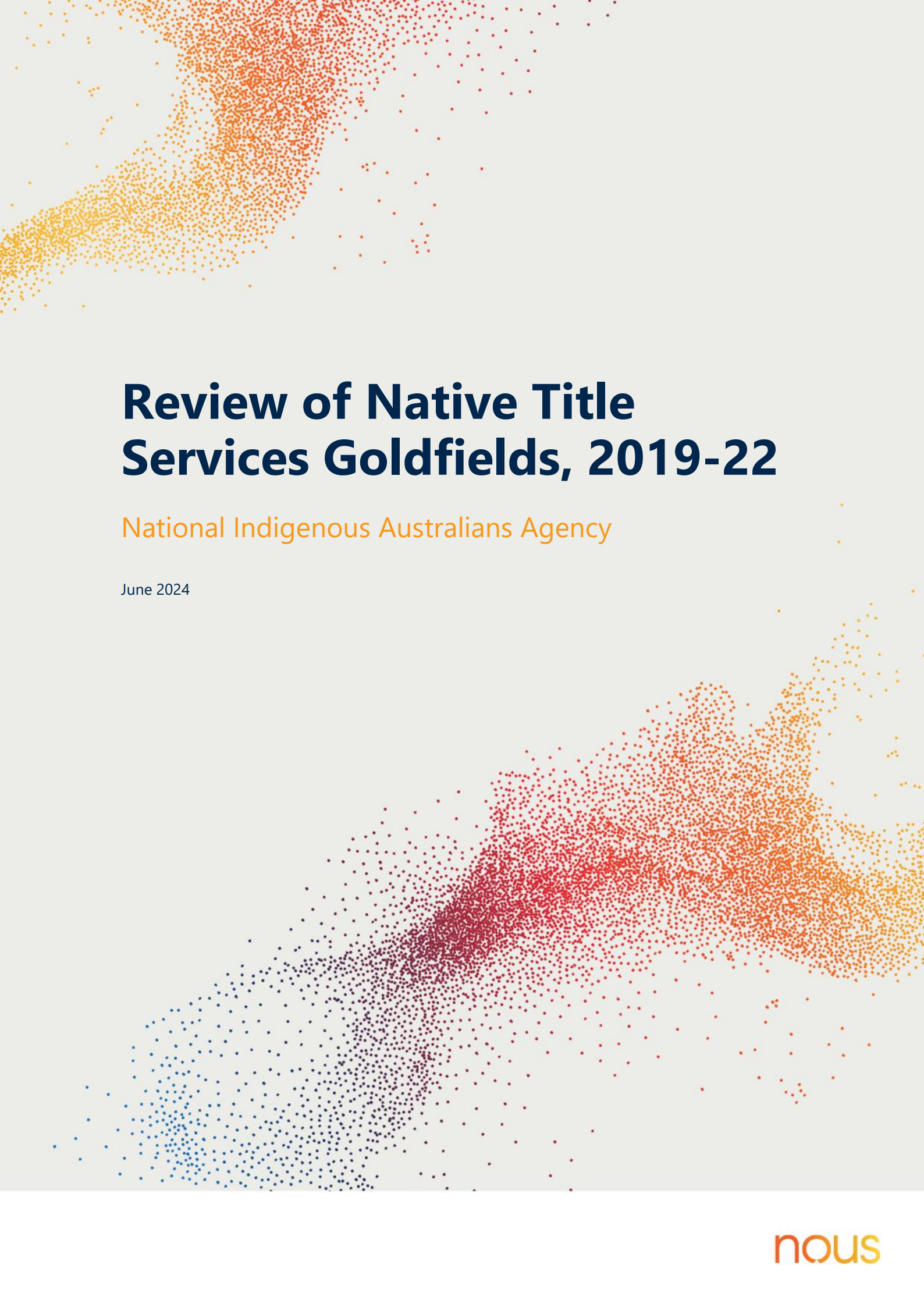




# **Review of Native Title Services Goldfields, 2019-22**

National Indigenous Australians Agency

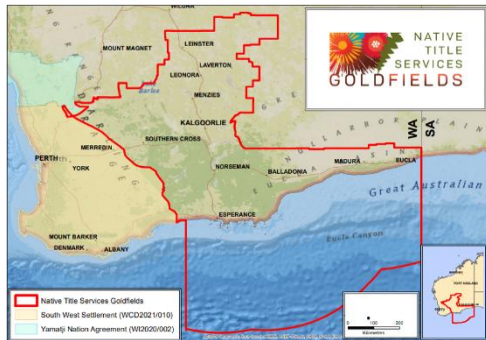
June 2024

## Contents

|            |                                                                                                                                                                                                                                                                 |    |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 1          | Profile of Native Title Services Goldfields .....                                                                                                                                                                                                               | 2  |
| 2          | Scope of the Review .....                                                                                                                                                                                                                                       | 4  |
| 3          | List of abbreviations.....                                                                                                                                                                                                                                      | 6  |
| 4          | Executive summary of performance and recommendations .....                                                                                                                                                                                                      | 8  |
| 5          | Performance assessment .....                                                                                                                                                                                                                                    | 13 |
| 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. ....                                       | 13 |
| 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. ....                              | 24 |
| 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..... | 29 |
| 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.....                                                                                            | 34 |
| 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.....                                                        | 39 |
| 5.6        | TOR 6   Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency.....                                                                                                                                     | 47 |
| 5.7        | TOR 7   Extent to which each organisation has developed its planning for a post-determination environment.....                                                                                                                                                  | 52 |
| Appendix A | Project Terms of Reference and performance indicators for individual reports .....                                                                                                                                                                              | 54 |
| Appendix B | Stakeholders consulted .....                                                                                                                                                                                                                                    | 57 |
| Appendix C | Documents reviewed .....                                                                                                                                                                                                                                        | 58 |
| Appendix D | Glossary .....                                                                                                                                                                                                                                                  | 60 |

# 1 Profile of Native Title Services Goldfields

**Native Title Services Goldfields (NTSG) provides native title services to the Goldfields region, with offices in Perth and Kalgoorlie**



NTSG was incorporated on 9 August 2019 and became the Native Title Service Provider (NTSP) for the Goldfields region on 27 November 2019, upon the signing of a funding agreement with the National Indigenous Australians Agency (NIAA). Prior to NTSG, the Goldfields Land and Sea Council (GLSC) had served as the Native Title Representative Body (NTRB) for the region until 1 July 2018. The NIAA withdrew funding to the GLSC from July 2019 and an interim service provider was appointed from then until the commencement of NTSG's funding agreement.

NTSG became the NTSP following a process through which the NIAA approached the market with a request for expressions of interest, seeking organisations who would be interested in providing native title services in the Goldfields. In response, the Board of Central Desert Native Title Services (CDNTS) submitted a proposal for the incorporation of a new company under the *Corporations Act 2001* (Cth) to provide native title services in the region. CDNTS is a long-time NTSP in the adjoining Central Desert Representative Aboriginal/Torres Strait Islander Body (RATSIB) area.

The Goldfields RATSIB area covers about 702,494 square kilometres of land and sea including about 364,032 square kilometres of land. The RATSIB area increased in 2022 when the South West Aboriginal Land and Sea Council (SWALSC) in the neighbouring RATSIB was recognised as the Central Services Corporation under the South West Indigenous Land Use Agreements (ILUAs).<sup>1</sup> As a result, the previous RATSIB area for SWALSC that was not included in the South West Settlement was amalgamated into the Goldfields RATSIB area.

The funding NTSG received from the NIAA between 1 July 2019 to 30 June 2022 (the Review period) varied. NTSG received about \$3.3 million in financial year (FY) 2019-20, \$5.2 million in FY2020-21 and \$4.3 million in FY2021-22.

NTSG is governed by a six-person Board comprising two non-Aboriginal Directors and four Aboriginal Directors who are Traditional Owners of the Goldfields region. During the Review period, the Board's two non-Aboriginal Directors (including the Board's chairperson) were also Board members of CDNTS. They ceased to be Board members of CDNTS after the end of the Review period.

At 30 June 2022, NTSG had 20 staff positions, of which 18 were filled, with four senior management positions: a Chief Executive Officer (CEO) and three divisional leads, including a Chief Operating Officer (COO), Principal Lawyer and Research Manager. NTSG used Desert Accounting and Business Support Pty Ltd (DABS), a subsidiary of CDNTS, for human resources (HR) and finance services. During the year after the Review period ended, NTSG employed a new CEO, a Traditional Owner of the Goldfields region, who was previously employed as NTSG's Senior Lawyer.

<sup>1</sup> The South West ILUAs are the most comprehensive native title agreements negotiated in Australian history. The settlement between the Noongar people and the Western Australian Government covers approximately 200,000 square kilometres of the south-west region.

Source: Western Australian Government, South West Native Title Settlement, 31 July 2023.

<https://www.wa.gov.au/organisation/departments/departments/south-west-native-title-settlement>

There have been four determinations of native title within the NTSG RATSIB area to date. During the Review period there were no determinations that native title exists. There was one determination that native title does not exist, in January 2021, reflecting the delivery of an ILUA. This determination related to an ILUA over the same country and does not reflect a failure of intent from NTSG. There were ten active claims in the RATSIB area at the end of the Review period, with NTSG being the solicitor for four of these claims. One of these claims was determined in July 2022 immediately following the Review period. NTSG was not the solicitor on record for this determination.

There were three Prescribed Body Corporates (PBCs) within the RATSIB area in June 2022, with one additional PBC established shortly after the Review period, in July 2022. NTSG had formal service agreements in place with all four of these PBCs. NTSG predominantly provided financial assistance to these PBCs, but it also provided Future Act support to two PBCs and governance support to one PBC.

NTSG is unusual in that it is a new organisation operating in a region with a complex and highly contested native title environment. As such it has inherited a range of claims, issues and perceptions of native title that are crucial in shaping its operating environment. Its predecessor, the GLSC, continues to function as a provider of Ranger programs. There are a range of loyalties and interests with the GLSC throughout the region and these further complicate the operating environment for NTSG. In addition to these issues, the anthropology of the area is very complex, as indicated by over 100 historical overlapping claims registered in the RATSIB area. One highly experienced anthropologist who has worked in the region commented that they had never worked in an area with similar complexity.

## 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 *Native Title Act 1993* (Cth) (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 Prescribed Body Corporates 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 ILUA, performance against milestones, budgetary performance and staffing. A list of the data and documents that informed the Review can be found at Appendix C.

The quantitative analysis was complemented by stakeholder interviews. As required by the NIAA, and in accordance with the TOR, this Review involved consultations with persons affected by the activities of each NTRB-SP, including Traditional Owners, PBCs, staff of the NTRB-SP, state governments, NIAA, the Federal Court and legal stakeholders. A list of the stakeholder consultations undertaken for this Review is set out in Appendix B.

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

## **Limitations**

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

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

Accordingly, Nous appreciates that the views of the consulted stakeholders may not be representative of the views of most 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   |
| AGM          | Annual general meeting                                |
| ATO          | Australian Taxation Office                            |
| CDNTS        | Central Desert Native Title Services                  |
| CEO          | Chief Executive Officer                               |
| COO          | Chief Operating Officer                               |
| DABS         | Desert Accounting and Business Support Pty Ltd        |
| FAN          | Future Act notification                               |
| FY           | Financial year                                        |
| GLSC         | Goldfields Land and Sea Council                       |
| HR           | Human resources                                       |
| IEO          | Index of Education and Occupation                     |
| ILUA         | Indigenous Land Use Agreement                         |
| LGA          | Local government area                                 |
| NIAA         | National Indigenous Australians Agency                |
| Nous         | Nous Group                                            |
| NTRB         | Native Title Representative Body                      |
| NTSG         | Native Title Services Goldfields                      |
| NTSP         | Native Title Service Provider                         |
| NTRB-SP      | Native Title Representative Body and Service Provider |
| ORIC         | Office of the Registrar of Indigenous Corporations    |
| PBC          | Prescribed Body Corporate                             |
| RATSIB       | Representative Aboriginal/Torres Strait Islander Body |
| RNTBC        | Registered native title bodies corporate              |
| SWALSC       | South West Aboriginal Land and Sea Council            |

| Abbreviation      | Meaning                            |
|-------------------|------------------------------------|
| The NTA           | <i>Native Title Act 1993</i> (Cth) |
| The Review period | 1 July 2019 to 30 June 2022        |
| TOR               | Terms of Reference                 |

## 4 Executive summary of performance and recommendations

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

### **TOR 1 | Extent to which each organisation has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19.**

The Goldfields region is particularly complex, with a significant number of overlapping claims, high levels of intra-Indigenous conflict, multiple pathways to recognise native title and legacy issues stemming from the previous NTRB – the GLSC.

Given NTSG's complex operating environment, it was difficult for NTSG to progress native title outcomes quickly and with the right people on the right claims during the Review period. The Review found that whilst NTSG's claims strategy produced native title outcomes more slowly, the strategy was reasonable, given the high levels of distrust and disengagement with native title in the community.

The funding provided to NTSG was relatively low among all the NTRB-SPs, particularly considering the complex nature of the region and the consultative approach required by its claims strategy. A lack of resourcing and difficulties with recruitment significantly limited achievement of native title outcomes.

During the Review period there was no new determination that native title exists in the NTSG RATSIB area. NTSG negotiated a consent determination in January 2021 that involved the surrender of native title in return for the establishment of an ILUA over the same country, representing a positive native title outcome for the claim group. NTSG made progress on native title claims and expected to have its first determination that native title exists occurring within two years after the Review period.

At the end of the Review period, NTSG was representing four active claims and provided funding and in-kind assistance to four other active claims. NTSG's activity over the Review period aligned with its strategy to focus on supporting claim groups that most accurately represented those with the relevant native title rights and interests. This was well supported by NTSG's legal team, who were highly experienced. This team faced resourcing challenges in meeting the native title needs of the RATSIB area.

NTSG's anthropological team was experienced but faced resourcing constraints that affected its ability to deliver its large workload. Additionally, NTSG's anthropological research was hindered by NTSG's lack of access to research conducted by its predecessor, GLSC. Traditional Owners expressed mixed satisfaction with NTSG's anthropological research. There was often a perception that consultation could be conducted more extensively with a broader range of Traditional Owners to improve the recording of who was on each claim group. NTSG staff commented that within the constraints of the resources available to them, they undertook as much consultation as possible, but they would have liked to undertake further consultation if additional resources were available.

During the Review period, NTSG supported one ILUA settlement. At the end of the Review period, about 14 per cent of claimable land within NTSG's RATSIB area was not subject to a registered claim or a determination.

NTSG was responsive to Future Act notification (FANs), with a total of 960 responses within the Review period.

#### RECOMMENDATION

1

NTSG should work with the NIAA to better match resources with the level of consultation required to efficiently progress claims based on more extensive engagement with those who may hold native title within the region.

