



Review of North Queensland Land Council, 2019-22

National Indigenous Australians Agency

June 2024

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1 Profile of the North Queensland Land Council

The North Queensland Land Council (NQLC) is based in Cairns and Townsville and provides services to the North Queensland region, from the Daintree in the north, down to Sarina and inland to Croydon



The NQLC is the recognised Native Title Representative Body and Service Provider (NTRB-SP) for the Northern Queensland region. The NQLC was incorporated on 28 March 1994 under the then *Aboriginal Councils and Associations Act 1976* and is now registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

The NQLC's Representative Aboriginal/Torres Strait Islander Body (RATSIB) area covers about 943,300 square kilometres of land and sea. Of this, about 411,164 square kilometres of the RATSIB area is land – as shown on the left. This accounts for around 24 per cent of the land area of Queensland.¹²

As at 30 June 2022:

- There had been 64 determinations of native title within the NQLC's RATSIB area since the passage of the NTA, four of which occurred between 1 July 2019 and 30 June 2022 (the Review period).
- The NQLC had achieved 54 native title determinations overall, two of which occurred during the Review period. Both determinations were by consent.
- There were 16 active claims in the NQLC RATSIB area awaiting a determination, 11 of which the NQLC was acting for the applicant. One active claim (not represented by the NQLC) was determined just after the Review period, in July 2022.
- The RATSIB area had seven active non-claimant applications. The NQLC does not act as representative for any non-claimant applications.
- There were 33 Prescribed Body Corporates (PBCs) within the RATSIB area, 24 of which were supported by the NQLC. The NQLC provides post-determination assistance such as governance support and representation in Indigenous Land Use Agreements (ILUAs) and Future Act matters to support PBCs, but not to other Aboriginal Corporations in the RATSIB area. It does not own any subsidiary entities.

The NQLC received variable levels of funding during the Review period. It received approximately \$9.2 million in financial year (FY) 2019-20, \$9.1 million in FY2020-21 (inclusive of \$800,000 in special grants) and a slightly larger sum of \$10 million in FY2021-22.

The NQLC's Board is member-based and elected on a "ward" system, which has been designed to ensure there is representation across the NQLC's RATSIB area. The Board had 12 Directors as of 30 June 2022, with each Director serving a two-year term. Board elections occur at each annual general meeting (AGM).

The NQLC has four senior management positions: a Chief Executive Officer (CEO) and three divisional heads, including a Chief Financial Officer (CFO), Principal Legal Officer (PLO), and Engagement and Development Support Team (EDST) Manager. As at 30 June 2022, 26 per cent of employees identified as

¹ NQLC. NQLC Annual Report 2021-22. 2022. Accessed 1 July 2023. <https://nqlc.com.au/wp-content/uploads/2022/10/2021-2022-annual-report-v2.0.pdf>

² Geoscience Australia. Area of Australia – States and Territories. 2023. Accessed 12 April 2023. <https://www.ga.gov.au/scientific-topics/national-location-information/dimensions/area-of-australia-states-and-territories>

Aboriginal and/or Torres Strait Islander. The NQLC has a head office in Cairns and another office in Townsville.

2 Scope of the Review

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

The purpose of this Review was to assess the individual and comparative performance of NTRB-SPs in delivering native title outcomes for Aboriginal and Torres Strait Islander people and communities under the *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 PBCs towards self-sufficiency
- has developed its planning for a post-determination environment.

The complete TOR are included in Appendix A.

Methodology

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

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

Nous used a mixed method approach to undertaking this Review, including an analysis of quantitative data on the progress of claims, Future Acts and 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 1.

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

Limitations

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

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

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

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

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

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

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

3 List of abbreviations

Abbreviation	Meaning
AGM	Annual general meeting
CEO	Chief Executive Officer
CFO	Chief Financial Officer
EA	Enterprise Agreement
EDST	Engagement and Development Support Team
FAME	Future Acts Mining and Exploration
FAN	Future Act notification
FY	Financial year
HR	Human resources
ILUA	Indigenous Land Use Agreement
IRSD	Index of Relative Socioeconomic Disadvantage
LGA	Local government area
NIAA	National Indigenous Australians Agency
NNTT	National Native Title Tribunal
Nous	Nous Group
NQLC	North Queensland Land Council
NTRB	Native Title Representative Body
NTRB-SP	Native Title Representative Body and Service Provider
ORIC	Office of the Registrar of Indigenous Corporations
PBC	Prescribed Body Corporate
PBCSU	PBC Support Unit
PLO	Principal Legal Officer
RATSIB	Representative Aboriginal/Torres Strait Islander Body
RNTBC	Registered native title bodies corporate

Abbreviation	Meaning
The CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth)
The NTA	<i>Native Title Act 1993</i> (Cth)
The Review period	1 July 2019 to 30 June 2022
TOR	Terms of Reference

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.

