



Review of NTSCORP Limited, 2019-22

National Indigenous Australians Agency

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1 Profile of NTSCORP Limited

NTSCORP Limited (NTSCORP) provides native title services for Traditional Owners in New South Wales (NSW) and the Australian Capital Territory (ACT)

NTSCORP is the Native Title Service Provider (NTSP) for NSW and the ACT. It operates as a public company limited by guarantee, registered with the Australian Charities and Not-for-profits Commission (ACNC) as a Public Benevolent Institution. NTSCORP was established in 2002 after the NSW Aboriginal Land Council relinquished its status as a Native Title Representative Body (NTRB) in December 2001.

NTSCORP was originally established under the name "NSW Native Title Services Limited". It has functioned under the name "NTSCORP Limited" since 2007. Its office is in Redfern, NSW.



The NSW and ACT Representative Aboriginal/Torres Strait Island Body (RATSIB) area, pictured, has a land area of about 803,575 square kilometres and a total area (including water) of 1,722,365 square kilometres. It also has the highest population of First Nations people of all RATSIB areas in the country.

As of 30 June 2022, the end of the review period, there had been 17 determinations of native title within the NSW RATSIB area since the passage of the *Native Title Act 1993* (Cth) (the NTA). Three of these occurred between 1 July 2019 to 30 June 2022 (the Review period). As of 30 June 2022, there were ten active claims in the NSW RATSIB area awaiting determination. NTSCORP was listed as the representative for four of these claims. One of these claims was successfully determined on 19 December 2022 (after the Review period). NTSCORP did not assist with lodgement of any native title claims during the Review period but undertook two significant research projects prior to submitting claims.

As of 30 June 2022, there were nine Prescribed Body Corporates (PBCs) within the RATSIB area. NTSCORP supported eight of these PBCs during the Review period. A tenth PBC was established in April 2023, following the positive determination of the Widjabul Wia-bal claim.

NTSCORP received \$20.2 million in funding from the National Indigenous Australians Agency (NIAA) over the Review period. This included \$5.6 million of base funding each year and additional funding for PBC support and unforeseen litigation.

The NTSCORP Board of Directors consisted of eight member Directors and one non-member Director who provided professional advice but did not have voting rights. At the time of the Review, NTSCORP had 29 staff across its corporate, legal, research and community facilitation teams.

NTSCORP operated in a unique and challenging political and legal context, which significantly impacted on its ability to deliver native title outcomes. The *Aboriginal Land Rights Act 1983* (NSW) (the ALRA) grants certain rights and protections to Aboriginal people in relation to land ownership, management and compensation. However, land is not considered "claimable Crown land" under the ALRA if it is subject to a registered native title claim or determination. This had led to disputes between Aboriginal people who wished to exercise land rights and those who wished to pursue native title rights. Despite local agreement making this had contributed to the complexity of pursuing native title outcomes in NSW.

2 Scope of the Review

The 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 Terms of Reference (TOR) provided by the NIAA for the Review are to determine the extent to which each organisation:

- has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19
- assesses and prioritises applications for assistance in a manner that is equitable, transparent and robust and is well publicised and understood by clients and potential clients
- deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints
- performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation
- has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery
- is adequately supporting PBCs towards self-sufficiency
- has developed its planning for a post-determination environment.

The complete TOR are included in 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 Agreement (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 reviews was set out in the Consultation Plan for the reviews, which was also provided to each organisation 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 all (or the majority) of the 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
ACNC	Australian Charities and Not-for-profits Commission
ACT	Australian Capital Territory
CEO	Chief Executive Officer
CFO	Chief Financial Officer
FAN	Future Act notification
FY	Financial year
HR	Human resources
IEO	Index of Education and Occupation
ILUA	Indigenous Land Use Agreement
IRSD	Index of Relative Socioeconomic Disadvantage
LALC	Local Aboriginal Land Council
LEC	Land and Environment Court
LGA	Local government area
MOU	Memorandum of understanding
NIAA	National Indigenous Australians Agency
NSW	New South Wales
NTRB	Native Title Representative Body
NTRB-SP	Native Title Representative Body and Service Provider
NTSCORP	NTSCORP Limited
NTSP	Native Title Service Provider
ORIC	Office of the Registrar of Indigenous Corporations
PBC	Prescribed Body Corporate
PLO	Principal Legal Officer
RATSIB	Representative Aboriginal/Torres Strait Island Body

Abbreviation	Meaning
RNTBC	Registered native title bodies corporate
The ALRA	<i>Aboriginal Land Rights Act 1983</i> (NSW)
The Attorney General	Attorney General of New South Wales
The CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)
The NTA	<i>Native Title Act 1993</i> (Cth)
The Review period	1 July 2019 to 30 June 2022
TOR	Terms of Reference
WLALC	Wagonga Local Aboriginal Land Council

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 Appendix A.

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.

NTSCORP achieved three determinations during the Review period and represented four additional claims that remained active at the end of the Review period. NTSCORP did not file any new applications during the Review period. External consultants were engaged to conduct research over the Canberra and Monaro regions.

Many stakeholders reported that highly complex land tenure, and the relationship between the NTA and the ALRA significantly impacted NTSCORP's ability to achieve native title outcomes. The interaction between the NTA and the ALRA resulted in Local Aboriginal Land Councils (LALCs) submitting a large number of non-claimant applications. This created substantial additional work for NTSCORP, which acted as a respondent to 21 non-claimant applications during the Review period. In two cases NTSCORP opposed the non-claimant application, leading to litigation.

Where instructed to do so, NTSCORP continued to assist clients to pursue ILUAs to achieve native title outcomes for clients, negotiating eight ILUAs on behalf of its clients during the Review period. NTSCORP advised that as of 30 June 2022, it was actively negotiating 12 ILUAs and 27 Future Act agreements with public and private organisations.

Stakeholders broadly felt that NTSCORP lawyers went above and beyond to deliver native title outcomes in a challenging operating environment. NTSCORP lawyers were seen by legal commentators as well prepared, responsive and hardworking. One close observer suggested the level of detail in witness statements could at times be improved. But this commentary was refuted by NTSCORP.

Several Traditional Owners who engaged with the Review were dissatisfied with the composition of claim groups, which they believed was due to poor research work on the part of NTSCORP. In response, NTSCORP noted that decisions about the composition of claim groups could only be made by native title claim groups when authorising the applicant to make an application or amend an application, and were not made by NTSCORP.

During the Review period, NTSCORP adopted a new approach of contracting external anthropologists to deliver research. The use of external consultants had a positive impact on the quality and speed of connection reports with some external stakeholders noting that connection reports developed with external anthropologists were typically of a high quality. Informed commentators also spoke highly of NTSCORP's historical research but raised concerns about the quality of internally produced connection reports. In response, NTSCORP noted that these comments likely applied to an earlier period and that all internally produced connection reports undertaken during the Review period had contributed to the State determining that there was a credible basis for recognising native title. Stakeholders also pointed to the limited opportunity for delegation of tasks within the Research team, which may have contributed to the challenges faced by that team. This was likely due to a lack of junior research staff. NTSCORP advised that it was unable to fund a junior research position.

The Review received some commentary that suggested that the interaction between NTSCORP and external contractors could be improved to get the most out of the arrangement. This included concerns that research was hampered by the limited availability of Community Facilitators. In response, NTSCORP rejected this commentary, noting that a significant level of support had been provided to external anthropologists who were engaged and paid to produce the report themselves.

The challenges created by COVID-19 were responsible for a considerable slowing in the progress of claims during the Review period. While the pandemic led to the introduction of new technologies, there was also resistance among some Traditional Owners to the use of video conferencing.

RECOMMENDATION

1

NTSCORP should continue to engage external anthropologists to ensure that it produces high quality connection reports and meets Federal Court deadlines.

RECOMMENDATION

2

NTSCORP should establish processes that ensure it provides adequate briefings and support to external anthropologists that it engages, including ways to ensure culturally appropriate engagements where Community Facilitators have limited availability.

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.

NTSCORP's approach to assessment and prioritisation was documented in its Facilitation and Assistance Policy, which was approved by the NTSCORP Board of Directors in 2011. Staff were aware of this policy. Over the Review period, NTSCORP prioritised claims with the greatest chance of success, strongest claim group coherence and quality of research conducted.

NTSCORP did not prioritise requests for assistance from other NTRB-SPs and did not respond to at least one request from another NTRB-SP for assistance with a cross-border claim.

The assessment and prioritisation policy was not publicly available but was available to native title claim groups upon request and to those whose requests for assistance were unsuccessful.

Most Traditional Owners who spoke with the Review did not express any concerns with the assessment and prioritisation process. A few Traditional Owners expressed dissatisfaction with the process, suggesting it was not transparent and that the Board prioritised claims that benefited themselves. The Review was not made aware of any evidence that supported these concerns. The Board did not make decisions about which claims to prioritise, although they were briefed on NTSCORP's prioritisation decisions and given an opportunity to interrogate these decisions.

Creating a public facing assessment and prioritisation policy would help clients and potential clients gain a better understanding of NTSCORP's decision-making and claim assessment and prioritisation process.

RECOMMENDATION

3

NTSCORP should develop a public facing Facilitation and Assistance Policy that clearly outlines how requests for assistance are assessed and prioritised, to improve transparency. It should actively promote the document to Traditional Owners who are seeking engagement with NTSCORP.

RECOMMENDATION

4

NTSCORP should consider the development of new memorandum of understanding (MOU) with neighbouring NTRB-SPs to ensure a collaborative approach to cross-border claims.

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.

Community engagement and outreach was a clear priority for NTSCORP. The Community Facilitation team was responsible for overseeing respectful engagement with members of the community. Other NTSCORP staff were positive about the value of the Community Facilitation team, including its ability to convey complex matters in simple terms. NTSCORP made considerable efforts to ensure it engaged appropriately and built cultural competency within the organisation.

Multiple stakeholders, including Traditional Owners, PBC staff and external consultants who engaged with the Review, broadly reported that outside of meetings, NTSCORP communicated poorly. These stakeholders reported that it was exceedingly difficult to successfully contact NTSCORP by either phone or email, and that NTSCORP did not return calls or emails in a timely manner. NTSCORP did not accept that this concern was representative of its clients/potential clients. NTSCORP reported that staff endeavoured to respond in a timely manner but could not always do so due to the sheer volume of communications they received.

Many of the Traditional Owners who spoke with the Review reported that they rarely received information about claim group meetings or updates on claim group matters from NTSCORP directly and were more likely to receive relevant information via word-of-mouth. In response, NTSCORP advised that information was made available through Facebook, advertisements and other channels.

The NTSCORP website contained some valuable information but could have been used more effectively to communicate NTSCORP activities. Most of the information commonly accessible on the website of an NTRB-SP was not available, including fact sheets and policies (such as its travel assistance policy), annual reports or a strategic plan. NTSCORP subsequently advised the Review that in July 2024 it was in the process of re-designing the website to make it easier to update and change.

NTSCORP's annual reports only contained mandatory financial information and provided no other information about the company's performance over the previous year, such as a report from the Chairperson and Chief Executive Officer (CEO). While there was no legal obligation for the annual reports to include specific information about organisational achievements or other statistics, all other NTRB-SPs produced annual reports as a means of being accountable to their communities.

Several stakeholders raised concerns to the Review that the CEO and all members of the Community Facilitation team were from one family and that this created perceptions of one family having too much influence over NTSCORP operations. In response, NTSCORP advised that at least two of these members of staff were recruited by the former CEO and dismissal on the basis of their familial relationships would be

unlawful. Stakeholders also noted that this situation created the risk that in the event of an urgent family matter, NTSCORP's capacity to hold meetings and communicate with community members in a timely manner could be impacted. Stakeholders also reported feeling uncomfortable about making a complaint about the Community Facilitation team.

While NTSCORP had a Complaints Policy and Internal Review Policy, neither was published on its website. The handling of complaints was primarily the responsibility of the CEO. This led to understandable discomfort about submitting a complaint about a member of the CEO's family. NTSCORP received a significant number of complaints from serial complainants, which added to workload and stress.

No requests for internal review were received during the Review period.

RECOMMENDATION

5

NTSCORP should establish a more structured approach to responding to stakeholders so that missed calls and emails receive attention in a timely manner.

RECOMMENDATION

6

NTSCORP should take steps to diversify its Community Facilitation team.

RECOMMENDATION

7

NTSCORP should update its Complaints Policy to include procedures for dealing with real or perceived conflicts of interest.

RECOMMENDATION

8

NTSCORP should ensure that it distributes information about claim group meetings and updates on the progress of claims and research to all relevant native title interest holders.

RECOMMENDATION

9

NTSCORP should develop more channels to update community members about native title matters. This should involve, at a minimum, updating the NTSCORP website and developing comprehensive annual reports containing information about performance of the organisation for the past year.

RECOMMENDATION

10

To increase transparency and accountability to the community, NTSCORP should update its website to make key documents, such as its Complaints Policy, publicly available.

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.

NTSCORP significantly underspent its approved budget in each year of the Review period, primarily due to the impact of COVID-19, the underspend of PBC basic support funding and the contribution of carried-forward funds to its budget. While NTSCORP's expenditure on native title remained relatively stable in

financial year (FY) 2019-20 and FY2020-21, it rose by 41 per cent in FY2021-22 once COVID-19 restrictions were relaxed and NTSCORP could resume holding claim group meetings. Travel and meeting costs rose by almost \$1 million between FY2020-21 and FY2021-22.

Staff salaries were consistently the most significant expense for NTSCORP. Several commentators suggested that salaries were uncompetitive with the market, especially for junior lawyers. This significantly affected NTSCORP's ability to attract and retain staff. More frequent benchmarking would assist in ensuring salaries for highly sought-after professional staff remain competitive.

The Review acknowledges that there were a range of external factors that affected the cost-effectiveness of NTSCORP, the most significant of which included the high cost of claim group meetings, the relatively high cost of operating in Sydney and the relative complexity of pursuing native title outcomes in NSW. However, the Review also identified some relatively inefficient practices at NTSCORP over the Review period. This included an apparent lack of delegation throughout the organisation, resulting in more highly paid senior staff unnecessarily managing operational matters, with these staff members appearing overly involved in operational matters. This was exacerbated by the lack of a Deputy CEO and the absence of a Human Resources (HR) function – either in- or out-sourced.

NTSCORP responded that the lack of junior staff necessitated greater involvement from senior staff and that undertaking recruitment in-house was a cost saving measure. However, the Review believes it would be more efficient if the time of highly experienced legal professionals is devoted to legal matters rather than recruitment. NTSCORP staff recognised the opportunity for more cost saving strategies to be implemented, including improving the delegation of operational tasks. There were plans in place to sell some of the company vehicles.

NTSCORP provided travel support, accommodation and meals to claim group members who needed to travel to attend meetings. External commentators were largely positive about the way in which meetings were conducted. Expenditure on meetings and travel accounted for approximately 19 per cent of total expenditure across the Review period. This is in part due to the large size of claim groups in the NTSCORP RATSIB area.

RECOMMENDATION

11

NTSCORP should benchmark salaries more frequently to ensure staff salaries remain competitive.

RECOMMENDATION

12

NTSCORP should optimise its vehicle inventory by owning only the number of vehicles required to effectively carry out core business activities.

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.

NTSCORP was operating as a public company limited by guarantee, registered with the ACNC as a Public Benevolent Institution. There were clear delineations of roles, responsibilities and decision-making powers in place between NTSCORP's Board and CEO.

The Review found that NTSCORP's flat organisational structure and limited internal delegation of authority generated operational inefficiencies and an unsustainable workload for the CEO. Many external stakeholders reported that NTSCORP was not a responsive organisation and the Review found challenges

with timely engagement from NTSCORP. Operational challenges were exacerbated by a lack of specific organisational roles, such as a Deputy CEO, a dedicated position to support the Board and a dedicated HR function. It may be timely for the Board to consider a review of the organisation structure and succession planning to achieve efficiencies and continuity for the future.

All Board Directors had been in place for a long period. The Board did not engage with the Review process, which is of concern, as it may indicate a level of disconnect that is not consistent with good governance. Numerous stakeholders reflected that the introduction of some new Board Directors to NTSCORP would present a positive opportunity to explore issues from a fresh perspective and increase Board Director diversity. Many Traditional Owners expressed frustration that NTSCORP was not sufficiently accountable to its clients, with some commenting that the Board was a “closed shop”. The lack of an election process, in addition to a lack of regular communication to constituents, created a lack of transparency. These issues were exacerbated by the absence of accessible, public facing annual reports or an up-to-date strategic plan. Attention to these organisational matters would be likely to enhance the level of trust and respect with which NTSCORP was regarded by some stakeholders.

NTSCORP had well-established policies to manage conflicts of interest within the organisation and to support the Board and staff to operate in an ethical manner. However, there was a perception from some Traditional Owners who engaged with the Review that conflicts of interest were not always handled appropriately during the Review period. Specifically, these Traditional Owners believed that the Board exerted undue influence on claim assessment and prioritisation. A number of Traditional Owners were also concerned that a potential or perceived conflict of interest may arise if NTSCORP staff members or senior executives were involved in a claim in which they held a personal interest. While the Review did not find any evidence of inappropriate conflicts of interest, it will be important for the Board and senior staff to consider ways to counter these perceptions.

NTSCORP’s purpose, vision and values were outlined in its strategic documentation and generally upheld by staff. However, NTSCORP did not have a current strategic plan in place, with the previous strategic plan developed in 2011 and the majority of action items expiring in 2013. There was a perception from some staff and former staff that the internal culture and working environment could be improved and that senior management could pay more attention to creating a respectful and transparent internal culture.

NTSCORP had sound financial management practices during the Review period, but financial reports were often submitted late, apparently due to resourcing constraints. NTSCORP staff training, particularly legal training, was largely “on the job” and considered effective. Staff turnover for researchers and junior lawyers was relatively high during the Review period and NTSCORP faced a major challenge in retaining and attracting new research and legal staff.

RECOMMENDATION

13

NTSCORP should review its organisation structure to clarify the delegation of work and refine position descriptions to minimise senior staff members’ involvement in lower level operational or administrative tasks, improve cost-effectiveness and enable senior staff to focus more on core business and strategic thinking.

RECOMMENDATION

14

NTSCORP should appoint a Deputy CEO to ensure appropriate processes are able to continue when the CEO is away or overwhelmed with work.