#### RECOMMENDATION

2

NTSG should continue to prioritise the recruitment of a second anthropologist and fill the vacant legal position. If necessary, it should offer flexible support to help individuals reach the required capability.

### **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.**

NTSG prioritised claims and requests for assistance in line with its claims strategy and had guidelines to support its assessment and prioritisation of applications for assistance. However, a lack of understanding of these prioritisation practices by clients and potential clients contributed to a lack of trust in NTSG that was expressed by Traditional Owners and their representatives. This included a perceived lack of clarity about NTSG's role on claims in the region and why NTSG made decisions in relation to their claims. Improved communication with clients and potential clients would help these groups to better understand the decision-making process which determines the assistance NTSG provides to potential claimants.

NTSG has withdrawn from heritage clearance activity to prioritise progress on claims. This has also contributed to a lack of satisfaction with NTSG performance among constituents.

#### RECOMMENDATION

3

NTSG should provide better internal communications about the policies supporting its assessment and prioritisation process to improve staff understanding.

#### RECOMMENDATION

4

NTSG should clearly communicate its policy on requests for assistance in the region and the factors it considers when assessing applications for assistance. As part of this, NTSG should consider reviewing its guidelines for assessment and prioritisation to ensure that constituents can understand them better.

#### RECOMMENDATION

5

NTSG should publicly explain why it has decided to withdraw from heritage clearances, given stakeholders' dissatisfaction with this decision. If resources allow in the future, it could review whether it should again play a role in facilitating the provision of heritage clearances.

### **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.**

During the Review period, NTSG made significant efforts to ensure its engagement with Traditional Owners was respectful, transparent and culturally appropriate. This included engaging with Traditional

Owners through multiple communication channels, employing Aboriginal staff with strong knowledge of the region and providing training opportunities for culturally appropriate engagement.

However, Traditional Owners said that NTSG's communication could have been more transparent and that response times could have been faster. Additionally, both staff and Traditional Owners noted that conduct at claim group meetings could become heated and the safety of meeting participants could be improved.

NTSG had a clear policy that detailed the complaints and internal review process, which was publicly available on its website. The process of responding to complaints could be improved internally to increase Board awareness of complaints.

#### RECOMMENDATION

6

NTSG should provide additional channels of communication, increase the frequency of communication and be more responsive. This includes providing more avenues for Traditional Owners to directly provide feedback and ask questions of NTSG staff.

#### RECOMMENDATION

7

NTSG should more strongly communicate its behavioural expectations and consequences for breaching the code of conduct at meetings to further reduce the risk of conflict.

#### RECOMMENDATION

8

The Board should improve its awareness of the complaints process and its role within it, to deliver accountability to constituents.

### **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.**

NTSG was cost-effective in its operations, particularly given the high costs of operating in a large and complex region. NTSG's cost-saving actions included using shared services with DABS for HR and finance and renting a house in Kalgoorlie for ongoing staff accommodation.

Staff salaries were a significant expense for NTSG. However, these costs were necessary for NTSG to perform its activities effectively, particularly given the difficulties it faced in attracting and retaining skilled employees who were in high demand from the mining industry.

The use of consultants was relatively high; however, the Review considers that this was justifiable given NTSG's resourcing constraints relative to workload, occasions of conflicts of interest and need for specific expertise to support some instances of dispute resolution.

Although the size and remoteness of the RATSIB area contributed to higher costs for NTSG, the Review believes that NTSG had appropriate processes and policies in place for travel assistance and claim group meetings.

It was the opinion of the Review that both staff and financial resources of NTSG were fully stretched. Should there be pressure to achieve determinations more quickly it would need to be met with additional resources.

**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.**

There were clear delineations of roles, responsibilities and decision-making powers between NTSG's Board, Chairperson, CEO and senior staff. During the Review period, NTSG had a skills-based Board of Directors who performed their roles in a voluntary capacity. When NTSG was incorporated in 2019, three CDNTS Directors were appointed to the NTSG Board to guide its establishment. During the Review period, NTSG had two Directors who were also Directors of the CDNTS Board.

The Board provided stable strategic governance of NTSG, however, there was confusion among Traditional Owners about the Board's structure and the level of influence the Board had on NTSG's decision-making regarding individual claims. The skills-based composition of the Board and the recruitment of new Board members by existing Board members meant that there was no direct accountability back to the region. This generated significant frustration and distrust among constituents.

NTSG had well-established policies to manage conflicts of interest within the organisation, supporting the Board and staff to operate in an ethical manner. However, there was a strong perception from stakeholders within the Goldfields region that conflicts of interest were not handled appropriately. The perception included the notion that NTSG was "run by" CDNTS, that use of DABS confirmed this perception and that NTSG Board members who were also native title claimants exerted extensive influence on NTSG's claims strategy. Whilst the Review considers that NTSG operated appropriately with respect to managing conflicts of interest, this perception was a major barrier to building positive working relationships with stakeholders in the community.

NTSG's Values and Mission document outlined the organisation's key values, which support transparent, honest and respectful relationships with Traditional Owners to achieve the best outcomes for them. These values were reflected in NTSG's workplace culture, which staff praised as a hard-working and collaborative environment. Staff were supported to undertake relevant professional development opportunities, including skills-based and cultural awareness training. There is an opportunity to provide targeted mentoring and training for the new CEO who was appointed after the Review period.

Staff turnover was relatively low but increased over the Review period. A major challenge for NTSG was attracting experienced candidates in a highly competitive market, particularly into the legal and anthropological teams.

**RECOMMENDATION**

9

NTSG should publish its conflicts of interest policies on the website and clearly communicate its adherence to these policies. This could include a targeted communications piece in plain language sent out to Traditional Owners that clearly outlines NTSG's commitment to its conflict of interest policies and the separation of the Board from operational decisions about claims.

**RECOMMENDATION**

10

NTSG should seek assistance from the NIAA for a targeted training and mentoring program to support the new CEO in their role.

**RECOMMENDATION****11**

NTSG should consider creating an advisory structure that provides a forum for input and feedback from the grass roots.

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

NTSG had formal service agreements in place with all four PBCs in the region (one of these PBCs was formed shortly after the Review period). NTSG provided limited support to PBCs across the RATSIB area during the Review period. NTSG predominantly provided this support in the form of financial assistance, passing on the funding received from the NIAA to PBCs in the region. NTSG also provided some support through organising the annual general meetings (AGMs) for one PBC and providing support with FANs to two PBCs.

PBCs consulted as part of the Review were relatively satisfied with the level of support they received from NTSG. However, a group of stakeholders expressed dissatisfaction at the governance structure and conduct of one of the PBCs and NTSG's lack of response to their concerns. NTSG noted that they did not currently have the role or the resources to provide any more intensive level of support to PBCs. Nevertheless, stakeholders noted that they would like NTSG to provide additional PBC support, such as support with dispute resolution and capacity building.

During the Review period NTSG started to develop a policy to support the return of cultural materials to PBCs and Traditional Owners but lacked the internal capacity to finalise and implement the policy. Additionally, since the Review period NTSG has started the process of compiling GLSC's previous research materials into an online information system. Once finalised, this will support NTSG to return these materials in the future.

**RECOMMENDATION****12**

NTSG should finalise its policy to return cultural materials to PBCs and Traditional Owners once it has more internal capacity in its anthropological and legal teams.

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

At the end of the Review period, NTSG had not yet commenced strategic planning for a post-determination environment. Its focus was, appropriately, on establishing the organisation and achieving native title outcomes.

NTSG could consider how it can best support PBCs in a post-determination environment in the near future once more claims in the region have been determined.

**RECOMMENDATION****13**

Over the next 18 months the NTSG Board should commence strategic planning to explore NTSG's role in a post-determination environment. This includes considering NTSG's role in supporting PBCs once the claims load is more manageable.

## 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

The Goldfields region is particularly complex, with a significant number of overlapping claims, high levels of intra-Indigenous conflict, multiple pathways to recognise native title and legacy issues stemming from the previous NTRB – the GLSC.

Given NTSG's complex operating environment, it was difficult for NTSG to progress native title outcomes quickly and with the right people on the right claims during the Review period. The Review found that whilst NTSG's claims strategy produced native title outcomes more slowly, the strategy was reasonable, given the high levels of distrust and disengagement with native title in the community.

The funding provided to NTSG was relatively low among all the NTRB-SPs, particularly considering the complex nature of the region and the consultative approach required by its claims strategy. A lack of resourcing and difficulties with recruitment significantly limited achievement of native title outcomes.

During the Review period there was no new determination that native title exists in the NTSG RATSIB area. NTSG negotiated a consent determination in January 2021 that involved the surrender of native title in return for the establishment of an ILUA over the same country, representing a positive native title outcome for the claim group. NTSG made progress on native title claims and expected to have its first determination that native title exists occurring within two years after the Review period.

At the end of the Review period, NTSG was representing four active claims and provided funding and in-kind assistance to four other active claims. NTSG's activity over the Review period aligned with its strategy to focus on supporting claim groups that most accurately represented those with the relevant native title rights and interests. This was well supported by NTSG's legal team, who were highly experienced. This team faced resourcing challenges in meeting the native title needs of the RATSIB area.

NTSG's anthropological team was experienced but faced resourcing constraints that affected its ability to deliver its large workload. Additionally, NTSG's anthropological research was hindered by NTSG's lack of access to research conducted by its predecessor, GLSC. Traditional Owners expressed mixed satisfaction with NTSG's anthropological research. There was often a perception that consultation could be conducted more extensively with a broader range of Traditional Owners to improve the recording of who was on each claim group. NTSG staff commented that within the constraints of the resources available to them, they undertook as much consultation as possible, but they would have liked to undertake further consultation if additional resources were available.

During the Review period, NTSG supported one ILUA settlement. At the end of the Review period, about 14 per cent of claimable land within NTSG's RATSIB area was not subject to a registered claim or a determination.

NTSG was responsive to FANs, with a total of 960 responses within the Review period.

### 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

##### **NTSG progressed a number of native title claims, but made limited progress in native title determinations during the Review period**

During the Review period, NTSG represented no claims resulting in a determination of native title. NTSG represented one claim resulting in a determination of no native title (this involved the surrender of native title in return for the establishment of an ILUA over the same country).

NTSG's key activities during the Review period included:

- three native title claims filed, with a total of four native title claims in progress at 30 June 2022 (details are in Table 1)
- one ILUA resulting in surrender of native title (the same claim that resulted in a determination of no native title).

**Table 1 | Summary of current active claims represented by NTSG as at the end of the Review period**

| Claim           | Federal Court file number | Date filed | Status commentary                                                                                                                                                                                 |
|-----------------|---------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nyalpa Pirniku  | WAD91/2019                | 12/02/2019 | Claim in negotiations with the Western Australian Government towards a consent determination, which NTSG anticipated occurring in 2023. Claim filed before the Review period (not filed by NTSG). |
| Kakarra Part A  | WAD297/2020               | 16/12/2020 | Claim in mediation with the Western Australian Government. Claimed filed during the Review period.                                                                                                |
| Ngadju Mia Wamu | WAD180/2021               | 09/08/2021 | Claim filed during the FY2021-22 reporting period and registered by the National Native Title Tribunal. Claim filed during the Review period.                                                     |
| Payarri People  | WAD56/2022                | 23/03/2022 | NTSG assisted with research, community engagement and filing the claim. Claim filed during the Review period.                                                                                     |

In addition to the claims NTSG directly represented, NTSG provided funding and in-kind assistance to four other claims during the Review period, identified in Table 2. For these claims, NTSG exercised its other functions including its facilitation, assistance and dispute resolution functions. NTSG also provided grants of funding to Indigenous respondents within the region during the Review period to help them obtain legal representation and/or commission anthropological research.

**Table 2 | Summary of claims where NTSG provided funding and in-kind assistance during the Review period<sup>2</sup>**

| Claim             | Federal Court file number | Date filed | Status commentary                                                                        |
|-------------------|---------------------------|------------|------------------------------------------------------------------------------------------|
| Marlinyu Ghoorlie | WAD647/2017               | 22/12/2017 | NTSG provided facilitation and assistance support, and further anthropological research. |
| Darlot            | WAD142/2018               | 10/04/2018 | NTSG provided facilitation and assistance support.                                       |
| Waturta           | WAD297/2018               | 02/07/2018 | NTSG provided mediation assistance and further research.                                 |
| Tjalkadjara       | WAD597/2018               | 17/12/2018 | NTSG provided mediation assistance and further research.                                 |

### **NTSG’s claims strategy was focused on the guiding principle of “right people, right Country”, in alignment with its claims strategy over the Review period**

NTSG’s claims strategy during the Review period, as articulated in its FY2021-22 annual report, focused on “engaging with constituents to develop relationships to better understand how it can assist in securing recognition of native title for all the right people for Country throughout the region.” This claims strategy was reinforced through consultation with staff. The support provided by NTSG focused on claims to resolve native title and include all the right people for Country, within the scope of NTSG’s resources, responsibilities and operational plan.

NTSG adopted a flexible approach to providing support. The Review considers that this was appropriate, particularly given the high level of complexity and intra-Indigenous conflict in the region. Therefore, NTSG provided support through directly representing claims or providing other assistance and support to claim groups who it did not represent. It is important to note that the abundance of overlapping claims in the region impeded NTSG’s capacity to represent a large number of claims without encountering conflicts of interest or perceptions of conflicts of interest. NTSG provided considerable funds to support third parties in cases where there were possible conflicts of interest.

Given NTSG’s complex operating environment, the Review considers that its claims strategy was reasonable and consistent with its efforts to provide assistance in various ways, not limited to the representation of claims.

NTSG adopted a consultative and evidence-based approach to maximise the accuracy and functionality of claim groups, which aligned to its claims strategy. This strategy could be significantly time-consuming due to the intensity of intra-Indigenous conflict between Traditional Owners. This contributed to the fact that there were no determinations that native title exists represented by NTSG during the Review period.

### **NTSG’s legal team was knowledgeable and experienced**

NTSG’s senior lawyers were experienced in native title and the team overall was knowledgeable and hard-working. However, towards the end of the Review period NTSG’s legal team was small and stretched by a large claim load, which negatively affected the level of supervision junior lawyers received. One external stakeholder suggested that the legal team could have improved the way in which it progressed some native title claims and that some of the legal team were “too junior”. Despite this concern, most stakeholders found that the work of NTSG’s legal team was generally of good quality, particularly given the team’s stretched capacity and challenges in recruiting additional experienced lawyers.

<sup>2</sup> There have been significant developments since the Review period for two claims. In the year after the Review period, NTSG began representing the Tjalkadjara claim, and provided facilitation and assistance support to the Karrajibbin claim.

