policies and procedures to support travel to and from claim group meetings to support a focus on cost effectiveness. CDNTS only used external consultants where required to leverage leading technical expertise.

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, HR, etc.), operations (travel, legal, offices, etc.) or other relevant items

NIAA and PBC support funding varied over the Review period

CDNTS received varied levels of annual funding from the NIAA during the Review period. CDNTS funding for FY2019-20 was \$5.4 million. This increased to \$8.3 million in FY2020-21, then decreased to \$7.7 million in FY2021-22.

The PBC support base funding remained relatively consistent, with a slight year on year increase. CDNTS's income was also supplemented by other income generated from capital gains and bank interest, which fluctuated year by year.

For DABS and DSS, though they were wholly owned by CDNTS, they operated independently, with revenue generated from either fee-for-service or other grant funding sources. They did not receive any funding from the NIAA.

Table 10 | CDNTS income FY2019-20 to FY2021-22 (including GST)²³

Funding	FY2019-20	FY2020-21	FY2021-22
NIAA funding	\$5,416,530	\$8,325,651	\$7,748,151
PBC Basic Support (base)	\$1,096,380	\$1,193,880	\$1,146,380

²³ CDNTS. Financial, Operational Plan and activity report NTSP Funding (2020-2022). Accessed September 2023.

Funding	FY2019-20	FY2020-21	FY2021-22
Other income	\$75,256	\$165,714	\$95,606
Total²⁴	\$5,982,929	\$9,023,658	\$8,990,137

Total annual expenditure remained at similar levels over the Review period, but specific expenses fluctuated

CDNTS had a small increase on the total annual expenditure on native title activities within the Review period. As outlined in Table 11, specific expenses varied due to the impact of COVID-19. For instance, meeting expenses dropped from \$9,647 in FY2019-20 to \$3,435 in FY2020-21 due to the limited number of in-person meetings held during the peak of the pandemic. However, travel expenses varied over the period due to COVID-19 community restrictions in 2021 and 2022.

Each year, staff salaries remained the highest expense for CDNTS. The salaries expense remained steady despite the high turnover of staff. The expenditure on recruitment increased about threefold from FY2019-20 to FY2020-21 due to the high turnover and levels of new staff onboarding.

Conversely, training and development expenses gradually decreased over the Review period, from \$38,918 in FY2019-20 to \$21,768 in FY2021-22. This decrease is consistent with feedback provided by staff, who commented on the limited training and development opportunities provided during the Review period.

Expenditure on legal or anthropological consultants had a sharp increase from \$524,607 in FY2020-21 to \$1.2 million in FY2021-22. Review consultations revealed the expensive and time-consuming nature of hiring consultants, due to the low supply of and high demand for anthropologists within the native title industry.

Expenditure on PBC support funding from the NIAA increased moderately over the Review period, rising from \$989,155 to \$1.2 million. The Review heard that this was largely due to CDNTS acting on behalf of more PBCs, rather than due to an increase in the level of funding to each PBC. This was in line with the broader vision of CDNTS to help the Aboriginal people of the Central Desert “to advance capacity, to be sustaining and in control” while also reflecting the increased number of PBCs.²⁵

Table 11 | Expenses during the Review period²⁶

Expense categories	FY2019-20	FY2020-21	FY2021-22
Salary and wages	\$2,452,217	\$2,367,847	\$2,472,506
Consultants	\$524,607	\$950,079	\$1,234,646
Services and supplies	\$21,691	\$20,981	\$20,971
Meetings	\$9,647	\$3,435	\$9,500
Training and development	\$38,918	\$32,830	\$21,768

²⁴ Total funding consists of base agreement, PBC support, mid-year, unforeseen litigation, unspent funds carried forward from the previous year and any other additional funding approved and paid during the financial year.

²⁵ CDNTS. CDNTS Strategic Plan 2023-2026.

²⁶ CDNTS. Financial, Operational Plan, and activity report NTSP Funding (2020–22). Accessed September 2023.

Expense categories	FY2019-20	FY2020-21	FY2021-22
Recruitment	\$11,736	\$43,387	\$32,550
Motor vehicle expenses	\$24,682	\$39,472	\$35,162
Travel expenses	\$178,660	\$256,519	\$175,774
PBC support	\$989,155	\$1,136,366	\$1,254,927
Other expenses (occupancy, technology, consumables, equipment, insurance)	\$1,045,096	\$508,448	\$513,879
Total expenditure on native title (incl GST)	\$5,296,409	\$5,359,364	\$5,771,683

Annual expenditure was relatively even amongst PBCs

CDNTS gave PBCs similar amounts of funding throughout the Review period. Only seven PBCs had their funding amounts changed (lowered or increased) and no PBCs had their funding amounts changed more than once. One client commented on their satisfaction in having their funding amount changed to better reflect their needs and service requirements. The Review found that PBCs were satisfied overall with how CDNTS had handled the funding as a service provider.

Cost-saving actions, strategies and/or discussions

CDNTS was highly conscious of its financial constraints and had clear policies to monitor spending

Consultations revealed that both staff and clients were aware during the Review period of the extensive costs and tight funding arrangements CDNTS operates under. While CDNTS views financial efficiency as a key strength, it continually reminded staff that there were ongoing challenges relating to travel costs in remote environments. This attitude was highlighted in consultations, where staff commented on the importance of cost efficiency within a financially constrained funding landscape.

CDNTS has various policies to ensure that expenditure remains within the budget as outlined in the Administrative Procedures Manual. The Manual prescribes clear guidelines on the key definitions, responsibilities and processes. The key financial policies include the CDNTS:

- Travel Assistance Policy – with details on assisting with the travel costs of eligible native title holders who attend their claim group meetings.
- Delegations Policy – clear delegations on funding submissions, contracts and financial obligations to uphold the appropriate level of authority in financial processes.
- Gift Fund Policy – provisions around CDNTS's charitable services, donations and gift cards.
- Credit Card Policy – policies outlining the use of corporate cards, including a statement of responsibility form.
- Funds Held in Trust Policy – deferring all requests for funds management to RFM.

The CEO and CFO exercised close scrutiny of the expenditure of each department and reviewed the use of corporate cards, donations, travel expenditure and PBC funds on a regular basis.

In addition to the expenditure policies and procedures, CDNTS had a risk register to file current or potential risks. Once risks were appropriately identified, the mitigation strategies, policies and procedures, and likelihood were assessed. The risks were then scaled on a risk likelihood impact matrix. This assessed a risk on a level of one to five (one being negligible and damage worth under \$100,000; and five being catastrophic and damage worth over \$1 million). CDNTS then assessed the risk on other merits such as the damage to health and safety, environment, social and cultural heritage, legal and compliance, and CDNTS's reputation. The Review found that this process was thorough and was somewhat unusual among NTRB-SPs.

CDNTS had a wide range of cost-monitoring and risk assessment strategies to best utilise funding

The Review found CDNTS implemented a number of cost-saving strategies to remain as efficient as possible, this included:

- streamlining travel planning and booking processes to minimise the costs of air fares and car travel
- purchasing cars and equipment to minimise travel costs through renting cars
- working with other land councils to use or share equipment (for example cars)
- negotiating with industry to assist with the costs of meetings dealing with agreement negotiations
- providing training to claimants in situations where there are mutual benefits
- implementing new corporate travel management software to digitise systems and make them more efficient
- holding transparent discussions on finance arrangements during team and company-wide meetings.

A range of stakeholders explained that there was further interest from CDNTS to develop more cost-saving strategies, particularly through streamlining its governance and reporting processes and updating its technology and systems.

The subsidiary structure has maintained an ongoing role in managing cost savings

CDNTS established subsidiaries DABS, DSS and RFM to provide independent services to a range of clients along their post-determination journey. Collectively, these subsidiaries operated within a "wraparound" model to ensure clients could receive full support from CDNTS, DABS, DSS and RFM in a coordinated approach, as depicted in Figure 1.

Figure 1 | CDNTS support structure²⁷



These subsidiaries received advantage from sharing services across the entities as appropriate. For example, Group Workplace Health and Safety Manager and Group Communications Manager costs were

²⁷ CDNTS. Central Desert Group. <https://www.centraldesert.org.au/>

split between the companies. This model kept costs down and enabled the group to secure expertise in an affordable manner. Further, the subsidiaries could provide fee-for-service activities, including to groups outside CDNTS's client base. For example, DABS's growth in fee-for-service work would assist in expanding the suite of back of house services that DABS may be able to offer to its client base in the future (for example, IT support).

Stakeholders thought that these activities were critical to CDNTS's support to PBCs and that they should be sustained. The Review noted that efficiencies could be gained by re-integrating DABS into CDNTS's core organisational structure to reduce duplication in reporting and associated administrative burden. Further detail on the functions and roles of each subsidiary are discussed under TOR 5.

Appropriate processes for claim group meetings

Claim group meetings were carefully planned and documented by staff

CDNTS has vast experience in holding claim group meetings in a cost-effective manner. During the Review period, it used a clear approach to ensuring key details in the claim group meetings were presented clearly to clients. This approach involved distilling complicated information into digestible formats, such as PowerPoints with clear language and diagrams. CDNTS staff then allowed adequate time for consultation, consideration and questions from stakeholders to ensure that the information was understood. CDNTS video called all claim group meetings and retained copies of the recordings.