RECOMMENDATION	15
NTSCORP should undertake a strategic planning process to update its Strategic Plan and publicise the plan on its website to provide meaningful strategic direction for the coming three to five years.	
RECOMMENDATION	16
NTSCORP should implement mechanisms to create and maintain a culture where staff feel safe to give and receive feedback and make complaints.	
RECOMMENDATION	17
NTSCORP should establish or outsource an HR function to support recruitment and handle internal complaints.	
RECOMMENDATION	18
NTSCORP should review and amend its Constitution to limit the tenure of Directors in line with best practice to encourage new Directors to join the Board and to ensure it represents the diversity of its stakeholders. Board renewal should be managed through a phased transition to ensure that only a portion of the Board is being renewed in each nomination period.	
RECOMMENDATION	19
NTSCORP should publicly advertise for new Board nominations.	
RECOMMENDATION	20
NTSCORP should consistently produce informative annual reports and make them available on its website. The annual reports should include information about NTSCORP's performance as a means of communication to its stakeholders.	
RECOMMENDATION	21
NTSCORP should prioritise the submission of budgets and financial reports on time to ensure that it complies with the requirements of its funding bodies.	

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

NTSCORP provided support to eight of the nine PBCs in its RATSIB area throughout the Review period. Unlike many other NTRB-SPs, NTSCORP did not have a PBC Support Unit but provided support functions through its Legal Unit. Support provided by NTSCORP included compliance with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (the CATSI Act), such as providing assistance to PBCs to convene and attend general meetings, native title holders' meetings and Directors' meetings, and taking minutes for those meetings.

In addition, NTSCORP's legal team provided a comprehensive legal service to PBCs in relation to ILUA negotiations, other commercial negotiations, contracts and responses to Future Acts. NTSCORP advised the Review that it provided the equivalent of four full time lawyers working with PBCs exclusively, predominantly on Future Acts and negotiation and implementation of agreements. In contrast, some PBCs who engaged with the Review reported that at times NTSCORP would forward Future Acts to the PBCs without providing support to respond and that without support, they struggled to respond to Future Acts. NTSCORP rejected these claims and maintained that it always supported PBCs to respond to FANs where they had procedural rights to do so.

NTSCORP significantly underspent its PBC basic support budget across the Review period. NTSCORP advised that the underspends were caused by PBCs not meeting NTSCORP's reporting requirements. NTSCORP required PBCs to submit an operational plan and budget detailing the activities for which financial support was required. NTSCORP then allocated funding to each PBC based on its assessment of their need and capability, with more funding allocated to those PBCs that NTSCORP deemed to have the greatest need. This process also tended to result in significant delays to the allocation of funds, which was a point of considerable frustration for some PBCs. This significant history of underspending on PBC basic support across the Review period is a concern in relation to NTSCORP's role in adequately supporting PBCs towards self-sufficiency.

NTSCORP staff explained that most PBCs in the RATSIB area are still a long way off self-sufficiency and relied on support from NTSCORP in some capacity. There was a view from NTSCORP that some PBC Directors were not sufficiently involved in PBC matters and not willing to provide the level of oversight and support required of them.

NTSCORP staff reported that the workload generated by PBCs was not sustainable within current operational funding limits. As more claims have been determined, PBC matters have taken an increasing proportion of staff resources, which NTSCORP reported has diverted key resources away from claims work. There is a high degree of complexity and conflict through many of the PBCs in the RATSIB area, which contributes to the high workload.

This increasing workload, together with NTSCORP's continued progression of native title claims, had limited NTSCORP's capacity to take a strategic approach to supporting PBCs toward self-sufficiency. NTSCORP staff and external commentators acknowledged that an absence of a strategic approach to supporting PBCs toward self-sufficiency was a shortcoming. NTSCORP had no plans to address this issue, citing funding constraints as a significant barrier.

NTSCORP does not have formal service agreements with the PBCs, although NTSCORP staff and PBC staff said they would like to have service agreements or MOUs in place. There is a need for greater clarity about the basic services that NTSCORP provides, as well as any fee for service arrangements for other services and guidance on costs that should be covered by proponents.

RECOMMENDATION

22

NTSCORP should develop and implement a publicly accessible policy that outlines the services it provides to PBCs. This document should be actively circulated to all PBCs and reviewed annually.

RECOMMENDATION

23

NTSCORP should implement formal service agreements or MOUs with PBCs as a matter of urgency to clarify the scope of support NTSCORP will provide PBCs.

RECOMMENDATION

24

NTSCORP should develop and implement a fee for service policy for PBCs so that there is clarity for PBCs about additional support that can be provided from NTSCORP and to cover circumstances where a third party should be covering PBC costs in responding to Future Acts.

RECOMMENDATION

25

NTSCORP should undertake the development of a strategic plan for PBC development in consultation with the PBCs and use this plan to make a case for funding to further develop PBC capability.

RECOMMENDATION

26

NTSCORP should review its processes to ensure that funding to be provided to PBCs is allocated without unreasonable delay.

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

As of June 30, 2022, NTSCORP's strategic planning for post-determination had not commenced and NTSCORP reported that it was not under consideration by the Board.

The majority of NTSCORP's resources were dedicated to progressing claim work and legal work for PBCs and NTSCORP staff expected claim work to continue for the next ten to 15 years. While NTSCORP senior staff understood the importance of planning for a post-determination environment, it was not a priority during the Review period.

RECOMMENDATION

27

NTSCORP should undertake strategic planning to define its role in the post-determination environment.

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

NTSCORP achieved three determinations during the Review period and represented four additional claims that remained active at the end of the Review period. NTSCORP did not file any new applications during the Review period. External consultants were engaged to conduct research over the Canberra and Monaro regions.

Many stakeholders reported that highly complex land tenure, and the relationship between the NTA and the ALRA significantly impacted NTSCORP's ability to achieve native title outcomes. The interaction between the NTA and the ALRA resulted in LALCs submitting a large number of non-claimant applications. This created substantial additional work for NTSCORP, which acted as a respondent to 21 non-claimant applications during the Review period. In two cases NTSCORP opposed the non-claimant application, leading to litigation.

Where instructed to do so, NTSCORP continued to assist clients to pursue ILUAs to achieve native title outcomes for clients, negotiating eight ILUAs on behalf of its clients during the Review period. NTSCORP advised that as of 30 June 2022, it was actively negotiating 12 ILUAs and 27 Future Act agreements with public and private organisations.

Stakeholders broadly felt that NTSCORP lawyers went above and beyond to deliver native title outcomes in a challenging operating environment. NTSCORP lawyers were seen by legal commentators as well prepared, responsive and hardworking. One close observer suggested the level of detail in witness statements could at times be improved. But this commentary was refuted by NTSCORP.

Several Traditional Owners who engaged with the Review were dissatisfied with the composition of claim groups, which they believed was due to poor research work on the part of NTSCORP. In response, NTSCORP noted that decisions about the composition of claim groups could only be made by native title claim groups when authorising the applicant to make an application or amend an application, and were not made by NTSCORP.

During the Review period, NTSCORP adopted a new approach of contracting external anthropologists to deliver research. The use of external consultants had a positive impact on the quality and speed of connection reports with some external stakeholders noting that connection reports developed with external anthropologists were typically of a high quality. Informed commentators also spoke highly of NTSCORP's historical research but raised concerns about the quality of internally produced connection reports. In response, NTSCORP noted that these comments likely applied to an earlier period and that all internally produced connection reports undertaken during the Review period had contributed to the State determining that there was a credible basis for recognising native title. Stakeholders also pointed to the limited opportunity for delegation of tasks within the Research team, which may have contributed to the challenges faced by that team. This was likely due to a lack of junior research staff. NTSCORP advised that it was unable to fund a junior research position.

The Review received some commentary that suggested that the interaction between NTSCORP and external contractors could be improved to get the most out of the arrangement. This included concerns that research was hampered by the limited availability of Community Facilitators. In response, NTSCORP rejected this commentary, noting that a significant level of support had been provided to external anthropologists who were engaged and paid to produce the report themselves.

The challenges created by COVID-19 were responsible for a considerable slowing in the progress of claims during the Review period. While the pandemic led to the introduction of new technologies, there was also resistance among some Traditional Owners to the use of video conferencing.

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

NTSCORP delivered three determinations during the Review period

During the Review period NTSCORP secured three determinations that native title existed, as shown in Table 1. The Federal Court determined that native title existed over the entire Gumbaynggirr People #5 claim, and parts of the Gumbaynggirr #3 and Bandjalang People #3 and #4 claims.

Table 1 | Successful native title claims during the Review period¹

Claim	Federal Court file number	Date filed	Date of determination	Status	PBC
Bandjalang People #3 and #4	NSD426/2016, NSD122/2019	24/03/2016	30/04/2021	The claim was determined by consent and covers approximately 721 hectares of land across a range of sites in the vicinity of Evans Head.	Bandjalang Aboriginal Corporation PBC registered native title bodies corporate (RNTBC)
Gumbaynggirr People #5	NSD1312/2018	23/07/2018	26/11/2019	The claim was determined by consent and covers approximately 23 hectares of land on the mid-north coast of NSW, south of Urunga.	Gumbaynggirr Wenonah Head Aboriginal Corporation RNTBC
Gumbaynggirr People #3	NSD1350/2016	15/08/2016	26/11/2019	The claim was determined by consent and covers approximately 147 hectares of land on the Mid-North coast of NSW, along Warrell Creek, south of Nambucca Heads.	Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC

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

NTSCORP progressed four active claims during the Review period

NTSCORP represented four active claims during the Review period, as shown in Table 2. The Widjabul Wia-Bal claim resulted in a determination that native title existed in the entire determination area in December 2022, after the Review period.

Table 2 | Summary of active claims for NTSCORP at 30 June 2022²

Claim	Federal Court file number	Application type	Date filed	Status
South Coast People	NSD1331/2017	Claimant	03/08/2017	Active.
Widjabul Wia-Bal	NSD1213/2018	Claimant	24/06/2013	On 12 December 2022, it was determined that native title exists in the entire determination area.
Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan	NSD38/2019	Claimant	14/03/2012	Active. This matter is scheduled for a consent determination in 2024.
Gomeri People	NSD37/2019	Claimant	20/12/2011	Active.

NTSCORP did not file any new claims during the Review period

NTSCORP did not file any new native title applications during the Review period. NTSCORP advised that this was largely because it was focussed on progressing the active claims it was representing. NTSCORP was also engaged in research in three areas to determine whether a claim should be lodged and which family groups should be included on the claim. During the Review period, NTSCORP conducted research for the South Coast People's claim, the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan People's claim, the Gomeri People's claim, and briefed out research in the Canberra and Monaro regions.

NTSCORP actively responded to non-claimant applications during the Review period

As outlined in section 1, section 36 of the ALRA provides that land is not "claimable Crown land" if it is subject to a registered claim or a native title determination. This means that Aboriginal people cannot successfully claim Crown land under the ALRA if there is a registered claim or a determination of native title over the land in question. Moreover, section 42 of the ALRA requires that a native title determination must be obtained before a land dealing can be undertaken by a LALC. This has meant that the LALCs often submit non-claimant applications over land they would like to undertake a land dealing on, seeking a determination that native title does not exist. The land area covered by many of these applications was typically very small. For example, a single housing block may be subject to a non-claimant application.

During the Review period, NTSCORP acted as a respondent to 21 non-claimant applications with 15 non-claimant applications decided during the Review period. NTSCORP was a respondent in 14 of these decided cases. In all but two of the decided cases, NTSCORP did not oppose the non-claimant application

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

as it was not instructed to do so. In the two cases where NTSCORP opposed the non-claimant application, the cases were determined by litigation. In one of these cases the Federal Court requested NTSCORP's active participation in a matter to be referred to the Full Court.

NTSCORP staff reported that responding to one of the above matters, *Wagonga Local Aboriginal Land Council v Attorney General of New South Wales* [2020] FCA 1113, took considerable resources during the Review period. In this case, Wagonga Local Aboriginal Land Council (WLALC) pursued a non-claimant application over a parcel of land it had been granted in Narooma, NSW, within the South Coast native title claim area. NTSCORP acted in the non-claimant application on behalf of the South Coast applicants, arguing that South Coast People held native title rights and interests in the parcel of land. WLALC claimed that there was a lack of evidence to prove continuous connection to the parcel of land and that any native title had been previously extinguished over part of the area by the construction of sewerage lines. Following the litigated process, the Federal Court ruled that native title did not exist and decided in favour of WLALC. This episode demonstrated the difficulty NTSCORP encountered in establishing and achieving native title outcomes, in a context where the interests of LALCs and native title claimants were disputed. However, NTSCORP also noted to the Review that in many communities there was good cooperation between groups and the parties were trying to make the most out of a difficult situation.

NTSCORP also opposed *Mace v State of Queensland* [2019] FCAFC 233 (becoming a respondent at the request of the Federal Court), arguing, in part, that the absence of Aboriginal respondents actively asserting native title interests (including where research had not yet been undertaken over the area) did not mean that there were not people with native title rights over the area. The Federal Court ruled in favour of Darkinjung LALC as there was no evidence from people who asserted native title rights over the area. The Federal Court found that native title did not exist over the area subject to the claim.

A full list of non-claimant applications filed or determined during the Review period is displayed in Table 3.

Table 3 | Non-claimant applications filed or determined during the Review period

Claim	Federal Court file number	Date filed	Date determined	Nature of NTSCORP response
Penrith City Council	NSD316/2022	2/05/2022	-	No formal response as of 30 June 2022.
<i>Griffith Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD1178/2021	12/11/2021	12/05/2023	Did not oppose.
<i>Deerubbin Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD1120/2021	25/10/2021	20/07/2023	Did not oppose.
<i>Coonamble Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD983/2021	22/09/2021	10/08/2023	Did not oppose on the instructions of Gomeroi People.

Claim	Federal Court file number	Date filed	Date determined	Nature of NTSCORP response
Uungula Wind Farm	NSD787/2021	5/08/2021	-	No formal response as of 30 June 2022.
Dungog Shire Council	NSD1340/2020	16/12/2020	-	No formal response as of 30 June 2022.
<i>Darkinjung Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD1189/2020	30/10/2020	22/12/2022	Did not oppose.
<i>Biraban Local Aboriginal Land Council v Attorney-General of New South Wales</i>	NSD1033/2020	17/09/2020	24/02/2022	Did not oppose.
<i>West Wyalong Local Aboriginal Land Council v Attorney-General (NSW)</i>	NSD923/2020	21/08/2020	13/09/2021	Did not oppose.
Attorney General of New South Wales (Mid Coast)	NSD813/2020	28/07/2020	-	No formal response as of 30 June 2022.
Attorney General of New South Wales (Whitton)	NSD843/2020	28/07/2020	-	No formal response as of 30 June 2022.
Attorney General of New South Wales (East Killara)	NSD842/2020	24/07/2020	-	No formal response as of 30 June 2022.
Southern Metropolitan Cemeteries Land Manager and Attorney General of New South Wales	NSD189/2020	25/02/2020	-	No formal response as of 30 June 2022.
<i>Leeton and District Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD75/2020	24/01/2020	14/04/2021	Did not oppose.
<i>Awabakal Local Aboriginal Land Council v Attorney</i>	NSD71/2020	24/01/2020	20/10/2020	Did not oppose.

Claim	Federal Court file number	Date filed	Date determined	Nature of NTSCORP response
<i>General of New South Wales</i>				
<i>Deerubbin Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD2067/2019	11/12/2019	20/10/2020	Did not oppose.
<i>Griffith Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD1223/2019	31/07/2019	16/10/2020	Did not oppose.
<i>Bahtabah Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD686/2019	3/05/2019	26/08/2020	Did not oppose.
<i>Worimi Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD1970/2018	25/10/2018	13/08/2019	No response to the application.
<i>Mace v State of Queensland</i>	QUD31/2018	2/10/2018	19/12/2019	Opposed and Respondent Party at the request of the Federal Court.
<i>La Perouse Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD996/2018	12/06/2018	11/07/2019	Did not oppose.
<i>Wagonga Local Aboriginal Land Council v Attorney General of New South Wales</i>	NSD328/2017	8/03/2017	5/08/2020	Opposition on behalf of the South Coast people.

Informed commentators broadly reported that NTSCORP lawyers were well prepared, responsive and hard working

Stakeholders who interacted with NTSCORP in a legal context broadly held positive views about the work of the legal team. Stakeholders reported that NTSCORP lawyers were very hard working and often worked long hours to ensure they could meet Federal Court deadlines and produce high quality legal documents. Stakeholders commented that NTSCORP was always on time with court proceedings and that any delays

in court proceedings were not caused by NTSCORP. NTSCORP lawyers were seen as very responsive to requests made by the Federal Court. Stakeholders reflected that when additional resources were required to progress a court matter, NTSCORP was always willing to allocate those resources.

NTSCORP staff reported that they received positive feedback on the quality of the evidence used to support claims during the Review period. One stakeholder who was closely involved in Federal Court proceedings observed to the Review that the level of detail in witness statements could at times be improved. They attributed this to NTSCORP having limited experience pursuing litigated claims that required more detailed evidence. NTSCORP staff rejected this criticism and noted that it was made by only one stakeholder³. It was NTSCORP's view that affidavits and witness statements provided for credible evidence assessment to the State were provided on a confidential basis and were, in their view, very detailed⁴.

Other lawyers represented four active claims in the RATSIB area over the Review period

There were four active claims in the RATSIB area during the Review period that were represented by other lawyers. These matters were brought by independent solicitors instructed by Traditional Owners, without any prior engagement with NTSCORP. NTSCORP did not fund these matters. NTSCORP was a respondent to the Warrabinga Wiradjuri matters and provided assistance in mediation between the applicant and some Indigenous respondents pursuant to its dispute resolution functions. Table 4 summarises the claims not represented by NTSCORP.

Table 4 | Summary of active claims in the RATSIB area not represented by NTSCORP

Claim	Federal Court file number	Application type	Date filed	Status	Representative
Wendy Lewis, Mavis Agnew, and Martin de Launey on behalf of Warrabinga-Wiradjuri #2	NSD543/2013	Claimant	27/03/2013	Active	Maddocks Lawyers
Warrabinga-Wiradjuri #6	NSD1786/2016	Claimant	12/10/2016	Active	Maddocks Lawyers
Warrabinga-Wiradjuri #7	NSD857/2017	Claimant	31/08/2018	Active	Maddocks Lawyers
Tweed River Bundjalung People	NSD876/2020	Claimant	4/08/2020	Active	ESJ Law

³ Stakeholders spoke to the Review on a confidential basis.

⁴ NTSCORP also noted that in contrast, affidavits which are annexed to public claim documents, given their public nature, provide limited information required only for the purposes of the registration test.

Anthropological research

NTSCORP had a small team of experienced anthropologists

Over the course of the Review period the NTSCORP Research team consisted of three anthropologists, one of whom worked part-time, and one historian. The Research team was highly experienced, with three team members having been at NTSCORP since 2002 including the Manager of Research, and one staff member having been at NTSCORP since 2013. NTSCORP anthropologists explained that they viewed themselves as independent researchers accountable to the Federal Court, rather than to NTSCORP itself, and that they therefore maintained a high level of independence.