## **Traditional Owners had a mixed level of satisfaction with NTSG's delivery of native title outcomes**

Traditional Owner consultations indicated a mixed level of satisfaction with NTSG during the Review period. Many Traditional Owners expressed frustration that incorrect individuals were involved in many of the claims, or that claims were not inclusive of all people that should be on the claim. Stakeholders expressed a preference for broader consultation with family groups to give people more opportunities to express their views and assert their position on claim groups. Some participants reflected that NTSG was trying to do the right thing in talking to people about who should be on claim groups, but they thought there was still work to do in this space.

Both Traditional Owners and NTSG staff noted a large proportion of people likely to have native title rights and interests were disengaged from native title matters due to the history of complexity, intra-family conflict and past difficulties in achieving determinations of native title in the region. Many Traditional Owners consulted reflected that the history of disputation and distress over native title claims in the region made it very hard for NTSG to re-visit the issues that have driven the concerns over claim group composition both within and between claim groups.

Despite some of the mixed views from Traditional Owners, there was a consensus view of excitement and relief following the appointment of NTSG's new CEO, which occurred approximately one year after the Review period. Traditional Owners expressed satisfaction in the new CEO being an Indigenous person with a strong understanding of the region. Their positive past interactions with her, notably in her previous role as NTSG's Senior Lawyer, contributed to their satisfaction.

Traditional Owners' perspectives on the performance of NTSG were significantly coloured by their concerns regarding NTSG's governance. These are covered under TOR 5.

## **Anthropological research**

### **NTSG's research team was competent and well-supported but faced resourcing challenges**

During the Review period, NTSG's anthropological team was led by a Research Manager and consisted of two Senior Anthropologists (one position vacant at the end of the Review period), one Research Assistant, one Community Relations Officer and one Information Scanning Officer. Effectively this meant that two anthropologists carried the research workload. External anthropologists consulted for the Review noted that they perceived NTSG's anthropologists to be highly experienced and knowledgeable, and that NTSG's anthropology function performed well.

During the Review period, the team had a large workload. At 30 June 2022, the team was focussed on three claim areas based in the northern and eastern areas of the NTSG RATSIB area to determine who the potential native title claimants were for these areas. The Review understands that this workload was particularly difficult due to the region's complexities, which made it more difficult and time-consuming to produce claim groups with all the right people. Furthermore, NTSG staff have noted that since one of the Senior Anthropologists left the organisation, there have been difficulties in recruiting another Senior Anthropologist with the capabilities needed for the role, even with NTSG's willingness to provide flexible support to help individuals reach the required capability.

NTSG used external anthropologists where required, such as when NTSG staff lacked capacity or were conflicted through their support for an opposing party. However, NTSG also noted a lack of anthropologist capacity amongst external consultants, which contributed to the large workload of NTSG's anthropologists. The Review understands that these factors have made it challenging for NTSG to conduct anthropology functions in an effective and timely manner.

### **Consulting more broadly could help NTSG to include the right people on the right claims**

As mentioned previously, there was a widespread perception amongst Traditional Owners that proposed claim groups in the region did not include all the right people, and/or included people without a valid claim for inclusion. Both staff and Traditional Owners acknowledged that additional consultation would assist in remedying this issue. The barriers to conducting additional consultation were lack of internal capacity at NTSG and levels of disengagement among some Traditional Owners, meaning that some were not prepared to participate.

Furthermore, staff noted that the quicker pace at which the Western Australian Government currently aims to progress native title claims, combined with short deadlines determined by the Federal Court, could limit the opportunity to consult more widely.

### **The efficiency of NTSG's anthropological research was impacted by a lack of access to previous research materials**

NTSG started its research program in response to requests from claim groups seeking help with filing native title claims. NTSG requested access to the research compiled by GLSC from GLSC and Grant Thornton (the interim service provider for the Goldfields region) during its establishment period. However, NTSG did not have access to this research until mid to late 2021, when it began receiving parts of these materials. As a result of this lack of access, NTSG had to conduct its research from scratch. This led to an inefficient use of NTSG's limited resources and dissatisfaction among Traditional Owners due to repeated consultation.

By the end of the Review period, NTSG had received a significant number of documents generated by GLSC. These documents were provided in a shipping container and were not organised in a coherent manner. It has therefore taken a long time to get value from the documents. After the Review period, NTSG employed an Information Scanning Officer on a temporary contract (to March 2024) to help with organising these documents and systematically recording them in an online information system. Once completed, this will support NTSG's anthropological research more efficiently.

### **NTSG had a structured peer review process in place to assure the quality of work done by external anthropologists**

NTSG established a process for assessing the quality of research and reports done by external anthropologists. When work was briefed out to external anthropologists, a peer review was usually conducted by NTSG's Research Manager or Senior Anthropologist. This review process involved the use of a pro forma document with specific questions for the reviewer to complete prior to the work being finalised and published. This pro forma document was implemented by NTSG's Research Manager during the Review period. The Review believed that this peer review process was a simple and effective way to quality assure the work of external anthropologists, but staff noted there could be difficulties in peer reviewing documents due to external consultants working within tight timeframes.

## **Future Acts and ILUAs**

### **A large number of FANs were received in the Goldfields region**

A large number of FANs were received in the Goldfields region during the Review period. The number varied significantly over time, as outlined in Table 3. NTSG increased its response to Future Acts as a proportion of total notices received in each specific financial year. Responses rose from approximately ten per cent of notices received in the FY2019-20 to 91 per cent in FY2020-21. This was a significant achievement.

**Table 3 | NTSG FAN data for the Review period<sup>3</sup>**

| Financial year | FANs received in the Goldfields region | Responses to Future Acts by NTSG (total number) | Responses to Future Acts by NTSG (per cent) |
|----------------|----------------------------------------|-------------------------------------------------|---------------------------------------------|
| 2019-20        | 785                                    | 78                                              | 10%                                         |
| 2020-21        | 1,426                                  | 624                                             | 44%                                         |
| 2021-22        | 282                                    | 258                                             | 91%                                         |

NTSG employed two staff members who dedicated their time to Future Acts: a Future Acts Officer and a Future Acts Advocate. These staff members prepared monthly reports on the agreements they had prepared and provided those to applicants when they met with them. They also maintained a database to track the matters they completed. As mentioned under TOR 6, NTSG provided some in-kind Future Act support to two of the PBCs in the region. However, most PBCs in the region were relatively self-sufficient, so significant Future Act support was not required.

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

#### **NTSG supported one ILUA settlement during the Review period and no determinations of native title**

During the Review period, NTSG filed two new claims and supported one ILUA settlement resulting in surrender of native title. The detail of the successfully negotiated ILUA is outlined in Table 4. While NTSG did support the development of ILUAs as part of its functions, negotiating ILUAs has not been a high priority due to a low demand.

**Table 4 | Summary of the ILUA registered during the Review period<sup>4</sup>**

| ILUA name             | ILUA type      | Subject matter          | Date registered |
|-----------------------|----------------|-------------------------|-----------------|
| Mirning People Part B | Area Agreement | Native Title Settlement | 18/05/2021      |

There were no claims resulting in a determination of native title during the Review period. Nevertheless, the Review considers that through its wide range of claim work which progressed claims towards determination, that NTSG achieved positive native title outcomes during the Review period, especially considering NTSG's complex operating environment.

The Review notes that NTSG expected to achieve at least one determination of native title in the two years after the Review period (for the Nyalpa Pirniku claim).

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

NTSG has only used brief out arrangements where necessary. Brief out arrangements occurred when NTSG staff lacked capacity or were conflicted through their support for an opposing party. This happened

<sup>3</sup> NTSG Annual Reports 2019-20, 2020-21, 2021-22.

<sup>4</sup> National Native Title Tribunal Register of Indigenous Land Use Agreements.

relatively frequently due to the complexity of NTSG's claims profile and placed a considerable strain on the NTSG budget.

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

About 14 per cent of the claimable land within the NTSG RATSIB area was not subject to a registered claim or a determination. The NTSG RATSIB area covers about 702,494 square kilometres, with 364,032 square kilometres of land and the rest sea. The total land area subject to a registered claim or native title determination at the time of the Review was about 311,720 square kilometres or 86 per cent of NTSG's total land coverage.

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

The length of time to determine the Mirning Part B claim was 19.9 years, noting that this claim was filed by GLSC and not NTSG. The average length of determined claims was not applicable as NTSG only represented one determination during the Review period (associated with an ILUA that involved surrender of native title).

The Federal Court has set a claim resolution target of five years for all claims lodged since 2011. For claims lodged before 2011, this target was ten years.<sup>5</sup> The length of time to determine the Mirning Part B claim (lodged before 2011 by GLSC) was significantly higher than the target of ten years. However, this was not indicative of NTSG's performance, as the claim was carried by GLSC for about 17 years. This measure will be more applicable to NTSG once it has had more determined applications.

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

During the Review period, NTSG did not submit any applications for native title compensation. This aligned with its strategy of focusing on native title claims on as-yet unclaimed land. The Review considers that this was an appropriate strategy in this context.

## **5.1.2 TOR 1: External factors**

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

### **State government policy and legislation**

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

The Western Australian Government's position was to achieve consent determinations for the state, with an increased willingness to progress native title claims more quickly under Closing the Gap priorities and the Western Australian Implementation Plan.<sup>6</sup> This stance has evolved from the historically adversarial approach taken by the Western Australian Government.

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<sup>5</sup> Justice Berna Collier. Prioritisation of Native Title Cases in the Federal Court of Australia. 2011. Accessed 20 September 2023. <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-collier/Collier-J-20110527.rtf>

<sup>6</sup> Western Australian Government, Closing the Gap WA Implementation Plan, 2021. <https://www.wa.gov.au/government/publications/wa-government-closing-the-gap-implementation-plan-2023-2025>

NTSG staff noted that whilst the Western Australian Government currently has a positive attitude towards native title, the demand for a quicker pace to produce native title outcomes created challenges for NTSG. This included placing pressure on NTSG to balance its responsibility to produce the right claims with the right people within shorter timeframes. Staff noted that this could lead to consultation and research not being conducted as extensively as NTSG would like, which contributed to Traditional Owner dissatisfaction. Additionally, staff noted that the Western Australian Government’s positive attitude towards achieving consent determinations could lead to less time being available to resolve intramural disputes.

### State legislation has had some impact on native title land determinations

Within Western Australia’s context, a range of state legislation was directly or adjacently related to NTSG’s native title activities, as outlined in Table 5.

Table 5 | Relevant Western Australian legislation

| Legislation                                       | Overview                                                                                                                                                                                                                                                                                                                                                                                                | Impact                                                                                                                                                                                                          |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> | There has been significant commentary on the Western Australian <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> . In response, the Western Australian Government has decided to repeal the <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> (despite it only coming into effect on 1 July 2023) and revert to the previously repealed <i>Aboriginal Heritage Act 1972 (WA)</i> with some amendments. | <b>Low</b> – The re-design and subsequent repeal of the <i>Aboriginal Cultural Heritage Act 2021</i> was not mentioned as a factor that impacted upon NTSG’s interactions with constituents.                    |
| <i>Mining Act 1978 (WA)</i>                       | The Western Australian Government asserts that the expedited procedure applies to all exploration tenement applications lodged under the <i>Mining Act 1978 (WA)</i> , such as Exploration and Prospecting Licenses.                                                                                                                                                                                    | <b>Moderate</b> – Western Australian Government policies around expedited procedure impose some pressures on NTSG but do not substantially act as a barrier to achieving outcomes for its native title parties. |

### Complexity of remaining claims

#### The high complexity of remaining claims has required additional effort from NTSG

Staff and expert external stakeholders noted that complexity in the Goldfields region was higher than other regions, with one staff member highlighting there were over 100 historical overlapping claims in the region. The cultural system in the Western Desert region has contributed to this, with affiliation structures and large ranges of country meaning that there are multiple pathways to recognition of native title for constituents. Additionally, the history of colonisation and settlement within the region has led to disputes between Traditional Owners over aspects of genealogies and the right to ownership of Country. The notable level and intensity of intra-Indigenous conflict within and between family groups was a significant cause of delay in the determinations of native title, a perception which was reinforced through staff interviews and survey responses. The complexity of the remaining claims was expected to require additional efforts from NTSG in its legal and anthropology activities, including community engagement and research.

“I’ve never encountered so much difficulty in those negotiations (in the Goldfields region) between people themselves, and between you as an anthropologist trying to deal with people and understand their sense of belonging.”

External anthropologist

## History of previous claims

### **Past determinations and the significant length of time to determine previous claims contributed to Traditional Owner dissatisfaction**

The Wongatha claim was a previous native title claim in the GLSC RATSIB area that was dismissed in 2007 by the Federal Court. The case was dismissed on the basis that it did not sufficiently comply with section 61 of the NTA (regarding authorisation) and that it was not evident that the applicants were members of the native title claim group. Following the dismissal of the Wongatha claim, many Traditional Owners chose to pursue smaller claims, which has contributed to the high level of intra-Indigenous conflict to date in the region. Staff noted that there was still a level of mistrust stemming from the legacy of Wongatha, as Traditional Owners had doubts regarding the ability of NTRB-SPs to achieve native title outcomes.

The length of time between registering and determining the previous claims in the region from GLSC was significant, averaging 15 years. Additionally, GLSC did not file any claims between 2011 and 2018. These legacy issues inherited from GLSC contributed to significant distrust of NTRB-SPs in the region in fulfilling their duties and contributed to negative perceptions of NTSG since its establishment. As a result, NTSG has had to put a significant amount of effort into both distinguishing itself from GLSC and CDNTS and explaining why it was established. For example, NTSG has taken time at claim meetings and information sessions to educate attendees on native title and the role NTSG has in supporting native title outcomes.

## Complexity of land use and tenure

### **Due to the complexity of land use and tenure in the region, there have been different perspectives regarding who has the right to native title**

Staff and expert external stakeholders noted that the Goldfields region was particularly complex. In parts of this region, there are multiple systems of traditional law and custom. Within one of those systems there are multiple pathways to recognition, with the result that there are frequent disagreements between Traditional Owners regarding who holds rights to specific land and the delineation of claim boundaries. As a result, there has been a high degree of complexity for NTSG staff in producing timely native title outcomes with the right people on the right claims, particularly in a region where broad levels of consultation are needed.

Conflict between claim groups has been increased by the extensive mining interests in the area and the potential for financial benefits and other income. The historical filing of poorly constructed claims that in effect operated to promote one family group's interests over another have also had an effect.

Finally, the history of colonisation and migration of people within the Goldfields region has added to complexity and disputation.

## COVID-19

### **COVID-19 hindered NTSG at a crucial point in its establishment, but NTSG has made efforts to adapt to these challenges**

NTSG's commencement as the NTRB-SP of the region in November 2019 was significantly impacted by COVID-19 from early 2020. This occurred at a critical time when NTSG needed to make people aware that it was the new service provider for the region, develop relationships with constituents and distinguish itself from GLSC and CDNTS. This presented significant challenges in building strong relationships with constituents in line with NTSG's claims strategy. In addition, NTSG lost contact with some Traditional Owners due to difficulties in maintaining stable channels of communication (such as a consistent mobile phone number or home address). COVID-19 also slowed NTSG's progress on native title claims, with

delays in holding claim meetings and an inability to use external anthropologists from interstate to support its work.