Senior employees, such as the PLO and senior lawyers, attended claim group meetings alongside several other staff members. This ensured CDNTS could adequately answer questions and were aware of any concerns or issues raised by clients. Junior employees attended claim group meetings to ensure they could receive in-person training.

Annual yearly expenditure per claimant group

CDNTS spent \$22,582 for claim group meetings during the Review period.

Travel assistance policies for claim group meetings

There were clear policies and procedures to support travel to and from claim group meetings

CDNTS developed policies and clear guidelines to support potential native title holders in undertaking travel for the purpose of claim group meetings.

According to the CDNTS Travel Assistance Policy, CDNTS could provide travel assistance for claimants and native title holders who were unable to travel to claim group meetings through an application process.²⁸ This process of screening applications was based on the type of assistance required, the location of the meeting, the number of claimants and the overall budget. The policy provided clear guidelines on expenditure on meals, travel, accommodation and fuel. Assistance limits were calculated based on the location of a claimant.

²⁸ CDNTS. CDNTS Travel Assistance Policy. 2023. Accessed September 2023.

Appropriate rationale for use of external consultants

CDNTS used external consultants where required to leverage leading technical expertise

CDNTS achieved value for money in purchasing goods and services. External consultants were used during the Review period to fulfil specific work where the organisation required additional support. It was particularly important for CDNTS's native title activities given some senior external anthropologists had leading technical expertise across the Western Desert region. Many of these parameters for procurement were based on costs while also considering the need to draw on existing services or acquiring new providers, as stated below.

Where we expect the cost of an asset or service to exceed \$80,000, we either obtain public tenders or invite three suitable, qualified service providers to tender for the provision of the asset or service.

CDNTS Annual Report (2021-2022)

When an external provider was used, CDNTS recorded their details on an annual register. This register was maintained to allow decision-making and tendering processes to become more efficient. It minimised the risk of using inappropriate service providers.

During the Review period CDNTS employed external consultants for cultural-related consultation, specific legal services for PBCs, anthropological services, culture and heritage services, auditing services, economic reporting, ethnographic services and business consulting services. Very few external consultants were used more than once. Overall, CDNTS spent 6.7 times more on staffing than external consultants. The Review found that this was an adequate and efficient level of funding spent on consulting services.

Table 12 | Consulting costs FY2019-20 to FY2021-22

Cost type	FY2019-20	FY2020-21	FY2021-22
Staffing costs	\$5,296,409	\$5,359,364	\$5,771,683
Consulting costs	\$524,607	\$950,079	\$1,234,646

5.4.2 TOR 4: External factors

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

Size of RATSIB area

The CDNTS RATSIB area is large, which made it challenging for CDNTS to service clients

The CDNTS RATSIB area covers 822,887 square kilometres. This is about 32 per cent of the land area of Western Australia. The terrain consists mostly of arid and sand plains and covers three of five Australian deserts – the Great Sandy Desert, the Gibson Desert and the Great Victoria Desert. This created challenges for CDNTS to physically reach clients or meet face to face due to having to travel longer and through harsh conditions.

Remoteness of RATSIB area

The remoteness of the RATSIB area meant it was difficult for CDNTS to achieve cost-savings

CDNTS services some of the most remote areas in Western Australia (and Australia). There are no major population centres in the Central Desert. According to the Accessibility and Remoteness Index of Australia, all the areas within the CDNTS RATSIB area are classified as “very remote”, the most remote of the five categories.²⁹

The remoteness of the CDNTS RATSIB area meant that significant costs were incurred on travel to engage with Traditional Owners and maintain a presence with the Central Desert community, as shown in Table 13.

Table 13 | CDNTS travel, FY2019-20 to FY2021-22 ³⁰

Travel type	FY2019-20	FY2020-21	FY2021-22
Trips	69	101	97
Return flight bookings	214	385	370
Total travelling days	1,180	2,404	1,781
Vehicle operating days	102	524	305

Average number of people within a claim group

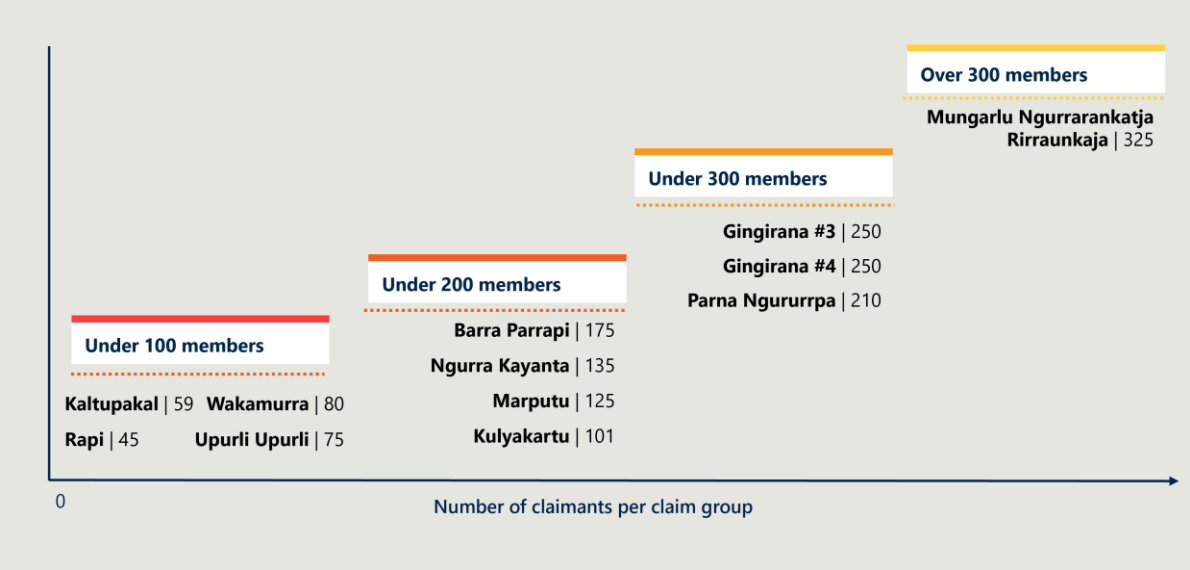
Numbers of people in claim groups varied considerably across the RATSIB area

According to CDNTS documentation, the average number of people in claims groups varies according to the size and area of the claim respectively. The Review found that claims with smaller claim groups tended to be in more remote areas. Figure 2 shows the numbers of people in each claim group that CDNTS provides services for. The Review found that although there were a number of smaller claim groups, this did not materially impact CDNTS’s native title activities during the Review period.

²⁹ Australian Bureau of Statistics. 2023. Map of ASGS Edition 3 Remoteness Areas for Australia. Accessed September 2023. <https://www.abs.gov.au/statistics/standards/australian-statistical-geography-standard-asgs-edition-3/jul2021-jun2026/remoteness-structure/remoteness-areas>

³⁰ CDNTS. CDNTS Annual Reports 2019-20, 2020-21, 2021-22.

Figure 2 | Number of people in claim groups³¹



Interpreters

CDNTS did not use accredited interpreters, but worked with nominated claim group members to support proceedings

The Review found that CDNTS did not use accredited language interpreters to engage with Traditional Owners. There were no expenses related to interpreter services and it therefore had limited effect on cost effectiveness for CDNTS.

Some clients and staff did note, however, that the English literacy levels of some Traditional Owners were very poor. In this regard, claim groups were able to elect at least one person who spoke English proficiently and could engage in their claim actively.

³¹ CDNTS. Claim group information document. 2023. Accessed August 2023.

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

During the Review period, there were numerous changes to governance and management structures for CDNTS. While roles and responsibilities have always been well defined and aligned to best practice corporate governance, changes were driven by an interest in supporting improved efficiency and effectiveness and creating a more positive organisational culture and a more productive way of operating. Stakeholders uniformly commented that at the end of the Review period CDNTS was in a much better place than previously.

In the CDNTS Policy Manual, the Disclosure of Conflict of Interest Policy clearly defined the parameters of addressing a conflicting interest within the Board of Directors. However, this policy did not apply to CDNTS staff members or those who may have been both native title holders and members of the CDNTS Board or staff. This creates a potential for conflicts of interests to emerge in the day-to-day decision-making of the organisation. An opportunity exists for CDNTS to develop and incorporate protocols to define the parameters of addressing a conflict of interest relating to CDNTS staff members and in day-to-day decision making of the organisation.

CDNTS had a subsidiary governance structure which sees two of its corporate functions – HR and finance – sitting in one of its subsidiaries, DABS. CDNTS advised that as a wholly owned subsidiary, DABS did not receive funding from the NIAA and that CDNTS's statutory functions and corporate services operate with core funding provided by the Commonwealth in accordance with section 203FE of the NTA. There were mixed views on the effectiveness of this model, predominantly relating to perceived duplication of governance and reporting processes across DABS and CDNTS. The Review found that it is timely for CDNTS to review the delineation of functions and responsibilities between DABS and CDNTS, to explore how the organisation can have the most efficient structure.

The other subsidiaries, DSS and RFM, were seen to operate effectively and the Review found these subsidiaries to be appropriate given their functions. DSS supports Indigenous organisations to maximise the use and management of their lands. RFM is a low-cost Trustee service to Aboriginal groups who do not have sufficient funds to warrant a larger trustee service.