Despite its strong history of achieving native title outcomes for its clients, the NQLC achieved only two determinations in the Review period. This compares to 13 native title determinations in the previous Review period (FY2015-16 to FY2017-18) and 54 native title determinations for various claim groups since incorporation. The Review attributes this slowdown in large part to internal factors, particularly the instability in senior legal and leadership roles, generally high levels of staff turnover, impacted by the offer of voluntary redundancies, as well as the challenges of recruiting anthropology staff. The slow-down was also impacted by external factors, such as COVID-19 restrictions, the complexity of remaining claims, Indigenous respondent issues, and the position of the Queensland Government in requiring a higher standard of evidence and in seeking to litigate in Federal Court cases outside the region.

The NQLC had a large ongoing claim load, including 12 active claims and seven non-claimant applications as at 30 June 2022. These claims had progressed at different rates, with an average age of 4.46 years for active claims and 9.25 years for all claims since inception as at 31 December 2022. During the Review period the NQLC also received 4,224 Future Act notifications (FANs) and negotiated 23 ILUAs, four of which resulted in the surrender of native title in exchange for other benefits. It did not file any applications for compensation.

The NQLC restructured its anthropology services during the Review period, in response to the challenge and the cost of engaging independent experts to undertake the preparation of connection reports for the Federal Court. Under the restructure, resources were moved from the NQLC's core claims team to establish an independent research unit reporting directly to its CEO. This restructure created challenges for the claims team, which was left under-resourced. At the same time, the Queensland Government questioned the independence and quality of the reports produced by the newly established research unit, requiring a higher standard of proof than had been previously the case. The unit was subsequently disbanded and all anthropology resources were returned to the core claims team.

Traditional Owners varied in their satisfaction with the performance of the NQLC with some concerns about claim boundaries or claimant group membership, or feeling pressured by the NQLC. Others expressed satisfaction with the way the NQLC had handled their claim.

RECOMMENDATION

1

Implement a formal and regular mechanism to collect feedback on the NQLC's client satisfaction with the services it provides.

RECOMMENDATION

2

Continue to liaise and communicate openly with Queensland Government representatives to ensure that claims progress efficiently.

RECOMMENDATION

3

Prioritise the recruitment of sufficient anthropology staff to ensure that research supports the progress of claims and is well understood by claimants.

TOR 2 | Extent to which each organisation assesses and prioritises applications for assistance in a manner that is equitable, transparent, and robust and is well publicised and understood by clients and potential clients.

The previous Review recommended that the NQLC should review its assessment, prioritisation and resourcing decision-making process to ensure that it was clear, easy to understand and facilitated consistent high-quality decisions. It also recommended that the NQLC should document key decisions to improve transparency of the decision-making process. The NQLC reported that these changes had not been actioned as anticipated over the Review period (likely due to the instability of senior leadership).

Many of the concerns raised by some stakeholders during the previous Review, such as concerns about favouritism in the prioritisation of claims, continued to be raised during this Review period.

The NQLC had a Policy Manual, which was last updated in 2016. While the Policy Manual provided guidance on factors used to assess an application for assistance, decisions about the prioritisation of claims was still not formally recorded and information on the factors that informed prioritisation was still not readily available to clients or potential clients.

Staff held conflicting views on how the assessment and prioritisation process worked in practice and reported it had been strained by a lack of resourcing in the anthropology unit, a backlog of existing claims and frequent changes in senior leadership.

RECOMMENDATION

4

Review and confirm the NQLC's assessment and prioritisation decision-making policy and process, ensuring that it is documented clearly and transparently. The updated policy should include the factors considered when making decisions in relation to the:

- initial decision to provide assistance
- prioritisation of different claims/matters
- interactions of these factors with resourcing decisions.

Once confirmed, communicate this policy and process to internal and external stakeholders, including publicly (for example, by publishing the process on the NQLC website) and for individual decisions (for example, by sharing the reasoning for decisions with relevant parties).

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

The importance of engaging respectfully with Traditional Owners was generally understood within the NQLC; however, the quality and extent of the NQLC's communication and level of transparency varied. Some Traditional Owners reported they were engaged in appropriate ways and had strong relationships with the NQLC; others raised concerns about how the NQLC engaged with them.

The Review notes that the NQLC did not have documented policies, procedures, recruitment processes, professional development, or other support to aid culturally appropriate engagement. This lack of formal approaches was exacerbated by the reduction in the number of project officers through a voluntary redundancy process in FY2020-21. Based on experience through the Review period, there remains an opportunity to consider how cultural competency can be more strongly embedded across the entire employee lifecycle, including through tailored formal training. The Review notes the move to re-employ Aboriginal project officers since the Review period.