Most external commentators reported that the NTSCORP research work was of good quality

Stakeholders generally felt that the quality of anthropological work had improved considerably since the previous Review period (FY2014-15 to FY2016-17). Stakeholders felt that NTSCORP was producing reports quickly and to a high standard, and that these reports facilitated further anthropological research. The quality of NTSCORP's historical work also received particularly positive feedback from several stakeholders, including NTSCORP staff and external anthropologists.

Other commentators expressed some concerns about the speed and quality of NTSCORP's research and internal connection reports. In response, NTSCORP noted that all internally produced connection reports undertaken during the Review period had contributed to the State determining that there was a credible basis for recognising native title. The Review accepts NTSCORP's view that it was likely that the stakeholder concerns applied more to a previous historical period.

Some external stakeholders raised concerns about the delegation of tasks within the Research team, suggesting that there was an opportunity for tasks such as developing maps and genealogy reports to be delegated to more junior members of staff to create greater efficiencies. In response, NTSCORP advised that there were no junior anthropological staff in the organisation and that NTSCORP would be unable to hire additional anthropological staff without additional funding. NTSCORP advised that it received additional funding from NIAA in FY2019-2020 to hire a junior researcher, primarily to digitise and archive documents. This was non-recurrent funding and in January 2021 NTSCORP applied the funding to hire a junior researcher on a fixed contract. This staff member is no longer at NTSCORP following the completion of the contract. Since that time there have been no junior research staff. The lack of an appropriate staff structure is likely to have contributed to the challenges faced by the Research team.

Engagement of external anthropologists significantly increased NTSCORP's capacity to conduct anthropological research

During the Review period NTSCORP adopted a new approach of contracting external anthropologists to deliver research. Previously, NTSCORP conducted all anthropological work internally. Stakeholders were generally of the view that the new approach was very effective. This approach significantly increased the speed of the work and capacity of NTSCORP anthropologists. Stakeholders also felt that the broad experience of external anthropologists improved the quality of connection reports. NTSCORP staff reported that engaging external anthropologists also supported the professional development of NTSCORP staff members.

NTSCORP staff explained that one NTSCORP anthropologist worked closely with one external anthropologist on a given matter. The main projects during the Review period were in the ongoing South Coast and Gomeroi claims, and research in the Canberra and Monaro regions. In one case, the NTSCORP staff member was responsible for conducting some of the field work with close guidance from the external

anthropologist, who was then responsible for writing the connection report. In all other instances, external anthropologists were responsible for both conducting field work and developing reports.

The Review received some commentary that suggested that the interaction with external contractors could be improved to get the most out of the arrangement. This would include additional briefings, a speedier response to requests for assistance or improved internal capacity to review key documents. There was also a concern that research was hampered by the lack of availability of Community Facilitation team members to attend consultations. In response, NTSCORP rejected this commentary, noting that a significant level of support had been provided to external anthropologists who were engaged and paid to produce the report themselves. The Review notes that while it is important that culturally appropriate engagement takes place, there is an opportunity for NTSCORP to consider how this might be achieved without the restrictions necessitated by the limited availability of Community Facilitators.

Future Acts and ILUAs

NTSCORP actively responded to Future Acts during the Review period

NTSCORP received 7,882 Future Act notifications (FANs) during the Review period. This included notices received under part six of the *National Parks and Wildlife Act 1974*. NTSCORP provided all native title holders and claimants with FANs. During the Review period, NTSCORP communicated actively with government agencies to ensure it complied with notification requirements. NTSCORP actively supported native title holders and claimants to respond to Future Acts.

A summary of the FANs received is provided in Table 5.

Table 5 | FANs received by NTSCORP during the Review period

Financial year	FANs received
2019-20	1,117
2020-21	3,433
2021-22	3,332
Total	7,882

NTSCORP negotiated eight ILUAs on behalf of its clients

During the Review period NTSCORP successfully negotiated and registered a total of eight ILUAs on behalf of its clients, as shown in Table 6. Two of the ILUAs signed during the Review period were the result of the NSW Government seeking consent determinations, which was an approach sometimes adopted by the government. NTSCORP also negotiated six other ILUAs on behalf of Traditional Owners. This was reflective of a broader shift in NTSCORP's focus toward progressing ILUAs on behalf of PBCs and native title holders. Following an increase in determinations that began in 2013, NTSCORP has actively supported PBCs to negotiate ILUAs with corporations and the NSW Government. Over half of all ILUAs in NSW were registered in the four years between 1 July 2018 and the end of the Review period.

NTSCORP staff reported that as of 30 June 2022, it was actively negotiating 12 ILUAs and 27 Future Acts with public and private organisations.

Table 6 | ILUAs in the NTSCORP region⁵

ILUA name	ILUA type	Subject matter	Date registered
Ongoing Tenures (including White Cliffs) ILUA	Body Corporate	Tenure resolution, commercial	9/12/2021
Buronga Sandwash ILUA	Body Corporate	Small mining, commercial	9/12/2021
Western Bundjalung Amended Settlement ILUA	Area Agreement	Native title settlement, access, consultation protocol	4/05/2021
Cavanbah (Byron Bay) Arakwal ILUA	Area Agreement	Native title settlement, access, community, consultation protocol	20/05/2020
Buronga HealthOne ILUA	Body Corporate	Government, development	4/03/2020
Copmanhurst Projects ILUA	Area Agreement	Mining, infrastructure	4/10/2019
Barkandji Single Dealings ILUA	Body Corporate	Extinguishment, tenure resolution	10/09/2019
Barkandji RNTBC Keltren ILUA	Body Corporate	Extinguishment	30/07/2019

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

As mentioned above, during the Review period NTSCORP secured three determinations and filed no new claims. Further details on the ILUAs negotiated during the Review period are provided below.

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

NTSCORP did not provide funding for a native title party to receive external legal representation during the Review period.

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

The NTSCORP RATSIB area covers approximately 1,722,365 square kilometres, of which 803,575 square kilometres is land and inland waters.⁶ Of the land area in the RATSIB area, approximately:

- 4,950 square kilometres have been subject to a determination that native title exists, equating to 0.62 per cent of the RATSIB land area
- 6,984 square kilometres have been assessed as subject to a determination that native title does not exist by the Federal Court, equating to 0.87 per cent of the RATSIB land area

⁵ National Native Title Tribunal. Register of Indigenous Land Use Agreements. 2023. Accessed June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx>

⁶ Flood waters, rivers and creeks. Not sea water.

- 274,442 square kilometres are subject to an active claim, equating to 34.15 per cent of the RATSIB land area.

This means that approximately 64.36 per cent of the claimable land within the RATSIB area was not subject to a registered native title claim or determination at the end of the Review period.

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

NTSCORP delivered some claims quickly, with more complex claims being slower and remaining active at the end of the Review period

For the three applications determined within the Review period, the average time in years between filing the claim and the determination being made was 3.2 years, as shown in Table 7. This is well below the target of five years set by the Federal Court.

Table 7 | Total years active of each determined claim during the Review period

Claim	Federal Court file number	Date filed	Determination	Years active
Bandjalang People #3 and #4	NSD426/2016, NSD122/2019	24/03/2016	30/04/2021	5.1
Gumbaynggirr People #3	NSD1312/2018	15/08/2016	26/11/2019	3.3
Gumbaynggirr People #5	NSD1350/2016	23/07/2018	26/11/2019	1.4

However, for the four claims represented by NTSCORP that remained active at the end of the Review period the average time in years between filing the claim and the end of the Review period was 8.7 years, as shown in Table 8. While NTSCORP was able to progress relatively straight-forward applications during the Review period, it was unable to achieve determinations for its more complex claims.

Table 8 | Total years active of each active claim during the Review period

Claim	Federal Court file number	Date filed	Determination	Years active
Gomeri People	NSD37/2019	20/12/2011	-	10.5
Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan	NSD38/2019	14/03/2012	-	10.3
Widjabul Wia-Bal	NSD1213/2018	24/06/2013	-	9
South Coast People	NSD1331/2017	3/08/2017	-	4.9

Commentators acknowledged that NTSCORP was slow to deliver the more complex determinations. They attributed most of this delay to the complexity of claim groups. However, NTSCORP's practice of focusing on a small number of claims at any one time also contributed to the slow pace of determinations. NTSCORP reported that this was due to limited resourcing and the amount of time required to respond to PBC requests for support. The Review notes that PBC support functions also reported resource limitations.

There was consistent commentary that delays in progressing determinations were at times caused by NTSCORP's policy of requiring a Community Facilitation team member to be present at all meetings. The

Review received reports of delays in scheduling until a team member became available or meetings needing to be postponed. The organisation chart in place during the Review period⁷ had three positions in the Community Facilitation team, although not all positions may have been filled. This is discussed further in TOR 3.

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

NTSCORP staff reported that the organisation had taken a strategic and innovative approach to compensation during the Review period, supporting four PBCs with similar compensation matters under the NSW legal system. This consisted of support for the Bandjalang Aboriginal Corporation PBC RNTBC, the Yaegl Traditional Owners Aboriginal Corporation RNTBC, Ngullingah Jugun (Our Country) Aboriginal Corporation RNTBC and Barkandji Native Title Group Aboriginal Corporation RNTBC with compensation claims arising out of the compulsory acquisition of land subject to native title rights. In each case, NTSCORP supported the applicants to prepare and submit affidavit and oral evidence, submissions to the Valuer General and prepared the matter for litigation.

For example, NTSCORP supported the Bandjalang Aboriginal Corporation PBC RNTBC in an application for compensation from Transport for NSW arising out of the compulsory acquisition of native title interests.⁸ In 2016, Transport for NSW compulsorily acquired the subject land, including the land that was the subject of the Bandjalang People's native title rights. The applicant (the Bandjalang Aboriginal Corporation PBC RNTBC) lodged a claim for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW). NTSCORP acted as the solicitor on behalf of the RNTBC. In 2019, Transport for NSW offered the applicant \$9,080 in compensation. The applicant rejected the offer and lodged an objection to the NSW Land and Environment Court (LEC). In 2020, the LEC ordered the payment of \$42,000 plus interest as agreed compensation for the compulsory acquisition of native title land, plus agreed costs in the amount of \$35,473.35.

During the Review period NTSCORP also conducted negotiations on behalf of the Gumbaynggir People, Bundjalung People of Byron Bay and the Widjabul Wia-bal in relation to ILUAs which addressed a range of matters, including compensation.

NTSCORP staff reported that they had been involved in conversation with the National Native Title Council about the strategic direction of compensation claims.

Several Traditional Owners who spoke with the Review were dissatisfied with the composition of claim groups

The Review team spoke with Traditional Owners from a range of determined and non-determined claims who requested an interview⁹ in response to being provided with information about the Review. Many were complainants who were dissatisfied with the response to their complaints. The Review acknowledges that only a limited number of stakeholders provided feedback and that 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.

⁷ NTSCORP Organisational Chart, provided in January 2024. NTSCORP staff reported that the organisational structure was unchanged from the Review period.

⁸ Bandjalang Aboriginal Corporation PBC RNTBC on behalf of the *Bandjalang People v Transport for NSW* [2020] NSWLEC 1008.

⁹ The Review team was given a list of Traditional Owners to contact by NTSCORP. The Review contacted these people to request an interview. Some of those interviewed passed Nous' details to others, who then requested an interview.

Several Traditional Owners from various claim groups raised concerns about the composition of claim groups and the boundaries around and between claim areas. These Traditional Owners held the view that the composition of claim groups did not reflect the evidence and attributed this to insufficient rigour being applied during the research process. The Review notes the response from NTSCORP that NTSCORP does not make any decisions about the composition of claim groups or boundaries. These decisions can only be made by native title claim groups when authorising the applicant to make an application or amend an application.

The Federal Court was satisfied with NTSCORP's facilitation of the difficult Widjabul Wia-bal claim

In the decision in relation to the Interlocutory Application to the Federal Court in *Widjabul Wia-bal v Attorney General of New South Wales* [2022] FCA 1187, which was handed down shortly after the Review period, Justice Jagot said as follows:

...I am satisfied that the exhaustive and exhausting process which the Widjabul Wia-bal People have undertaken, facilitated by NTSCORP, may have involved pain and anger, but that was because difficult decisions had to be made. I am not able to accept that there has been insufficient consultation with claim group members or any material shortcomings in the processes by which the claim group has reached this point. I am not able to accept that NTSCORP has done anything other than fulfil its functions under the NTA. The adverse perceptions of some claim group members of NTSCORP seems to me to be a regrettable consequence of the difficult decisions the Widjabul Wia-bal People have had to make over such a long time to reach the point which they have.¹⁰

5.1.2 TOR 1: External factors

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

State government policy and legislation

NSW Government legislation added legal complexity that impacted NTSCORP's ability to perform its native title functions

In NSW there are two key mechanisms by which Aboriginal people can have their rights recognised in land – native title under the NTA and land rights under the ALRA. While these systems are both about recognising and providing for Aboriginal peoples' rights, the two systems operate under two different laws and differ in the rights they can provide. Native title and land rights can sometimes exist on the same land.

The Review found that the relationship between the NTA and the ALRA contributed to tensions within and between some claim groups. Specifically, the inability for a LALC to deal in land without native title first being extinguished led to disputes between those who wanted to achieve a native title determination and those who wanted to undertake a land dealing. The Review heard accounts of families and communities divided over whether they should pursue native title or land rights. This contributed to the complexity of native title claims in NSW.

The ALRA provides that a LALC which seeks to undertake a "Land Dealing" on land it owns "subject to native title" must obtain a native title determination before the Land Dealing can be undertaken (section 42 the ALRA). This has resulted in a large number of non-claimant applications being lodged by LALCs in

¹⁰ *Widjabul Wia-bal v Attorney General of New South Wales* [2022] FCA 1187, at [79].

the Federal Court seeking determinations that native title does not exist. The vast majority of these applications have not been opposed by Traditional Owners.

Importantly, the Review also heard that in most cases, Traditional Owners, NTSCORP and LALCs made considerable efforts to navigate this complexity and achieve positive outcomes.

There were several other NSW Acts that impacted NTSCORP's ability to deliver native title outcomes. These included the:

- *Mining Act 1992* (NSW)
- *Water Management Act 2000* (NSW)
- *National Parks and Wildlife Act 1974* (NSW)
- *Crown Land Management Act 2016* (NSW)

Complexity of remaining claims

The history of colonisation in NSW and the ACT contributed to the significant complexity of claims in NSW

The history of colonisation and settlements in the region has led to disputes between Traditional Owners about the origins of family groups and the right ownership of Country. Staff commented that remaining claims are expected to be complex due to intra-Indigenous conflicts. Overall, the Review found that the complexity of the claims necessitated additional anthropological, research and community engagement efforts.

History of previous claims

The outcome of previous claims did not significantly impact the native title environment in the NTSCORP RATSIB area

Stakeholders in NSW reported that the outcome of the High Court's *Yorta Yorta* (2002) decision, which was a significant loss for the Yorta Yorta people, reverberated across the native title system. Although the claim was predominantly over land within Victoria it set a particularly high bar in proving continuous connection and created difficulties for claims over urban or well-developed areas.

Complexity of land use and tenure

Complex land use and tenure contributed significantly to the resources required to progress claims in NSW

The history of land ownership in NSW has been shaped by colonisation, dispossession of Indigenous peoples and subsequent land distribution. NSW has various layers of land ownership, with different levels of government and private entities holding land rights. This includes land controlled by local councils, state government bodies, LALCs, public authorities and private individuals or corporations. Over time, land in NSW has been used for different purposes, leading to overlapping tenures. This includes agricultural land, residential areas, national parks, conservation areas, mining leases and infrastructure corridors. Resolving conflicts and reconciling different land uses can be challenging.

Moreover, due to the historical allocation of land to free settlers and released convicts in NSW, and the ongoing high population density of the east coast of NSW and the ACT, many of the land holdings in NTSCORP's RATSIB area are relatively small. NTSCORP staff explained that there are over 9,000 parcels of

Crown land covered by the South Coast claim and that is before the other parcels of privately held land are considered. NTSCORP will be required to conduct tenure analysis on each of these land holdings before the claim can be resolved.

COVID-19

COVID-19 significantly impeded NTSCORP's ability to progress claims during the Review period and prompted changes to its ways of working

NTSCORP, like many other organisations, was forced to transition to alternative ways of working during the COVID-19 pandemic. NTSCORP proactively implemented a range of measures to mitigate the risk of COVID-19 to its staff, clients and community. These included:

- displaying signage and posters to help staff identify the symptoms of COVID-19¹¹
- creating a COVID-19 safety pack for travelling staff members which contained masks, hand sanitiser, rapid antigen tests and Powerade¹²
- practicing safety precautions in the office, including social distancing and maintaining an office register
- working from home measures for NTSCORP staff
- corresponding with staff regularly to ensure they had up to date information
- monitoring the situation and advice from the NSW Government, including NSW Health and Safe Work NSW, and amending NTSCORP's protocols as and when appropriate.

As noted by some NTSCORP staff, NTSCORP invested in technology to facilitate the transition for staff members to work from home. The NTSCORP team held weekly team meetings via Zoom. Staff members commented that post-COVID-19, NTSCORP adopted a hybrid meeting model with some individuals attending in person and some attending via Zoom. They noted that this was "innovation moving us forward".

Nevertheless, COVID-19 caused significant disruption. Staff consulted as part of the Review identified that COVID-19 significantly impacted their ability to engage with community. For example, COVID-19 outbreaks and associated restrictions meant consultations with Traditional Owners and PBCs were delayed or often cancelled. Further, NTSCORP staff reported many Traditional Owners in NSW had an aversion to using video conferencing technology, making it challenging to conduct consultations.

External stakeholders commented that COVID-19 resulted in understandable delays in claim progression.

Amount of funding

Funding limitations have significantly impacted NTSCORP's ability to perform its native title functions

Compared to other NTRB-SPs, the Review found that NTSCORP received a relatively low level of funding given the size of its RATSIB area and given it has the largest Indigenous population of any RATSIB area. NTSCORP received approximately \$20.2 million from NIAA over the Review period. NTSCORP funding relative to the size of the RATSIB area and number of claim groups represented during the Review period is presented in Table 9.

¹¹ NTSCORP, Your COVID-19 Safety Plan, 10 December 2020.

¹² NTSCORP, COVID-19 staff direction, 31 January 2022.

Table 9 | Total funding relative to factors of interest

Factor of interest (denominator)	Ratio
NTSCORPs total land and land waters area: 803,575 square kilometres	\$25.14 per square kilometre
Estimate of Aboriginal and Torres Strait Islander Australians in the NTSCORP RATSIB area: 349,235	\$57.84 per Aboriginal and Torres Strait Islander resident
Number of claim groups represented over the Review period: 7	\$2.9 million per claim group

Overall, given the unique challenges that NTSCORP contended with, the Review found that the amount of funding NTSCORP received had an impact on its ability to achieve native title outcomes for its clients.