Most staff were guided by the well-established mission, vision and values in their day-to-day work. CDNTS experienced some workplace culture issues and dissatisfaction amongst staff early in the Review period. There was also significant turnover of senior staff and limited capacity for professional development and training. As a result of actions that were undertaken to address concerns, including changes made by CDNTS management since the Review period, the organisation has seen an uplift in workplace culture since 2022.

CDNTS has recognised that to maintain and sustain this trajectory it will be important to continue to monitor engagement and culture, especially given the competitive job market and high workloads of staff. CDNTS has embedded corporate culture and engagement as a KPI within its new Strategic Plan and has undertaken annual surveys for the last two years.

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 roles and responsibilities of the CDNTS Board of Directors were clearly outlined

All stakeholders generally reported that there was a clear distinction between the roles and responsibilities of the CDNTS Board and senior staff. There were clear separations of powers, which were detailed in various CDNTS policies and documents, namely the CDNTS Delegations Policy, the CDNTS Board of Directors Roles and Responsibilities Policy, the CDNTS Role of Chairperson Policy, the CDNTS CEO and PLO Protocol Policy, and CDNTS Annual Reports (2019-2022).³²

The responsibilities of the Board and Chairperson include strategic planning, overseeing the operations of the CEO, PLO and senior staff members, and representing CDNTS in public forums and the wider community. The roles and responsibilities are outlined in Table 14, as referenced in the CDNTS Board and Chairperson's policies.

Staff reported they were generally pleased with the strategic direction and decision-making made by the Board during the Review period. They noted that the Board was strictly removed from the operational matters of claims and native title work.

Table 14 | Roles and responsibilities of the CDNTS Board and the Chairperson

Board responsibilities ³³	Chairperson responsibilities ³⁴
- Strategic planning and initiating the cyclic strategic planning process with the CEO, management and employees. - Overseeing the business of Central Desert and the activities of the CEO and the PLO. - Approving and reviewing management's succession plan, major financial and strategic policy decisions, a corporate governance framework and governance policies. - Ensuring the company operates within the bounds of its objects, functions and powers as set out in the company's constitution. - Ensuring the principal corporate business risks have been identified and appropriate systems to manage these risks have been implemented. - Ensuring an effective and transparent process of Board renewal. - Providing orientation for new Board members and ongoing development for Directors. - Advocating for the company to build the profile, and explore and develop opportunities for the company, and native title claimants and holders of the region.	- Providing strong leadership of the Board, assist the Board in reviewing and monitoring the aims, strategy, policy and directions of the CDNTS, and the achievement of its objectives. - Providing interface between the Board's management and the legal practice, including establishing effective working relationships and communicating key concerns of management. - Managing the affairs of the Board, by providing leadership and guidance to the Board of Directors. - Chairing and being present at all Board meetings. - Ensuring that the Board has full governance of the company's business and affairs, and are alert to its obligations to the company, management, employees and other stakeholders. - Managing relations with government, the public and other stakeholders. - Acting as spokesperson and representing CDNTS in conjunction with the CEO. - Representing the interests of the CDNTS at official functions and meetings with government and other stakeholder groups.

³² CDNTS. CDNTS Delegations Policy. Accessed September 2023., CDNTS. CDNTS Board of Directors, Roles and Responsibilities Policy. Accessed September 2023., CDNTS. CDNTS Role of Chairperson Policy. Accessed September 2023., CDNTS. CDNTS Chief Executive Officer and PLO Protocol Policy. Accessed September 2023., CDNTS. CDNTS Annual Reports 2019-2020, 2020-21, 2021-22.).

³³ CDNTS. Board of Directors, Roles and Responsibility Policy. 2017. Accessed August 2023.

³⁴ CDNTS. Role of Chairperson Policy. 2021. Accessed August 2023.

Board responsibilities ³³	Chairperson responsibilities ³⁴
• Appointment of the CEO and overseeing their performance, including an annual evaluation. • Appointment of the PLO, overseeing their legal practice, including an annual evaluation. • Evaluation of the Chair, Board and Board Committee performance.	• Uphold procedural matters involving the Chair, by calling meetings at appropriate times.

Executive roles across CDNTS were distinct and had specific duties across the business

Executive roles across CDNTS have clearly defined role and job descriptions specific to their function. The CDNTS duty statement documents outlined the role, duties and selection criteria for each senior staff member, as a standard benchmark for each function and to avoid overlap across roles. Each executive staff member was required to sign a duty statement before commencing, as formal recognition of their role and responsibilities. The roles for senior leaders are outlined in Table 15.

Table 15 | CDNTS key functions³⁵

Executive position	Role description
Chief Executive Officer	• Providing organisational leadership and upholding the day-to-day operations and management of CDNTS. • Leading the senior management team and reporting to the Board on the operations of CDNTS. • Fulfilling the duties of the CEO for DABS.
Principal Legal Officer	• Assisting and representing claim groups in the legal processes in the NNTT as the solicitor on record. • Providing legal advice to CDNTS clients, CEO, Board and the organisation generally. • Liaising with other bodies and agencies regarding native title matters, including the Federal Court.
Head Anthropologist	• Leading the undertaking of all anthropological and research related activities. • Identifying and securing funding streams, including grants and fee for service work. • Providing written advice to CDNTS staff and clients on anthropological aspects of native title.
Operations Manager	• Managing and leading the Statutory Functions team responsible for the delivery of services. • Ensuring services being provided are delivered to the highest level of quality and timeliness. • Ensuring the activities of the Statutory Functions team are coordinated with the activities of the Land and Community team.
Client Services Manager	• Leading and managing the activities of the client services team, including the financial responsibilities of the team.

³⁵ CDNTS Duty Statements. 2021. Accessed August 2023.

Executive position	Role description
	- Expanding the CDNTS service offerings to PBCs in a sustainable manner. - Assisting PBCs and related entities to build capacity towards self-sustainability.
Communications Manager	- Managing and implementing the communication initiatives that support the achievement of CDNTS. - Writing submissions and securing grants from government or other bodies to support the delivery of CDNTS goals and objectives. - Identifying and leading the development of new communications initiatives.
Work Health and Safety Manager	- Developing, implementing and managing Work Health and Safety regulations for the organisation. - Providing leadership and guidance to CDNTS staff, subsidiaries and clients to ensure the safety of all employees. - Managing all incident and accident reports and any corrective actions needed.
Human Resources Manager	<i>This function is part of the CDNTS subsidiary (DABS).</i>
Chief Financial Officer	<i>This function is part of the CDNTS subsidiary (DABS).</i>

The CDNTS organisational structure evolved during the Review period

During the Review period, the CDNTS organisational structure changed to enhance its effectiveness and efficiency across the business. In 2019, CDNTS had a multi-tiered structure with three functions: Native Title Services, Administrative Development Support and Trustee Services. The changes during the Review period included:

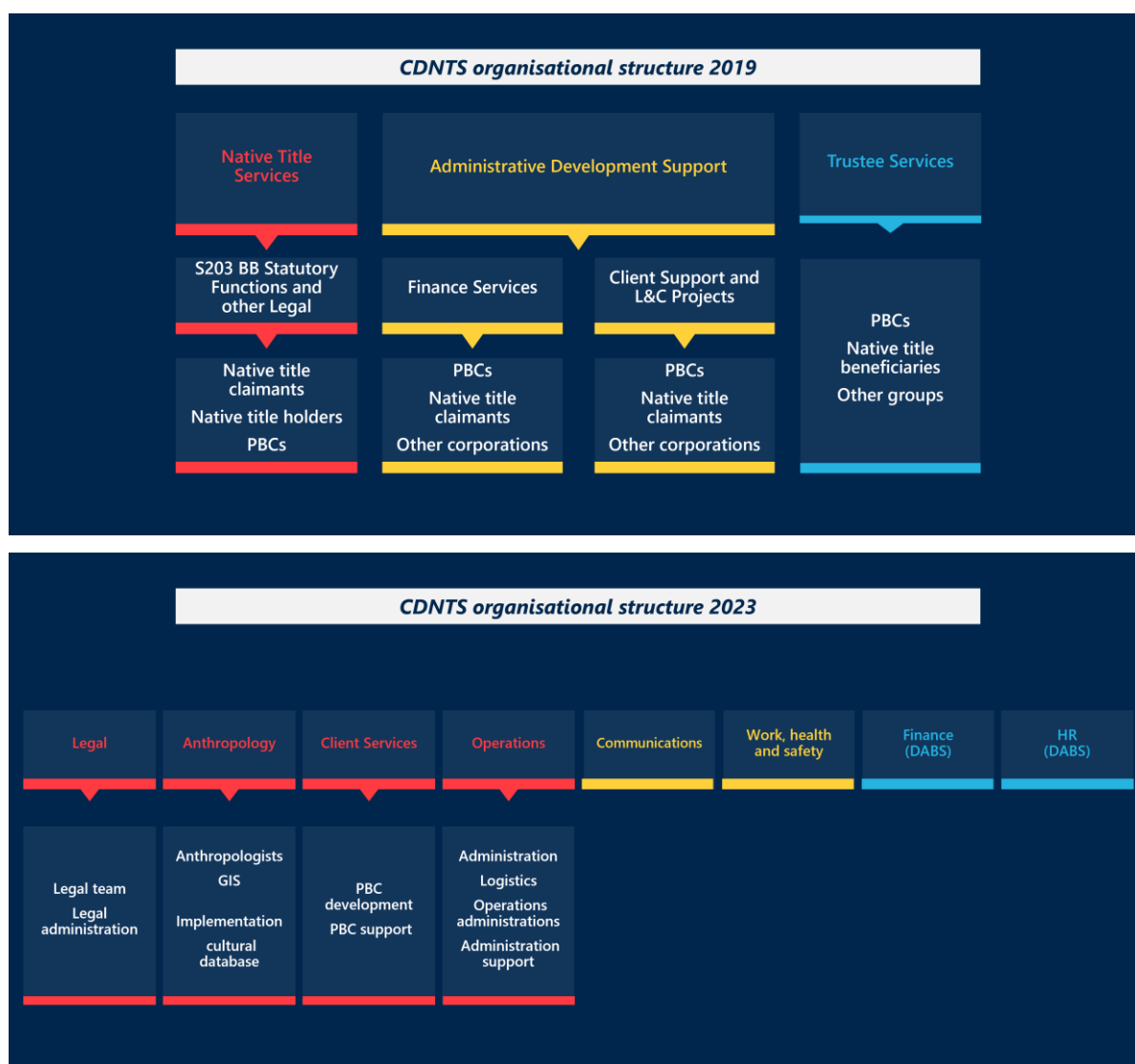
- splitting out each function in native title and administrative development into individual functions
- transferring the PBC Support Unit from DSS to CDNTS and combining individual functions into one team under client services within CDNTS
- transferring the finance and HR business from DSS into a newly incorporated subsidiary, DABS
- adding Communications and Workplace Health and Safety as functions in CDNTS, with costs shared across the subsidiaries
- formalising the arrangement for DSS staff to undertake trustee services work on behalf of RFM in 2020 through a service agreement.