The NQLC did not have formal policies and procedures regarding its use of cultural materials. However, in practice cultural materials were managed by the anthropology unit while the claims process was active and the EDST unit for any return requests made by PBCs. There was a lack of understanding on the part of Traditional Owners about the NQLC's use of cultural materials throughout the claim process and thereafter. Traditional Owners also expressed concerns regarding consent, storage, access and ownership of cultural materials to the Review.

The NQLC's complaints and internal review policies were publicly available on its website. During the Review period, the NQLC received six complaints (including indirectly via the NIAA) and four requests for internal review. Both staff and clients lacked clarity about how complaints were handled.

RECOMMENDATION

5

Introduce measures across the employee lifecycle to improve the NQLC's organisational cultural competency, including but not limited to:

- consideration of cultural competency in recruitment decisions
- formal tailored cultural competency training for new starters and regular refresher training for existing staff
- easily accessible guidance on what respectful, transparent and culturally appropriate engagement looks like in practice
- visual, plain English resources about the native title process that staff can provide to clients
- increased numbers of Indigenous project officers and Indigenous people on NQLC staff more broadly.

RECOMMENDATION

6

Support staff and clients to consistently understand and apply the NQLC's complaints processes by providing relevant information in appropriate formats:

- For staff, upon commencement of employment and periodically thereafter through clear written guidance.
- For clients, upon commencement of their relationship with the NQLC and at key points in the native title process thereafter.

RECOMMENDATION

7

Initiate additional group engagement opportunities with Traditional Owners to improve claimant understandings of the native title process, the NQLC's relationships with claimants and relationships between different claimant groups.

RECOMMENDATION

8

Work with stakeholders and other NTRB-SPs to develop a policy for the NQLC's use of cultural materials. This policy should address key issues including how the NQLC will explain and obtain consent for potential uses of cultural materials when first engaging with a claim group and how it will continue to communicate with claim groups regarding its ongoing use of cultural materials.

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.

Staff salaries made up the greatest component of spending for the NQLC, on average about half of its annual expenditure. Consultant costs (anthropology and legal) were a key cost driver for the organisation. Despite this, the NQLC's use of external resources appeared to be effective and appropriate.

The NQLC implemented a range of savings measures during the Review period: for example, voluntary redundancy packages, an independent in-house anthropology unit and a blanket policy of no claims meetings on Sundays. Not all of these were successful: staff reported that the voluntary redundancies had a detrimental impact on the NQLC's operation with Indigenous project officers and legal officers leaving the organisation. The establishment of an in-house independent anthropology team was subsequently disbanded. However, the increase in community acceptance of videoconferencing during COVID-19 created significant efficiencies.

The NQLC's policies and processes for claim group meetings balanced considerations of cost-effectiveness with the importance of supporting equitable participation. Meetings were generally productive and support effective use of time and resources, though there were some calls for them to be better organised and communicated.

Some external factors had an impact on the NQLC's ability to achieve native title outcomes in a cost-effective way, including the size and remoteness of the RATSIB area.

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

The delineation of roles, responsibilities and decision making between the NQLC's Board, Chairperson, CEO and senior staff was clearly defined in its corporate documentation. In practice, however, it was clear to the Review that the delineation of responsibilities was not well understood by the Board Directors. Considerable dissatisfaction was expressed by Board Directors about the NQLC policy of "separation of powers" which they felt was locking Directors out of engagement with staff. This policy, initiated prior to the Review period, sought to clarify the role of Directors in relation to day-to-day management of the organisation.

The NQLC Board had a representative model based on a ward system. While there were efforts during the Review period to change the structure to include greater external expertise, a move to change the Rule Book to bring this into effect was voted down in 2021.

Throughout the Review period, the NQLC experienced considerable organisational disruption due to high levels of senior management changes, with an acting CEO in place for more than a year. The uncertainty created by changes in Executive leadership created a lack of capacity to undertake internal improvements and led to delays in some decision-making. The period of instability commenced with the sudden departure of the long-term PLO in late 2019 and included an ongoing series of leadership changes, including the departure of the CEO in 2021, resulting in acting or interim CEO incumbents through to the end of the Review period. The Review formed the view that the instability in leadership created significant challenges for the delivery of outcomes across the whole organisation.

Under the circumstances, the NQLC and those in interim leadership roles responded strongly to keep the organisation functioning as effectively as it did through this period of disruption. The NQLC has since recruited staff to the substantive key executive management roles, including a new PLO in late 2022 and a new CEO in mid-2023. Executive changes were compounded by high levels of staff turnover due to redundancies and ongoing tensions reported between teams and offices. Recruitment of professional staff continued to be challenging throughout the Review period.