To address these challenges, NTSG implemented a number of policies to be responsive to mandated government requirements and allow staff to safely engage with Traditional Owners. These included a:

- **Vaccination Policy** to protect staff against and raise awareness of infection hazards in the workplace
- **Communicable Disease Policy** to mitigate the risk and spread of disease within the workplace
- **COVID-19 Policy** to protect, to the extent possible, employees and the clients they come into contact with from acquiring and transmitting COVID-19
- **COVID-19 Mandatory Vaccination Policy** to provide a clear understanding of the mandated COVID-19 vaccination requirements for all employees of NTSG.

### Amount of funding

#### NTSG’s achievement of native title rights and interests was constrained by lack of funding

Material presented above shows the extreme complexity of achieving native title rights and interests in the NTSG RATSIB area. Given this operating environment each claim needs significant resources to be viable.

As the financial service provider for NTSG, DABS indicated that NTSG had demonstrated value for money. However, many stakeholders consulted for the Review believed that a lack of funding has hindered NTSG’s ability to achieve native title outcomes. This included senior and junior NTSG staff members, native title claimants receiving legal and anthropological services, and PBC directors receiving support services. These stakeholders believed that given the remoteness and complexity of the Goldfields region, the lack of funding limited NTSG’s ability to conduct sufficient consultation activities, recruit and retain skilled candidates, and ultimately progress native title claims.

NTSG received \$12.4 million from the NIAA during the Review period (excluding PBC support). Table 6 outlines NTSG’s funding relative to its RATSIB area.

**Table 6 | NTSG’s total funding from the NIAA relative to factors of interest**

| Factor of interest (denominator)                                  | Ratio                        |
|-------------------------------------------------------------------|------------------------------|
| NTSG’s total land and sea area: 702,494 square kilometres         | \$17.65 per square kilometre |
| NTSG’s total land and land waters area: 375,960 square kilometres | \$32.99 per square kilometre |

Though the funding provided to NTSG was relatively low among all the NTRB-SPs, on the measures available to the Review, NTSG’s funding relative to area appears broadly in line with other NTRB-SPs. However, the Review considers that the amount of funding has had a moderate to high impact on NTSG’s ability to achieve native title outcomes for clients.

### 5.1.3 TOR 1: Recommendations

#### RECOMMENDATION

1

NTSG should work with the NIAA to better match resources with the level of consultation required to efficiently progress claims based on more extensive engagement with those who may hold native title within the region.

#### RECOMMENDATION

2

NTSG should continue to prioritise the recruitment of a second anthropologist and fill the vacant legal position. If necessary, it should offer flexible support to help individuals reach the required capability.

## 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

NTSG prioritised claims and requests for assistance in line with its claims strategy and had guidelines to support its assessment and prioritisation of applications for assistance. However, a lack of understanding of these prioritisation practices by clients and potential clients contributed to a lack of trust in NTSG that was expressed by Traditional Owners and their representatives. This included a perceived lack of clarity about NTSG's role on claims in the region and why NTSG made decisions in relation to their claims. Improved communication with clients and potential clients would help these groups to better understand the decision-making process which determines the assistance NTSG provides to potential claimants.

NTSG has withdrawn from heritage clearance activity to prioritise progress on claims. This has also contributed to a lack of satisfaction with NTSG performance among constituents.

### 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

##### **NTSG prioritised applications based on the quality of research and resulting claim groups**

One of NTSG's first tasks after its establishment in 2019 was to decide which claims to pursue. It made decisions based on an assessment of the likelihood of success. Since NTSG's commencement, the prioritisation of applications for assistance was based on the quality of research available and was dependent on which groups approached NTSG for assistance, subject to resourcing capacity. Where NTSG could not provide support, either due to a lack of resourcing capacity or involvement in a conflicting claim, NTSG communicated with clients to understand if other services were needed to deliver quality native title outcomes, such as mediation or funding for external representation.

The Review considers that NTSG's prioritisation of applications was conducted reasonably given the complexity of the region, and that it aligns with NTSG's claims strategy. NTSG showed flexibility through offering both direct and indirect support, depending on circumstances.

##### **NTSG had a clear, documented process to assess applications**

During the Review period NTSG had clear guidelines for assessing applications for assistance. This documentation included its:

- **Guidelines for Assessing Applications for Assistance** – used to assess applications for a determination of native title
- **Facilitation and Assistance Requests Policy** – used to assess a request from a constituent for NTSG to perform its facilitation and assistance functions.

Both documents provided clear instructions for staff members on how they should process relevant applications. This allowed NTSG to assess applications in a consistent manner, provided an objective procedure for decisions and created accountable decision-making.

One external stakeholder noted their perception that NTSG provided assistance to any Traditional Owners in the region without considering the strength of their claim. This perception stemmed from NTSG's claims strategy to provide broad support to Traditional Owners in the region to create claim groups that include the right people. This stakeholder believed that this could potentially result in unsuccessful claims.

The Review acknowledged this possibility but considered that NTSG's approach was appropriate. This position was based on feedback from Traditional Owners that reflected extensive disputation regarding claim groups leading to significant dissatisfaction with determined claims. The Review received extensive feedback that some groups within existing claims believed they did not receive their native title rights and interests because of the way in which PBCs were functioning to exclude some groups that were perceived as being wrongly included in the claim group. This feedback reinforced the merit of NTSG's approach to consult widely to get the right people onto claims.

### **Staff expressed mixed familiarity with the assessment and prioritisation process**

While management expressed a clear understanding of NTSG's assessment and prioritisation process, not all NTSG staff had the same understanding: the staff survey identified responses ranging from "not familiar at all" to "extremely familiar" with the policies supporting this process. The Review considered that policies supporting this process and how they related to NTSG's overall prioritisation of activities could be better publicised internally to increase staff knowledge. The Review noted that not all staff needed to understand the process to the same extent as those involved in the actual assessment process. However, all staff should understand that people can make applications for assistance, where the forms are and where they should direct those wishing to make an application. They should also be able to explain NTSG decisions to stakeholders.

## **Client and potential client awareness of the process**

### **Stakeholders had a limited understanding of NTSG's assessment and prioritisation process**

Traditional Owners expressed a relatively strong understanding of the native title system and a growing understanding of how to make applications for assistance. Additionally, some Traditional Owners noted they understood NTSG's focus on driving native title outcomes and appreciated the progress made (in contrast to earlier history with GLSC).

Whilst NTSG staff noted that the reasoning behind its responses to applications were provided once applications were determined, some Traditional Owners felt that decisions were not made in a transparent manner and that they did not understand the reasons why decisions were made, particularly for potential clients who did not receive assistance. They also

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*"Sometimes it feels like decisions are made behind closed doors."*

Traditional Owner

noted that decision times for their applications could vary significantly with limited explanation. This was particularly noted where NTSG provided support very late or after a period of not providing assistance. Traditional Owners also reported a lack of regular updates and communication during the decision-making process, noting it could take weeks or months for them to receive a response from NTSG staff.

### **NTSG should make clear to clients and potential clients the factors that contribute to their assessment of applications**

NTSG's senior staff members indicated that the prioritisation process was predominantly communicated to clients and potential clients verbally in meetings. Whilst NTSG had clear documents in place outlining the process for clients and potential clients to submit an application, NTSG could consider reviewing the guidelines to ensure they can be more readily understood by constituents. This would support clients and potential clients to clearly understand why decisions were made and it would complement the existing efforts NTSG has made to foster transparency in its engagements.

### **NTSG's role as part of native title claims was sometimes misunderstood by clients and potential clients**

NTSG's strategy focused on identifying persons who may hold native title in particular areas. As part of this approach, NTSG joined claims as a respondent during the Review period, with the aim of producing claims that were sufficiently inclusive. However, some clients and potential clients interpreted this as NTSG being less supportive in achieving native title outcomes, as this could slow down the progress of the claim.

Furthermore, some clients and potential clients believed that NTSG was prioritising Western Desert constituents in their native title activity, particularly in cases where they had joined claims as a respondent. The Review understands that NTSG also joined as a respondent to numerous claims brought on a Western Desert basis, but that this perception created challenges for NTSG and distrust among some constituents.

The Review believed NTSG's actions were justified, as they aligned with its claims strategy to achieve native title claims with the right people, which was more likely to deliver sustained achievements of rights and interests due to lower levels of dispute within the determined claim group. To reduce the level of distrust among Traditional Owners, effective communication regarding NTSG's role in claims and the reasoning behind it is important.

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

#### **Traditional Owners expressed mixed satisfaction with the prioritisation process and the outcomes from their applications for assistance**

Traditional Owners consulted during the Review expressed varying levels of satisfaction with the prioritisation and assessment of claims in the region. Some felt that there were acceptable outcomes, but most were unhappy. The Review acknowledges that people were far more likely to engage with the Review if they were unhappy or dissatisfied.

The lack of visible native title outcomes in the region contributed to the dissatisfaction expressed by most of those who engaged with the Review. This was partly a legacy issue of the Goldfields region. Additionally, many Traditional Owners said they were unhappy with the outcome of who was on each of the claims in the Goldfields region. There was a widespread perception that claim groups included people without valid claims and excluded people with valid claims. There was widespread unease at a small number of Traditional Owners who were included on multiple claims. This unease was widespread across all NTRB-SPs and could be compounded by the history of Western Desert people's usage of the area, which entitled their inclusion in multiple claim groups.

Dissatisfaction and distrust also stemmed from a view that NTSG's consultation was not conducted broadly enough, leading to a smaller number of Traditional Owners having a stronger contribution to decision making about who was on each claim.

As noted elsewhere, only a small minority of Traditional Owners came forward to speak with the Review.

### **Traditional Owners from some PBCs were not satisfied with the conduct of heritage clearances**

Consultation indicated a widespread perception that heritage clearances<sup>7</sup> were being conducted by a small group of people who did not have extensive knowledge of the country on which they were conducting clearances. There was a perception that this has resulted in inaccurate clearances and increases the risk of damaging sites.

This issue contributed to dissatisfaction with NTSG, as constituents wanted support to make sure the right people were resourced to conduct clearances. The Review understands that NTSG previously operated heritage services in the region; however, during the Review period it did not have the resources to conduct clearances while managing a large claims related workload. Staff noted that this contributed to Traditional Owners' dissatisfaction. Staff also noted that they continued to inform Traditional Owners that they were only involved in the compliance issues related to heritage surveys and not the heritage clearances themselves. Importantly, staff also noted that many Traditional Owners did not want NTSG to be conducting heritage surveys as they believed NTSG were assuming control over heritage business and thus removing a potential income source. When NTSG has the resources to broaden its focus from claim matters, it could consider whether it should again play a role in facilitating the provision of heritage clearances.

## **5.2.2 TOR 2: External factors**

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

### **Number of claims relative to NTRB-SP size and resourcing**

During the Review period there was no determination of native title in the NTSG RATSIB area (one claim resulted in the establishment of an ILUA). Accordingly, an average cost per claim is not applicable. The complexity of the Goldfields region meant that each claim was, and continues to be, relatively more expensive to conduct than in other regions, as there were higher costs associated with the broad consultation required, as well as more resources used for mediation and dispute resolution. Additionally, NTSG has had to compete with the well-resourced mining industry for staff and accommodation.

## **5.2.3 TOR 2: Recommendations**

### **RECOMMENDATION**

3

NTSG should provide better internal communications about the policies supporting its assessment and prioritisation process to improve staff understanding.

### **RECOMMENDATION**

4

NTSG should clearly communicate its policy on requests for assistance in the region and the factors it considers when assessing applications for assistance. As part of this, NTSG should consider reviewing its guidelines for assessment and prioritisation to ensure that constituents can understand them better.

<sup>7</sup> The Review understands that heritage service delivery is not a statutory function for NTRB-SPs and that NTSG is not funded for it, but that it was a key point that contributed to Traditional Owner satisfaction.

## RECOMMENDATION

5

NTSG should publicly explain why it has decided to withdraw from heritage clearances, given stakeholders' dissatisfaction with this decision. If resources allow in the future, it could review whether it should again play a role in facilitating the provision of heritage clearances.

## 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

During the Review period, NTSG made significant efforts to ensure its engagement with Traditional Owners was respectful, transparent and culturally appropriate. This included engaging with Traditional Owners through multiple communication channels, employing Aboriginal staff with strong knowledge of the region and providing training opportunities for culturally appropriate engagement.

However, Traditional Owners said that NTSG's communication could have been more transparent and that response times could have been faster. Additionally, both staff and Traditional Owners noted that conduct at claim group meetings could become heated and the safety of meeting participants could be improved.

NTSG had a clear policy that detailed the complaints and internal review process, which was publicly available on its website. The process of responding to complaints could be improved internally to increase Board awareness of complaints.

### 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

##### **NTSG made strong efforts to engage with Traditional Owners in a respectful and transparent manner**

NTSG's staff noted that in line with NTSG's claims strategy they made concerted efforts to build relationships with Traditional Owners in the region and to remain as a neutral party. As mentioned under TOR 5, NTSG's strategic plan highlighted the organisation's values as being "honest and transparent", conducting itself with "dignity, self-respect and humility" and aiming to "build and maintain strong relationships". This was a particular focus at NTSG's commencement, where staff noted their approach has been to build strong relationships with Traditional Owners in the region. Their efforts included openly talking about the challenges faced by Traditional Owners and emphasising the functions NTSG has as a service provider to support these challenges, in addition to upholding the confidentiality and privacy of clients. Staff noted there were challenges in building relationships at the establishment of NTSG due to distrust of NTRB-SPs which was partly created by the previous incumbent, but that Traditional Owners had since developed a more positive rapport with NTSG and its staff over time, particularly near the end of the Review period.

"We have such a good team, they are young but very experienced. These people are very driven, ethical and focused on what constituents want."

NTSG senior staff member

This approach was communicated by NTSG in its values statements (outlined in more detail under TOR 4) and in its annual reports. An example of NTSG's neutrality was an instance noted by a senior staff member where at a claim group meeting with a lot of in-fighting between claim group members, NTSG stepped out of the meeting so the claim group could decide internally whether it wanted to proceed with the

claim. This was also evidenced by staff consulted for the Review who shared the opinion that a key strength of NTSG was its team, who were committed to achieving native title outcomes and building strong relationships with Traditional Owners whilst remaining impartial.