The current CDNTS structure has four portfolios and four discrete services. The portfolios are Legal, Culture and Heritage (Anthropology), Client Services and Operations. These represent the main operating functions of CDNTS. The discrete services include two internal functions (Communications and Finance) and two external functions (Finance and HR) which are a part of the CDNTS subsidiary, DABS.

The prior (as of June 2019) and current (as of June 2023) portfolio structures are shown in Figure 3. During the Review period a number of incremental changes were made to the structure. The most recent changes were made in early 2023, which is outside the Review period. During consultations, the Review found that several staff members across various levels saw the recent structural change as a positive decision which allowed people to work more collaboratively across functions. While staff worked in more specialised units, they could do so in a more collegial and efficient way.

Since 2014, trustee services have been provided through CDNTS subsidiary RFM.

Figure 3 | CDNTS organisational structure, June 2019 vs June 2023³⁶



CDNTS had a subsidiary governance structure to manage supporting functions – there were mixed views on the effectiveness of this model and functions could be further clarified

CDNTS had three wholly owned subsidiary companies, one of which was established in May 2021, during the Review period:

- **Rockhole Funds Management Pty Ltd (established 2013).** RFM is a native title trust fund management service and registered not-for-profit organisation. Its core function was to serve the CDNTS PBCs and claim groups who had not yet had native title determined. The RFM acted for PBCs whose trust funds were below the commercial threshold for private trust fund service providers. RFM deliberately operated on a low-cost model and used the Public Trustee as its “high benchmark” for cost pricing for its services.

³⁶ CDNTS Annual Reports 2019–20, 2021–22.

- **Desert Support Services Pty Ltd (established 2011).** DSS was established to support PBCs to build their own capacity and potentially create a viable economic entity that at some point in the future could be transferred to Indigenous ownership. This included providing services to support Indigenous organisations to maximise the use and management of their lands, ranger programs, capacity building programs and economic development. DSS became a member of the Indigenous Desert Alliance (IDA) in 2021. Members of IDA were Indigenous land management organisations working in the desert regions of Australia and membership of IDA facilitated networking between these groups.
- **Desert Accounting and Business Services Pty Ltd (established May 2021).** DABS is a subsidiary company which currently provides finance, accounting and HR services both within the CDNTS group and to PBCs and other Indigenous organisations.

To improve alignment and efficiency, CDNTS has explored changes to the suite of functions undertaken internally at CDNTS compared to across its subsidiary functions. Changes during the Review period included:

- In November 2020, the PBC Support function was transferred from DSS back to CDNTS.
- In March 2022, the Accounting and HR functions were transitioned from DSS to the new entity, DABS.
- In late 2022, the HR function within CDNTS was transferred to DABS.

Consultations with stakeholders identified that while there had been intensive efforts to review and improve the alignment of functions across each subsidiary, some issues remain, predominantly regarding the delineation of functions and responsibilities between DABS and CDNTS. While the breakdown between roles and functions across the subsidiaries was clear, stakeholders cited the duplication of governance and reporting processes across them as somewhat inefficient. For example, Board members sitting in governance roles across both CDNTS and DABS cited having to provide oversight of multiple reporting processes over similar activities, with little to no collaboration across subsidiaries. Further, there was general consensus that while there was a strong base for the separation of both RFM and DSS from the CDNTS core structure, the split of functions out to DABS created some confusion and inefficiencies for both staff and clients.

These inefficiencies had been recognised by the CDNTS Board and management and were being worked on. For example, a Work Health and Safety Manager was appointed to ensure consistent work health and safety policies and procedures, and a Communications Manager was appointed to support all subsidiaries. Regardless, the Review sees value in CDNTS reviewing the delineation of functions and responsibilities between DABS and CDNTS, to explore the most efficient subsidiary structure for the group's operations.

Board integrity and capability

The CDNTS Board continued to follow a skills-based structure, resulting in a Board with strong corporate expertise

During the Review period CDNTS had a skills-based Board, as opposed to a community-representative model. Board members were elected based on their complementary skills and expertise in specific areas. These skills were in areas such as native title, business, accounting, legal issues, community engagement or development, public administration, Indigenous social or cultural issues and dispute resolution. This allowed Board members to transfer much of their existing professional knowledge into the strategic direction of CDNTS.

While cultural capability was not an essential requirement of being a CDNTS Board Director, the majority of Board members were assessed on their previous experience in native title and working with and/or in

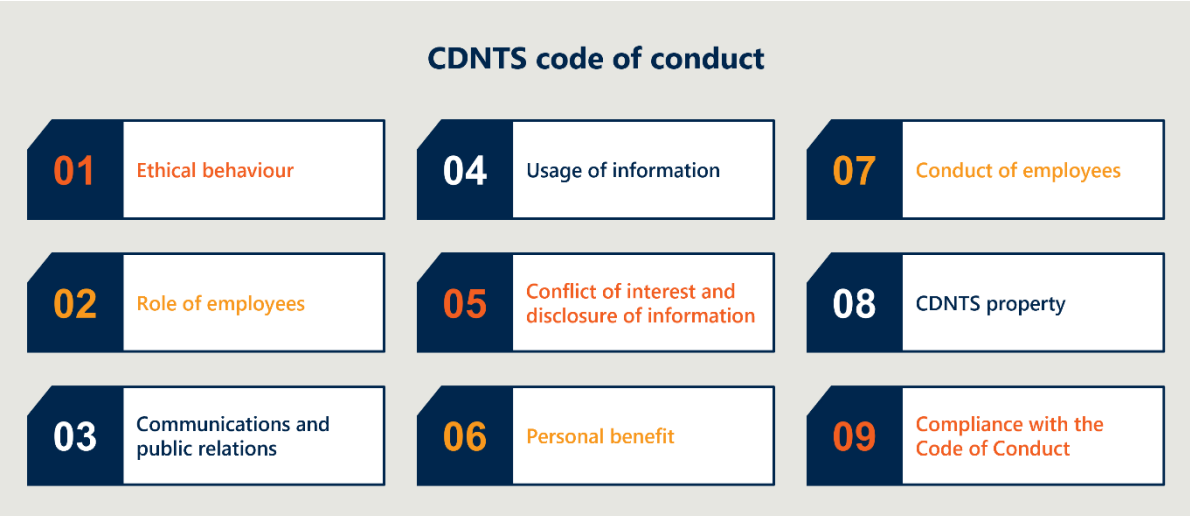
Indigenous organisations. The CDNTS Board TOR provided clear detail on the role and responsibilities required of Board members, as outlined previously in Table 14.

CDNTS advised that it was seen as important and preferable that Board members have some understanding and experience of working with and/or in Indigenous organisations.

Board responsibilities were clearly defined and outlined in the CDNTS Code of Conduct

The CDNTS Code of Conduct set up clear standards of acceptable behaviour and applied it to all Board members, employees and contractors. It detailed the standard for a range of areas across the organisation, as indicated in Figure 4. All staff were required to sign a copy of the code before commencing employment with CDNTS.

Figure 4 | CDNTS Code of Conduct³⁷



Board members showed they have a strong understanding of the code by remaining highly transparent on the key areas outlined. For instance, in 2021 a Board member resigned as they had taken a new employment opportunity which was a potential conflict of interest to CDNTS. Similarly, another Board member stated they were not involved in certain CDNTS decisions due to their membership with another organisation.

Conflicts of interest

CDNTS had clear policies to address conflicts of interest in the Board, but not in the wider organisation

In the CDNTS Policy Manual, the Disclosure of Conflict of Interest Policy clearly defined the parameters of addressing a conflicting interest within the Board of Directors.³⁸ Board members were expected to act in the best interests of CDNTS and declare their conflicts, as well as any knowledge of other Board members’ conflicts, to the Board.