5.1.3 TOR 1: Recommendations

RECOMMENDATION

1

NTSCORP should continue to engage external anthropologists to ensure that it produces high quality connection reports and meets Federal Court deadlines.

RECOMMENDATION

2

NTSCORP should establish processes that ensure it provides adequate briefings and support to external anthropologists that it engages, including ways to ensure culturally appropriate engagements where Community Facilitators have limited availability.

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

NTSCORP's approach to assessment and prioritisation was documented in its Facilitation and Assistance Policy, which was approved by the NTSCORP Board of Directors in 2011. Staff were aware of this policy. Over the Review period, NTSCORP prioritised claims with the greatest chance of success, strongest claim group coherence and quality of research conducted.

NTSCORP did not prioritise requests for assistance from other NTRB-SPs and did not respond to at least one request from another NTRB-SP for assistance with a cross-border claim.

The assessment and prioritisation policy was not publicly available but was available to native title claim groups upon request and to those whose requests for assistance were unsuccessful.

Most Traditional Owners who spoke with the Review did not express any concerns with the assessment and prioritisation process. A few Traditional Owners expressed dissatisfaction with the process, suggesting it was not transparent and that the Board prioritised claims that benefited themselves. The Review was not made aware of any evidence that supported these concerns. The Board did not make decisions about which claims to prioritise, although they were briefed on NTSCORP's prioritisation decisions and given an opportunity to interrogate these decisions.

Creating a public facing assessment and prioritisation policy would help clients and potential clients gain a better understanding of NTSCORP's decision-making and claim assessment and prioritisation process.

5.2.1 TOR 2: Assessment of performance

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

Equity, transparency and robustness of assessment and prioritisation process

NTSCORP had a prioritisation policy which it actively used to guide its claim work, however it was not publicly available

NTSCORP had a policy for the assessment and prioritisation of claims detailed in its Facilitation and Assistance Policy, which was approved by the NTSCORP Board of Directors in 2011. This policy was not publicly available during the Review period, however, as detailed in the document, it was made available to native title claim groups upon request.¹³ Senior staff advised that since the Review period, NTSCORP has developed a new Facilitation and Assistance Policy which outlines a new way of prioritising assistance. At the time of the Review this policy was in draft phase.

The policy in use during the Review period contained seven categories that detailed NTSCORP's approach to claim prioritisation (Table 10).

¹³ NTSCORP, Facilitation and Assistance Policy.

Table 10 | Prioritisation policy categories

Category	Description
Category 1: priority claims potentially to be funded to trial	These claims have the highest chance of success at trial and are likely to have flow on benefits in the NSW region.
Category 2: non-priority claims receiving moderate levels of assistance	This includes preliminary research and anthropological activities of NTSCORP that identify future claims that may eventually be allocated to category one or category two level funding.
Category 3: claims receiving minimal assistance	This includes non-claimant applications which have been brought by third parties. It also includes claims lodged by native title claimants represented by parties other than NTSCORP.
Category 4: claims without merit	NTSCORP will not provide assistance except to facilitate their withdrawal or in some cases, make an application to have these claims struck out.
Category 5: research and negotiation activities with government by NTSCORP	This is in respect of policy matters where state or federal legislation has the potential to impact upon native title rights and interests under the NTA. It includes work involving responses to inquiries of the state and federal government.
Category 6: education workshops and information activities to explain to Aboriginal communities	This includes Aboriginal communities of NSW and the ACT and their rights, interests and process of making and prosecuting potential claims, the NTA and the role of NTSCORP. The workshops assist in community consultation, cohesion of native title claim groups and facilitate the establishment of new claims.
Category 7: special projects	This includes projects with general application for protection and recognition of native title such as Future Acts.

Further, the Facilitation and Assistance Policy noted claims assessed by the 2000 NSW Aboriginal Land Council prioritisation program were only reassessed if there was significant change to the claim since the program was implemented.

The policy also detailed¹⁴:

- **Circumstances in which matters may be briefed out.** Matters would be briefed out in exceptional circumstances, specifically if there was a lack of in-house staff, resources, or skills, or a real or perceived conflict of interest.
- **Procedures for ensuring confidentiality.** This included storage of sensitive information and confidentiality clauses if matters were briefed out.
- **Application assessment processes including for decisions on assistance.** Applications for assistance were considered and determined by the Planning and Budgetary Committee of NTSCORP, which comprised the CEO, and Managers and Deputy Managers of the Community Facilitation, Research, Legal and Finance units. The assessment of applications for assistance involved an assessment of the legal merits of the claim, relative priority of the claim and considered the funding available to NTSCORP. The Planning and Budgetary Committee might be guided in the assessment process by a report from the Manager Operations group.

¹⁴ NTSCORP, Facilitation and Assistance Policy.

NTSCORP staff reported that while the Board did not make decisions about which claims to prioritise, the list of claims being put forward for funding was presented to the Board as part of the Operational Plan and budget.

NTSCORP reported that it prioritised claims with the greatest chance of success

During the Review period, NTSCORP prioritised claims with the greatest chance of success. These claims were considered to have the strongest claim group coherence and were supported by high quality research. Staff commented that while they were still progressing claims with the greatest chance of success, they were moving onto more complex claims. The Review believes that NTSCORP's approach to the prioritisation of applications was reasonable given the complexity of the region. The prioritisation procedures followed were consistent with those of other NTRB-SPs.

NTSCORP did not prioritise requests for assistance from other NTRB-SPs

The Review was advised that at least one request for NTSCORP to cooperate in a cross-border claim went unanswered during the Review period. While this may suggest that NTSCORP resources were fully occupied with current work, there is an opportunity for NTSCORP to be more responsive in the future. NTSCORP commented that in previous times they had MOU with adjacent NTRB-SPs (Queensland South Native Title Services, South Australian Native Title Services and First Nations Legal and Research Services) but these had lapsed.

Staff were familiar with the assessment and prioritisation process

Senior staff demonstrated a clear understanding of NTSCORP's assessment and prioritisation policy. Staff surveyed throughout the Review were also familiar with the assessment and prioritisation process, with most staff indicating that perceived strength of claim was the first factor considered by NTSCORP when prioritising support. This was consistent with its policy.

Client and potential client awareness of the process

Most clients and potential clients the Review engaged with did not comment on NTSCORP's assessment and prioritisation process

As noted above, NTSCORP did not publish its Facilitation and Assistance Policy online or make it publicly available in other ways. With a few exceptions, the Traditional Owners interviewed as part of the Review did not comment on NTSCORP's prioritisation of assistance as an issue. One PBC explained they understood NTSCORP had limited resources and were content to wait for further claim work to be assisted.

There is an opportunity for NTSCORP to develop a public facing policy to improve the transparency of its prioritisation decisions. This would support clients and potential clients to clearly understand the processes surrounding prioritisation of claims and why decisions are made.

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

Feedback indicates that Traditional Owners were broadly satisfied with NTSCORP's approach to prioritisation

As discussed above, most clients and potential clients that were engaged as part of the Review did not raise concerns about NTSCORP's approach to prioritisation. Clients and potential clients engaged by the

Review were broadly content with assessment and prioritisation decisions, including those who had to wait some time for their claim to be prioritised.

A small number of Traditional Owners who were not happy with the outcome of their claim held the view that the prioritisation process was not transparent and expressed concern that prioritisation decisions may have been inappropriately influenced by Board members or NTSCORP staff. The Review was not made aware of any evidence that supported these concerns.

5.2.2 TOR 2: External factors

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

Number of claims relative to NTRB-SP size and resourcing

The number of claims represented by NTSCORP was not a good indicator of relative performance. Given that NTSCORP received approximately \$20.2 million of native title funding across the Review period and represented a total of seven claims, this suggests that NTSCORP received approximately \$2.9 million per claim over the Review period. However, as noted by NTSCORP, this does not account for funding being dedicated to PBCs and PBC support, preparation of compensation claims, research, non-claimant applications and the negotiation of ILUAs, as well as to claims.

Moreover, the challenging legislative environment presented significant obstacles to achieving consent determinations and amplified costs.

5.2.3 TOR 2: Recommendations

RECOMMENDATION

3

NTSCORP should develop a public facing Facilitation and Assistance Policy that clearly outlines how requests for assistance are assessed and prioritised, to improve transparency. It should actively promote the document to Traditional Owners who are seeking engagement with NTSCORP.

RECOMMENDATION

4

NTSCORP should consider the development of new MOU with neighbouring NTRB-SPs to ensure a collaborative approach to cross-border claims.

5.3 TOR 3 | Extent to which each organisation deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints.

Summary

Community engagement and outreach was a clear priority for NTSCORP. The Community Facilitation team was responsible for overseeing respectful engagement with members of the community. Other NTSCORP staff were positive about the value of the Community Facilitation team, including its ability to convey complex matters in simple terms. NTSCORP made considerable efforts to ensure it engaged appropriately and built cultural competency within the organisation.

Multiple stakeholders, including Traditional Owners, PBC staff and external consultants who engaged with the Review, broadly reported that outside of meetings, NTSCORP communicated poorly. These stakeholders reported that it was exceedingly difficult to successfully contact NTSCORP by either phone or email, and that NTSCORP did not return calls or emails in a timely manner. NTSCORP did not accept that this concern was representative of its clients/potential clients. NTSCORP reported that staff endeavoured to respond in a timely manner but could not always do so due to the sheer volume of communications they received.

Many of the Traditional Owners who spoke with the Review reported that they rarely received information about claim group meetings or updates on claim group matters from NTSCORP directly and were more likely to receive relevant information via word-of-mouth. In response, NTSCORP advised that information was made available through Facebook, advertisements and other channels.

The NTSCORP website contained some valuable information but could have been used more effectively to communicate NTSCORP activities. Most of the information commonly accessible on the website of an NTRB-SP was not available, including fact sheets and policies (such as its travel assistance policy), annual reports or a strategic plan. NTSCORP subsequently advised the Review that in July 2024 it was in the process of re-designing the website to make it easier to update and change.

NTSCORP's annual reports only contained mandatory financial information and provided no other information about the company's performance over the previous year, such as a report from the Chairperson and CEO. While there was no legal obligation for the annual reports to include specific information about organisational achievements or other statistics, all other NTRB-SPs produced annual reports as a means of being accountable to their communities.

Several stakeholders raised concerns to the Review that the CEO and all members of the Community Facilitation team were from one family and that this created perceptions of one family having too much influence over NTSCORP operations. In response, NTSCORP advised that at least two of these members of staff were recruited by the former CEO and dismissal on the basis of their familial relationships would be unlawful. Stakeholders also noted that this situation created the risk that in the event of an urgent family matter, NTSCORP's capacity to hold meetings and communicate with community members in a timely manner could be impacted. Stakeholders also reported feeling uncomfortable about making a complaint about the Community Facilitation team.

While NTSCORP had a Complaints Policy and Internal Review Policy, neither was published on its website. The handling of complaints was primarily the responsibility of the CEO. This led to understandable discomfort about submitting a complaint about a member of the CEO's family. NTSCORP received a significant number of complaints from serial complainants, which added to workload and stress.

No requests for internal review were received during the Review period.

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

NTSCORP made considerable efforts to develop and maintain connections with the community

The NTSCORP motto is “Our People. Our Focus”. NTSCORP staff, including former staff, felt that all NTSCORP staff embodied this motto and ensured that the interests of the community were at the core of everything they did. They felt that NTSCORP made strong efforts to inform the community of its role and how it could support them, and prioritised appropriate engagement with the community. Several external stakeholders reported that NTSCORP’s focus on and engagement with the community was one of its biggest strengths.

Many stakeholders were positive about the appropriateness of NTSCORP consultation

NTSCORP has a Community Facilitation team responsible for overseeing respectful engagement with members of the community. External stakeholders broadly reported that the community facilitators were very effective at facilitating respectful and transparent engagement at meetings. Some stakeholders reported that the facilitation of meetings is one of NTSCORP’s greatest strengths. PBCs broadly felt that NTSCORP meetings were facilitated appropriately, community facilitators effectively communicated complex matters in understandable terms and that Traditional Owners had opportunities to contribute and express their perspectives.

External stakeholders reported that outside of meetings NTSCORP communicated poorly and was very difficult to contact

Several Traditional Owners who contacted the Review reported that NTSCORP often failed to share information about upcoming meetings or shared information too late for claimants or potential claimants to be able to attend meetings. Many Traditional Owners reported that they rarely received information or updates about the claims they were on, or about research being conducted in their area. Some Traditional Owners reported that they were more likely to receive information about meetings or information relating to research or claims in their area from friends or family members via word of mouth, rather than directly from NTSCORP. NTSCORP staff rejected these claims as unrepresentative. NTSCORP staff reported that all authorisation meetings were advertised on community noticeboards and through social media channels, claim group meeting notices were sent to all claim group members and newsletters containing updates on claims were distributed to claim group members between meetings.

Many of the stakeholders who spoke with the Review, including Traditional Owners and PBC staff members, reported that NTSCORP was very difficult to communicate with. Several stakeholders said that phone calls and emails to NTSCORP would often go unanswered, or if they were answered, the relevant staff member they were trying to contact would be unavailable at the time. Some stakeholders noted that NTSCORP would often commit to returning phone calls and then not do so. In response, NTSCORP did not accept that this feedback was representative of its clients. NTSCORP staff explained that they endeavoured to respond to Traditional Owners in a timely manner but could not always do so due to the sheer volume of communication they received.

NTSCORP staff reported that they always sent documents to constituents when requested, however stakeholders suggested that this did not always occur in practice. Several Traditional Owners told the Review that they had requested documents or policies and not received anything back from NTSCORP, or

only received the relevant information after a period of many months. It would be more efficient for NTSCORP to have these publicly available.

The NTSCORP website contained some valuable information but could have been used more effectively to communicate NTSCORP activities

The NTSCORP website had very effective resources that explained native title, the application process and how it compared and related to the ALRA. However, most of the information commonly accessible on the website of an NTRB-SP was not available. For example, the NTSCORP website did not include fact sheets and policies (such as its travel assistance policy), annual reports or a strategic plan – documents commonly found on other NTRB websites.

The website also contained inadequate information about how the organisation prioritised requests for assistance. The website explained that NTSCORP considered applications for assistance in accordance with the criteria contained in NTSCORP's Facilitation and Assistance Policy but did not provide a link to the document. There was also no information on the website about how to make a complaint or the existence of a complaints register, nor how to request an internal review.

NTSCORP subsequently advised the Review that in July 2024 it was in the process of re-designing the website to make it easier to update and change.

NTSCORP did not take the opportunity to report on performance through its annual reports

NTSCORP annual reports were not available on the NTSCORP website and had to be requested directly from NTSCORP or accessed from the ACNC website¹⁵. Further, the annual reports only contained mandatory financial information and provided no other information about the company's performance over the previous year, such as a report from the Chairperson and CEO. While there was no legal obligation for the annual reports to include specific information about organisational achievements or other statistics, all other NTRB-SPs produced annual reports as a means of being accountable to their communities.

Better communication would improve NTSCORP's accountability to the community and foster increased trust

The strength of stakeholder concerns about communication (from other stakeholders as well as dissatisfied Traditional Owners), together with the lack of the usual channels of communication to stakeholders (such as annual reports and an informative website) suggested to the Review that there is room for NTSCORP to improve its communication. This in turn would improve its accountability to the community and the level of trust in which it is held.

Culturally appropriate engagement

NTSCORP made considerable efforts to ensure it engaged appropriately and built cultural competency within the organisation

The Community Facilitation team was responsible for ensuring that all engagement was culturally appropriate. According to the organisation chart the team consisted of three community facilitators, including a manager and deputy manager of the team. Community facilitators attended meetings between Traditional Owners and NTSCORP lawyers and anthropologists – including external consultants – to

¹⁵ <https://www.acnc.gov.au/charity/charities/1f10d9e4-38af-e811-a960-000d3ad24282/documents/575f8e9c-f79e-ee11-be37-00224893cef4>

support culturally appropriate facilitation. Community facilitators aimed to ensure that community members felt welcome to attend and contribute at meetings, and that information was communicated in a way that community members could understand. NTSCORP staff and external consultants broadly reported that the community facilitators were effective in enabling engagement and were especially effective at communicating information in understandable terms.

NTSCORP made efforts to raise the cultural competency of its staff by ensuring that all staff, including corporate staff, attended at least one meeting a year with community members. NTSCORP staff were broadly supportive of this initiative. Some stakeholders also reported that NTSCORP conducted some community outreach activities to build connections with the broader community. For example, one stakeholder commented that NTSCORP would attend events such as the Koori Knockout to build their profile and ensure that community members were aware of who they were and understood the services they offered.

Several stakeholders reported concerns about the impact of the familial relationship between the CEO and the entire Community Facilitation team

During the Review period, the Community Facilitation team consisted entirely of family members of the CEO. NTSCORP advised that at least two of these members of staff were recruited by the former CEO and that dismissal on the basis of their familial relationships would be unlawful.

Several external commentators reflected that communication with NTSCORP was impacted by the existence of these family relationships. Staff members explained that NTSCORP had a rule that at least one Aboriginal staff member must be present at every meeting with community members. This meant that, on occasion, occurrences such as family events meant that none of the family was able to attend work. This created bottlenecks in arranging and conducting meetings. On these occasions, meetings had to be delayed, often at short notice.

Many stakeholders, including NTSCORP staff, Traditional Owners and external stakeholders, also reported feeling very uncomfortable to make a complaint about a member of the Community Facilitation team. Since the CEO was responsible for addressing and responding to complaints, stakeholders reported that this amounted to making a complaint to the CEO about a member of their own family. NTSCORP advised that the CEO was able to declare any conflict and nominate a delegate to manage the complaint. Nonetheless, the perception remained that complaints about the Community Facilitation team would not be acted on or could lead to negative consequences for the complainant.

Complaints

The handling of NTSCORP complaints was primarily the responsibility of the CEO

The handling of complaints was detailed in NTSCORP's Policy Manual. The policy stipulated that all complaints should be made in writing and addressed to the CEO.

According to the policy, the CEO was to respond to the complainant within five working days, acknowledging receipt and explaining any actions to follow. The CEO would then delegate the complaint to a member of NTSCORP's Management Executive best placed to investigate and respond as the investigation officer. The investigation officer had responsibility for investigating and reporting on the complaint, within a timeframe specified by the CEO. Following the investigation, a report would be provided to the CEO, who was then responsible for responding to the original complainant to explain how the matter had been dealt with and the reasons for NTSCORP's approach to the matter. If the CEO determined that an NTSCORP staff member had behaved inappropriately, the CEO would determine what further action should occur. A register of all complaints was to be maintained by the CEO.

If the complaint related to the CEO, the policy required that the complaint be referred to and handled by the Chairperson of NTSCORP. Given the understandable discomfort that some stakeholders expressed about submitting a complaint about a member of the Community Facilitation team, the Review considers that this approach should be extended in the policy so that the Chairperson of the Board is responsible for handling complaints where the CEO may have a real or perceived conflict of interest.