To build strong relationships with Traditional Owners, NTSG used several different communication channels. This included:

- **Ongoing community information and consultation meetings** associated with research projects, claim group meetings and ad-hoc discussions with families and individuals.
- **Biannual regional community information and consultation meetings**, held in Kalgoorlie, to provide general updates to Traditional Owners on the progress of native title claims and NTSG's activities in the Goldfields region. This also acted as a platform for Traditional Owners to raise concerns directly with NTSG's staff. NTSG noted that attendance at these meetings was typically around 40 people and was slowly building.
- **Social media pages**, which provided another avenue for NTSG to provide updates on meetings or other communication with individuals.
- **General communication channels** including email and phone.

### **While some Traditional Owners praised NTSG's engagement efforts, others felt there could be more transparency and faster response times**

Several Traditional Owners consulted during the Review noted that they understood that NTSG was making efforts to engage as best it could with the community to produce native title outcomes, particularly given the complex nature of the region. However, some Traditional Owners said they would have liked more transparency in relation to the native title activities and NTSG's role in facilitating native title outcomes, rather than explanations of the concept of native title. As this information was most often provided at the biannual regional community information and consultation meetings, this information could be difficult to access for those who could not afford to travel for these meetings.

Additionally, many Traditional Owners expressed frustration about their inability to get in touch with NTSG. They noted that they would often receive no response, wait many weeks until they received a response or were told staff were "too busy" to contact them. Traditional Owners also noted that when trying to contact NTSG staff in person, office doors were locked. This reinforced their perception that it was very difficult to contact NTSG staff. The Review understands that NTSG kept office doors locked in accordance with work health and safety obligations to take reasonable measures to ensure staff safety, following a number of security incidents. The Review also understands that the large workload of staff and NTSG's inability to attract more staff has contributed to slow response times.

### **There was sometimes a high level of conflict between Traditional Owners in meetings, which could create an unsafe environment for staff and meeting participants**

During the Review period, the level of conflict in the Goldfields region often resulted in heated and disruptive meetings, which could sometimes become violent. This contributed to a lack of trust among Traditional Owners in the native title process. NTSG staff noted this as a key issue that affected the safety of staff and meeting participants and impacted the productivity of meetings.

To help address this issue, NTSG should explore the use of alternative communication channels such as social media that are separate from large in-person meetings. NTSG acknowledged this and was taking steps to address this issue by continuing to establish clear expectations of behaviour for all participants at meetings and communicating the agreed consequences of unacceptable conduct, such as a temporary ban on in-person meeting attendance. NTSG also implemented a practice of using security staff for certain meetings that it anticipated would be highly contentious.

### **NTSG's communications and engagement activities could be updated to support their ongoing engagement, but the organisation had limited capacity to do so during the Review period**

NTSG's communications and engagement activities were intended to detail how NTSG should engage with Traditional Owners in the region, both through what its staff communicate and the channels through which they do so. NTSG noted that a communications and engagement strategy could improve engagement with Traditional Owners. However, the Community Relations Officer who led the development of this strategy had very limited capacity. Additionally, NTSG had limited funding to recruit another employee to support NTSG's communications function. The Review understood that NTSG updated its organisational structure after the Review period to establish an Aboriginal Community Engagement Specialist, which was a new role that would support this function.

### **Culturally appropriate engagement**

#### **NTSG has implemented strong structures and processes to support culturally appropriate engagement**

NTSG provided culturally appropriate engagement by employing Aboriginal staff who had strong ties to communities in the Goldfields region. During the Review period, NTSG employed an Aboriginal Liaison Officer to provide cultural guidance and expertise on the communities and issues in the region. After the Review period, NTSG adapted this role to create two new Aboriginal-identified Cultural Counsel roles – one male and one female – to provide more culturally appropriate engagement with stakeholders. The previous Aboriginal Liaison Officer transferred to the women's position, while the men's position was in the process of being filled during this report's development. The Aboriginal Community Engagement Specialist role, referred to above, would further support NTSG in its community engagement. The employment of Aboriginal people from the region has helped NTSG develop these culturally appropriate engagement approaches.

Unfortunately, in stakeholder consultation during the Review there was a perception that these roles gave preferential treatment to the families of the incumbents. This needs to be acknowledged as a perception, and the NTSG should provide evidence that it deals fairly with all groups.

During the Review period NTSG gave staff formal and informal training opportunities to develop their cultural competency. NTSG ran an on-Country workshop at Morapoi Station, facilitated by an NTSG constituent and cultural educator. All staff completed a two-day Aboriginal and Torres Strait Islander Mental Health First Aid training in the year after the Review period and several staff have subsequently become accredited Mental Health First Aiders. Where the budget permitted, the NTSG provided opportunities for staff to attend culturally relevant events to enhance staff members' knowledge of Aboriginal people. Furthermore, NTSG's anthropological team frequently shared insights about the region's background and history with the rest of the team to complement their understanding of the area. The Review notes that most members of the NTSG team were highly experienced and have worked in native title for extended periods.

In addition, NTSG's Leave Policy supported the culturally appropriate engagement of internal staff. The policy entitled Aboriginal and Torres Strait Islander staff to take up to ten days of paid leave per year to attend Aboriginal ceremonies required by customary or traditional law. NTSG's anthropologists also make efforts to accommodate sorry business and other community events when engaging with claimants, shifting and delaying meetings as needed.

NTSG's efforts to conduct culturally appropriate engagement were supported by the results of the staff survey. Nearly all survey respondents indicated they felt NTSG was "very well" or "well" run and that NTSG performs "extremely well" when it comes to behaving in a culturally safe way towards both Traditional Owners and employees.

### **There was a perception from some Traditional Owners that consultation was rushed**

Whilst NTSG built close relationships with Traditional Owners through its culturally appropriate engagement, some Traditional Owners expressed concerns about consultation processes being rushed at times. They reported instances where staff did not have sufficient time to thoroughly listen to their concerns as well as a lack of responsiveness from staff. This issue was also reflected in the lack of broad consultation with Traditional Owners, as mentioned under TOR 1.

## **Complaints**

### **NTSG had a clear Compliments, Complaints and Suggestions Procedure published on its website**

NTSG had a Compliments, Complaints and Suggestions Procedure on its website, alongside a contact form for stakeholders to make a complaint. This procedure clearly outlined the process NTSG follows when it responds to a complaint. Most Traditional Owners indicated that they understood how to make a complaint to NTSG.

### **NTSG received six complaints during the Review period**

During the Review period, most complaints related to Traditional Owners' dissatisfaction regarding the inclusion of appropriate individuals in native title claims. This included opinions that the wrong people were part of claim groups, or that claim groups did not include all the people they should.

Although the complaints procedure provided a clear outline for managing and resolving complaints, it was unclear whether complaints were consistently raised with NTSG's Board. This was evident in consultations for the Review, where some of NTSG's Board members indicated they were unaware of any complaints made during the Review period or the process for escalating complaints.

It is important that the Board is fully informed about complaints and the complaints process and that it can effectively communicate this to external stakeholders to promote trust in NTSG.

## **Internal review**

### **NTSG conducted no internal reviews from a request over the Review period**

NTSG was responsible for providing and publicising a process for native title holders to request an internal review of decision-making undertaken by NTSG under the NTA.<sup>8</sup> NTSG's internal review process was publicly available on its website, outlined clearly in NTSG's Compliments, Complaints and Suggestions Procedure. NTSG also had an operational policy that clearly outlined the process for conducting an internal review.

During the Review period NTSG received no internal review requests.

## **Use of cultural materials**

### **NTSG used cultural materials appropriately and has made efforts to organise the current materials they have**

NTSG has a range of obligations relating to archiving records as a commitment to understand, create and manage the records of its activities. The National Archives of Australia has supported the indefinite freeze on the destruction of Commonwealth records which might be of assistance in Indigenous family reunions

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<sup>8</sup> Section 203BI of the NTA.

and records relating to stolen wages.<sup>9</sup> NTSG operated ethically in obtaining and retaining consent for the use of materials. Staff made efforts to catalogue all the research documents obtained from GLSC, with the aim of returning materials to the appropriate Traditional Owners. They also exercised strong diligence when it came to other cultural materials, with the legal team being conscious of only using materials for the purpose with which they were created.

As aforementioned, NTSG struggled in the Review period to obtain and retain use of cultural materials, as it was unable to access the materials developed by GLSC until mid to late 2021. Staff noted this led to somewhat disorganised management of NTSG's current cultural materials. This was being improved in the post-Review period.

### **Clients had varying levels of trust in NTSG's use of cultural materials**

Traditional Owners involved in the Review conveyed a lack of trust in the research that had been used by NTSG. This sentiment was echoed by numerous Traditional Owners who had compiled their own genealogy reports and other evidence to support their native title claims. This has stemmed from the perception that a number of claims in the region did not include the right people as part of the claim group. While it may not fully address the perception of improperly constituted claim groups, there is an opportunity for NTSG to clearly explain its role in the collection, use and distribution of cultural materials.

Some Traditional Owners also expressed dissatisfaction that the material they originally provided to GLSC was not made available and that they had to deliver all the information again. While this was not NTSG's fault, it contributed to some people's perception that native title was not well managed in the region.

## **5.3.2 TOR 3: External factors**

No external factors have been identified for TOR 3.

## **5.3.3 TOR 3: Recommendations**

### **RECOMMENDATION**

6

NTSG should provide additional channels of communication, increase the frequency of communication and be more responsive. This includes providing more avenues for Traditional Owners to directly provide feedback and ask questions of NTSG staff.

### **RECOMMENDATION**

7

NTSG should more strongly communicate its behavioural expectations and consequences for breaching the code of conduct at meetings to further reduce the risk of conflict.

### **RECOMMENDATION**

8

The Board should improve its awareness of the complaints process and its role within it, to deliver accountability to constituents.

<sup>9</sup> National Archives of Australia. 2009. Records affecting the rights and entitlements of Aboriginal and Torres Strait Islander people. <https://www.naa.gov.au/information-management/disposing-information/disposal-freezes-and-retention-notices/records-affecting-rights-and-entitlements-aboriginal-and-torres-strait-islander-people>

## 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

NTSG was cost-effective in its operations, particularly given the high costs of operating in a large and complex region. NTSG's cost-saving actions included using shared services with DABS for HR and finance and renting a house in Kalgoorlie for ongoing staff accommodation.

Staff salaries were a significant expense for NTSG. However, these costs were necessary for NTSG to perform its activities effectively, particularly given the difficulties it faced in attracting and retaining skilled employees who were in high demand from the mining industry.

The use of consultants was relatively high; however, the Review considers that this was justifiable given NTSG's resourcing constraints relative to workload, occasions of conflicts of interest and need for specific expertise to support some instances of dispute resolution.

Although the size and remoteness of the RATSIB area contributed to higher costs for NTSG, the Review believes that NTSG had appropriate processes and policies in place for travel assistance and claim group meetings.

It is the opinion of the Review that both staff and financial resources of NTSG were fully stretched. Should there be pressure to achieve determinations more quickly it would need to be met with additional resources.

### 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**

#### Total funding for NTSG varied over the Review period

The annual base funding received from the NIAA increased from FY2019-20 to FY2020-21, and remained steady in FY2021-22, as shown in Table 7. The NIAA provided \$811,893 funding additional to the base agreement in FY2020-21, but it did not provide additional funding in the other financial years. NTSG did not receive funding for PBC support in FY2019-20, but it was provided funding for this from FY2020-21 onwards.

Table 7 | NTSG income FY2019-20 to FY2021-22

| Funding             | FY2019-20   | FY2020-21   | FY2021-22   |
|---------------------|-------------|-------------|-------------|
| Base agreement      | \$3,311,241 | \$4,114,000 | \$4,114,000 |
| PBC support funding | -           | \$227,000   | \$227,000   |
| Additional funding  |             | \$861,893   |             |

| Funding             | FY2019-20   | FY2020-21   | FY2021-22   |
|---------------------|-------------|-------------|-------------|
| Total <sup>10</sup> | \$3,311,241 | \$5,202,893 | \$4,341,000 |

### Total expenditure and breakdown of expenditure fluctuated over the Review period

Consultation with DABS, NTSG's financial provider, indicated that NTSG's delivery of native title outcomes was relatively cost-effective, particularly given it received relatively low levels of funding considering the complexity of the region's native title affairs. The relative breakdown of native title expenditure and key line items fluctuated across the Review period. The relatively low total native title expenditure of approximately \$2.3 million in FY2019-20 could be partly attributed to the impact of COVID-19, which hindered consultation and research engagements, as well as NTSG being in the early stages of its establishment. This was evidenced by the relatively low expenditure on project salaries compared to later financial years.

**Table 8 | NTSG expenses during the review period<sup>11</sup>**

| Expense categories                                                                                                               | FY2019-20               | FY2020-21   | FY2021-22   |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------|-------------|-------------|
| Total expenditure on native title <sup>12</sup>                                                                                  | \$2,294,654             | \$4,412,943 | \$3,492,252 |
| Total expenditure on salaries (legal, anthropological, corporate)                                                                | \$971,820               | \$1,951,514 | \$2,012,704 |
| Expenditure on project salaries (legal, anthropological)                                                                         | \$592,811               | \$1,401,382 | \$1,453,895 |
| Expenditure on corporate salaries (including cost of key management personal acquitted to the native title function of the NTRB) | \$379,009 <sup>13</sup> | \$353,536   | \$352,069   |
| Expenditure on salaries acquitted to native title (CEO)                                                                          |                         | \$196,596   | \$206,740   |
| Total expenditure on external consultants (not attributed to meetings)                                                           | \$205,185               | \$711,552   | \$312,900   |
| Total expenditure on meetings (travel, venue hire, fares, consultants)                                                           | \$57,072                | \$185,668   | \$149,058   |
| Claimants (meetings)                                                                                                             | \$4,960                 | -           | -           |
| Claimants (travel)                                                                                                               | \$17,271                | \$62,241    | \$54,577    |
| Venue hire                                                                                                                       | -                       | -           | \$25,474    |
| Staff (travel) – attributable to native title                                                                                    | \$34,841                | \$71,503    | \$50,260    |
| Fares                                                                                                                            | -                       | \$45,666    | \$5,052     |
| Consultants                                                                                                                      | -                       | \$6,258     | \$13,695    |
| Total other expenses                                                                                                             | \$17,392                | \$238,363   | \$241,291   |

<sup>10</sup> Total funding consists of base agreement, PBC support, mid-year, unforeseen litigation and any other additional funding approved and paid during the financial year.

<sup>11</sup> Financial data provided by NTSG for the Review, 2023.

<sup>12</sup> Note that only key line items have been included as part of this breakdown, so total expenditure does not equate to the sum of all line items.