While NQLC received unqualified audit reports across the Review period, the accrual of significant annual underspends and the need for a program of voluntary redundancies led the Review to the finding that overall financial management was not optimal. This finding was rejected by the NQLC as overly simplistic and failing to consider the unique complexities of funding and expenditure within NTRB-SPs.

Staff reported that training and development opportunities were limited or non-existent, with no cultural awareness training offered in any formal capacity. There were also isolated reports of bullying and harassment which the respondents felt the NQLC did not respond to appropriately. Nevertheless, staff generally found the NQLC to be a good workplace, and staff were broadly united on the values and mission of the organisation to deliver native title outcomes for clients.

RECOMMENDATION

9

Implement a process for the CEO and Board to work together to clarify their respective roles and relationships in line with the principles of good governance. Revisit previous efforts to strengthen the NQLC's governance model through increasing the skills set of the Board. This should include further training for current Board Directors, implementing minimum skill requirements for all new Directors and including a minimum of two independent professional Board Directors.

RECOMMENDATION

10

More clearly define the training opportunities and performance development processes available for all staff and ensure they are consistently applied. This should also include a clear employee value proposition, career pathways for Indigenous staff and adoption of a formal induction program for all new employees, including senior Executives.

RECOMMENDATION

11

Assess the benefits and cost of splitting out human resources (HR) as a distinct and separate executive responsibility so that staff can feel more confidently supported in their professional development and growth in their workplace.

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

The NQLC supported 24 PBCs during the Review period and had service agreements in place with all of them. Staff provided tailored levels of support, dependent on the needs and demands of each PBC. Support was constrained by the limited resourcing available to proactively support PBCs in their journey towards self-sufficiency.

The NQLC engaged frequently with those PBCs who had more Future Act and ILUA activity, and the relationships were strong and positive. The NQLC was pro-active in supporting development opportunities for PBCs. PBCs who had less frequent contact with the NQLC were concerned about perceived favouritism and held less positive views about the support they received.

Most stakeholders agreed that support for PBCs was under-resourced and required greater investment from government to increase capacity.

While the NQLC did not have a formal policy in place during the Review period for the return of cultural materials, it has advised that templates have since been drafted for final consideration concerning the return of materials to PBCs.

RECOMMENDATION

12

Increase transparency by clearly communicating to PBCs what support the NQLC can provide to them within its limited budget.

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

The NQLC's strategic planning for post-determination remained under developed, with uncertainty about the role the organisation will play in a post-determination environment. The NQLC's most recent Strategic Plan spanned the period 2016-2021 and was yet to be replaced or updated. Consistent with this, people at all levels of the organisation said it did not have, or they were uncertain if it had, a strategic plan for the post-determination environment. This was likely a result of the instability of Executive leadership through the Review period.

There was limited monitoring of PBCs' progress in a post-determination environment, with no clear framework in place for assessing PBC maturity or attainment of their strategic aspirations. Some progress has been made since the Review period however, with joint projects currently under discussion.

The NQLC did not plan for or action any compensation claims during the Review period. The NQLC advised that while a great deal of internal work had taken place around compensation, legal advice obtained by the NQLC had generally been to wait until the issues were clarified due to the uncertain state of the law in this space.

While the NQLC still had many claims to progress, the high number of claims that had been determined and resulting PBCs meant the Review expected it to be further advanced in planning for post-determination.

RECOMMENDATION

13

Determine the role (or set of roles) the NQLC will play in a post-determination environment, including preparation for future compensation claims. This could be facilitated by reviewing and updating the

Strategic Plan and other key corporate documents to ensure that they remain fit-for-purpose and relevant to the current and future work environment.

5 Performance assessment

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

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

Summary

Despite its strong history of achieving native title outcomes for its clients, the NQLC achieved only two determinations in the Review period. This compares to 13 native title determinations in the previous Review period (FY2015-16 to FY2017-18) and 54 native title determinations for various claim groups since incorporation. The Review attributes this slowdown in large part to internal factors, particularly the instability in senior legal and leadership roles, generally high levels of staff turnover, impacted by the offer of voluntary redundancies, as well as the challenges of recruiting anthropology staff. The slow-down was also impacted by external factors, such as COVID-19 restrictions, the complexity of remaining claims, Indigenous respondent issues, and the position of the Queensland Government in requiring a higher standard of evidence and in seeking to litigate in Federal Court cases outside the region.

The NQLC had a large ongoing claim load, including 12 active claims and seven non-claimant applications as at 30 June 2022. These claims had progressed at different rates, with an average age of 4.46 years for active claims and 9.25 years for all claims since inception as at 31 December 2022. During the Review period the NQLC also received 4,224 FANs and negotiated 23 ILUAs, four of which resulted in the surrender of native title in exchange for other benefits. It did not file any applications for compensation.