The NTSCORP Complaints Policy was not publicly available

The NTSCORP Complaints policy was not available on its website. This was a direct contradiction of the policy itself, which stated:

1. *Notification of the Complaints Register*

NTSCORP will publicise the existence of the Complaints Register by the following means:

- *NTSCORP's website will refer to the existence of the Complaints Register. It will also provide advice on the means of lodging a complaint.*
- *The existence of the Complaints Register will be brought to the attention of claimants and any other interested parties as necessary, depending on the circumstances.*¹⁶

Several Traditional Owners told the Review they did not know how to submit a complaint. Providing advice on the website about the existence of a complaints register and how to lodge a complaint would ensure Traditional Owners and other stakeholders are aware of how to make a complaint.

NTSCORP received a significant number of complaints from serial complainants

While it is not unusual for NTRB-SPs to receive serial complaints, NTSCORP staff reported that they received a significant number of complaints from a small group of serial complainants during the Review period. The CEO and other NTSCORP staff received many of these complaints directly from Traditional Owners and indirectly from the NIAA. For instance, NTSCORP reported that one complainant typically sent over 20 emails in a given week. NTSCORP staff reported that they always responded to complaints when they could but many of the complaints related to matters outside the remit of the organisation or duplicated complaints already made by the same complainant. NTSCORP staff expressed a desire for the NIAA to screen the complaints it forwards onto NTSCORP to relieve the administrative burden on NTSCORP.

Internal review

The NTSCORP Internal Review Policy dates from 2012 and was not publicly available

The Internal Review Policy detailed the means for native title holders, people who may hold native title, or PBCs, to request a review of decisions or actions taken by NTSCORP which affected them. The policy stipulated that when an internal review is requested, the CEO (or delegate in the case that the original decision was made by the CEO), is to assess whether the matter falls within the ambit of the section of the NTA relating to internal reviews (section 203BI). If it does, the CEO or delegate is to inform the applicant that NTSCORP will progress with an internal review, after which the applicant has four weeks to provide written submissions and/or any materials to support the application. Following this period, the CEO or delegate is to prepare a report with recommendations for determination by the Board. The Board then decides, based on the report, whether the original decision or action was correct, or whether another decision or action should be taken by NTSCORP. The policy also provided that the Board, at its discretion, may also commission a report from an external advisor and base its decision on the external advice

¹⁶ NTSCORP Complaints Policy.

provided. The Board's determination is the final decision on the matter. The Board of Directors is responsible for advising the applicant of the decision and any rights they have to any further review.

The Internal Review Policy was not available on the NTSCORP website or otherwise accessible to the public. Section 203BI of the NTA states that the process for requesting an internal review should be publicised appropriately. NTSCORP staff reported that they distribute the Internal Review policy with any decision made not to accept a request for assistance. Publication of the policy on the NTSCORP website would further increase transparency and ensure that Traditional Owners and other stakeholders are aware of how to request an internal review.

NTSCORP did not receive any requests for internal review during the Review period.

Use of cultural materials

The Manager of Research had the responsibility of reviewing work practices of the Research Unit to ensure due processes were followed in collecting, compiling and assessing information. This included ensuring that cultural materials were used and stored appropriately.

The Review received no reports that NTSCORP was using cultural materials in an inappropriate manner.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

5.3.3 TOR 3: Recommendations

RECOMMENDATION

5

NTSCORP should establish a more structured approach to responding to stakeholders so that missed calls and emails receive attention in a timely manner.

RECOMMENDATION

6

NTSCORP should take steps to diversify its Community Facilitation team.

RECOMMENDATION

7

NTSCORP should update its Complaints Policy to include procedures for dealing with real or perceived conflicts of interest.

RECOMMENDATION

8

NTSCORP should ensure that it distributes information about claim group meetings and updates on the progress of claims and research to all relevant native title interest holders.

RECOMMENDATION

9

NTSCORP should develop more channels to update community members about native title matters. This should involve, at a minimum, updating the NTSCORP website and developing comprehensive annual reports containing information about performance of the organisation for the past year.

RECOMMENDATION

10

To increase transparency and accountability to the community, NTSCORP should update its website to make key documents, such as its Complaints Policy, publicly available.

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

NTSCORP significantly underspent its approved budget in each year of the Review period, primarily due to the impact of COVID-19, the underspend of PBC basic support funding and the contribution of carried-forward funds to its budget. While NTSCORP's expenditure on native title remained relatively stable in FY2019-20 and FY2020-21, it rose by 41 per cent in FY2021-22 once COVID-19 restrictions were relaxed and NTSCORP could resume holding claim group meetings. Travel and meeting costs rose by almost \$1 million between FY2020-21 and FY2021-22.

Staff salaries were consistently the most significant expense for NTSCORP. Several commentators suggested that salaries were uncompetitive with the market, especially for junior lawyers. This significantly affected NTSCORP's ability to attract and retain staff. More frequent benchmarking would assist in ensuring salaries for highly sought-after professional staff remain competitive.

The Review acknowledges that there were a range of external factors that affected the cost-effectiveness of NTSCORP, the most significant of which included the high cost of claim group meetings, the relatively high cost of operating in Sydney and the relative complexity of pursuing native title outcomes in NSW. However, the Review also identified some relatively inefficient practices at NTSCORP over the Review period. This included an apparent lack of delegation throughout the organisation, resulting in more highly paid senior staff unnecessarily managing operational matters, with these staff members appearing overly involved in operational matters. This was exacerbated by the lack of a Deputy CEO and the absence of a HR function – either in- or out-sourced.

NTSCORP responded that the lack of junior staff necessitated greater involvement from senior staff and that undertaking recruitment in-house was a cost saving measure. However, the Review believes it would be more efficient if the time of highly experienced legal professionals is devoted to legal matters rather than recruitment. NTSCORP staff recognised the opportunity for more cost saving strategies to be implemented, including improving the delegation of operational tasks. There were plans in place to sell some of the company vehicles.

NTSCORP provided travel support, accommodation and meals to claim group members who needed to travel to attend meetings. External commentators were largely positive about the way in which meetings were conducted. Expenditure on meetings and travel accounted for approximately 19 per cent of total expenditure across the Review period. This is in part due to the large size of claim groups in the NTSCORP RATSIB area.

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.

NTSCORP underspent its approved budget in each year of the Review period

NTSCORP received \$5.59 million of base funding from NIAA in each year of the Review period, as shown in Table 11.

Funding received for PBC basic support was consistent through the first two years of the Review period but increased in FY2021-22 after discussions between the NIAA and NTSCORP.

Mid-year funding allocations also varied in the Review period, with a notable allocation of \$1.2 million in FY2020-21 which was provided to support NTSCORP to meet increased demands in the Widjabul Wia-bal, Gomeroi and South Coast claims. In total, NTSCORP received \$20.16 million over the Review period.

Table 11 | Overview of NIAA funding provided to NTSCORP over the Review period

Financial year	Base agreement	PBC basic support	Mid-year funding variation	Total (ex GST)
2019-20	\$5.59 million	\$331,000	\$508,000	\$6.43 million
2020-21	\$5.59 million	\$331,000	\$1.2 million	\$7.12 million
2021-22	\$5.59 million	\$621,000	\$400,000	\$6.61 million

However, this table does not paint a complete picture of NTSCORP's available funding during the Review period. In each year of the Review period, NTSCORP's approved budget was significantly greater than the funding received from the NIAA, due to underspends carried forward each year.

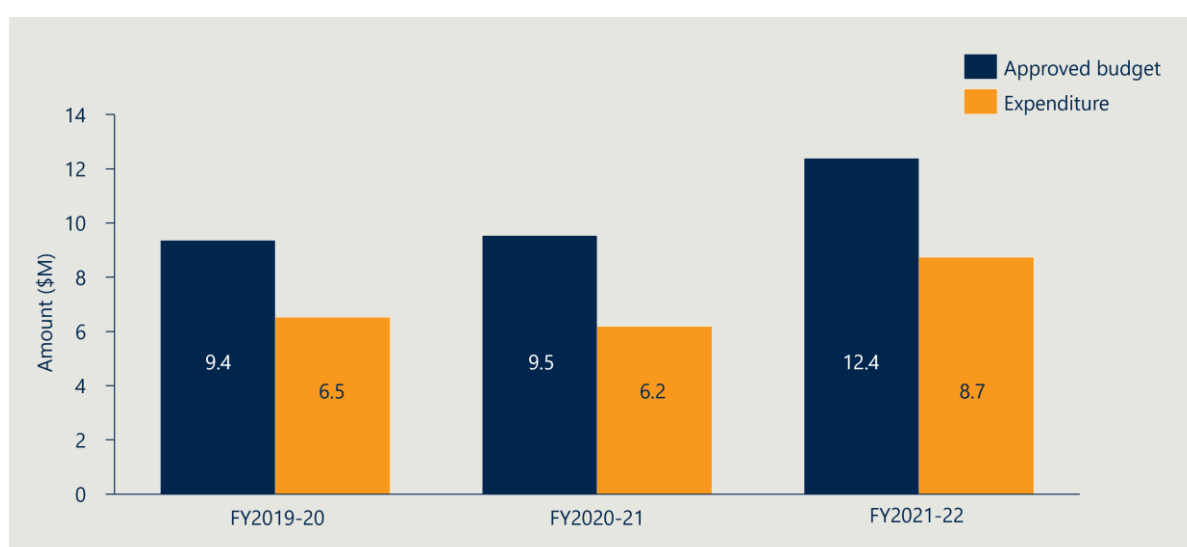
In FY2019-20, NTSCORP had an approved budget of \$9.33 million, which included \$6.43 million of NIAA funding and an additional \$2.9 million of funding carried over from FY2018-19.

In FY2020-21, NTSCORP had an approved budget of \$9.54 million, which included \$7.12 million of NIAA funding and an additional \$2.42 million of funding carried over from FY2019-20.

In FY2021-22, NTSCORP had an approved budget of \$12.38 million, which included \$6.61 million of NIAA funding and an additional \$5.77 million of funding carried over from FY2020-21.

As shown in Figure 1, NTSCORP significantly underspent its approved budget in each year of the Review period.

Figure 1 | NTSCORP expenditure and approved budgets FY2019-20 to FY2021-22



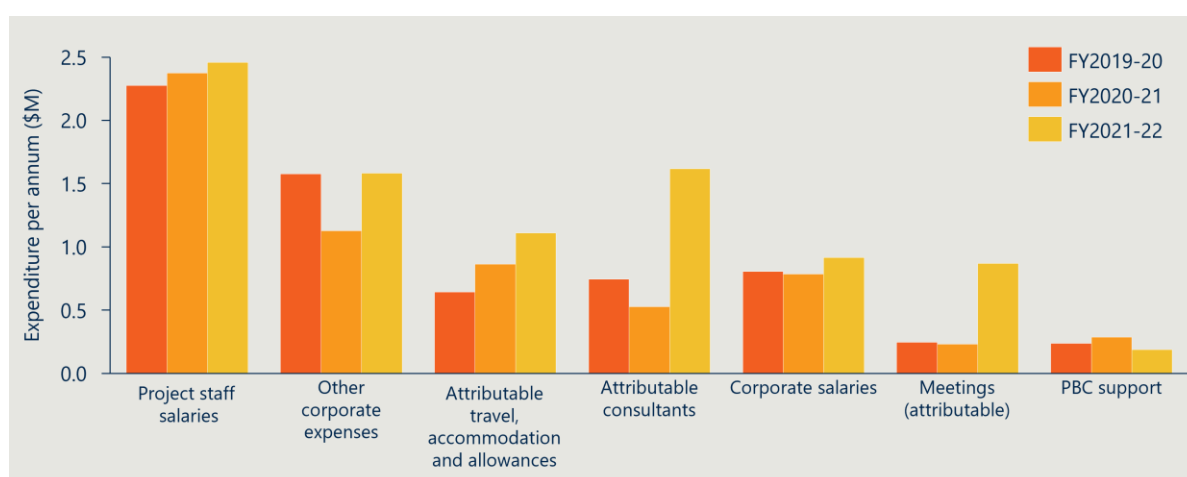
During the lockdowns, NTSCORP was significantly limited in the number of meetings that could be held, contributing to its underspends in FY2019-2020 and FY2020-21. In each year, the NIAA allowed NTSCORP to carry forward unspent funding to the following year. NTSCORP's expenditure increased significantly in FY2021-22 with the lifting of COVID-19 lockdown measures. However, NTSCORP still spent significantly less than its budget.

NTSCORP had especially significant underspends of its PBC funding (this is discussed further under TOR 6). NTSCORP underspent its PBC basic support budget by \$515,000 in FY2019-20, \$872,000 in FY2020-21 and \$1,313,000 in FY2021-22.

Staff salaries were consistently the most significant expense for NTSCORP

Staff and corporate salaries accounted for approximately 33 per cent of NTSCORP's expenditure over the Review period. As shown in Figure 2, the relative breakdown of key line items fluctuated across the Review period, due largely to the limiting effects of COVID-19 on certain travel and research engagements.

Figure 2 | NTSCORP expenditure FY2019-20 to FY2021-22



Uncompetitive salaries may have impacted staff attraction and retention as well as efficiency

NTSCORP staff and external commentators reported that NTSCORP salaries were uncompetitive with the market, especially for junior lawyers. This significantly affected NTSCORP's ability to attract and retain staff. NTSCORP also advised that the staff retention issue sometimes necessitated more senior staff undertaking tasks that could have been performed by more junior staff (see for example in relation to research and anthropology under TOR 1).

Senior NTSCORP staff explained that NTSCORP regularly benchmarked its salaries against comparable positions advertised online. However, they acknowledged that they last undertook benchmarking before the COVID-19 pandemic and that the benchmarks for wages were likely outdated. A regular benchmarking of staff salaries by NTSCORP would assist it to understand if it is paying competitive salaries to attract and retain high quality legal, anthropological and administrative staff.

Cost-saving actions, strategies and/or discussions

NTSCORP employed some cost saving strategies during the Review period

According to senior NTSCORP staff, NTSCORP's cost-saving strategies included:

- arranging accommodation and travel for meetings in advance

- sharing company vehicles wherever possible
- not having an HR function but instead using senior staff to manage recruitment
- senior staff managing a range of operational matters.

The Review identified some inefficient practices at NTSCORP over the period

The Review acknowledges that there were a range of external factors that affected the cost-effectiveness of NTSCORP, detailed later in the external factors section. The most significant factors included the high cost of claim group meetings, the relatively high cost of operating in Sydney and the relative complexity of pursuing native title outcomes in NSW. However, the Review also identified some relatively inefficient practices at NTSCORP over the Review period.

One of the issues affecting efficiency was the apparent lack of delegation throughout the organisation, resulting in more highly paid senior staff unnecessarily managing operational matters. This was observed by the Review team and was commented on by several external stakeholders. For example, in the absence of a Deputy CEO, the CEO was responsible for managing and responding to all incoming complaints as well as many other operational tasks. In the absence of an HR function – either in- or out-sourced – senior professional staff were responsible for recruiting legal staff, including the process of screening all applications. Delegating these tasks could save a significant amount of time for senior professional staff.

During the Review period, NTSCORP owned eight vehicles. The vehicles were used for travelling to claim group meetings. Senior NTSCORP staff acknowledged that this was excessive and reported that NTSCORP had plans to sell two to three of the vehicles.

Appropriate processes for claim group meetings

Claim group meetings were effectively managed

No complaints about the management of claim group meetings were made to the Review. External commentators were largely positive about the way in which meetings were conducted. Some Traditional Owners who spoke to the Review were concerned that NTSCORP arranged travel and accommodation for meetings too late and that the costs were therefore very high. In response, NTSCORP staff advised that they always arranged meetings weeks in advance to reduce costs.

NTSCORP's high expenditure on claim group meetings was impacted by the size and dispersion of the claim groups

NTSCORP spent \$3,961,000 on meetings and travel over the Review period, accounting for approximately 19 per cent of total expenditure over the Review period. Meeting and travel costs were less significant in FY2019-20 and FY2020-21 due to the limiting effects on travel of the COVID-19 pandemic.

Table 12 | NTSCORP meeting and travel costs during the Review period

Financial year	Attributable meeting costs	Attributable travel costs	Total
2019-20	\$245,000	\$643,000	\$888,000
2020-21	\$230,000	\$863,000	\$1.09 million
2021-22	\$870,000	\$1.1 million	\$2 million

NTSCORP staff explained that meeting costs were relatively high because claim groups in the NTSCORP RATSIB area were relatively large, adding to travel and accommodation costs for claim group members.

Annual yearly expenditure per claimant group

NTSCORP's average expenditure per claimant group was relatively high

The Review calculates a measure of expenditure per claim group to consider the relative position across all NTRB-SPs. The total attributable expenditure has been divided by the number of claimant groups served by NTSCORP to obtain an approximate average per annum figure as shown in Table 13.

Table 13 | Average expenditure per claimant group

Financial year	Total attributable expenditure (excluding PBC related)	Number of claimant groups	Mean expenditure per claimant group
2019-20	\$3.7 million	7	\$529,000
2020-21	\$3.5 million	5	\$700,000
2021-22	\$5.5 million	4	\$1.38 million

The table indicates that NTSCORP's expenditure per claimant group was relatively high when compared to other NTRB-SPs. However, there were many factors that contributed to this including:

- relatively large claim groups leading to higher costs for travel and meetings
- funding dedicated to pursuing ILUAs, Future Acts and compensation claims through the NSW Courts and responding to non-claimant applications.

Given that project staff salaries are considered an attributable cost, the attributable expenditure in Table 11 includes resources dedicated to work on various activities, rather than just on representing claimant groups.

Travel assistance policies for claim group meetings

NTSCORP provided transport and accommodation assistance for claim group members to attend authorisation meetings

During the Review period, NTSCORP paid Traditional Owners a flat rate of 63 cents per kilometre to cover travel costs, depending on their distance from the meeting, with a minimum of 50km and a maximum of 600km. This is equivalent to a maximum of \$378 per claim group member. Traditional Owners were free to use this money towards petrol costs, airfares, or other modes of transport. NTSCORP also provided meals and accommodation for Traditional Owners.

Appropriate rationale for use of external consultants

NTSCORP used external consultants in appropriate ways

NTSCORP staff explained that the organisation primarily contracted consultants to support the quality and timeliness of anthropological work. As discussed under TOR 1, during the Review period, NTSCORP adopted the approach of contracting external consultants to conduct much of the field work required to

evidence native title claims. This enabled NTSCORP to meet Federal Court deadlines, improve the quality of its anthropological work and maintain impartiality by including external anthropologists in the evidence-gathering process. Moreover, this approach ensured that NTSCORP could complete anthropological work when required without having to maintain as many anthropologists on staff.