<sup>13</sup> Data provided did not clearly delineate between corporate and CEO salaries, so they have been combined.

| Expense categories                                                                               | FY2019-20 | FY2020-21 | FY2021-22 |
|--------------------------------------------------------------------------------------------------|-----------|-----------|-----------|
| Motor vehicles (including maintenance) (project vehicles only – corporate vehicles not included) | \$17,392  | \$15,066  | \$20,291  |
| Expenditure on PBC support funding <sup>14</sup>                                                 | -         | \$223,297 | \$221,000 |

In each year of the Review period staff salaries accounted for the majority of NTSG's expenses. This was expected given the difficulties NTSG faced recruiting and retaining suitably qualified staff, particularly lawyers and anthropologists with professional native title expertise. One staff member noted that NTSG remunerated its lawyers and anthropologists slightly higher than some other NTRB-SPs but still had difficulty filling vacancies. The Review understands that salaries will remain a relatively high expense for NTSG as it recruits more staff to support increased consultation and research activities.

### Cost-saving actions, strategies and/or discussions

#### **NTSG was cost-effective through its leveraging of shared services with CDNTS**

NTSG was set up by CDNTS. This helped NTSG to leverage the efficiencies of another already established NTRB-SP. As part of this set up, NTSG shared the DABS services with CDNTS. DABS provided HR and finance functions to a number of organisations in the Central Desert region, including both NTSG and CDNTS. Using DABS for these functions was identified as a cost-saving strategy for NTSG in its establishment, as it was cheaper than retaining these functions in-house. In the period after the Review, NTSG still lacked the capacity to operate its HR and finance functions in-house.

Using DABS had the disadvantage of reinforcing constituents' perceptions that NTSG was not an independent entity that only sought to represent them. The Review noted that NTSG was aware that this was a consequence of the decision to use CDNTS-related services.

#### **NTSG recently enhanced its cost-effectiveness by renting a house in Kalgoorlie for its staff**

In the period after the Review, NTSG adopted a cost-effective measure by renting accommodation in Kalgoorlie for Perth-based staff who frequently travel to the region. This made it simpler for NTSG to organise accommodation in Kalgoorlie, particularly for short-notice trips, which could be challenging and expensive in a mining town like Kalgoorlie. Furthermore, this ongoing accommodation in Kalgoorlie allowed NTSG's Logistics Officer to allocate more time to other tasks.

### Appropriate processes for claim group meetings

#### **Claim group meeting processes were appropriate, despite the cost drivers associated with the Goldfields region**

The size and remoteness of the NTSG RATSIB area contributed to high costs for meetings, including travel and catering costs. This was noted by DABS and senior staff. The Review believes this was an unavoidable cost for NTSG. Staff feedback indicated that claim group meetings were generally productive and achieved what they set out to do, supporting the effective use of time and resources.

Additionally, NTSG staff mentioned that frequent sorry business necessitated changes (often delays) to meeting times. The Review understands that while delays to meetings created extra costs, this was necessary to allow NTSG to engage in a culturally appropriate way with Traditional Owners.

<sup>14</sup> PBC support was not provided by NTSG in FY2019-20.

## Annual yearly expenditure per claimant group

NTSG's costs for claim group meetings often fluctuated depending on the location of Traditional Owners, the size of claim groups, the number of participants and the nature of the meeting. Costs for claim group meetings were lower in FY2019-20 due to COVID-19, where fewer in-person meetings could be held. Costs increased in FY2020-21 and remained relatively stable in FY2021-22, as outlined in Table 9.

**Table 9 | Meeting costs for NTSG's native title function over the Review period**

| Expense category                                                                                                               | FY2019-20 | FY2020-21 | FY2021-22 |
|--------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|-----------|
| Total expenditure on meetings (travel, venue hire, fares, consultants) – refer to Table 8 for detailed line items for meetings | \$57,072  | \$185,668 | \$149,058 |

## Travel assistance policies for claim group meetings

### **NTSG had a well-documented and appropriate travel assistance policy, but it could be misunderstood by Traditional Owners**

NTSG offered travel assistance to members of a claim group to attend claim group meetings through a travel allowance. This travel allowance was paid per vehicle rather than per person, which could cause confusion for Traditional Owners. This allowance was clearly documented in the NTSG Travel Assistance Policy, outlined on the NTSG website. NTSG did not provide a travel allowance for all meetings, such as information sessions, which staff noted was due to a lack of funding. This contributed to some Traditional Owners not attending.

Additionally, one NTSG staff member noted that travel for claim group meetings was a significant expense and suggested that it could be more cost-effective to facilitate pooled transport options (that is, NTSG directly hires buses for Traditional Owners). However, the Review understands that clients in the region preferred to travel in a car of their own choosing rather than a pooled transport option. This also promoted a safer environment due to the intra-Indigenous conflict that exists within the Goldfields region. Therefore, the Review believes NTSG's travel assistance policy was reasonable in supporting meeting attendance.

## Appropriate rationale for use of external consultants

### **NTSG appropriately used external consultants when it had limited capacity, could not work on a conflicting claim or to support dispute resolution**

The average yearly cost of external consultants over the Review period was \$408,879, as outlined in Table 10. The NTSG Board and staff noted that NTSG faced resourcing constraints relative to the organisation's current workload. This has been compounded since the Review period, when NTSG had vacant Senior Lawyer and Senior Anthropologist positions that they were not able to fill. NTSG's consulting costs increased significantly from \$205,185 in FY2019-20 to \$711,552 in FY2020-21. These costs reduced by approximately 56 per cent to \$312,900 in FY2021-22.

**Table 10 | Expenditure on external consultants during the Review period**

| FY2019-20 | FY2020-21 | FY2021-22 | Average yearly cost for the review period |
|-----------|-----------|-----------|-------------------------------------------|
| \$205,185 | \$711,552 | \$312,900 | \$408,879                                 |

Although external consultant expenditure was a significant cost during the Review period, particularly in FY2020-21, the Review considers that the use of consultants was justifiable given both the difficulties NTSG experienced recruiting and retaining staff and the pressure on NTSG to achieve native title outcomes in relatively short timeframes. NTSG staff noted that external consultants were often required due to the number of overlapping claims in the region, which could create conflicts of interest for NTSG staff. Additionally, the complicated nature of disputes in the Goldfields region often required the use of external consultants with specific expertise to support dispute resolution. The Review views this as reasonable and in alignment with NTSG's claims strategy to provide objective support to Traditional Owners.

## 5.4.2 TOR 4: External factors

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

### Size of RATSIB area

#### **The size of the RATSIB area contributed to higher costs of delivering native title outcomes**

NTSG operates in a RATSIB area of about 702,494 square kilometres, of which 364,032 square kilometres is land. NTSG staff and DABS noted in consultation for the Review that distance was a key cost driver for NTSG, which led to high travel costs for both Traditional Owners and staff due to the provision of travel assistance for claim group meetings.

### Remoteness of RATSIB area

#### **The NTSG RATSIB area is predominantly remote or very remote, contributing to higher costs**

The Australian Bureau of Statistics classifies the NTSG RATSIB area as predominantly remote or very remote, except for the City of Kalgoorlie-Boulder and the Town of Kambalda which are classified as outer regional areas. The high remoteness of the RATSIB area contributed to higher costs. This included higher costs to facilitate claim group meetings and consult with clients across the region, and higher recruitment costs due to difficulties NTSG experienced attracting and retaining skilled employees.

### Average number of people within a claim group

#### **The number of people within a claim group varied significantly from 27 to 1,300 people**

NTSG noted that the number of adult members on the NTSG contact lists or PBC member lists varied significantly by claim group, with an average number of approximately 460 per claim group. Although this was a high average number of people per claim group, NTSG staff noted that it was difficult to estimate the number of people within a claim group who would attend a claim group meeting. As a result, this would drive claim group meeting costs, including catering and venue hire, as NTSG had to assume the number of people who would attend a meeting and prepare accordingly.

### Interpreters

#### **NTSG did not require the use of interpreters at meetings**

The fluency of Traditional Owners in English within the Goldfields region was not identified as a challenge throughout the Review. The NTSG Board and staff did not express the need for interpreters at claim group or other meetings and there were no expenses associated with interpreters during the Review period.

## 5.5 TOR 5 | Extent to which each organisation has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery.

### Summary

There were clear delineations of roles, responsibilities and decision-making powers between NTSG's Board, Chairperson, CEO and senior staff. During the Review period, NTSG had a skills-based Board of Directors who performed their roles in a voluntary capacity. When NTSG was incorporated in 2019, three CDNTS Directors were appointed to the NTSG Board to guide its establishment. During the Review period, NTSG had two Directors who were also Directors of the CDNTS Board.

The Board provided stable strategic governance of NTSG, however, there was confusion among Traditional Owners about the Board's structure and the level of influence the Board had on NTSG's decision-making regarding individual claims. The skills-based composition of the Board and the recruitment of new Board members by existing Board members meant that there was no direct accountability back to the region. This generated significant frustration and distrust among constituents.

NTSG had well-established policies to manage conflicts of interest within the organisation, supporting the Board and staff to operate in an ethical manner. However, there was a strong perception from stakeholders within the Goldfields region that conflicts of interest were not handled appropriately. The perception included the notion that NTSG was "run by" CDNTS, that use of DABS confirmed this perception and that NTSG Board members who were also native title claimants exerted extensive influence on NTSG's claims strategy. Whilst the Review considers that NTSG operated appropriately with respect to managing conflicts of interest, this perception was a major barrier to building positive working relationships with stakeholders in the community.

NTSG's Values and Mission document outlined the organisation's key values, which support transparent, honest and respectful relationships with Traditional Owners to achieve the best outcomes for them. These values were reflected in NTSG's workplace culture, which staff praised as a hard-working and collaborative environment. Staff were supported to undertake relevant professional development opportunities, including skills-based and cultural awareness training. There is an opportunity to provide targeted mentoring and training for the new CEO who was appointed after the Review period.

Staff turnover was relatively low but increased over the Review period. A major challenge for NTSG was attracting experienced candidates in a highly competitive market, particularly into the legal and anthropological teams.

### 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 NTSG's Board, Chairperson, CEO and senior staff were clearly delineated**

At the time of the Review, NTSG was a public company limited by guarantee, registered with the Australian Charities and Not-for-profits Commission (ACNC) as a Public Benevolent Institution. It was also endorsed by the Australian Taxation Office as a Deductible Gift Recipient. NTSG was governed by a Board of

Directors responsible for managing and directing NTSG’s activities to achieve the purposes set out in its Constitution.

The respective roles, responsibilities and decision-making powers of the Board, Chairperson, CEO and senior staff were clearly outlined in internal policy documents and NTSG’s Constitution. According to these documents, the Board was responsible for providing strategic direction and overseeing the conduct of the business of NTSG and the activities of the CEO and the Principal Lawyer. The Board was also responsible for the organisation’s overall performance and compliance. By contrast, the CEO was responsible for the day-to-day operations and management of NTSG.

While the Chair of the Board maintained an effective working relationship with the CEO and Principal Lawyer, the Board maintained strict independence from operational matters involving claims and Future Acts. Table 11 provides a summary overview of the Board and Chairperson responsibilities.

**Table 11 | Overview of Board and Chairperson responsibilities<sup>15</sup>**

| Board                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Chairperson                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Operate with transparency and accountability, aligning with the Constitution and legal obligations.</li> <li>• Approve and monitor budgets, and ensure financial results are recorded appropriately, accurately and in a timely manner.</li> <li>• Conduct a cyclic strategic planning process and engage with the CEO, management and staff to set strategic objectives and monitor the strategic plan.</li> <li>• Approve and review: management’s success plan; major financial and strategic policy decisions; the corporate governance framework; and other governance policies.</li> <li>• Advocate to build the company profile, progressing opportunities for the company and native title claimants and holders of the region.</li> <li>• Identify corporate business risks and implement appropriate ways to manage these risks.</li> <li>• Ensure effective recruitment, retention and training of Board Directors and evaluation of their performance.</li> <li>• Select the CEO, set the CEO’s remuneration, oversee and monitor the CEO’s performance and conduct an annual CEO evaluation.</li> <li>• Select, oversee and monitor the Principal Lawyer and their legal practice.</li> </ul> | <ul style="list-style-type: none"> <li>• Maintain an effective working relationship with the CEO and Principal Lawyer on behalf of the Board of Directors, acting as the principal interface to ensure awareness of the Board’s concerns and the Board’s awareness of management’s concerns.</li> <li>• Ensure that the Board functions independently of management.</li> <li>• Provide leadership and guidance to the Board of Directors, including facilitating open communication between Board members and assisting the Board in reviewing NTSG’s policies, processes and other key aspects.</li> <li>• Act as spokesperson and represent the interests of NTSG with government, the public and other stakeholders, in conjunction with the CEO.</li> <li>• Conduct procedural matters appropriately, including calling Board meetings, developing meeting agendas and presiding at all relevant meetings.</li> </ul> |

There was general consensus among staff and Board members that NTSG’s governance roles and responsibilities were well understood and fit for purpose. The roles of senior managers were also clearly delineated, with each manager responsible for a clearly defined functional area (legal, research and corporate services). During consultations, staff reflected that their roles and responsibilities were clearly outlined in their position descriptions. Table 12 provides an overview of senior management staff responsibilities.

<sup>15</sup> NTSG, Board of Directors Roles and Responsibilities Policy Document Number: GP002.

**Table 12 | Overview of senior management responsibilities relating to native title<sup>16</sup>**

| Position                | Description of native title responsibilities                                                                                                                                                                                                       |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Chief Executive Officer | The CEO is responsible for implementing the strategic direction approved by the Board and ensures the organisation's structure and processes meet the strategic and cultural needs of the organisation, its people and resources.                  |
| Principal Lawyer        | The Principal Lawyer is responsible for the legal team's activities in providing appropriate native title services and adhering to the claim and research milestones set out in the operational plan.                                              |
| Chief Operating Officer | The COO is responsible for managing NTSG's operational aspects of the strategic plan to ensure that NTSG staff can function effectively and efficiently.                                                                                           |
| Research Manager        | The Research Manager is responsible for providing anthropological advice to stakeholders including native title claimants, native title holders, PBCs, NTSG staff and consultants. They are also involved in managing NTSG's anthropological team. |

## Board integrity and capability

### NTSG was governed by a highly experienced skills-based Board of Directors

Throughout the Review period, NTSG was governed by a Board of six Directors, who performed this role in a voluntary capacity. When NTSG was first incorporated in 2019, three CDNTS Directors were appointed to the NTSG Board to guide its establishment and assist NTSG to establish strong governance practices. Alongside these Directors, a further three highly experienced Aboriginal Directors with connections to the Goldfields region were appointed to the Board. Aboriginal representation on the Board has since increased, with four of the six Board positions held by Aboriginal Directors.

NTSG was established with a skills-based Board model rather than a representative Board. The rationale for doing so was to promote neutrality and avoid perceptions of favouring any one family group over another. The Review notes that this model was also used by CDNTS and that it had many benefits – particularly given the highly contested nature of the Goldfields region.

Accordingly, Directors were selected based on their skills and expertise, and appointed to the Board by current Board members. While not a formal representative structure, the Board consciously pursued a strategy of hiring Aboriginal Directors with connections across the Goldfields region, with a particular focus on ensuring this representation was geographically balanced. The Board also sought to ensure it had equal gender representation and representation from across age groups.