The NQLC restructured its anthropology services during the Review period, in response to the challenge and the cost of engaging independent experts to undertake the preparation of connection reports for the Federal Court. Under the restructure, resources were moved from the NQLC's core claims team to establish an independent research unit reporting directly to its CEO. This restructure created challenges for the claims team, which was left under-resourced. At the same time, the Queensland Government questioned the independence and quality of the reports produced by the newly established research unit, requiring a higher standard of proof than had been previously the case. The unit was subsequently disbanded and all anthropology resources were returned to the core claims team.

Traditional Owners varied in their satisfaction with the performance of the NQLC with some concerns about claim boundaries or claimant group membership, or feeling pressured by the NQLC. Others expressed satisfaction with the way the NQLC had handled their claim.

5.1.1 TOR 1: Assessment of performance

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

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

The NQLC made slower progress in achieving native title determinations during the Review period

The NQLC had performed well in achieving native title outcomes for clients since its establishment in 1994, achieving 54 positive determinations of native title for various claim groups. However, within the Review period, the NQLC supported the achievement of only two determinations (as shown in Table 1). This was lower than the 13 determinations during the previous Review period.

Table 1 | Determinations achieved by the NQLC during the Review period³

PBC	Traditional Owner group	Date filed	Determination date	Judgement	Status commentary
Warrgamay Traditional Owners Aboriginal Corporation registered native title bodies corporate (RNTBC)	Warrgamay	24/09/2015	18/08/2021	Native title exists in the entire determination area.	The claim was determined by consent and covers parcels of land in and around Girringun National Park, Lannercost State Forest and Abergowrie State Forest, Queensland.
Yuwi Aboriginal Corporation RNTBC	Yuwibara People	10/01/2019	25/02/2020	Native title exists in the entire determination area.	The claim was determined by consent and covers parcels of land, sea and waterways in the vicinity of Mackay.

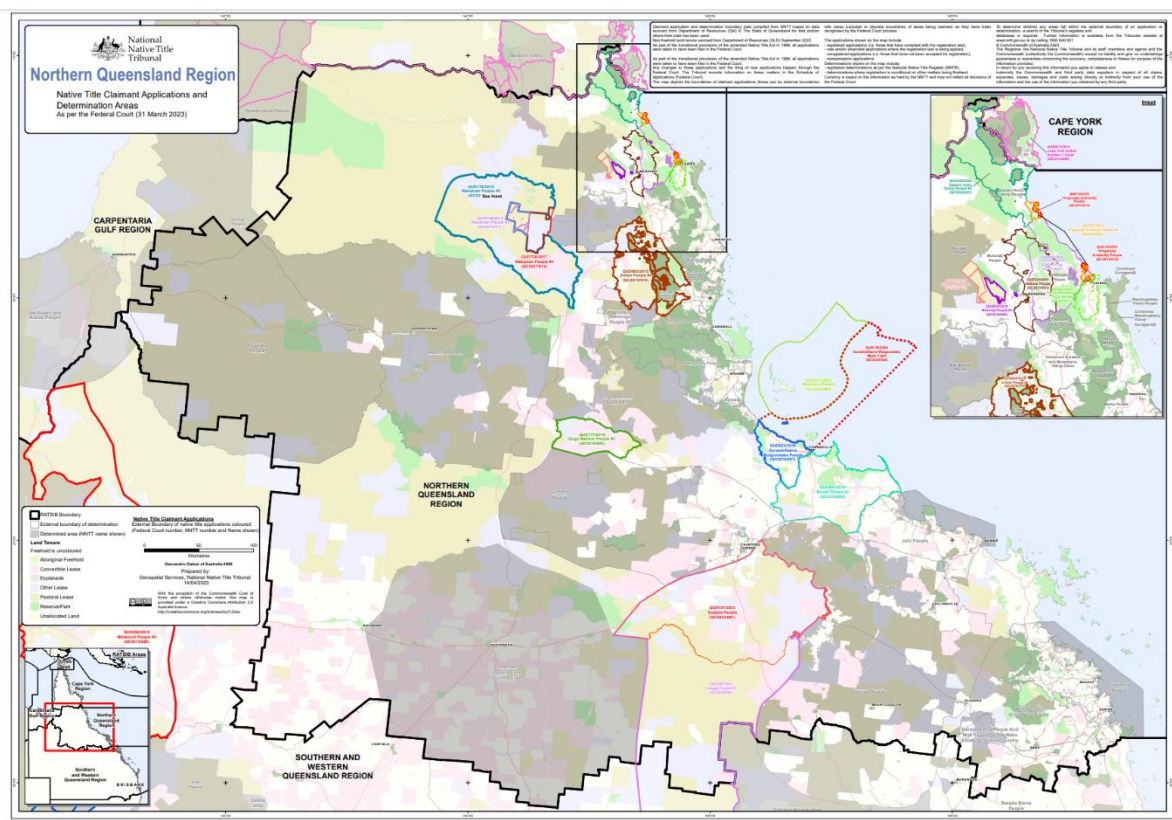
During the Review period, the NQLC also filed two native title applications and acted for four native title claims that resulted in settlement ILUAs (which provided for surrender of native title in exchange for non-native title benefits). It did not file any native title applications for compensation.