The policy had clear procedures to follow when dealing with a potential conflicting interest during a Board meeting. Board members were expected to declare their interest at the start of the meeting and were

³⁷ CDNTS. CDNTS Code of Conduct. 2022. Accessed September 2023.

³⁸ CDNTS. CDNTS Disclosure of Conflict of Interest Policy. 2022. Accessed September 2023.

required to leave the room for any related decisions. The Chairperson had to ensure that the risk of the conflict was managed appropriately beyond the meeting. All conflicts were recorded and maintained by the Secretary in a Register of Director's Interests.

However, the Review found no equivalent policy that applies to CDNTS staff members or those who may have been both native title holders and members of CDNTS staff. This presented opportunities for conflicts of interests to emerge in the day-to-day decision making of the organisation. Where native title holders, from CDNTS's RATSIB area or other areas, were working for CDNTS, the Review heard that a lack of mitigation strategies for staff conflicts of interest had the potential to influence, or could be perceived as influencing, outcomes of decisions that favoured their claim group or associated families. This will be increasingly important, as the organisation reported wanting to hire more First Nations staff members.

The policy does not explicitly identify or address protocols for this type of interest. There would be value in incorporating this into the policies. A clear opportunity exists for CDNTS to consider developing and incorporating protocols to define the parameters of addressing a conflict of interest relating to CDNTS staff members and in day-to-day decision making.

Culture and values

CDNTS had a defined vision and values which guide the activities of Board and staff

During the Review period CDNTS had a clear vision and value system for employees to follow. The vision was focused on providing the "highest social, cultural and economic aspirations" for Traditional Owners. This directly informed CDNTS's mission. The values were specific actions which staff followed to embody the mission and vision, as outlined in Figure 5. Many of CDNTS's policies and procedures were drawn from the key values of the organisation, fostering a culture centred on high performance, productivity and dedication.

Figure 5 | CDNTS 2023 values statement and mission



During the Review, CDNTS demonstrated there was generally widespread commitment to ensure they

aligned with the CDNTS vision, mission and values. Consistently staff shared their enthusiasm for the work they did and were committed to delivering good outcomes for Traditional Owners. As one staff member in the Review survey explained:

I have found CDNTS to be, at its core, absolutely committed to their clients and their employees. I am surrounded by extremely passionate people who are striving for the very best for all involved.

Similarly, staff management and Board members were across the importance of being able to strategically reach goals at a productive pace. Staff saw CDNTS as an influential and collaborative place to work. This was mostly attributed to the meaningful relationships with their colleagues and Traditional Owners as well as the opportunity to work in a unique environment and region in Australia.

CDNTS experienced some workplace culture issues and dissatisfaction amongst staff early in the Review period, with clear actions taken to address concerns

Early in the Review period, CDNTS staff were largely unhappy with the culture of CDNTS. Much of the dissatisfaction was reported to be the ongoing effect of high staff turnover, poor governance and lack of communication between various teams and managers. One staff member described the early phase of the Review period as a “low point” for CDNTS as a workplace.

In September 2019, a focus group was conducted by an external consultant to measure the culture and engagement of CDNTS. Many of the issues reflected ongoing tensions between certain staff members, as well as mixed feelings towards the leadership and the poor communication of senior managers.

The external consultant provided the recommendations outlined in Table 16.

Since 2019, internal staff surveys have been conducted to measure and re-measure the workplace culture and satisfaction from staff. The surveys revealed some improvements since 2019 and there have been no comments regarding bullying, uncooperative attitudes, or personal agendas since then. There were, however, still ongoing concerns around communication, transparency and collaboration across certain parts of the business.

In 2022, a Joint Consultative Committee was established to oversee potential issues with the Enterprise Agreement. The Committee remains as an internal body, consisting of senior and junior staff members, for employees to discuss any of their concerns with.

Table 16 | CDNTS 2019 culture review recommendations and CDNTS actions

Recommendation	Actions made by CDNTS
Developing a clear vision, purpose, values and strategy.	- CDNTS Strategic Plan developed. - CDNTS vision, mission and values updated (as per Annual Report).
Aligning the organisation design structure.	CDNTS organisational structure changed.
Developing clear reporting roles, expectations and reporting lines for each role.	CDNTS role descriptions and duty statement documents developed for every role in the organisation.
Creating a culture of accountability and praise.	CDNTS management incorporating new approaches to rewarding employees for contributions.

Recommendation	Actions made by CDNTS
Reviewing policies, processes and systems.	CDNTS Policy Manual updated to include more concrete policies across various areas.
Understanding training and development needs and identifying solutions.	- CDNTS providing more training opportunities to staff, namely cultural competency, work health and safety training, role-specific training. - CDNTS providing supporting documents for staff to understand cultural aspects of working in native title.
Enhancing communication through using agile ways of working.	CDNTS management adopted according to teams.
Introducing meeting rhythms and routines with agendas (two-way communication).	CDNTS management adopted according to teams.

Since the Review period, staff turnover and implementation of new strategies has seen a gradual improvement in the workplace culture. In the Review survey, all staff who responded agreed that CDNTS was a good place to work. In consultations, one employee explained:

In those previous few years [during the Review period], it was not great situation, but now they have a clean slate. I think it's a better workplace now.

During consultations, CDNTS Board members expressed their intention to aim for stronger and more transparent communications between themselves and staff members, to create a more transparent culture. The Review found that CDNTS has taken various actions to address workplace culture issues and anticipates the trajectory is gradually improving.

Financial management

CDNTS had a strategic and methodological approach to financial management

Financial governance was supported by documented policies and procedures in the CDNTS Policy Manual. Most of these functions were handled by DABS, with a CFO who worked flexibly across CDNTS's financial obligations and other matters. This approach to financial management was understood and actioned by all levels of the organisation.

Training and professional development

CDNTS offered a range of training and professional development activities, but many staff did not have the capacity to fully undertake these opportunities

During the review period staff had access to a range of training and development opportunities.³⁹ The organisation emphasised providing high-quality professional training and development opportunities for all its employees.

³⁹ CDNTS. CDNTS Annual Report (2021–2022).

Central Desert encourages and supports its employees to participate in regular professional development workshops and courses. These are sourced from a wide range of training providers to consolidate and increase relevant skills and knowledge.

CDNTS Annual Report (2021-2022)

CDNTS staff receive a detailed induction program, which included training in first aid, safety equipment, and how to manage and maintain four-wheel drive vehicles. There were further opportunities to take part in skills-based training, cultural awareness training, management courses, HR practices, governance and minute taking, and legal practice courses. Additionally, there were a range of summits and conferences that CDNTS employees were encouraged to attend for networking and development opportunities. CDNTS was aware of the need to continue to build up its legal, anthropological, and culture and heritage staff, due to under resourcing in these areas.

The Review survey and consultations indicated staff had received mixed levels of formal and informal training during their time at CDNTS. According to the survey, the majority of employees had received cultural awareness training, although only a few respondents said they had received skills-based training. One staff member attributed the low levels of training and development to the high workload.

This has seen newer staff members rely on learning directly from senior staff members instead of formal mechanisms. This mainly involved observing and shadowing senior members during meetings and asking their managers directly for advice and questions. While this was an effective way for employees to retain information and skills from experienced staff, it risked relying on specific employees for information.

"We are behind on training and professional development because of workload. We just don't have time to do a lot of training and PD. We have to learn on the job."

CDNTS staff member

There were additional support mechanisms to ensure the mental health safety of staff members, including mental health training to new staff, an Employee Assistance Program and recent updates to the CDNTS Work Health and Safety policies and procedures to include a Health and Wellbeing Policy. During consultations, CDNTS senior staff expressed their ongoing aim to improve training and development for staff and said they were in the process of implementing this.

Performance review conversations were somewhat ad hoc for junior staff

CDNTS undertook performance reviews after three months for new employees to understand challenges and opportunities for each staff member, with six-monthly reviews following for all staff. Staff consults highlighted positive reflections of these performance evaluations, as they gave staff an opportunity to provide feedback to their manager about what could be improved across the organisation, while also receiving performance-related feedback. While this process was conveyed to the Review, one respondent from the CDNTS staff survey stated:

I have not had a performance review at all and am nearly at one year of working with the organisation. Assumed to be working well from other comments and actions, but no explicit performance review.

Level of staff turnover

A competitive job market and ongoing challenges in staff retention have resulted in few long-standing senior staff at CDNTS

During the Review period, CDNTS saw a high turnover of senior staff throughout the organisation. From July 2019 to June 2021, CDNTS had a retention rate of 80 per cent. From June 2021 onwards, the rate

declined to 57 per cent. This has seen annual employee separations rise from five to ten people, as indicated in Table 17.

In 2020, the long-standing CDNTS CEO retired. This was followed with the departures of many long-standing senior and mid-level management members from across the organisation.

Table 17 | CDNTS staff retention⁴⁰

Timepoint	Full-time employees	Part-time and casual employees	Total employees	Employees on parental leave	Employees retired	Employee separations	Retention rate
June 2020	22	4	26	1	1	5	80%
June 2021	17	6	23	2	0	5	80%
June 2022	17	4	25	1	1	10	57%

CDNTS acknowledged it was operating in a highly competitive job market, with a high demand for native title professionals and low supply of those with suitable skillsets. As such, CDNTS had to compete with government departments, mining and corporate companies, who could provide greater monetary benefits and were less restricted by funding constraints. One staff member pointedly observed that, “after a couple of years, people [at CDNTS] tend to move on if salaries aren’t competing.” This has seen both long-standing staff members and contractors overlook CDNTS for more competitive job offers in Western Australia. As a result, it has become harder to retain and replace staff, as there are few people with the required skillsets and willingness to work in remote areas for lower pay. This trend remains common across other NTRSB-SPs in the Review.