### The NTSG Board has provided stable leadership to the organisation

The NTSG Board established strong governance practices and provided stable leadership to NTSG over the Review period. The Board operated in accordance with the NTSG Constitution, Board meetings were well attended, and Board members reflected that they developed a productive working relationship and were broadly aligned in their vision.

This was supported by the results of the staff survey conducted as part of this Review. The survey indicated that the majority of staff felt the Board was comprised of Directors who had an appropriate blend of skills; governed in a timely and transparent manner; operated in a culturally sensitive manner; and maintained a productive working relationship with the CEO.

<sup>16</sup> NTSG Annual Report 2021-22; NTSG website.

The Board played an active role in setting NTSG's strategic direction during its first three years of operation, and it continued to provide an appropriate level of oversight and direction to senior staff, while maintaining a clear separation from operational decisions. NTSG's ability to maintain consistent operations in the period following the sudden resignation of its CEO (which occurred after the Review period) was testament to the Board's strong governance and the commitment and capability of NTSG's senior staff.

### **There was confusion among Traditional Owners about the Board's role and structure**

NTSG staff regularly received inquiries from constituents about how to become a Board member, indicating that NTSG's Board structure was not well understood within the region. The Review heard similar requests during consultations with Traditional Owners, who expressed a desire for NTSG Board meetings to be open to the public to enable greater transparency. The role of the NTSG Board with respect to decision-making was also not well understood, with many Traditional Owners believing that the Board decided which claims NTSG would support.

### **The Board's skill-based model did not mandate direct representation from the region**

NTSG's Constitution did not mandate representation from the region on its Board.<sup>17</sup> Nevertheless, as mentioned above, NTSG has made a concerted effort to appoint Directors with connections to the Goldfields region. At the time of the Review, four of NTSG's six Directors were Traditional Owners from across the Goldfields RATSIB area, who were involved in the day-to-day life and politics of the region.

Numerous Traditional Owners expressed frustration with this model. Specifically, these stakeholders said they felt as though people who live in the region have no channel of direct accountability from the Board to them. Their perception was that decisions were made about them, not with them. There was also immense frustration that there was no way for constituents to influence NTSG's operations. This drove significant dissatisfaction. NTSG's governance structure was also perceived as an extension of the CDNTS model, which was widely disliked.

The Review recognises this frustration and notes that an alternative governance model would also not be without its critics. In acknowledgement of the frustration, the Board and senior staff of NTSG could consider creating an advisory structure that provides a forum for input and feedback from the grass roots.

## **Conflicts of interest**

### **NTSG had well-established policies for managing conflicts of interest**

NTSG had clearly documented policies for managing conflicts of interest at both the Board and staff levels. At the Board level, section 49 of the NTSG Constitution clearly outlined the responsibilities of Board members regarding actual or perceived material conflicts of interest. This section stated that:

- Directors must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors.
- The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clauses 49.4: (a) be present at the meeting while the matter is being discussed, or (b) vote on the matter.

In addition to the requirements outlined in the Constitution, NTSG also had separate "disclosure of conflict of interest" policies for both Board members and staff members. These documents clearly outlined the

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<sup>17</sup> This was an NIAA requirement for any organisation expressing interest in becoming the NTRB-SP for the Goldfields RATSIB.

obligations of staff and Board members to disclose conflicts of interest and the steps required to appropriately manage conflicts of interest.

**NTSG managed actual and perceived conflicts of interest appropriately; however, perceptions of conflicts of interest at the Board level were widespread throughout the Goldfields region**

NTSG Board and staff members adhered to the organisation's conflict of interest policies, declaring and managing actual or perceived conflicts of interest in an appropriate manner. Specifically, Directors declared possible conflicts at the start of each Board meeting, left the meeting while the Board discussed the matter and did not participate in voting on the matter. NTSG also maintained a Register of Interests, outlining all actual or perceived conflicts of interest.

Nevertheless, there was widespread concern amongst Traditional Owners and other external stakeholders in the Goldfields area that NTSG did not handle perceived conflicts of interest appropriately. Specifically:

- **There was a perception that NTSG was run by CDNTS.** Although NTSG was incorporated as a separate company, several of the NTSG Board members also served on the CDNTS Board (this has diminished since the Review period). This led to a perception by stakeholders that NTSG was not independent from CDNTS and that decisions were not made by people with an appropriate understanding of the Goldfields region. The Review noted that this was a long-standing issue, of which NTSG was well-aware. It is important to note that NTSG managed this perceived conflict appropriately as described above. NTSG has also made concerted efforts to address this perception. When NTSG was incorporated, the original intention was for CDNTS Directors to be appointed on a short-term basis and be replaced by non-CDNTS Directors upon the conclusion of their terms. One of the original CDNTS Directors was replaced and the remaining two CDNTS Board members indicated they intend to step down from the CDNTS Board in October 2023 and from the NTSG Board in due course. Nevertheless, this perception made it challenging for NTSG to build positive working relationships with community members.
- **There was a perception that NTSG Board members who were also native title claimants in the region exerted undue influence on NTSG's claims strategy.** Many Traditional Owners expressed dissatisfaction at the way claims were structured "with the wrong people on them" and the way funding decisions were made in the Goldfields region. Amongst the reasons for these perceptions was a belief that NTSG Board members who were also claimants in the region had an undue influence on staff decision-making and directly influenced which claims NTSG chose to support. The Review found no evidence to support claims that Board members had unduly influenced NTSG's claims strategy. While there were instances during the Review period where an NTSG Board member had also been a claimant, these interests were always appropriately disclosed to the Board and the Board member was excluded from any relevant discussions. Nevertheless, this perception of bias created difficulties for NTSG staff during community engagements and meetings and directly undermined NTSG's work to establish its neutrality. Nous notes that following the Review, NTSG has taken steps towards acknowledging and addressing each of these issues.

## Culture and values

**NTSG's values were clearly outlined in its strategic plan and upheld by staff**

NTSG established four key values which were clearly articulated in its publicly available Values and Mission document. They are:

1. ***"Be Trustworthy – we are transparent in our affairs and our dealings, we build and maintain strong relationships, we are authentic and diligent, and we do what we say we will do.***

2. **Act with Integrity** – we are honest and transparent, we uphold confidentiality and the privacy of our clients and partners, we own our mistakes, we follow up on tasks and we deliver.
3. **Give and Earn Respect** – we conduct ourselves with dignity, self-respect and humility, we understand and honour the culture and experiences of the Aboriginal people we work with, we are mindful of others' opinions and perceptions, we value those we work with, and we value and celebrate our successes.
4. **Focussed on Our Client's Success** – we are committed to getting the best outcomes for the Traditional Owners of the Goldfields, we work hard to properly understand the needs of our clients and we work diligently to achieve their success."

NTSG staff and Board members tried to act in accordance with these values. Staff reflected that they tried to consult as broadly as possible within NTSG's budgetary and staffing constraints, be transparent in their communication with claim groups by explaining the intent behind particular actions or decisions, and work as flexibly as possible to accommodate sorry business and other events of cultural importance. The Review also received positive feedback about the quality of the legal team's work, with one interviewee noting that NTSG has been scrupulous in not acting in a partisan way and working diligently for the benefit of its clients.

### **NTSG established a positive and collaborative workplace culture**

Staff reflected that NTSG has developed a strong, collaborative culture. The legal and anthropological teams in particular developed a positive working relationship, which staff felt helped to enhance the quality of NTSG's work. While NTSG's legal and anthropological teams were understaffed over the Review period, senior staff and Board members commended the team's energy and work ethic. As one staff member said: "it's hard work but the team that we've got here is fantastic. Everyone's working as hard as everyone else. It fosters a really good environment." This was supported by the results of the staff survey, which indicated that the majority of staff felt that NTSG was a "very good" or "good" place to work.

The Review did not receive any feedback indicating that bullying or harassment was a problem at NTSG. Rather, the majority of staff indicated they believed NTSG was a safe place to work. However, aggression towards staff at claim meetings, which could become quite heated, was raised as an issue. NTSG was seeking to address this.

## **Financial management**

### **NTSG established sound financial management practices**

During the Review period NTSG established robust 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. NTSG had a clearly documented policy for financial delegations and received monthly financial reports from DABS, its accounting services provider. NTSG also published independently audited financial statements in its annual reports, which are available on the NTSG website. NTSG was also required to submit detailed half-yearly reports on budgeted and actual expenditure for its operations to the NIAA. It did this in a timely and consistent manner.

## **Training and professional development**

### **Staff were satisfied with the training and professional development opportunities NTSG provided**

Over the Review period, NTSG provided staff with relevant professional development opportunities, with priority given to employees required to complete annual continuing professional development to retain their certificate of practice or professional affiliations. In total, NTSG allocated \$136,820 to professional

development for its staff and spent \$68,199 of this. The Review understands that the underspend on professional development was likely due to staff having limited capacity to undertake training, given their high native title claim workloads. This is reasonable in the short- and medium-term but should not continue indefinitely.

**Table 13 | NTSG budgeted and actual spend on staff training and professional development<sup>18</sup>**

| Financial year | Budgeted         | Actual          |
|----------------|------------------|-----------------|
| 2019-20        | \$29,170         | \$11,322        |
| 2020-21        | \$55,800         | \$24,514        |
| 2021-22        | \$51,850         | \$32,363        |
| <b>Total</b>   | <b>\$136,820</b> | <b>\$68,199</b> |

Staff expressed satisfaction with the level of support they received to undertake training and professional development. The majority of staff indicated that both skills-based training opportunities and cultural awareness training helped with their work on native title.

In addition to paid training opportunities, NTSG developed informal on-the-job training practices for its legal and anthropology teams. For example, the legal team adopted a practice of pairing junior lawyers with senior lawyers to provide shadowing opportunities and build their competence before expecting the junior lawyers to run the claim day-to-day. To ensure a high quality of work, the senior lawyers set clear expectations for junior staff members' work to be reviewed before it was sent out. NTSG's anthropology and legal teams also implemented a practice of holding internal debriefs following community meetings to reflect on meeting design and incorporate lessons learned for future meetings.

### **A dedicated training and professional development program would be beneficial for new CEOs**

After the Review period, NTSG employed a new CEO, who was previously its Senior Lawyer. As part of the CEO's induction into the role, it would be valuable for either NIAA or the Board to implement a targeted training program for any areas where the CEO feels they need development. This is particularly important where the CEO does not have prior relevant experience in NTRB-SP senior management. Providing training and mentoring to new CEOs will develop their skills and support them in their role.

## **Level of staff turnover**

### **Staff turnover was generally low, but increased during the Review period**

Staff turnover across the Review period was relatively low, at approximately six per cent in FY2019-20, 11 per cent in FY2020-21 and 27 per cent in FY2021-22.<sup>19</sup> Staff turnover at the Board and executive levels was minimal, with only two changes to NTSG's leadership over this period – the retirement of one Board Director and NTSG's interim Principal Lawyer. Turnover at the junior staff level was higher, with the increase in turnover in FY2021-22 attributable to the resignation of five permanent staff members for a variety of reasons, including three lawyers who left to pursue opportunities in other organisations, as NTSG was unable to match their salary expectations.

<sup>18</sup> Financial data provided by NTSG for the Review, 2023.

<sup>19</sup> Nous calculations, using data from NTSG Annual Reports 2019-20, 2020-21, 2021-22.

## Attracting experienced professional staff continues to be a challenge, despite concerted recruitment efforts

Recruiting experienced professional staff has become a challenge for NTSG in recent years. As at 30 June 2022, two of NTSG's 20 staff positions remained vacant. After the Review period, NTSG continued to report a shortage of qualified anthropologists and lawyers with experience in native title. These staffing challenges significantly increased the workload of NTSG's legal and anthropological teams and affected the pace with which NTSG was able to undertake claim work.

Following the Review period, these shortages were exacerbated by the promotion of one of NTSG's lawyers to the position of CEO. In addition to challenges recruiting lawyers and anthropologists, NTSG found it challenging to recruit and retain administrative staff and community liaison officers in Kalgoorlie, in large part due to NTSG's inability to compete with the salaries offered by mining companies.

NTSG made concerted efforts to recruit staff and expanded its eligibility criteria in an attempt to overcome these shortages. For example, the legal team reported that they would consider recruiting junior lawyers without experience in native title and skill them up in-house.

### 5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

### 5.5.3 TOR 5: Recommendations

#### RECOMMENDATION

9

NTSG should publish its conflicts of interest policies on the website and clearly communicate its adherence to these policies. This could include a targeted communications piece in plain language sent out to Traditional Owners that clearly outlines NTSG's commitment to its conflict of interest policies and the separation of the Board from operational decisions about claims.

#### RECOMMENDATION

10

NTSG should seek assistance from the NIAA for a targeted training and mentoring program to support the new CEO in their role.

#### RECOMMENDATION

11

NTSG should consider creating an advisory structure that provides a forum for input and feedback from the grass roots.

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

### Summary

NTSG had formal service agreements in place with all four PBCs in the region (one of these PBCs was formed shortly after the Review period). NTSG provided limited support to PBCs across the RATSIB area during the Review period. NTSG predominantly provided this support in the form of financial assistance, passing on the funding received from the NIAA to PBCs in the region. NTSG also provided some support through organising the AGMs for one PBC and providing support with FANs to two PBCs.

PBCs consulted as part of the Review were relatively satisfied with the level of support they received from NTSG. However, a group of stakeholders expressed dissatisfaction at the governance structure and conduct of one of the PBCs and NTSG's lack of response to their concerns. NTSG noted that they do not currently have the role or the resources to provide any more intensive level of support to PBCs.

Nevertheless, stakeholders noted that they would like NTSG to provide additional PBC support, such as support with dispute resolution and capacity building.

During the Review period NTSG started to develop a policy to support the return of cultural materials to PBCs and Traditional Owners but lacked the internal capacity to finalise and implement the policy.

Additionally, since the Review period NTSG has started the process of compiling GLSC's previous research materials into an online information system. Once finalised, this will support NTSG to return these materials in the future.

### 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

##### **Though they had minimal interaction with NTSG, most PBCs were relatively satisfied with the support NTSG provided**

PBCs who engaged in the Review noted they had minimal interaction with NTSG apart from receiving NIAA funding. One PBC expressed a desire to establish its PBC and rulebook independently, while seeking NTSG's assistance specifically with Future Acts. This suggests that the PBC was content to operate in a relatively self-sufficient manner with limited support from NTSG.

Another PBC acknowledged they needed support to start litigation activities but preferred to use a separate legal provider rather than NTSG. This PBC stated this was due to NTSG focusing on resolving native title claims. Therefore, the PBC believed that an external lawyer would have more capacity to support litigation activities. This was an example of where a lack of resources constrained the activities of NTSG.