The Review understands that procurement policies and processes were used for the engagement of consultants. A list of preferred providers was maintained by NTSCORP.

5.4.2 TOR 4: External factors

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

Size of RATSIB area

Both the size of the RATSIB area as a whole and the size of claims contribute to high costs for NTSCORP

The NSW RATSIB area has a land area of about 803,575 square kilometres. This area is over eight times larger than the smallest RATSIB area. The Gomeroi People claim covers over 110,000 square kilometres, while the Ngemba, Ngayampaa, Wangaaypuwan and Wayilwan claim covers over 95,000 square kilometres.

Remoteness of RATSIB area

The remoteness of the RATSIB area did not have a major effect on the cost effectiveness of NTSCORP relative to other NTRB-SPs

While some claims represented by NTSCORP covered remote areas, when compared with other NTRB-SPs, the claims represented by NTSCORP were overall over less remote areas. While remoteness had some effect on NTSCORP's cost-effectiveness, it had much a smaller effect than the size of the RATSIB area.

Average number of people within a claim group

A large number of people within claim groups contributed to high costs

The Australian Bureau of Statistics estimates that there are 349,235 First Nations people in NSW and the ACT.¹⁷ This is considerably higher than any other RATSIB area. As such, there are a relatively high number of people in the claim groups in NTSCORP's RATSIB area. NTSCORP provided estimates of the number of members in each claim group that it represented during the Review period.

Table 14 | Estimated number of claim group members for claims represented during the Review period

NTSCORP reference for application	Estimated number of claim group members
Gomeroi People	10,000
South Coast People	5,000

¹⁷ Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, (accessed 13 March 2024), <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release>

NTSCORP reference for application	Estimated number of claim group members
Gumbaynggirr People #5	3,500
Gumbaynggirr People #3	3,500
Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan native title determination application	3,000
Widjabul Wia-Bal	1,200
Bandjalang People #3 and #4	1,000

According to these estimates NTSCORP represented 27,200 claim group members during the Review period. This is an average of 3,886 per claim group across the seven claims it represented. The ongoing Gomeroi claim group has 10,000 members alone. NTSCORP staff explained that there were typically between 300 and 500 people at Gomeroi claim group meetings. Staff and external commentators reported that the high number of people in each claim group dramatically increased meeting and travel costs during the Review period. Moreover, NTSCORP staff explained that due to the size of claim group meetings, many staff often travelled to meetings, contributing to both the economic and opportunity cost of meetings.

Interpreters

NTSCORP rarely needed to use interpreters

NTSCORP staff reported that the organisation rarely contracted interpreters due to the relatively high level of English spoken among First Nations people in the RATSIB area.

5.4.3 TOR 4: Recommendations

RECOMMENDATION

11

NTSCORP should benchmark salaries more frequently to ensure staff salaries remain competitive.

RECOMMENDATION

12

NTSCORP should optimise its vehicle inventory by owning only the number of vehicles required to effectively carry out core business activities.

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

NTSCORP was operating as a public company limited by guarantee, registered with the ACNC as a Public Benevolent Institution. There were clear delineations of roles, responsibilities and decision-making powers in place between NTSCORP's Board and CEO.

The Review found that NTSCORP's flat organisational structure and limited internal delegation of authority generated operational inefficiencies and an unsustainable workload for the CEO. Many external stakeholders reported that NTSCORP was not a responsive organisation and the Review found challenges with timely engagement from NTSCORP. Operational challenges were exacerbated by a lack of specific organisational roles, such as a Deputy CEO, a dedicated position to support the Board and a dedicated HR function. It may be timely for the Board to consider a review of the organisation structure and succession planning to achieve efficiencies and continuity for the future.

All Board Directors had been in place for a long period. The Board did not engage with the Review process, which is of concern, as it may indicate a level of disconnect that is not consistent with good governance. Numerous stakeholders reflected that the introduction of some new Board Directors to NTSCORP would present a positive opportunity to explore issues from a fresh perspective and increase Board Director diversity. Many Traditional Owners expressed frustration that NTSCORP was not sufficiently accountable to its clients, with some commenting that the Board was a "closed shop". The lack of an election process, in addition to a lack of regular communication to constituents, created a lack of transparency. These issues were exacerbated by the absence of accessible, public facing annual reports or an up-to-date strategic plan. Attention to these organisational matters would be likely to enhance the level of trust and respect with which NTSCORP was regarded by some stakeholders.

NTSCORP had well-established policies to manage conflicts of interest within the organisation and to support the Board and staff to operate in an ethical manner. However, there was a perception from some Traditional Owners who engaged with the Review that conflicts of interest were not always handled appropriately during the Review period. Specifically, these Traditional Owners believed that the Board exerted undue influence on claim assessment and prioritisation. A number of Traditional Owners were also concerned that a potential or perceived conflict of interest may arise if NTSCORP staff members or senior executives were involved in a claim in which they held a personal interest. While the Review did not find any evidence of inappropriate conflicts of interest, it will be important for the Board and senior staff to consider ways to counter these perceptions.

NTSCORP's purpose, vision and values were outlined in its strategic documentation and generally upheld by staff. However, NTSCORP did not have a current strategic plan in place, with the previous strategic plan developed in 2011 and the majority of action items expiring in 2013. There was a perception from some staff and former staff that the internal culture and working environment could be improved and that senior management could pay more attention to creating a respectful and transparent internal culture.

NTSCORP had sound financial management practices during the Review period, but financial reports were often submitted late, apparently due to resourcing constraints. NTSCORP staff training, particularly legal training, was largely "on the job" and considered effective. Staff turnover for researchers and junior lawyers was relatively high during the Review period and NTSCORP faced a major challenge in retaining and attracting new research and legal staff.

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, responsibilities and decision-making powers of the Board of Directors, CEO and senior staff were clearly defined in NTSCORP's governance documents

NTSCORP was operating as a public company limited by guarantee, registered with the ACNC as a Public Benevolent Institution. NTSCORP was governed by a Board of Directors which was responsible for managing and directing NTSCORP's activities to achieve the purposes set out in its Constitution. As detailed in NTSCORP's corporate documentation, the role of the Board of Directors was to:

- prepare the company's strategic plan
- prepare the company's "representative body" (sic) policies and procedures
- review the company's performance of its "representative body functions" (sic) including reviewing the performance of the CEO.

NTSCORP's corporate documentation also noted the limitations to the Board's role. This included the day-to-day operations of the company and supervision of staff other than the CEO. Further, senior staff commented there was a strict delineation of roles and responsibilities between the Board and management. The Board was excluded from operational decisions and its involvement was only focussed on its own role. The Board received briefing materials from management to support its decision making.

The roles and responsibilities of NTSCORP's CEO and management team were also clearly defined in the NTSCORP corporate documentation. Table 15 provides an overview of senior management responsibilities.

Table 15 | Overview of senior management responsibilities¹⁸

Position	Description of native title responsibilities
Chief Executive Officer	The CEO had an operational role. The CEO was responsible for implementing the strategic plan and the day-to-day operations of NTSCORP.
Chief Financial Officer (CFO)	The CFO was responsible for managing NTSCORP's financial and risk management aspects to meet the overall objectives of NTSCORP. The role included managing the Corporate Unit's annual and long-term strategic objectives, planning and developing the Corporate Unit and providing internal commercial, economic and business advice to other company divisions, teams and project teams.
Principal Solicitor	The Principal Solicitor was responsible for overseeing the legal operations of NTSCORP. The role included: • managing the Legal Unit in accordance with the requirement of the Legal Profession Uniform Law (NSW) 2014 • providing legal advice to native title holders and claimants regarding applications and their settlement

¹⁸ NTSCORP, Job Descriptions documentation.

Position	Description of native title responsibilities
	providing legal advice in relation to ILUAs and developing and implementing appropriate strategies to achieve native title.
Research Manager	The Research Manager was responsible for overseeing NTSCORP's historical and anthropological research. The role included managing the operational and financial activities of the Research Unit and Research Projects, planning and developing the structure of the Research Unit and reviewing work practices of the Research Unit to ensure due processes were followed in collecting, compiling and assessing information.
Manager Community Facilitation	The Community Facilitation Manager was responsible for community engagement and improving experiences for supporting clients and potential clients. The role included: - ensuring that the process and law associated with native title claims were communicated effectively - working with PBCs, native title holders and claimants in the field to coordinate claim group meetings - responding to queries from claimant groups and other stakeholders concerning native title to ensure all parties are informed of the processes.

NTSCORP's flat organisational structure generated inefficiencies and an unsustainable workload for the CEO

NTSCORP has historically employed a flat organisational structure and continued to do so throughout the Review period. This meant that the senior managers reported directly to the CEO, with all significant decisions being made by the CEO (see Figure 3). Senior staff commented that the flat structure worked well and enabled NTSCORP to make decisions efficiently. However, external stakeholders consistently commented that it was very difficult to get NTSCORP to respond in a timely manner (see also under TOR 3). They reported difficulties in reaching the CEO and noted that a lack of deputising decision making to senior staff resulted in long delays in establishing contact and stimulating action. This had flow-on consequences for the ability of more junior staff to action decisions due to bottlenecks at the senior decision-making level. This feedback has been reinforced by the Review team's experience of engaging with NTSCORP throughout the Review.

NTSCORP's flat structure also meant senior staff were overly involved in operational matters

Senior staff at NTSCORP were overly involved in operational matters. The CEO explained that the CEO role was the primary respondent to and manager of all complaints. While it is important for the CEO to be involved in serious matters and to communicate with complainants, the CEO reported that they were spending multiple hours each week managing emails and phone calls from serial complainants. A review of the organisation structure and the development of a documented approach to the management of communications would enable a significant portion of this work to be delegated to other members of staff.

Similarly, external anthropologists explained that the lack of junior researchers meant that the head of research often carried out work such as generating maps and genealogy reports. This is not an efficient use of senior staff time.

NTSCORP staff reported that having each unit be responsible for its own recruitment meant that senior members of staff regularly undertook the entire recruitment process for new staff, including advertising, screening applicants and conducting all interviews. This was a significant impost on the time of staff who were already working long hours and struggling to meet their demanding workload. While the Review

found that NTSCORP experienced moderate levels of turnover during the Review period (see further detail below), NTSCORP advised that the recruitment process was required for four research staff who resigned, three corporate staff who resigned and four legal staff who resigned.

The Review acknowledges that the involvement of senior staff in operational matters is partly attributable to resourcing constraints, but a review of the organisation structure and implementation of a more devolved model would be likely to improve the efficiency of NTSCORP. The creation of a Deputy CEO position would address some of the challenges and facilitate more rapid decision making. It would also allow proper cover for periods where the CEO is absent on leave, as arrangements currently mean that when the CEO is unavailable, no decisions can be made.

NTSCORP did not have specialist support functions, such as a dedicated HR team

The consequences of NTSCORP's flat structure were exacerbated by the lack of specific organisational capability within NTSCORP. The only support functions within NTSCORP were three financial administration and two general administrative positions. There was no dedicated position to support the Board, which may partially explain how difficult it was for the Review team to engage with them¹⁹. An HR function may also assist with complaint handling and resolution.

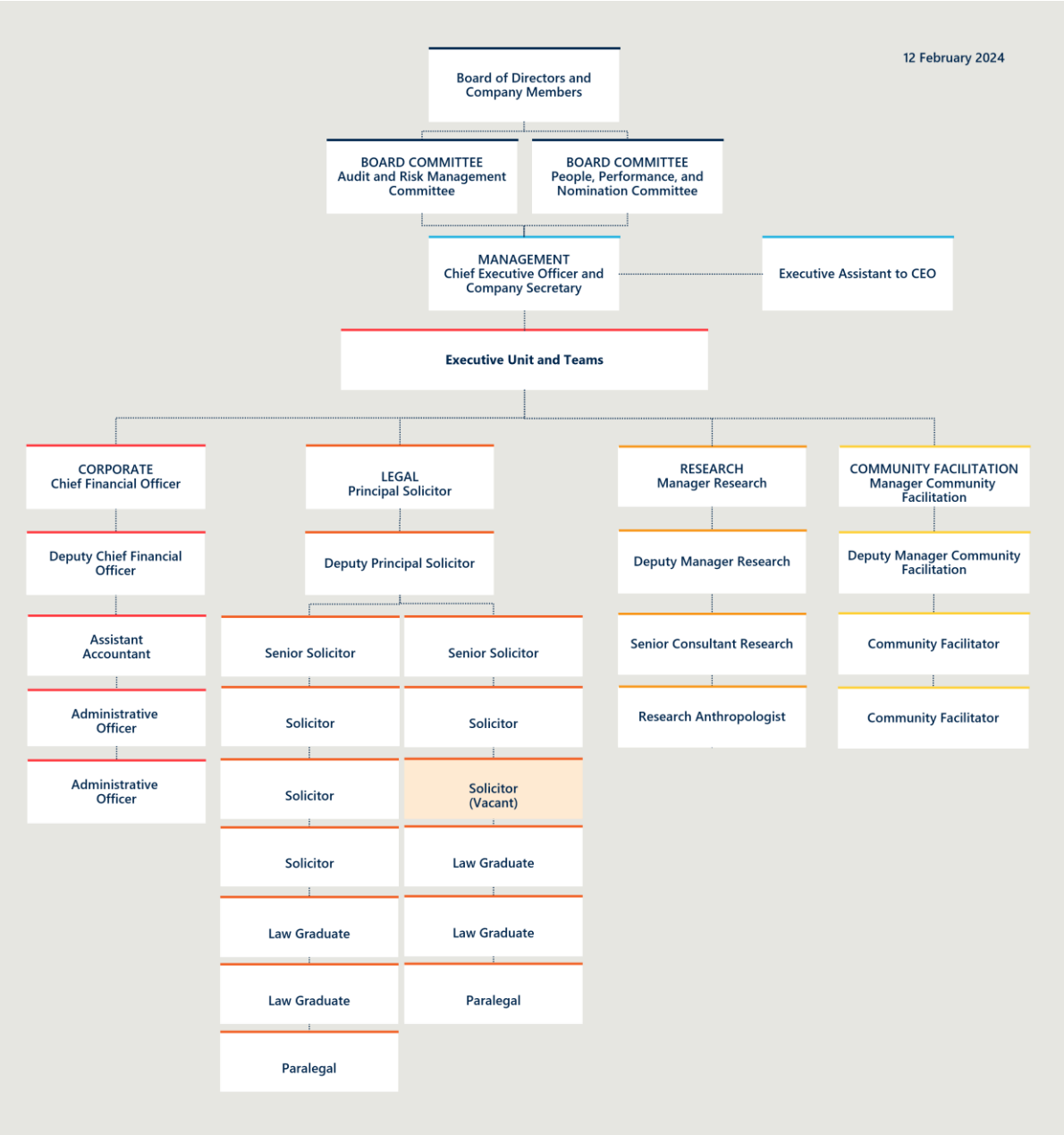
The Review finds it particularly problematic that NTSCORP did not have a dedicated HR function. Recruitment could be done more efficiently if NTSCORP had an internal HR function or engaged a recruitment firm to screen applications and shortlist applicants for senior members of staff to conduct final interviews. NTSCORP advised that it had sought estimates from a recruitment firm who quoted \$10,000 for the placement of one lawyer. NTSCORP viewed the process of recruitment being handled by each unit as a cost saving measure. However, the Review remained of the view that a review of the NTSCORP organisational structure and the creation of a dedicated HR function – whether in-sourced or out-sourced – would increase the efficiency of the organisation.

A copy of NTSCORP's organisational structure in place during the Review period is shown in Figure 3²⁰.

¹⁹ As noted later in this section, despite repeated attempts by the Review team to seek to contact the Board and arrange consultation, no consultation occurred.

²⁰ Organisation structure was provided to the Review in February 2024, however, NTSCORP reported that this was the same organisation structure in place during the Review period.

Figure 3 | NTSCORP organisational structure



There was no succession planning to deliver continuity at NTSCORP

NTSCORP had a stable senior leadership team throughout the Review period. This supported the established business-as-usual functioning. Given the tenure of senior staff, including the CEO having been in place since 2012, it would be appropriate for the Board to consider succession planning to ensure continuity into the future.

Board integrity and capability

The NTSCORP Board of Directors had generally served long terms

During the Review period, the Board consisted of eight member Directors and one non-member Director.²¹ The Board held 15 meetings during the Review period.

The member Directors of the Board were originally appointed to be broadly representative of the former Aboriginal and Torres Strait Islander Commission regions. However, the Board did not directly represent the various regions and Directors were not appointed through any process that reflected an intention that they be representative.

The Board's appointment (and re-appointment) of Directors was guided by the recommendations of the People and Nomination Committee, which was a sub-committee of the Board. This means that Board Directors entirely controlled the process for recruiting and approving Directors. There was no public process of calling for nominations for new Board Directors. The NTSCORP Constitution established the initial period of appointment for Board Directors as two years; however, it did not stipulate term limits. As of June 2022, Board Directors had an average service period of 12 years.

NTSCORP staff surveyed throughout the Review noted that the Board worked well together and had a good mix of skills. Senior staff commented that having the same Board had some positives. For example, they understood who NTSCORP was and where it came from. However, the benefits of maintaining this corporate knowledge must be weighed against the advantages that come from Board renewal. Numerous stakeholders reflected that the introduction of new Board Directors to NTSCORP would present a positive opportunity to explore issues from a fresh perspective and increase Board Director diversity.

Many Traditional Owners expressed frustration that NTSCORP was not sufficiently accountable to its clients throughout NSW and the ACT. Some Traditional Owners commented that the Board is a "closed shop". The lack of an election process, in addition to a lack of regular communication to constituents created a lack of transparency for all those who have or may have native title. These issues were exacerbated by NTSCORP's lack of an accessible, public facing and informative annual report and up-to-date strategic plan. While NTSCORP is not legally required to make these documents publicly available, doing so would provide an opportunity to improve its transparency and accountability and build trust within the community. These deficits severely limited the trust and respect with which NTSCORP was regarded by some stakeholders.

Amending NTSCORP's constitution to limit the tenure of Board members to a maximum period of two or three consecutive terms, in line with best practice governance recommended by the Australian Institute of Company Directors²², may be one strategy to generate renewal. Another may be to consider changing the Constitution to create a structure that is representative of the different interests across the RATSIB area. To further promote transparency of decision making, the NTSCORP Board could also advertise externally for Board positions.

The absence of a strategic plan hampered NTSCORP's ability to take a strategic approach to meet challenges

During the Review period, NTSCORP did not have a current strategic plan in place. The previous strategic plan was developed in 2011, with the majority of action items expiring in 2013. As outlined in its policies

²¹ NTSCORP, Board of Directors, Non-member Directors have an advisory role but no voting rights. <http://www.ntscorp.com.au/our-board-and-staff/board-of-directors/>

²² Australian Institute of Company Directors. Governance Analysis Tool. Accessed April 2024.

and procedures manual, the Board was expected to play a key role in the preparation of NTSCORP's strategic plan, using their expertise, experience and opinions to aid in the strategic planning process.