High workloads and recruitment challenges have led to burnout amongst staff, having the potential to create higher turnover rates

Due to difficulties in attracting and replacing staff, CDNTS staff have had higher-than-expected workloads throughout the Review period. Several staff raised their concerns during consultations, many of which were connected to greater mental stress being placed on them since joining CDNTS.

Ongoing turnover has also created a gap between very senior and junior staff, leaving few mid-level employees throughout the organisation. This gap has created pressure on new employees to train graduates and junior employees despite having little experience in the native title sector. Some external stakeholders alluded to this noticeable change in the CDNTS staff profile, making it somewhat more difficult to maintain regular communication and contact with CDNTS. One client observed that the ongoing levels of burnout amongst CDNTS staff risks creating further turnover.

“I do like the work. But at the moment I’m pretty stressed and I’ve got way too much to do.”

CDNTS staff member

5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

⁴⁰ CDNTS. CDNTS Annual Report (2021-2022).

5.5.3 TOR 5: Recommendations

RECOMMENDATION

2

Review the delineation of functions and responsibilities between DABS and CDNTS, to explore how the most efficient subsidiary structure can be established.

RECOMMENDATION

3

Develop and incorporate protocols that define the parameters of addressing a conflict of interest relating to CDNTS staff members and in day-to-day decision-making of the organisation.

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

Summary

CDNTS and its subsidiaries have a large variety of services they provide to PBCs. At the end of the Review period, there was a small dedicated PBC Support Unit within the organisation, while financial and HR services for PBCs were supported through DABS and land management was supported through DSS. The majority of PBCs supported by CDNTS had a formal service agreement in place. As the current capacity and funding of the PBC Support Unit is relatively limited by the extent of funding provided to it, support does not extend beyond governance, compliance and administration.⁴¹

PBC self-sufficiency varies according to the amount of funding each PBC can access and the skills and governance capabilities of PBC members. A small group of PBCs have greater natural resources and economic opportunities available to them. During the Review period, CDNTS provided services for both less independent and more self-sufficient PBCs and remained committed to having an advisory role for PBCs where requested. PBCs supported by CDNTS, DABS and DSS that engaged with the Review were mostly satisfied with the support they received, but they were looking to CDNTS for greater opportunity to build capability, to explore economic development opportunities and to connect with other PBCs across the RATSIB area.

The Review acknowledges that the activities and functions of the CDNTS PBC Support Unit are limited by funding; however, it considers that CDNTS could further explore opportunities for how the PBC Support Unit could better focus on capacity-building and self-sufficiency. This could include PBC forums or networks bringing together PBCs across the region and better linking the PBCs to external opportunities such as training for Directors in leadership. CDNTS could explore alternative funding or grants to support this development.

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 supported by CDNTS, DABS and DSS were mostly satisfied with the support they received; however, opportunities remain to bolster relationships and embed a focus on PBC self-sufficiency

PBCs were generally pleased with the services they received from CDNTS and its subsidiaries. A few stakeholders noted CDNTS's recent efforts in supporting claim groups with compensation claims to deliver economic benefits to communities. Those who had a long-standing relationship with CDNTS said they were very clear on who specifically to contact for certain questions, concerns or advice.

Clients also valued the services DABS and DSS provided. Some clients used DABS for accounting and bookkeeping services which they did not have capacity to undertake themselves. This allowed them to have an essential service provided in a cost-efficient way. DSS was regarded as having a supportive role in

⁴¹ Functions of the PBC Support Unit are in line with the "Basic PBC Support Funding" provided by the NIAA.

allowing PBCs to establish foundations for land management programs, which contributed to building long-term capacity.

Nonetheless, a small number of PBCs were dissatisfied with certain aspects of the support they received during the Review period. This included:

- not having clear ongoing communication from certain members of CDNTS staff
- not receiving the extent of those services which were outlined in the service agreement
- having to ask and inform CDNTS staff of upcoming surveys and meetings.

Many clients acknowledged that turnover, funding constraints and the overall nature of native title were key challenges being navigated by CDNTS. The Review noted CDNTS had recruited an Implementation Officer since the Review period to ensure effective delivery of services to PBCs under existing agreements and reconciliation of outstanding payments. This will be a critical priority going forward for CDNTS in fostering strong relationships with PBCs and remaining responsive to their evolving needs.

Importantly, there was an ongoing consensus among PBCs that they would like to see a greater focus from CDNTS on PBC capacity-building and self-sufficiency support. For example, several PBCs mentioned they would like to receive more workshops and training from CDNTS in work health and safety, governance and negotiations for Directors. The Review noted that CDNTS's client base largely comprised small, remote PBCs that often had no staff or external funding sources and so capacity building could often be challenging. While the Review learned that CDNTS was entering a new phase of supporting PBC self-sufficiency under its Strategic Plan (as previously discussed under this TOR), PBCs generally reflected that this was not yet the case in terms of the support they were currently receiving from the PBC Support Unit.

The majority of PBCs the Review met with also agreed that they would like to have opportunities to network with other PBCs. Specifically, they would like to have access to PBC forums and ongoing communications with other PBCs to facilitate collegiality and inter-PBC relationships across the region. This was seen as a major opportunity that was not being provided given the interconnection of the Central Desert communities. The Review noted that NIAA occasionally provided funding to the National Native Title Council to work in conjunction with NTRB-SPs to deliver regional PBC forums. One such forum was scheduled for December 2023, but was postponed and was due to be held in May 2024.

Broadly, the Review found that CDNTS should consider how the PBC Support Unit could better focus on capacity-building and self-sufficiency (for example, PBC networks and forums), not just focusing on governance, compliance and administrative support. The Review recognised that there may need to be consideration of seeking alternative funding or grants to support this recommendation, given that the current scope of functions for the PBC Support Unit was aligned with the NIAA's PBC Support Funding.⁴²

The Review noted that DSS played an important role in land management program development for various PBCs, including Indigenous ranger employment and training programs, and promoting partnerships between native title communities and other organisations for mutual benefit.

Lack of CDNTS funding continued to limit the level of support clients received

PBC members were aware that limited resourcing of CDNTS staff had an impact on the timeliness and level of services they received. Some clients had to look to external providers for support as CDNTS did not have the capacity. Other clients noted that they were conscious of the limited resources amongst PBCs in the Central Desert area and tried to use CDNTS for particular support services. As one PBC explained,

⁴² NIAA's PBC Support Funding. <https://www.niaa.gov.au/indigenous-affairs/grants-and-funding/capacity-building-native-title-corporations#:~:text=PBC%20Basic%20Support%20Funding,to%20basic%20administration%20and%20compliance>.

“We only use what we need from CDNTS as we are aware that we don’t need the services as much as the smaller PBCs”. Both CDNTS and its clients noted the ongoing difficulty in finding experts in the industry and the Central Desert area in particular due to the supply and demand limitations outlined under TOR 1.

Percentage of PBCs/RNTBCs supported by the NTRB-SP who have had intervention from the Office of the Registrar of Indigenous Corporations (ORIC) or another regulator

No PBCs supported by CDNTS received formal intervention

No PBCs supported by CDNTS during the Review period had intervention from ORIC or another regulator.

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

CDNTS and its subsidiaries provide a large variety of services to PBCs

Core functions provided by CDNTS to PBCs under existing service agreements ⁴³	
• Notifying the PBC of any Support Funding round (if any) and any relevant information and time frames.	• Providing support and assistance to prepare a Support Funding application if requested.
• Reviewing and assessing all Support Funding applications.	• Releasing the funds to the PBC in a timely manner subject to the compliance by the PBC.
• Notifying the PBC of the outcome of its application.	• Drafting native title claims to a high quality (for PBCs to leverage).
• Providing strategic advice (such as stopping mining companies trying to approve policies etc.).	• Capability building (in areas such as governance and compliance).
• Future Acts administration (including receiving FANs and administering the agreements on behalf of PBCs).	• Geographic Information System mapping.

As mentioned under TOR 4, client services integrated a wraparound model for PBC support. This approach coordinated client services with DSS, DABS and RFM services to create a cohesive and holistic service model for PBCs. This meant that PBCs could leverage the appropriate services according to their specific needs, but also ensured that each client had adequate support to build basic foundations.

During the Review period, DABS provided separate financial services to each PBC as a preliminary requirement of their service agreements. These services ranged from setting up bank accounts and building financial literacy skills, to more complex initiatives including teaching financial governance, compliance and reporting. In addition, DABS also provided separate accounting and book-keeping services for clients who did not have the capacity, resourcing or skills to do their own.

DSS provided support for PBCs by securing funding for land management development, including support for Indigenous ranger employment and training programs. The work of DSS aimed to build the capacity of native title communities to manage their own land and community programs. It also had a role in

⁴³ CDNTS. Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency. 2022. Accessed October 2023.

promoting partnerships between native title clients and other organisations for mutual benefit. Much of this work was funded through project specific grants.