Figure 1 overleaf illustrates the areas of the region where native title exists or is currently under active claim.⁴

³ National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>

⁴ National Native Title Tribunal. North Queensland Claimant Application and Determination Areas. 2023. Accessed June 2023. http://www.nntt.gov.au/Maps/QLD_Northern_NTDA_Schedule.pdf

Figure 1 | North Queensland Claimant Application and Determination Areas



NQLC has a large number of claims currently active in the region

As at 30 June 2022, the NQLC had 11 active claims at various stages, as listed in Table 2.⁵

Table 2 | Active claims for the NQLC at 30 June 2022

Case name	
Gurambilbarra Wulgurukaba Mada Claim	Djabugay Nation Native Title Claim
Gugu Badhun People #3	Gurambilbarra Wulgurukaba People
Muluridji People #3	Bindal People #2
Djungan People #5	Jirrbal People #4
Wakaman People #5	Wakaman People #3
Wakaman People #4	

Turnover of legal staff during the Review period significantly impacted performance

For almost the entire Review period, there was significant instability in the claims team due to frequent turnover in the legal team. At the end of 2019, the PLO who had been at the NQLC for almost 20 years suddenly left the organisation without notice. The Review team was unable to ascertain the reasons for this. Due to the sudden departure, a commercial legal practitioner was engaged to act as PLO for several months until a new PLO commenced in July 2020. Then in early 2021, with the resignation of the CEO, the

⁵ National Native Title Tribunal. National Native Title Tribunal Register. 2023. Accessed in June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>

new PLO became acting CEO. The role of acting PLO was taken up by the Deputy PLO with a newly recruited lawyer becoming acting Deputy PLO.

In early 2022, the substantive PLO, who was acting CEO, resigned. The acting PLO and acting Deputy PLO decided to return to their substantive roles and so another commercial practitioner was engaged to act as PLO. A substantive PLO was appointed in late 2022. The manager of the EDST unit, who was a legal practitioner, stepped into the interim CEO role in mid-2022 until the appointment of a substantive CEO after the Review period, in mid-2023.

In addition to these leadership changes, the legal staffing was also impacted by the offer of voluntary redundancy packages in 2020, which led to the departure of legal staff.

As a result of these changes, the effective manager of the claims team changed five times during the Review period. Against this backdrop, it is not surprising that the staff of the NQLC reported that the ability of the organisation to deliver outcomes, plan ahead and allocate resources effectively, was severely compromised.

Federal Court engagement with the NQLC was generally positive

The Review did not identify any concerns from the Federal Court concerning the NQLC's interaction with the Court. The NQLC was generally seen as organised and professional, and meetings and mediations on Country had generally been run well. The Review notes the following comments from the Honourable Justice Derrington of the Federal Court, in relation to the filing of progress reports by the NQLC in advance of the hearing at the last Northern call over for the active native title claims in the NQLC's region, which was held in Cairns on 24 March 2023:

Can I just pass on the thanks of the court, and particularly that of the registrars, for the quality of the progress reports that have come through to us for this call over. The court very much appreciates the hard work that the profession up here has put into those reports and is grateful for the assistance that we've received. So thank you to all of you.

The Federal Court expressed a general concern across all NTRB-SPs about the challenges of recruiting and retaining senior legal and anthropology staff. These challenges have at times led to delays to claims proceeding. This issue is discussed further in this report.

Client satisfaction with the outcomes NQLC achieved for them has varied

The Review engaged via survey and interviews with stakeholders who were current or previous clients of the NQLC and had received support for their native title claim. These stakeholders varied in their level of satisfaction with the native title outcomes the NQLC supported them to achieve.

Some clients said that the NQLC effectively covered the basic elements needed to achieve their determination, and that they felt well supported and had a strong relationship with the NQLC claims team during the claim process.