This overarching lack of an articulated strategic direction indicates that the Board did not provide a high level of strategic direction for NTSCORP. This may be because NTSCORP essentially followed a business-as-usual approach, with a focus on delivering determinations.

Some staff indicated that the absence of strategic direction impacted NTSCORP's ability to perform efficiently. They noted that it contributed to NTSCORP having a reactive posture, with its focus tending to be on resolving practical issues as they arose. Other staff noted that NTSCORP had continued to evolve its provision of services despite the absence of a strategic plan.

Nous understands that after the Review period, NTSCORP has developed a draft one-page strategic plan, to be reviewed by the Board. The Review suggests that a full strategic planning process, including consultation with stakeholders, would be a very useful exercise for NTSCORP to undertake.

It is important to note that despite repeated attempts by the Review team to contact the Board and arrange consultation, no consultation occurred.

Conflicts of interest

NTSCORP had well-established policies in place for managing conflicts of interest

NTSCORP had two conflict of interest policies that applied to both the Board and staff members respectively. These policies were developed in 2010 and 2012 and provided clear guidance for the Board and staff about the processes they needed to follow to identify and address conflicts of interest. For example, the Board policy contained clear and easy to understand examples of what to do when different types of conflict of interest arose.

Further, according to Board meeting minutes, at the beginning of each meeting Directors were given the opportunity to declare a potential conflict of interest on any of the agenda items. They were also reminded to ensure the Conflicts Register, as it related to each of them, was up to date.

There was a perception among some Traditional Owners who engaged with the Review that Board Directors exerted undue influence on NTSCORP's claims work due to their personal interests

Some Traditional Owners who engaged with the Review held the view that Board Directors who were also claimants in the NSW region exerted undue influence on NTSCORP's decisions about which claims NTSCORP supported, for the benefit of their personal or family connections. Specifically, these Traditional Owners alleged that the Board did not declare conflicts of interest in facilitation and assistance decisions. One external stakeholder commented that involvement of NTSCORP Board and staff members with family ties to claims leads to "emotional rather than rational decisions". The Review notes NTSCORP's comment that the Traditional Owners who approached the Review were not a representative sample. The Review notes that there is nevertheless an ongoing level of distrust in the organisation from some Traditional Owners who contacted the Review and the Board might want to consider ways of addressing this.

The Review found no evidence that Board Directors had inappropriately influenced assistance decisions. As discussed under TOR 2, the Board did not make decisions about which claims to prioritise, although they were briefed on NTSCORP's prioritisation decisions and given an opportunity to interrogate these decisions. NTSCORP confirmed to the Review that Board Directors only "reviewed" the facilitation and assistance decisions which were declined. Further, senior staff commented that the Board was not involved in operational decisions and NTSCORP Board Directors were particularly good at delineating their role.

The Review also heard concerns from some Traditional Owners relating to the management of perceived conflicts when NTSCORP staff were acting in a personal capacity

Several Traditional Owners raised concerns with the Review about the perceived or potential conflict of interest that may arise when NTSCORP staff members or senior executives are involved in a claim in which they hold a personal interest. The Review heard accounts from several Traditional Owners who were concerned about the involvement of senior NTSCORP staff in public claim group matters in their personal capacity. This was despite the claim in question not being represented by NTSCORP. The Review does not suggest that NTSCORP staff had an actual conflict of interest, particularly as the claim in question was not represented by NTSCORP. However, the concern generated about this issue does point to a need for a claim member who is also a senior member of NTSCORP staff to carefully consider their public interactions in claim proceedings as they risk being identified as speaking for the organisation, even when they are acting in their personal capacity.

As discussed under TOR 3, some concerns were expressed about potential conflicts of interest in relation to the management of complaints when several members of the same family were involved.

Culture and values

NTSCORP's vision, purpose and values were outlined in its 2011 Strategic Plan and were generally upheld by staff

NTSCORP's 2011 Strategic Plan articulated seven values, which were promulgated on its website:

1. Respect for Elders and members of Aboriginal communities.
2. Commitment to achieve positive outcomes for our clients and Aboriginal communities.
3. To work collaboratively with Aboriginal communities.
4. To act in an honest, fair, transparent and accountable manner.
5. To provide professional and efficient performance of our function.
6. To provide a safe, trusting and respectful work environment.
7. To encourage and support Aboriginal employment.

About a third of NTSCORP staff responded to the Review's staff survey. Most of the respondents indicated that NTSCORP was a well-run organisation. Respondents also noted NTSCORP performed "somewhat well" or "extremely well" when it came to behaving in a culturally safe way with employees and "extremely well" when it came to behaving in a culturally safe way with Traditional Owners. Most staff consulted by the Review believed that, for the most part, the conduct of NTSCORP staff aligned with the values articulated on the website.

Some NTSCORP staff saw room for improvement in the working environment and internal culture

One of NTSCORP's core values was to "provide a safe, trusting and respectful work environment". While most staff felt that NTSCORP was a good place to work, some reflected that not all NTSCORP staff upheld this value. Some staff felt that NTSCORP had "an unsafe working environment" with insufficient attention given to creating a respectful and transparent internal culture.

Several NTSCORP staff who were employed during the Review period reported to the Review that they had experienced or witnessed incidents involving shouting and/or swearing at more junior staff from senior staff members. They commented that these incidents were not reported because there was no

independent channel through which they could be addressed. Former staff commented that, in their view, making a complaint would not be well received. See TOR 3 for a more complete discussion of complaints arrangements and handling.

Some NTSCORP staff and former staff also reported receiving insufficient support from senior staff when they received threatening communication and behaviour from clients. They felt that senior staff should step in and make it clear to clients that abusing NTSCORP staff was not acceptable, however this did not always occur and they felt they had been left at times to manage the situations by themselves.

Financial management

NTSCORP had sound financial management practices during the Review period, but financial reports were often submitted late

NTSCORP had financial management practices that enabled it to execute its financial responsibilities in accordance with both the *Corporations Act 2001* (Cth) and its funding agreement with the NIAA. The NIAA's funding for NTSCORP required it to submit detailed reports on budgeted and actual expenditure. NTSCORP staff acknowledged that the organisation missed several deadlines to submit budgets and financial reports to the NIAA. Staff reported that NTSCORP missed deadlines due to resourcing constraints and to ensure that financial statements were completely accurate.

NTSCORP staff reported that there were strict requirements in place about submitting a purchase order for expenses incurred by staff. Staff members were required to submit a purchase order to the CFO for all expenses and have all expenses approved by the relevant manager, CFO and CEO, depending on the size of the expense. Only the CEO and CFO had company credit cards. While some staff members reported that these practices were somewhat time consuming, they ensured that NTSCORP operated with strict financial transparency.

Training and professional development

NTSCORP relied upon on the job training

Over the Review period, NTSCORP relied upon on the job training to upskill staff, with junior legal staff paired with senior staff to provide oversight and support their professional development. Legal staff were supported to attend some formal training, such as the Australian Institute of Aboriginal and Torres Strait Islander Studies Legal Masterclass and the National Native Title Conference. However, senior staff commented that NTSCORP's lack of financial resources, coupled with staff members' limited time to attend formal training, made informal learning opportunities, such as sharing knowledge at regular team meetings, a more viable solution. Several current and former lawyers said they appreciated the quality of the legal guidance they received from more senior NTSCORP staff.

External stakeholders commented that NTSCORP was committed to training young lawyers and trained their junior legal staff well. They commented that NTSCORP's senior legal team invested in their junior staff and exposed them to a high level of responsibility early. This had resulted in quick career progression. They also commented that staff who left NTSCORP were picked up in relatively senior roles by other organisations. This supports the notion that NTSCORP trained its legal staff well.

Staff reported that their cultural awareness training was helpful for their work

Every two years, staff were required to complete cultural competency/cultural awareness training. Staff indicated they found this cultural awareness training helpful for their work. In addition, NTSCORP reported that it has requested funding from the NIAA to provide trauma-informed consultation training.

During the Review period, NTSCORP employed seven First Nations people, equating to 27 per cent of its workforce.

Level of staff turnover

NTSCORP experienced moderate staff turnover during the Review period

Overall, NTSCORP experienced moderate staff turnover during the Review period. The staff turnover figures for the Review period are provided in Table 16. Staff turnover was highest among junior lawyers and researchers.

Table 16 | Staff turnover rates during the Review period

Financial year	Total number of staff	Staff turnover rate
2019-20	26	19%
2020-21	26	8%
2021-22	25	16%

The Research team and Community Facilitation team each retained staff for extended periods of time. Staff explained that the turnover rate was highest in FY2019-20 because funding ended for three non-recurrent employees in the anthropology unit who subsequently left the organisation.

NTSCORP staff and former staff explained that there were several factors that contributed to the turnover of junior legal staff. This included the nature and pace of work at NTSCORP: staff had to work very long hours and travel a lot for work. Some staff reported that they had to deal with unhappy and sometimes aggressive clients without sufficient organisational support. External stakeholders and staff members commented that the workplace environment resulted in burnout. Moreover, as noted under TOR 1, salaries for junior lawyers in Sydney had not remained competitive. NTSCORP staff noted that it was very challenging to attract new staff.

Current and former NTSCORP staff also explained that many junior legal staff chose to leave to avoid being “pigeon-holed” into native title. NTSCORP staff explained that many junior legal staff left the company after two to three years once they had developed the skills and expertise to become highly valuable to the organisation. This caused frustration for senior lawyers, who felt they had to take on more responsibilities once these staff had left. The Review notes that this is not unusual across the sector.

5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

5.5.3 TOR 5: Recommendations

RECOMMENDATION

NTSCORP should review its organisation structure to clarify the delegation of work and refine position descriptions to minimise senior staff members’ involvement in lower level operational or administrative

13

tasks, improve cost-effectiveness and enable senior staff to focus more on core business and strategic thinking.

RECOMMENDATION

14

NTSCORP should appoint a Deputy CEO to ensure appropriate processes are able to continue when the CEO is away or overwhelmed with work.

RECOMMENDATION

15

NTSCORP should undertake a strategic planning process to update its Strategic Plan and publicise the plan on its website to provide meaningful strategic direction for the coming three to five years.

RECOMMENDATION

16

NTSCORP should implement mechanisms to create and maintain a culture where staff feel safe to give and receive feedback and make complaints.

RECOMMENDATION

17

NTSCORP should establish or outsource an HR function to support recruitment and handle internal complaints.

RECOMMENDATION

18

NTSCORP should review and amend its Constitution to limit the tenure of Directors in line with best practice to encourage new Directors to join the Board and to ensure it represents the diversity of its stakeholders. Board renewal should be managed through a phased transition to ensure that only a portion of the Board is being renewed in each nomination period.

RECOMMENDATION

19

NTSCORP should publicly advertise for new Board nominations.

RECOMMENDATION

20

NTSCORP should consistently produce informative annual reports and make them available on its website. The annual reports should include information about NTSCORP's performance as a means of communication to its stakeholders.

RECOMMENDATION

21

NTSCORP should prioritise the submission of budgets and financial reports on time to ensure that it complies with the requirements of its funding bodies.

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

Summary

NTSCORP provided support to eight of the nine PBCs in its RATSIB area throughout the Review period. Unlike many other NTRB-SPs, NTSCORP did not have a PBC Support Unit but provided support functions through its Legal Unit. Support provided by NTSCORP included compliance with the CATSI Act, such as providing assistance to PBCs to convene and attend general meetings, native title holders' meetings and Directors' meetings, and taking minutes for those meetings.

In addition, NTSCORP's legal team provided a comprehensive legal service to PBCs in relation to ILUA negotiations, other commercial negotiations, contracts and responses to Future Acts. NTSCORP advised the Review that it provided the equivalent of four full time lawyers working with PBCs exclusively, predominantly on Future Acts and negotiation and implementation of agreements. In contrast, some PBCs who engaged with the Review reported that at times NTSCORP would forward Future Acts to the PBCs without providing support to respond and that without support, they struggled to respond to Future Acts. NTSCORP rejected these claims and maintained that it always supported PBCs to respond to FANs where they had procedural rights to do so.

NTSCORP significantly underspent its PBC basic support budget across the Review period. NTSCORP advised that the underspends were caused by PBCs not meeting NTSCORP's reporting requirements. NTSCORP required PBCs to submit an operational plan and budget detailing the activities for which financial support was required. NTSCORP then allocated funding to each PBC based on its assessment of their need and capability, with more funding allocated to those PBCs that NTSCORP deemed to have the greatest need. This process also tended to result in significant delays to the allocation of funds, which was a point of considerable frustration for some PBCs. This significant history of underspending on PBC basic support across the Review period is a concern in relation to NTSCORP's role in adequately supporting PBCs towards self-sufficiency.

NTSCORP staff explained that most PBCs in the RATSIB area are still a long way off self-sufficiency and relied on support from NTSCORP in some capacity. There was a view from NTSCORP that some PBC Directors were not sufficiently involved in PBC matters and not willing to provide the level of oversight and support required of them.

NTSCORP staff reported that the workload generated by PBCs was not sustainable within current operational funding limits. As more claims have been determined, PBC matters have taken an increasing proportion of staff resources, which NTSCORP reported has diverted key resources away from claims work. There is a high degree of complexity and conflict through many of the PBCs in the RATSIB area, which contributes to the high workload.

This increasing workload, together with NTSCORP's continued progression of native title claims, had limited NTSCORP's capacity to take a strategic approach to supporting PBCs toward self-sufficiency. NTSCORP staff and external commentators acknowledged that an absence of a strategic approach to supporting PBCs toward self-sufficiency was a shortcoming. NTSCORP had no plans to address this issue, citing funding constraints as a significant barrier.

NTSCORP does not have formal service agreements with the PBCs, although NTSCORP staff and PBC staff said they would like to have service agreements or MOUs in place. There is a need for greater clarity about the basic services that NTSCORP provides, as well as any fee for service arrangements for other services and guidance on costs that should be covered by proponents.

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

NTSCORP provided support to eight of the nine PBCs in its RATSIB area

There were nine PBCs in the NTSCORP RATSIB area during the Review period and NTSCORP provided financial support to eight of these PBCs. Unlike many other NTRB-SPs, NTSCORP did not have a PBC Support Unit. NTSCORP's legal staff managed all PBC support matters, with support from the Community Facilitation team and oversight from the CEO. Where possible, PBC matters were allocated to the legal staff who managed the relevant claim process so that the teams were familiar with the context for the matter.

NTSCORP provided basic support assistance to the PBCs – helping the PBCs to maintain compliance with reporting requirements of the CATSI Act by correctly conducting annual general meetings (for example, ensuring minutes were taken) and responding to Future Acts appropriately. In addition, NTSCORP lawyers provided assistance to PBCs to negotiate ILUAs and acted on behalf of PBCs in compensation matters. NTSCORP lawyers also supported PBCs by tabling notices, providing legal advice, collating evidence, drafting responses and helping PBCs to create a structure through which they could charge other parties for their time spent responding to issues. NTSCORP advised the Review that it provides a comprehensive service to PBCs in relation to Future Acts. The equivalent of four full time lawyers work with PBCs exclusively and this is time predominantly spent on Future Acts, and negotiation and implementation of agreements.

NTSCORP significantly underspent its PBC basic support budget across the Review period

Over the Review period, NTSCORP received a total of \$1,511,210 from the NIAA for PBC basic support. However, it only distributed \$675,351 to PBCs across the three-year period and did not use the remaining funding to support its provision of basic support services to the PBCs. Funding documentation shows that NTSCORP had a history of underspending and carrying forward PBC basic support funding. These underspends were considered by the NIAA when determining funding amounts. This has influenced the funding level per year reported below.

In each of FY2019-20 and FY2020-21, NTSCORP received funding of \$331,000 from the NIAA for PBC basic support. During these years NTSCORP supported eight PBCs, meaning NTSCORP received \$41,375 per PBC each year for PBC basic support. This is relatively low compared to other NTRB-SPs which received approximately \$80,000 per PBC per year.

NTSCORP's total approved budget for PBC basic support in FY2019-20 was \$752,000 which included the \$331,000 of NIAA funding and \$421,000 of unspent funding from previous years carried over into FY2019-20. In FY2021-20, NTSCORP underspent its total approved budget for PBC support by \$515,000.

In FY2020-21 NTSCORP's total approved budget for PBC basic support was \$1,156,000. This included the \$331,000 of NIAA funding, plus the \$515,000 that was unspent in FY2019-20 and additional funding of \$311,000 provided by the NIAA. In FY2020-21, NTSCORP underspent its PBC basic support budget by \$872,000.

As a result, the NIAA worked with NTSCORP to address the funding and requirements of the PBCs and to "reset" funding with the commencement of a new agreement in FY2021-22. In FY2021-22, the NIAA increased the PBC basic support allocation to NTSCORP to \$621,000. NTSCORP continued to support eight

PBCs, with \$77,625 per PBC. NTSCORP continued to underspend its allocation of PBC basic support funding in FY2021-22. Its approved budget for PBC basic support in FY2020-21 was \$1,502,000, consisting of \$621,000 of NIAA funding, \$789,000 of carried forward funding and an additional \$83,000 of funding. NTSCORP underspent its budget by \$1,313,000.

Table 17 provides a breakdown of the incoming funding that NTSCORP received each year from the NIAA to support each PBC and the amount of outgoing funding that it provided to each PBC during the Review period.

Table 17 | NTSCORP's incoming and outgoing funding for each PBC during the Review period

PBC	FY2019-20 incoming	FY2019-20 outgoing	FY2020-21 incoming	FY2020-21 outgoing	FY2021-22 incoming	FY2021-22 outgoing
Dunghutti Elders Council Aboriginal Corporation RNTBC	\$26,000	\$0	\$26,000	\$26,000	\$77,625	\$0
Bandjalang Aboriginal Corporation PBC RNTBC	\$0	\$109,739	\$115,000	\$53,032	\$77,625	\$2,022
Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC	\$70,000	\$32,629	\$45,500	\$17,108	\$77,625	\$3,139
Barkandji Native Title Group Aboriginal Corporation RNTBC	\$90,000	\$14,709	\$45,000	\$7,139	\$77,625	\$17,212
Yaegl Traditional Owners Aboriginal Corporation RNTBC	\$40,000	\$4,612	\$137,710	\$43,949	\$77,625	\$105,378
Gumbaynggirr Wenonah Head Aboriginal Corporation RNTBC	\$70,000	\$46,615	\$50,000	\$28,275	\$77,625	\$3,346
Ngullingah Jugun (Our Country) Aboriginal Corporation RNTBC	\$35,000	\$29,395	\$70,000	\$39,342	\$77,625	\$57,710
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) RNTBC	N/A	N/A	\$70,000	\$70,000	\$77,625	\$0
Total	\$331,000	\$237,699	\$559,210	\$284,845	\$621,000	\$188,807

This significant history of underspending on PBC support across the Review period is a concern in relation to NTSCORP's role in adequately supporting PBCs towards self-sufficiency.