The other CDNTS subsidiary, RFM, served as a trust fund management service for PBCs. RFM acts for PBC trusts whose funds are below the commercial threshold for private trust fund service providers. The organisation operates on a deliberate low-cost model and uses the Public Trustee as its high benchmark for pricing its services.

PBC self-sufficiency varied according to funding, skills and governance of PBC members

During the Review period, CDNTS, DABS and DSS closely supported 14 PBCs through service agreements. More broadly, CDNTS supported 20 PBCs, each of which was at different levels of self-sufficiency. The usage of CDNTS, DSS and RFM varied according to each client, as PBCs used different combinations of services according to their unique preferences and needs. For instance, some PBCs used services from all three organisations while others used only one or two of the services.

A range of factors determined the self-sufficiency of PBCs. PBCs with strong foundations, governance skills and access to considerable grant funding have been able to become well-established organisations which provide “empowerment back to the people”. This allowed them to run effective ranger programs and develop strong objectives for future economic development. Much of this was due to having considerable funding as well as a Board with strong literacy skills. For instance, one PBC was able to establish themselves steadily after receiving strong support from CDNTS in the initial stages of their claim. As a stakeholder explained:

Initially we operated with a Board of Directors and heavily relied on CDNTS... over time, we have relied less on CDNTS and we have created an agreement with a mining company which provided some funding and allowed us to resource ourselves.

Nonetheless, a large proportion of PBCs require higher levels of assistance. Those with little funding, limited access to native title experts and smaller teams found it harder to remain independent from CDNTS. In some instances, PBCs did not have dedicated office spaces and operated with only one to two staff members, despite having hundreds of people on their claim. As one PBC stakeholder stated: “I’m the only person that they’ve got employed and I’m struggling to keep up with everything.”

In other cases, PBCs may have had a sizeable team but did not have technical knowledge on business operations or native title. This meant that some PBCs used CDNTS, DSS and RFM for direct support or to connect them with external consultants for specific expertise.

CDNTS is entering a new phase focused on strengthening the self-sufficiency of PBCs

After the Review period, CDNTS finalised most of the potential determinations in the Central Desert area. The strategic direction is now focused towards assisting PBCs to become more self-sufficient and to build their long-term capacity. Much of this focus involves allowing PBCs to develop strong governance and operational skills to achieve economic development and prosperity. CDNTS’s underlying vision is to ultimately “do themselves out of a job” to allow for PBCs to become autonomous organisations that are run and operated by Traditional Owners.

This vision is clearly understood by CDNTS. During the Review period, it showed a strong understanding of the key actions needed to facilitate this through highly strategic objectives. This was established under the new Strategic Plan as key areas for PBC growth, such as:

- Finishing or substantially progressing the native title determination journey, including compensation.
- Resourcing the PBC team to build on current service provisions, to existing and potential new client services at the centre of all CDNTS activities.

- Leveraging implementation opportunities (Employment and Contracting, Environment), in accordance with commitments under Land Access Agreements.
- Developing a plan and approach to Aboriginal Lands being divested back to PBCs.
- Reviewing and improving the provision of CDNTS services to PBCs to ensure that they have correct and up to date policies and procedures, IT systems and good governance; and to ensure that they have strong balance sheets and are sustainable.
- Engaging with PBCs to see if they want to become a Local Aboriginal Cultural Heritage Service and support them in the journey if they do or do not want to transition.
- Securing funding for internal resourcing to assist PBCs.
- Developing methods to effectively evaluate and measure CDNTS's impact.
- Developing and implementing a plan to serve PBCs and Aboriginal corporations outside CDNTS area.
- Being prepared for and planning to lose clients on good terms because they are self-sufficient.

CDNTS may continue to provide services for both self-sufficient and less independent PBCs

There is a shared understanding amongst CDNTS that not all PBCs will have the ability to become self-sufficient. This is due to the remoteness, lack of governance and skills, and limited income. CDNTS staff saw it as their responsibility to continually support those remote PBCs who will require ongoing assistance.

"We still use CDNTS every week even around mediations and general advice around native title... There will always be an advisory role for them with us."

PBC representative

PBCs who maintain a high level of self-sufficiency stated that no matter how independent they became, there could potentially always be an advisory role for CDNTS with them. This is due to the technical nature of native title legislation.

Overall, the Review found CDNTS PBCs aspire to become self-sufficient, however many have difficulty in operating functionally and independently from CDNTS.

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

CDNTS had a formal system in place for transferring cultural materials to PBCs

CDNTS received large amounts of information and materials from various stakeholders for each claim. Clients' cultural materials were collected, stored, used and transferred according to the CDNTS cultural material policies. The information was then stored on an internal database with strict provisions to secure and protect confidentiality.

During the Review period, CDNTS evolved its approach to transferring cultural materials from having no formal policies to having a standardised MOU. The MOU stipulated a formal agreement with PBCs on how cultural materials were handled. PBCs could then negotiate specific terms of the MOU to ensure it was being used appropriately. The Review heard that CDNTS had become more flexible, allowing PBCs to change the MOU according to their needs. Table 18 outlines the CDNTS's comprehensive approach to MOU documents.

Table 18 | Key contents of a MOU on cultural materials⁴⁴

Section	Key contents
Nature of cultural materials	• Nature of the material (video, audio, physical objects, photographs, maps). • Types of genealogies. • The sources of the material (individuals, publicly or previously held archival material; and researchers including original research). • The purpose for which the material was collected (the native title claims, site surveys and protection, litigated matters of various types, land management and protection; and personal genealogies and family connections).
Definitions of cultural materials	Division of cultural material into four categories: • Tranche 1 (material associated with heritage surveys). • Tranche 2 (material relating to sites, places, or objects of significance). • Tranche 3 (information relating to people). • Tranche 4 (other remaining material).
Formal cultural materials process	• The access and transfer of written materials are formally agreed by all parties involved in a CDNTS claim. • The claimant elects specific people who can access cultural materials on request.
Key issues	• Protocols of confidentiality. • Dispute resolution. • Issues on the control of cultural materials.
Gender-based restrictions	• Restrictions are held in place to align with cultural protocols between men's and women's business.

PBCs mostly responded well to having formal policies for cultural materials in place, but they still saw areas where CDNTS could refine its approach. Before these policies existed, some PBCs found the process for returning cultural materials somewhat confusing. This was because there was no centralised or organised approach to handing back materials after claims were completed. Other PBCs had found the MOUs to be complicated to understand with too much legal jargon.

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

The majority of PBCs supported by CDNTS had a formal service agreement in place

CDNTS supported 20 of the 27 PBCs to varying degrees based on the level of support required, the maturity of the PBC and the ongoing relationship between CDNTS and the PBC. At the time of the Review, CDNTS had 16 formal service agreements in place with PBCs.

⁴⁴ CDNTS. Memorandum of Understanding document. Accessed September 2023.

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

PBCs were generally satisfied with the process of negotiating service agreements with CDNTS

CDNTS provided standardised formal service agreements to the PBCs they supported during the Review period. This agreement had a simple structure which covered the agreed services, costs and support the PBC could receive from CDNTS. In practice, CDNTS provided the level of service required by the PBC, within the capacity of resources available to CDNTS and the limitations of the service agreement.

5.6.2 TOR 6: External factors

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

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

A select group of PBCs had natural resources and economic opportunities available to them

The varying maturity of PBCs and the landscape and available resources determine whether a PBC can become self-sufficient. Large PBCs with access to natural resources have been able to secure a significant number of exploration and mining agreements. These agreements offer employment for some Traditional Owners, as well as significant financial opportunities for claim groups. However, the Review found that for many PBCs, a lack of mining activity and economic opportunity in highly remote communities means that economic potential was limited. Further, the number of FANs remained relatively stable across the Review period.

Smaller PBCs will likely not have much economic opportunity in their determined area due to the lack of resource-rich land and its remoteness. In many cases, these PBCs understand their economic limitations. One PBC stakeholder commented, "If you don't have a mine or something to give you support, you get this determination but there's nothing you can do with it". This resulted in some PBCs becoming less focused on economic development and more focused on social and cultural forms of development such as centralising community settlements or renaming community reserves. CDNTS PBCs were conscious they had significantly less opportunity for tourism and economic development than native title holders in urbanised and coastal areas. As such, economic longevity and self-sufficiency remains an ongoing concern. However, some external stakeholders suggested that CDNTS could expand its efforts in supporting PBCs across these areas, where appropriate.

5.6.3 TOR 6: Recommendations

RECOMMENDATION

4

Explore additional mechanisms and funding opportunities (for example, PBC networks and forums, and PBC grants) that would allow the PBC Support Unit to increase its focus on capacity-building and self-sufficiency, in addition to its focus on governance, compliance and administrative support.

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

Summary

CDNTS is well progressed towards a post-determination environment – only six per cent of the RATSIB area is awaiting a claim to be made, with a further two per cent of the RATSIB area not on claimable land.

CDNTS's new Strategic Plan, developed shortly after the Review period, identified a priority to shift its roles and functions to align with this post-determination environment. This includes an increased focus on delivering economic outcomes for First Nations people (including through compensation claims), as well as supporting PBCs to build their own capacity and capability to create sustainable outcomes for First Nations communities (as supported by the Review's recommendations under TOR 6).

Alongside the new Strategic Plan, CDNTS developed an Operational Plan to guide short- and medium-term priority initiatives for the organisation, as well as KPIs to monitor implementation through discussions facilitated by the Board and Executive.