Other clients were dissatisfied with aspects of the outcomes achieved. The Review notes that the outcomes were not only the result of the NQLC activities but were dependent on the findings of anthropologists and the processes of the Federal Court. Four Traditional Owner groups believed that the geographic boundaries of their claims were incorrect or that people had been incorrectly included in or excluded from the claimants list. Some of these groups queried the anthropological evidence produced by the NQLC and alleged that certain consultants used by the NQLC pressured Traditional Owners who were unwell to provide evidence or to share sacred knowledge publicly. Certain Traditional Owners reported feeling pressure from the NQLC to join another claim group and go through the native title system as part of a larger claim in order to increase the chances of a successful determination. The Review cannot

comment on the validity of these allegations but notes that these were themes that were commonly heard from Traditional Owners across all NTRB-SPs who were unhappy with the outcomes of their claim.

Regarding ILUAs, some Traditional Owners who spoke with the Review remarked that entering into agreements with industries which were destructive to the land, such as mining, construction, or energy plant development, conflicted with their responsibilities as custodians of the land. They claimed that the NQLC did not consult with Elders who opposed such developments but instead encouraged and supported those who would be more tolerant of commercial development to take on PBC Board positions. The NQLC rejected these claims and reported they followed due legal process, consulting with all Traditional Owners before proceeding with the development of ILUAs.

Based on the materials provided to the Review and discussions with staff and clients, there did not appear to be formal mechanisms in place for collecting client feedback. Such mechanisms would have enabled the NQLC to obtain a more comprehensive understanding of its clients' level of satisfaction with its services, thereby providing insights into potential improvements. Other NTRB-SPs used processes such as regular surveys to identify client satisfaction with services they were providing.

Traditional Owner reflections on their engagement with the NQLC are described in further detail under TOR 3.

Anthropological research

Challenges with the performance of the NQLC's anthropology services led to a restructure of anthropology services

The NQLC's 2016-2021 Strategic Plan stated that the NQLC would:

- Facilitate appropriate anthropological research that met the state's connection guidelines to ensure all claims could progress to consent determination.
- Engage with state government and the Federal Court to ensure that their priorities were consistent with those of the NQLC.
- Provide connection reports to the state.

During the Review period, the NQLC, like many other NTRBs, had difficulties in attracting native title anthropologists, who were in high demand across Australia. The NQLC lost at least one experienced anthropologist, who was not replaced. As a result, the NQLC faced difficulties finding external consultants to undertake connection research in a timely way, leading to a backlog of connection reports.

In response, the NQLC Executive took a decision in 2021 to trial a different model, under which in-house anthropologists would be deployed into an "independent" research unit. The independent research unit reported directly to the CEO, undertook research and prepared connection reports to the standard of the Federal Court rules for independent experts. The unit comprised two anthropologists, independent from the core claims anthropology team.^{6,7} Previously, there were three in-house anthropologists reporting to an anthropology coordinator working in the claims team. The coordinator worked closely with the PLO and legal team.

The change was intended to provide a greater level of independence of the anthropological research, while maintaining in-house capability and expertise, and avoiding the additional costs of external

⁶ Although the acting CEO at the time was the substantive PLO, staff clarified on the departure of the acting CEO, that the intention was for the independent research unit to report directly to the CEO.

⁷ The anthropologists in the research team were supported by two external anthropological consultants provided by the Centre for Native Title Anthropology at the Australian National University, as "sounding boards" on anthropological issues.

consultants, who were generally more expensive and not always available when needed for projects. However, this change created challenges for the claims team, which was left under-resourced with only one anthropologist and one anthropology coordinator to take on the work that was previously serviced by a team of four.

There were also issues raised by the Queensland Government at the time with a number of connection reports, including an outsourced report and reports authored by the independent research unit being “rejected” by the state as not providing sufficient evidence. The NQLC advised that in its view this reflected stringent requirements set by the state for evidence of original and continuing connection to Country that had a strong physical component and was influenced by cases outside the NQLC’s region (this is further explored in section 5.1.2). The complexity of the cases in question resulted in significant time being devoted to re-working the reports.

As a result, it was decided that the services of the in-house anthropologists would be better allocated to claims and the experiment of having an independent research unit reporting to the CEO was disbanded. The NQLC reported that since the Review period it had employed a very senior anthropologist as Manager of Research and had a full complement of anthropologists. Under the subsequent organisational structure the Manager of Research again reported to the PLO.

Some stakeholders, including Traditional Owners, expressed concerns about the quality of anthropological research at the NQLC

Most stakeholders the Review consulted, including NQLC staff and Traditional Owners, recognised that claims the NQLC had been pursuing during and since the Review period were more complex and demonstrating connection was more challenging than previously. Several Traditional Owners remarked that some areas of land were so contested that they felt claim applications should not have been registered in the first instance, as it would lead to future intra-group conflict even if successful from a legal standpoint. The NQLC noted that at least one of these extremely conflicted claims in the RATSIB area had been initiated by external lawyers and was subsequently inherited by the NQLC.