The Review understands that spending against the budget improved considerably in FY2022-23 (after the Review period). Since the Review period, the amount of PBC support funding allocated to PBCs has been in line with other NTRB-SPs.

NTSCORP advised that underspends were caused by PBCs not meeting NTSCORP's reporting requirements and delays in the provision of funding

NTSCORP staff explained that each year it required PBCs to submit an operational plan and budget to NTSCORP detailing the activities for which it would need financial support. NTSCORP then allocated funding to each PBC based on its assessment of their need and capability, with more funding allocated to those PBCs that NTSCORP deemed to have the greatest need. NTSCORP staff explained that this process enabled the organisation to tailor the amount and type of support provided to better meet the needs of each PBC. NTSCORP staff advised the Review that they would pass on the funding to the PBCs they perceived as being able to competently meet reporting requirements. They advised that funding was not provided to the PBCs it considered to have limitations relating to governance or those that could not meet reporting requirements.

Several PBC staff felt that NTSCORP's reporting requirements were too burdensome and that their PBC lacked the resources or capacity to meet them. The lack of resources to meet reporting requirements was exacerbated by the fact that PBCs were not receiving the intended funding. NIAA staff explained that the PBC basic support funding requirements were set by NTSCORP, informed by NTSCORP's financial reporting obligations to the NIAA.

Another difficulty created by the NTSCORP reporting requirements is that they created an impost on NTSCORP staff time to analyse and then consider the appropriate funding level. This is likely to have contributed to the slow release of support funds, which caused enormous frustration for some PBCs and contributed to the significant underspends. A number of PBCs noted to the Review that the assessment process was very slow, leaving them to operate without funds for significant periods.

NTSCORP acknowledged that this was a problem during the Review period and reported a desire for PBCs to receive their funding. Stakeholders, including NIAA staff and PBC staff, reported that since the Review period, NTSCORP has distributed a significantly higher proportion of its funding to PBCs, in line with other NTRB-SPs.

NTSCORP organised a basic support training conference for its PBCs

In 2021 some of the funding received by NTSCORP for PBC basic support was used to organise centralised Native Title Operations Management Training for all PBCs to attend. The PBC Conference included governance training, sessions on financial and record keeping obligations, PBC decision making, common challenges and ways to overcome them, achieving aspirations and information about NIAA funding arrangements. PBCs consulted by the Review reported that the training was useful and that it was helpful to establish relationships with other PBCs. However, some PBCs said that they felt the training was an inefficient use of PBC basic support funding and that they would prefer to receive the funding directly so they could decide how to use it.

NTSCORP advised that it provided significant support to PBCs, particularly with Future Acts, although some PBCs reported dissatisfaction with NTSCORP's services

NTSCORP advised the review that staff table FANs at PBC Directors' meetings each month, provide advice on the PBC's rights, collate Director comments and draft response letters. Staff also worked with the PBCs to develop a policy under section 60AB of the NTA so that PBCs could charge proponents for providing the response, which provided a source of income to recover costs.

For more independently operating PBCs, who wanted to respond to FANs themselves, NTSCORP advised that staff have assisted in creating template responses which could be adjusted for each notice and provide advice where ever requested to do so to assist with the PBC's response. NTSCORP staff also reported that they met with each PBC monthly and made reasonable efforts to communicate with PBCs between those meetings.

In contrast, some PBCs who engaged with the Review reported that at times NTSCORP would forward FANs to the PBCs without providing support to respond. These PBCs reported that without support, they struggled to respond. Other PBCs reported that NTSCORP often forwarded FANs very late, leaving PBCs with only a few days to respond. NTSCORP rejected these claims and maintained that it always supported PBCs to respond to FANs where they had procedural rights to do so. NTSCORP staff reported that over the Review period, NTSCORP increased the level of resources it dedicated to responding to Future Acts. As noted under TOR 1, there are also several active compensation claims on foot on behalf of PBCs. Staff reported that some PBCs expected NTSCORP to respond immediately and did not acknowledge that NTSCORP staff often needed time to review documents or seek out certain information to prepare a response. Nor that NTSCORP staff had several responsibilities and at times needed to prioritise other matters.

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

The Review understands no PBCs supported by NTSCORP received a formal intervention from ORIC (or other regulator) during the Review period. Two PBCs were put into administration prior to the Review period.

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

NTSCORP staff reported that PBCs in NSW have made limited progress toward self-sufficiency

NTSCORP staff explained that most PBCs in the RATSIB area are still a long way off self-sufficiency and relied on support from NTSCORP in some capacity. Staff reported that some PBCs still requested that NTSCORP provide support for very basic functions that could feasibly be managed internally, such as taking minutes at Directors' meetings. This lack of progress towards self-sufficiency in economic and governance domains can partly be attributed to the limited input of PBC Directors, discussed below, but it is also partly attributable to the lack of resources made available to support PBCs to become self-sufficient.

In response, the NIAA advised that PBC basic support funding could be used to hire staff, where those staff support the basic operational and compliance requirements for which the funding is provided – for example a part time office assistant who helps with the organising of a Board meeting or the annual general meeting, or administers Future Act paperwork for the PBC. The NIAA noted however that it is unlikely that the current level of basic support funding would support more than a part time or casual worker, if the funds were available.

In reporting these challenges, it is also important to note that several PBCs in the RATSIB area had successfully negotiated arrangements that provided economic benefits and were conducting operations to benefit their members. For example, one PBC operated a large hall that it rents out for local members of the community to host events and functions.

NTSCORP expressed reservations about the willingness of some PBC Directors to fully engage with their PBC

NTSCORP reported to the Review that some PBC Directors were not sufficiently involved in PBC matters to provide the level of oversight and support required of them. Staff felt that many PBC Directors were unwilling to commit to the responsibilities of the role for which they were elected and unwilling to conduct “unglamorous” PBC business. In some instances, this has resulted in PBC members turning to NTSCORP for advice or support, rather than to the Directors of the PBCs. NTSCORP staff reported that in the past (prior to the Review period), they tried to extract themselves from involvement with administrative and general business matters of the PBCs and only support PBCs in their core business, such as legal advice and compliance through reporting under the CATSI Act. However, these attempts have largely led to more work as the PBCs have struggled without the additional support. Staff expressed a desire for PBC Directors to allocate greater time and resources to conduct core PBC business, however they acknowledge that the PBCs are not resourced to do this and the work is done on a voluntary basis.

The significant demands of NTSCORP’s PBC and claim work limited its capacity to take a strategic approach to developing PBC capability

NTSCORP staff reported that the workload generated by PBCs was not sustainable within current operational funding limits. As more claims have been determined, PBC matters have taken an increasing proportion of staff resources, which NTSCORP reported had diverted key resources away from claims work. There was a high degree of complexity and conflict through many of the PBCs in the RATSIB area, which contributed to the high workload.

This increasing workload, together with NTSCORP’s continued progression of native title claims, had limited NTSCORP’s capacity to take a strategic approach to supporting PBCs toward self-sufficiency. NTSCORP staff and external commentators acknowledged that an absence of a strategic approach to supporting PBCs toward self-sufficiency was a shortcoming. NTSCORP had no plans to address this issue, citing funding constraints as a significant barrier.

Senior NTSCORP staff expressed a desire to create a PBC Support Unit, with staff members dedicated to providing PBCs with legal support, support to pursue economic opportunities and progress towards self-sufficiency. This would enable NTSCORP to improve its performance in this regard and alleviate the pressure placed on those lawyers who are focussed on progressing claim work. NTSCORP staff explained that this was becoming increasingly important with a growing number of PBCs in the RATSIB area.

NTSCORP staff commented that the organisation previously applied to the NIAA for additional funding to establish a PBC Support Unit with two dedicated lawyers, one dedicated anthropologist and one dedicated community facilitator, but that this application was not approved. The NIAA advised that it was not aware of any application for funding to establish a PBC Support Unit. While total funding bids at the commencement of new agreements can not necessarily be approved in full, the NIAA advised it had no evidence of such a bid.

NTRB-SPs progress in returning cultural materials to PBCs/RNTBCs and Traditional Owners

NTSCORP had an informal policy in place for the return of cultural materials

NTSCORP staff explained that NTSCORP’s policy regarding the return of cultural materials is to only return cultural materials where the whole claim group passes resolutions authorising NTSCORP to do so. When NTSCORP received a request to return cultural materials it asked the group to decide whether they would like to resume custody of the materials. The Review heard no complaints about NTSCORP’s approach to

returning cultural materials. Other NTRB-SPs are developing written policies that NTSCORP may be able to adopt.

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

NTSCORP did not have formal service agreements in place with PBCs in its region, which created a mismatch in expectations of the services that NTSCORP would provide to PBCs

The Review formed the view that the absence of formal service agreements outlining the support NTSCORP would provide to PBCs contributed significantly to a clear mismatch in expectations between NTSCORP and some PBCs. The PBC staff who engaged with the Review expressed a desire to have formal service agreements in place, to clarify the support that NTSCORP would provide. Similarly, NTSCORP staff also expressed a desire to have agreements in place with the PBCs it supported to establish clear expectations for the services it could provide.

NTSCORP reported that since the Review period it has started to explore the idea of entering into MOUs rather than formal service agreements with each PBC. While formal service agreements would specify which services would be provided, NTSCORP felt that MOUs would enable NTSCORP to adopt a more flexible approach, better tailored to the specific needs of each PBC. MOUs would provide clarity about the basic services that NTSCORP provides, fee for service arrangements for other services and guidance on costs that should be covered by proponents.

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

No service agreements have been negotiated between NTSCORP and the PBCs in its RATSIB area.

5.6.2 TOR 6: External factors

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

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

There are abundant economic opportunities in NSW and the ACT

The NTSCORP RATSIB area is considerably more economically advanced than other RATSIB areas in Australia. Most of the determinations of native title in the RATSIB area are along the east coast of NSW, which has a relatively high population and abundant economic opportunities. Only the Barkandji and Western Bundjalung determinations are inland from the coast. Opportunities exist for PBCs to capitalise on economic opportunities to progress toward self-sufficiency. However, for the most part, PBCs in NSW remain reliant on NTSCORP for support and funding.

The local government areas (LGAs) subject to a positive native title determination in NSW are relatively advantaged

Another determinant of the extent to which self-sufficiency is achievable is the socioeconomic profile of the RATSIB area. A summary of the socioeconomic and educational profile of the LGAs with land subject to a positive native title determination is provided in Table 18. A high Index of Relative Socioeconomic Disadvantage (IRSD) decile indicates the highest levels of socio-economic advantage. A high Index of

Education and Occupation (IEO) score indicates the highest levels of educational advantage. For both indices, ten is the highest decile and zero is the lowest.

Table 18 | IRSD and IEO scores for LGAs in the NTSCORP RATSIB area²³

LGA	PBC(s)	2021 IRSD decile	2021 IEO decile
Ballina Shire Council	Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) Widjabul Wia-bal Gurrumbil Aboriginal Corporation	8	8
Balranald Shire Council	Barkandji Native Title Group Aboriginal Corporation	4	3
Bellingen Shire Council	Gumbaynggirr Wenonah Head Aboriginal Corporation	6	6
Bourke Shire Council	Barkandji Native Title Group Aboriginal Corporation	3	8
Broken Hill City Council	Barkandji Native Title Group Aboriginal Corporation	2	2
Byron Shire Council	Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) Widjabul Wia-bal Gurrumbil Aboriginal Corporation	8	9
Central Darling Shire Council	Barkandji Native Title Group Aboriginal Corporation	1	5
Clarence Valley Council	Bandjalang Aboriginal Corporation Yaegl Traditional Owners Aboriginal Corporation Ngullingah Jugun (Our Country) Aboriginal Corporation	3	3
Cobar Shire Council	Barkandji Native Title Group Aboriginal Corporation	5	3
Glen Innes Severn Shire Council	Ngullingah Jugun (Our Country) Aboriginal Corporation	2	3
Kempsey Shire Council	Dunghutti Elders Council (Aboriginal Corporation)	2	2
Kyogle Council	Ngullingah Jugun (Our Country) Aboriginal Corporation Widjabul Wia-bal Gurrumbil Aboriginal Corporation	2	4

²³ Australian Bureau of Statistics. SEIFA by LGA. 2023. <https://www.abs.gov.au/statistics/people/people-and-communities/socio-economic-indexes-areas-seifa-australia/latest-release>

LGA	PBC(s)	2021 IRSD decile	2021 IEO decile
Lismore City Council	Bandjalang Aboriginal Corporation Widjabul Wia-bal Gurrumbil Aboriginal Corporation	5	7
Nambucca Valley Council	Gumbaynggirr Wenonah Head Aboriginal Corporation Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation	2	3
Richmond Valley Council	Bandjalang Aboriginal Corporation Ngullingah Jugun (Our Country) Aboriginal Corporation Widjabul Wia-bal Gurrumbil Aboriginal Corporation	2	1
Tenterfield Shire Council	Ngullingah Jugun (Our Country) Aboriginal Corporation	2	4
Tweed Shire Council	Widjabul Wia-bal Gurrumbil Aboriginal Corporation	6	7
Unincorporated Far West	Barkandji Native Title Group Aboriginal Corporation	9	8
Wentworth Shire Council	Barkandji Native Title Group Aboriginal Corporation	5	5

The areas in NSW subject to a positive determination of native title have relatively high levels of socio-economic advantage and educational advantage when compared with LGAs in other RATSIB areas. This is likely to make it relatively achievable for PBCs to become self-sufficient.

5.6.3 TOR 6: Recommendations

RECOMMENDATION

22

NTSCORP should develop and implement a publicly accessible policy that outlines the services it provides to PBCs. This document should be actively circulated to all PBCs and reviewed annually.

RECOMMENDATION

23

NTSCORP should implement formal service agreements or MOUs with PBCs as a matter of urgency to clarify the scope of support NTSCORP will provide PBCs.

RECOMMENDATION

24

NTSCORP should develop and implement a fee for service policy for PBCs so that there is clarity for PBCs about additional support that can be provided from NTSCORP and to cover circumstances where a third party should be covering PBC costs in responding to Future Acts.

RECOMMENDATION

25

NTSCORP should undertake the development of a strategic plan for PBC development in consultation with the PBCs and use this plan to make a case for funding to further develop PBC capability.

RECOMMENDATION

26

NTSCORP should review its processes to ensure that funding to be provided to PBCs is allocated without unreasonable delay.

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

Summary

As of June 30, 2022, NTSCORP's strategic planning for post-determination had not commenced and NTSCORP reported that it was not under consideration by the Board.

The majority of NTSCORP's resources were dedicated to progressing claim work and legal work for PBCs and NTSCORP staff expected claim work to continue for the next ten to 15 years. While NTSCORP senior staff understood the importance of planning for a post-determination environment, it was not a priority during the Review period.

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

NTSCORP did not have a strategy to prepare for the post-determination environment

NTSCORP had no strategic plan in place for the post-determination environment during the Review period. As a result, NTSCORP did not have key performance indicators for monitoring its progress towards a post-determination environment. This aligns with its focus on determinations during the Review period.

There were no dedicated staff positions focused on post-determination and post-determination considerations did not come before the Board during the Review period.

As discussed under TOR 1, NTSCORP pursued compensation claims on behalf of four PBCs through state legislation. This has provided PBCs opportunities to pursue economic development. NTSCORP staff reported that they have been involved in strategic conversation with the National Native Title Council regarding compensation claims for the future.

5.7.2 TOR 7: External factors

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

Progress towards a post-determination environment

A number of claims still need to be progressed in NSW

NTSCORP staff members commented that the organisation was focused on delivering native title claims as the most effective strategy to move toward a post-determination environment. NTSCORP staff expected claim work to continue for the next ten to 15 years.

5.7.3 TOR 7: Recommendations

RECOMMENDATION

27

NTSCORP should undertake strategic planning to define its role in the post-determination environment.

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 NTSCORP'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 NTSCORP 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 January 29 and throughout February 2024. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- over 30 Traditional Owners including:
 - clients who have been represented by NTSCORP (including members of PBCs)
 - potential clients in NTSCORP's RATSIB areas/people who have engaged private legal representation to register a claim in NTSCORP's RATSIB area
- the Federal Court of Australia
- the NIAA
- representatives of the NSW Government
- NTSCORP staff employed during the Review period.

Despite repeated attempts Nous were unable to secure an interview time with the Board and Directors have had no input into this report.

Appendix C Documents reviewed

Category	Description
Policies and procedures	NTSCORP Board Governance Responsibilities NTSCORP Chairperson Election Rules NTSCORP Complaints Policy NTSCORP Delegation Policy NTSCORP Directors Travel Policy NTSCORP Facilitation and Assistance Policy NTSCORP General Accounting Procedures NTSCORP Internal Review Policy NTSCORP Member Election Rules NTSCORP Member Election Rules NTSCORP Membership Involvement in Community Meetings NTSCORP Payments of Accounts Policy NTSCORP Purchasing Procedures NTSCORP Staff Conflicts of Interest Policy NTSCORP Standing Orders for Board Members
Cultural guidance	NTSCORP Statement of Cultural and Customary Concerns
Operational and performance documents	2021-22 NTSCORP Milestones Report 2020-21 NTSCORP Milestones Report 2019-20 NTSCORP Milestones Report 2022-23 NIAA IAS Performance Report NTSCORP 1 July 2022 – 31 December 2022 2021-22 NIAA IAS Performance Report NTSCORP 1 July 2021 – 31 December 2021
Financial documents	2021-22 NTSCORP Acquittal Report 2020-21 NTSCORP Acquittal Report 2019-20 NTSCORP Acquittal Report NTSCORP Annual Report 2020-21 NTSCORP 2020 Limited Financial Statement NTSCORP Financial Statement for Year Ended 20 June 2022 NTSCORP Incoming and Outgoing PBC Funding (1 July 2019 – 30 June 2022)
COVID-19 planning documents	NTSCORP COVID-19 Office Attendance Register NTSCORP COVID Safe Hygiene Marshall Duties NTSCORP COVID-19 Safety Plan NTSCORP COVID-19 Staff Communications (1 July 2019 – 30 June 2022) NTSCORP COVID Staff Direction NTSCORP COVID-19 Update March 2020
Other	NTSCORP Board of Directors Meeting Minutes (1 July 2019 – 30 June 2022) NTSCORP Organisational Chart NTSCORP Role Descriptions

Category	Description
	NTSCORP Strategic Plan 2011
	NTSCORP Strategic Plan 2024 – Final Draft for Board Approval

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 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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75

PRINCIPALS

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