The Review sees an opportunity for CDNTS to engage with PBCs and clients to confirm that the organisation's priorities align with their future aspirations as a PBC. This will strengthen the organisation's strategic focus on delivering outcomes "with" and "for" First Nations people. CDNTS could undertake a formal period of engagement and review to strengthen relationships with the PBCs in its region to fully understand community aspirations for social, cultural and economic development. This process of engagement will help CDNTS identify how it can strategically support PBCs into the future to take advantage of any opportunities arising from their native title rights and interests.

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

CDNTS's new Strategic Plan has identified a clear priority to shift its roles and functions to align with a post-determination environment

CDNTS was well progressed towards a post-determination environment during the Review period. The CDNTS Board and CEO have been recently proactive in ensuring the organisation is ready for the future through the development of its new Strategic Plan 2023-2026. This involved working collaboratively with all staff during the development of the new Strategic Plan.

Among many priority areas, the Strategic Plan includes a specific focus on:

- re-allocation of priorities to focus on post-determination (PBC support from CDNTS, DABS and DSS, Future Acts and ILUAs, interaction with proponents)
- an increased focus on delivering economic outcomes for Aboriginal people – including through compensation claims
- supporting PBCs to build their own capacity to create sustainable outcomes for communities.

Internal and external stakeholders commented that CDNTS is well positioned to deliver on its future priorities, guided by this new Strategic Plan. For example, while compensation claims have historically played a limited role in Australia's native title system to date, the stakeholder consensus was that in light

of recent milestones across the region, compensation claims will form a critical and enduring element of CDNTS's native title activities. While the previous Review found that stakeholders saw this as a challenge for CDNTS in establishing economic value in compensation claims, stakeholders consulted during this Review pointed to the legal precedents outlined in the Tjiwarl and Pila Nature Reserve compensation claims as the "framework" to guide future activities.

Alongside the new Strategic Plan, CDNTS developed an Operational Plan to guide short- and medium-term priority initiatives for the organisation, as well as KPIs to monitor implementation.

An opportunity exists to support this strategic focus through engagement with PBCs and other constituents

While there is a shared understanding in CDNTS that not all PBCs will have the ability to become self-sufficient, the new Strategic Plan places a significant emphasis on CDNTS's responsibility to support PBCs in a post-determination environment by delivering supports that align to their needs and aspirations.

"Listening to community about what we want. We have native title, so CDNTS should help us with compensation, negotiations and putting services out in community. We should tell them what we want, not the other way around."

PBC representative

To implement this strategic direction, a significant opportunity exists for CDNTS to undertake a formal period of engagement with all relevant PBCs and constituents. This will further build the organisation's relationships with its community, understand community need and identify how CDNTS can support PBCs to achieve their economic, cultural and social aspirations.

This idea was supported by PBCs consulted during the Review. CDNTS is well positioned to increase its capacity to respond to Traditional Owners' desires for economic and cultural benefits.

5.7.2 TOR 7: External factors

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

Progress towards a post-determination environment

CDNTS is well progressed towards a post-determination environment

Ninety-two per cent of the RATSIB area is subject to a registered claim or native title determination, with only two per cent of the land not claimable.⁴⁵ With a number of additional claims since the Review period and research on the remaining unclaimed areas well underway, CDNTS expects that it will have completed all native title claims for its region within the next three to five years.

There was general consensus that CDNTS will also be well advanced on settling compensation claims within the region. The foreseeable transition to a complete post-determination environment in the next decade has encouraged CDNTS to engage deeply with post-determination planning.

⁴⁵ CDNTS. CDNTS Annual Report (2021-2022).

5.7.3 TOR 7: Recommendations

RECOMMENDATION

5

Engage with all PBCs to understand their aspirations in a post-determination environment and ensure alignment with CDNTS's new Strategic Plan.

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 CDNTS'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 CDNTS 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 21 August 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- ten Traditional Owners including:
 - clients who have been represented by CDNTS (including members of PBCs)
 - potential clients in CDNTS's RATSIB area
- the Federal Court of Australia
- the NIAA
- representatives of the Western Australian Government
- CDNTS staff and contractors, including:
 - CDNTS CEO and Executive
 - CDNTS Board Directors
 - current CDNTS staff
 - barristers.

Appendix C Documents reviewed

Category	Description
Annual reports	CDNTS, 2020 Annual Report [FY2019/20] CDNTS, 2021 Annual Report [FY2020/21] CDNTS, 2022 Annual Report [FY2021/22]
Background documents	Central Desert Native Title Services Team Structure (August 2023) Role descriptions and key functions document
Duty statements	Administration Support Clerk Duty Statement Agreement Implementation Officer Duty Statement Anthropologist Duty Statement Chief Executive Officer Duty Statement Communications Manager Duty Statement Cultural Geography Database and CCKI Assistant Duty Statement DS Senior Lawyer Duty Statement Geospatial Information Systems (GIS) Officer Duty Statement Lawyer Duty Statement Logistics Coordinator Duty Statement Manager Client Services Duty Statement Operational Administration Officer Duty Statement Operations Manager Duty Statement PBC Coordinator Duty Statement PLO Duty Statement Senior Lawyer Duty Statement Work Health and Safety Manager Duty Statement
Policies	Access, Insurance, Indemnity Policy Board of Directors Roles and Responsibilities Policy Bullying and Discrimination Harassment Policy CDNTS Code of Conduct Chief Executive Officer and Principal Lawyer Protocol Policy Compliments, Complaints and Suggestions Policy Credit Card Policy Delegations Policy Disclosure of Conflict of Interest Policy Facilitation and Assistance Requests Policy Funds Held in Trust Policy Gift Fund Policy Grievance and Dispute Resolution Policy Health and Wellbeing Policy Internal Review Policy Policy and Procedures Full Index (2023)

Category	Description
	Procurement Policy Recruitment and Selection Policy Risk Management Policy Role of the Chairperson Policy
Financial, operational and performance documents	Additional Performance reporting/KPIs document Audit and Risk Committee Charter CDNTS Performance Report (July 2020 to June 2021) CDNTS Performance Report (July 2021 to June 2022) Claim group information document Complaints register (2009-2023) Cultural Awareness Points for New Staff Culturally safe practice document Employee Induction: Cultural Connection and Practices Financial, operational plan and activity report (30 June 2020) Internal review procedure Internal review register Professional services engagement Professional Services Providers register Risk register Staff profile document Strategic plan (2023-2026)
COVID-19 policies	CDNTS Operational Policy during COVID-19 pandemic (2020) CDNTS Operational Policy during COVID-19 pandemic 2020 (updated) in relation to attendance at meetings CDNTS PBC Operational Policy during COVID-19 pandemic (2020) Coronavirus Information (2020) COVID 19 Return to the office pack COVID-19 Information pack (February 2022) COVID-19 Information pack (May 2022) COVID-19 Working from home pack (2021) COVID-19 Working from home pack (March 2020) COVID-19 Working in the office during phase 4 (June 2020) Notice 1: Coronavirus – Organisational Direction (2020) Notice 2: Coronavirus – Organisational Direction (2020) Notice 5: Coronavirus – Organisational Direction (2020) Notice 6: Coronavirus – Organisational Direction (2020).
PBC information	Barra Parrapi Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency Barra Parrapi Letter Agreement CDNTS Memorandum of Understanding document Kaltupakal Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency Kaltupakal Letter Agreement

Category	Description
	Kultju Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Kultju Letter Agreement
	Kulyakartu Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Kulyakartu Letter Agreement
	Marputu Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Marputu Letter Agreement
	MNR Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	MNR Letter Agreement
	Ngurra Kayanta Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Ngurra Kayanta Letter Agreement
	Parna Ngururrpa Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Parna Ngururrpa Letter Agreement
	PBC Grant Support Summary (FY19/20 to FY21/22)
	Pila Nguru Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Pila Nguru Letter Agreement
	Rapi Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Rapi Letter Agreement
	Tjamu Tjamu Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Tjamu Tjamu Letter Agreement
	Tjamu Tjamu Memorandum of Understanding
	Tjiwarl Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	TMPAC Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Wakamurru Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	Wakamurru Letter Agreement
	Yilka Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency
	YNP Deed for the administration of certain Prescribed Body Corporate funds from the National Indigenous Australians Agency.
Other inputs	Culture and engagement focus groups (September 2019)
	Joint consultative committee – terms of reference
	Staff culture survey template (November 2019)
	Staff culture surveys (November 2019)
	Team feedback (2021)

Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 19.

Table 19 | 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.
<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) (the CATSI Act)	The <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (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 <i>Native Title Act 1993</i> (Cth) to assist people in resolving native title issues by: mediating between the parties to native title applications at the direction of the Federal Court

Term	Meaning
	b) acting as an arbitrator in situations where the people cannot reach agreement about certain Future Acts 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 <i>Native Title Act 1993</i> (Cth)).
<i>Native Title Act 1993</i> (Cth) (the NTA)	The <i>Native Title Act 1993</i> (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 <i>Native Title Act 1993</i> (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 <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (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 <i>Native Title Act 1993</i> (Cth).

Term	Meaning
Representative Aboriginal/Torres Strait Islander Body (RATSIB) area	The area over which a Native Title Representative Body and Service Provider holds jurisdiction.
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 Appendix A.
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 20.

Table 20 | NTRB-SP 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 <i>Native Title Act 1993</i> (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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