A group of stakeholders were dissatisfied with the conduct and governance structure of one of the PBCs in the Goldfields region. They raised these concerns with NTSG during the Review period but were dissatisfied with the lack of response they received. Whilst the Review notes that NTSG had a full schedule, NTSG has an important role in supporting PBCs to address issues arising.

**Capability-building support would assist PBCs, but only if NTSG has adequate resourcing and capacity to provide this support effectively**

Another PBC noted that funding was the most helpful support that NTSG could provide and that it was not overly practical for NTSG or other NTRB-SPs to provide support with capability-building if the NTRB-SP and PBC were significantly distanced by location. However, this PBC expressed that capacity-building support would be valuable for PBCs as long as there was enough funding to adequately provide this support. Adequate levels of funding could help address any challenges caused by distance. The PBC acknowledged that NTSG would be unlikely to receive adequate funding to provide this capability-building support.

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

No PBCs in the NTSG RATSIB area had intervention from ORIC or other regulators during the Review period.

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

**NTSG provided limited support to PBCs in the Goldfields region**

There are four PBCs within the Goldfields region, with one of these PBCs formed in the period after the Review, outlined in Table 14.

**Table 14 | PBCs in the Goldfields region**

| PBC                                                      | Date of registration                        |
|----------------------------------------------------------|---------------------------------------------|
| Ngadju Native Title Aboriginal Corporation               | November 2014                               |
| Esperance Tjaltjraak Native Title Aboriginal Corporation | April 2015                                  |
| Mirning Traditional Lands Aboriginal Corporation         | March 2019                                  |
| Watarra Aboriginal Corporation                           | March 2022 (formed after the Review period) |

During the Review period, NTSG provided limited support to three of these PBCs (as Watarra Aboriginal Corporation was not formed during the Review). This support included:

- passing on funding received from the NIAA
- providing governance support to organise AGMs
- helping with FANs.

In the first year of the Review period, NTSG did not receive any PBC support funding and did not directly support any PBCs in the region. In the subsequent two years, NTSG received \$227,000 in PBC support funding each year, which it passed on to the three PBCs. As well, NTSG helped one PBC to organise its AGM and offered Future Act support to two PBCs in the region. This support was provided free, as the PBCs lacked the capacity to pay for this support. The largest PBC in the region, Esperance Tjaltjraak Native Title Aboriginal Corporation, was well established and well run, and had its own programs and funding streams.

There is a potential opportunity for NTSG to provide Future Act support on a fee-for-service basis in future if PBCs secure higher levels of funding and establish additional funding streams. The Review believes the

limited support provided to PBCs was justifiable, as it was consistent with NTSG's strategy to focus predominantly on achieving native title determinations. The Review considered this was appropriate for the circumstances of the region.

### **NTSG should consider its future role in supporting PBCs once remaining claims have been determined**

Staff expressed that there was an opportunity to provide more support to PBCs in a post-determination environment. Whilst NTSG was focused on supporting native title claim determinations, the Board mentioned that they were considering the contribution they could have in supporting PBCs once the remainder of the claims in the region had been determined. This could include support to set up PBCs (for example, organising AGMs and developing compliance policies) and longer-term planning for PBCs (for example, the set-up of Ranger, employment and training programs). This would likely require a restructure of NTSG's organisational structure to incorporate the right combination of skills and capabilities.

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

#### **Following the Review period, NTSG was in the process of organising cultural materials received from GLSC; however, little activity took place within the Review period**

NTSG made little progress in returning cultural materials to PBCs and Traditional Owners during the Review period. This was largely due to lack of access to cultural materials from GLSC. Since mid-2021, NTSG has acquired a significant collection of cultural materials from GLSC and is currently organising this material. To facilitate this task, it employed an Information Scanning Officer after the Review period, dedicated to compiling this data into an online information management system. It is expected that once these materials have been compiled, NTSG will be better prepared to return cultural materials to Traditional Owners. NTSG's anthropology staff noted that they can currently return personal materials on an ad-hoc basis, but returning cultural materials to PBCs is more difficult and will require organisation of the cultural materials received from GLSC to understand what is readily available. One PBC said that it was difficult to organise and return cultural materials, particularly in a format accessible to the PBC and its members.

Furthermore, during the Review period NTSG was in the final stages of establishing a policy to support the return of cultural materials. The development and finalisation of this policy was led by NTSG's previous Senior Anthropologist, who has since left. Due to limited capacity in the anthropological team, NTSG had not yet finalised this policy. However, as NTSG recruits another Senior Anthropologist and progresses towards completing the organisation of GLSC files, it is worth finalising this policy.

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

#### **All PBCs supported by NTSG have formal service agreements in place**

All three PBCs in the region during the Review period had formal service agreements with NTSG. A fourth PBC was formed shortly after the Review period and established a formal service agreement with NTSG.

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

As noted previously, NTSG provided limited support to PBCs and therefore service agreements followed the standard template. One PBC said it appreciated the pace at which NTSG endeavoured to negotiate service agreements, as this allowed funding to be transferred more quickly to the PBC.

5.6.2 TOR 6: External factors

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

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

There was a large amount of mining activity in the region; however, there were often limited benefits available for PBCs

The Goldfields region has a significant mining activities. However, staff said that most of the mining activities in the region predate the NTAs passage, resulting in limited financial benefits for PBCs and Traditional Owners. A senior staff member noted that a number of mining agreements in the region were nearing expiration, which could provide opportunities for PBCs to negotiate new agreements that would create monetary and other benefits. Additionally, certain areas within the Goldfields region did not have productive mines within their native title determination area. As a result, there was little to no capacity to access benefits from land access, which reduced the ability of some PBCs to achieve self-sufficiency.

Relatively low education and occupation levels could create difficulties in improving the capability and capacity of PBCs

Another determinant of the extent to which self-sufficiency is achievable is socioeconomic profile. A summary of the educational profile of the seven local government areas (LGAs) within the RATSIB area is in Table 15. A low Index of Education and Occupation (IEO) decile indicates relatively lower education and occupation levels of people in the area. The data suggests that LGAs in the Goldfields region are disadvantaged through relatively low literacy and numeracy levels, with four of these LGAs displaying significantly low IEO scores. This makes it difficult to improve the capacity and capability of a PBC's Board and staff to achieve economic self-sufficiency.

Table 15 | IEO for LGAs in the Goldfields RATSIB area

| LGA                              | 2021 IEO scores |
|----------------------------------|-----------------|
| Coolgardie                       | 1               |
| Dundas                           | 1               |
| Esperance                        | 4               |
| Kalgoorlie-Boulder <sup>20</sup> | 4               |
| Laverton                         | 3               |

<sup>20</sup> Part of this LGA is also located within CDNTS's RATSIB area.

| LGA                   | 2021 IEO scores |
|-----------------------|-----------------|
| Leonora <sup>21</sup> | 1               |
| Menzies <sup>22</sup> | 1               |

### 5.6.3 TOR 6: Recommendations

#### RECOMMENDATION

12

NTSG should finalise its policy to return cultural materials to PBCs and Traditional Owners once it has more internal capacity in its anthropological and legal teams.

<sup>21</sup> Part of this LGA is also located within CDNTS's RATSIB area.

<sup>22</sup> Part of this LGA is also located within CDNTS's RATSIB area.

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

### Summary

At the end of the Review period, NTSG had not yet commenced strategic planning for a post-determination environment. Its focus was, appropriately, on establishing the organisation and achieving native title outcomes.

NTSG could consider how it can best support PBCs in a post-determination environment in the near future once more claims in the region have been determined.

### 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

##### **During the Review period NTSG had not commenced strategic planning for a post-determination environment**

As described above, NTSG's primary focus during the Review period was on establishing the organisation and achieving native title outcomes. At the start of 2020, the NTSG Board and Executive developed a strategic plan for 2020 to 2022, which was publicly available on the website. This plan established three key priority areas for NTSG, which reflected its status as a relatively new organisation:

1. Building a strong foundation.
2. The trusted native title partner.
3. Strong and effective native title representation.

The Review understands that while the Board was aware of the need to consider NTSG's role in a post-determination environment, NTSG's immediate focus during the Review period remained on supporting native title determinations. As a result, by the end of the Review period NTSG had not yet started to develop a strategic plan for post-determination. However, Board members indicated to the Review that a formal planning process to consider how best NTSG could support PBCs once claims are determined would likely start in 2024.

The Review is of the opinion that this position is appropriate given the short time that the NTSG has been operating and its strategy of focusing on achieving native title determinations. However, the Review considers that it would be worthwhile for NTSG to consider undertaking strategic determination for post-determination over the next 18 months.

### 5.7.2 TOR 7: External factors

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

## Progress towards a post-determination environment

### The remaining claimable land is small but complex in nature

NTSG is a relatively new organisation, with many claims still to progress. As of 30 June 2022, NTSG had four claims in progress and was providing facilitation and assistance to four other active claims which NTSG was not acting for. Around 14 per cent of the claimable land within the NTSG RATSIB area was not subject to a registered claim or determination. While the remaining area is small in the context of the whole RATSIB area, it is highly complex and contested. This adds complexity to NTSG's already difficult claims load, which understandably requires all NTSG's current resources.

### 5.7.3 TOR 7: Recommendations

#### RECOMMENDATION

13

Over the next 18 months the NTSG Board should commence strategic planning to explore NTSG's role in a post-determination environment. This includes considering NTSG's role in supporting PBCs once the claims load is more manageable.

# 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 NTSG'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 NTSG to all staff and to Traditional Owners. Where feasible, notices were placed in relevant newspapers and other media to inform Traditional Owners of the opportunity to speak to the Review.

Face-to-face consultations took place in the week commencing 21 August 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- over 14 Traditional Owners including:
  - clients who have been represented by NTSG (including members of PBCs)
  - potential clients in NTSG's RATSIB area
- the Federal Court of Australia
- NIAA
- representatives of the Western Australian Government
- NTSG staff and contractors, including:
  - NTSG CEO and senior leaders
  - NTSG Board Directors
  - current NTSG staff
  - barristers
  - anthropologists.

## Appendix C Documents reviewed

| Category              | Description                                                                           |
|-----------------------|---------------------------------------------------------------------------------------|
| Annual reports        | NTSG Annual Report 2021/22                                                            |
|                       | NTSG Annual Report 2020/21                                                            |
|                       | NTSG Annual Report 2019/20                                                            |
| Policies              | NTSG Facilitation and Assistance Fact Sheet FS701                                     |
|                       | NTSG Facilitation and Assistance Requests Policy GP701                                |
|                       | NTSG Guidelines for Assessing Applications for Assistance – Native Title Claim GP703  |
|                       | NTSG Leave Policy GP106                                                               |
|                       | NTSG Travel Assistance Policy GP408                                                   |
|                       | NTSG Privacy Policy GP007                                                             |
|                       | NTSG Compliments, Complains and Suggestions Procedure PR700                           |
|                       | NTSG Disclosure of Conflict of Interest Policy GP009                                  |
|                       | NTSG Grievance and Dispute Resolution Policy GP103                                    |
|                       | NTSG Staff Disclosure of Conflict of Interest Policy GP414                            |
|                       | NTSG Internal Review Policy GP702                                                     |
|                       | NTSG Board of Directors Roles and Responsibility Policy GP002                         |
|                       | NTSG Role of the Chairperson Policy GP004                                             |
|                       | NTSG Delegations Policy GP001                                                         |
|                       | NTSG Shares and Investment Policy GP010                                               |
|                       | NTSG Deed of Access, Insurance and Indemnity GP300                                    |
|                       | NTSG Incident and Hazard Reporting Procedures PR209                                   |
|                       | NTSG Emergency Relief Fund Procedures PR401                                           |
|                       | NTSG Staff Vaccination Policy GP204                                                   |
|                       | NTSG Communicable Disease Policy GP209                                                |
|                       | NTSG COVID-19 Policy GP212                                                            |
|                       | NTSG COVID-19 Mandatory Vaccination Policy GP415                                      |
| Operational documents | Deed for Support Funding Watarra Aboriginal Corporation                               |
|                       | Deed for Support Funding for Esperance Tjaltjraak Native Title Aboriginal Corporation |
|                       | Deed for Support Funding for Mirning Traditional Lands Aboriginal Corporation         |
|                       | Deed for Support Funding for Ngadju Native Title Aboriginal Corporation               |
|                       | NTSG Operational Plan 2021/22 – Final Report                                          |
|                       | NTSG Operational Plan and Budget 2021/2022                                            |
|                       | NTSG Operational Plan 2021/2022 – Progress Report July to December 2021               |
|                       | NTSG Operational Plan and Budget Jan-June 2021                                        |
|                       | NTS Goldfields Ltd IAS Performance Report 01/07/2020 to 31/12/2020                    |
|                       | NTS Goldfields Ltd IAS Performance Report 01/07/2021 to 30/06/2022                    |
|                       | NTS Goldfields Ltd IAS Performance Report 01/01/2022 to 30/06/2022                    |
|                       | NTSG Employee Incident Report Form FM202                                              |
|                       | NTSG Hazard Identification Report Form FM204                                          |
|                       | NTSG Incident/Hazard Investigation Report Form FM208                                  |
|                       | NTSG Facilitation and Assistance Request Form FM701                                   |

| Category            | Description                                                                    |
|---------------------|--------------------------------------------------------------------------------|
| Financial documents | NTSG Grant Acquittal Statements for the year ended 30 June 2022                |
|                     | NTSG Revised Budget 2021/2022 October 21                                       |
|                     | NTSG Unaudited Financial Report for the Period 1 July 2021 to 31 December 2021 |
|                     | NTSG Unaudited Financial Report for the Period 1 July 2020 to 30 June 2021     |
|                     | NTSG Financial Report for the Period 1 July 2020 to 31 December 2020           |
|                     | NTSG Grant Acquittal Statements for the year ended 30 June 2020                |
|                     | NTSG Unaudited Expenditure Report for the Period Ended 31 December 2019        |
| Other               | NTSG Organisational Chart 2023                                                 |
|                     | NTSG Senior Lawyer Duty Statement                                              |
|                     | NTSG Anthropologist Duty Statement                                             |
|                     | NTSG Reception/Administration Officer Duty Statement                           |
|                     | The Constitution of NTS Goldfields Ltd                                         |
|                     | NTSG Values and Vision May 2020                                                |

## Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 16.

Table 16 | 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                                                                              | <p>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).</p> <p>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.</p>                                                           |
| 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)                                                      | <p>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:</p> <ol style="list-style-type: none"> <li>mediating between the parties to native title applications at the direction of the Federal Court</li> <li>acting as an arbitrator in situations where the people cannot reach agreement about certain Future Acts</li> <li>helping people to negotiate Indigenous Land Use Agreements.</li> </ol> |

| Term                                                                | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                     | 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). |
| 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.                                                                                                                                                                                                                                                                                                                                                   |

| Term               | Meaning                                                                                                                                                                     |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 17.

**Table 17 | 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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