As noted above, evidence presented by the NQLC did not always meet the Queensland Government guidelines for supporting connection to Country. It was apparent that there was sometimes a lack of consultation between the NQLC and state representatives prior to claims being filed. Stakeholders reported that with greater stability at the NQLC and a greater enthusiasm for open communication, consultation improved subsequent to the Review period.

Some Traditional Owners consulted by the Review raised concerns about the quality of anthropological research the NQLC had commissioned. While there may be multiple reasons for the dissatisfaction of some Traditional Owners, including intra-Indigenous disputes, some issues raised with the Review included:

- Behaviour or tone seen as disrespectful and patronising when talking to Traditional Owners about their ancestry and family history and pressuring Traditional Owners to share knowledge about secret or sacred sites and business.
- Relying on historical evidence which may have been incorrect in the first instance or was seen to be fabricated; proceeding with claims when disputes about ownership were not resolved; engaging with incorrect family groups or only a small number of the family groups connected to a given area.
- Stress or trauma from interactions (such as being told they had no connection, having to try and prove connection and the public humiliation they faced in the community as a result) causing physical, emotional and mental health issues.

- A perceived lack of professionalism, including not honouring commitments made regarding fieldwork scheduling.

The Review is not in a position to form a judgment on the validity of these issues and notes the NQLC's response that these are unsubstantiated allegations. Nevertheless, the Review notes them as issues raised with the Review that may be areas where the NQLC might pay particular attention in future. The Review notes that the restructure of the anthropology and research areas during the Review period, together with subsequent under-resourcing and staff shortages, may have meant that there was insufficient managerial oversight and support of research during this period.

Future Acts and ILUAs

The NQLC attentively delivered Future Acts and ILUAs to clients as part of its service

The NQLC recognised that ILUAs provided a valuable tool to resolving native title and Future Act matters, and delivered benefits to clients. Procedural rights afforded in the Future Act provisions of the NTA could be converted into benefits for the NQLC's clients. The NQLC's 2016-2021 Strategic Plan stated that it would inform native title holders of any notification processes and timeframes, terms and conditions, processes for responding and other activities that may affect their native title rights and interests in a timely and informative manner. It also stated that the NQLC would achieve this by maintaining an efficient and effective procedure for notification and maintaining an up-to-date register of native title claimants and holders. Further information about the NQLC teams working in this area is included in section 5.6.3.

Although the post-determination environment can be reactive, the NQLC relied on clear team structures and processes for work efficiency

Unlike some other NTRB-SPs, the NQLC had separate legal teams for claims and post-determination work, with the EDST managing the latter. Several staff members remarked that the volume of FANs received by the NQLC necessitated the separation. They commented that FANs involved commercial agreements and contract writing, which was a very different area of law to claims, which was more about a litigated process involving the gathering and contesting of evidence. The separation allowed for staff members within those teams to develop specialist knowledge of their areas and to fully focus on work that they were most qualified to do. However, other staff members said this separation created division between the teams and led to duplication of work. This is covered further under TOR 4.

Staff reported that EDST operations were as organised and streamlined as possible. This was essential as FANs are time sensitive notices, with most requiring a response within 28 days (and section 24 notices requiring a response within three days). Managing FANs as they arose and contacting the relevant PBCs and Traditional Owner groups in response was a significant workload for the EDST unit, occupying one lawyer and two administrative officers. Staff reported that an online portal was under development and on track to go live in 2024: it would send automatic email notifications to PBCs to check their inboxes as FANs came in, cutting down on administrative work. The NQLC developed this system in consultation with other NTRB-SPs that had similar systems.

Beyond FANs, NQLC staff commented on how EDST work could sometimes be influenced by external events or factors outside of their control. For example, issues such as ensuring tax compliance for PBCs or handling legal matters that arose within a PBC could require protracted legal assistance and associated costs.

NQLC staff reported negotiating with external stakeholders to provide funding for agreements to be developed wherever possible, especially when there was a significant land use or development at stake. Where agreements were smaller in scale, the NQLC would handle drafting and documentation within the

capacity of its own team. Where possible, they would try to batch smaller matters with similar terms for agreements before briefing a barrister where required, again in order to maximise value and funding.

The NQLC received a large number of FANs and secured a number of high value benefits during the Review period

During the Review period, the NQLC received a large number of FANs, averaging around 1,400 a year. This included a number of exploration notices issued under the expedited procedure regime. Over the same period, the NQLC successfully negotiated 23 ILUAs, four of which resulted in consent to surrender of native title in return for a benefits package. There were no unsuccessful ILUA or Future Act negotiations. This is summarised in Table 3.^{8,9}

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

Financial year	FANs			ILUAs	
	All notifications	Section 29 notifications (expedited)	Section 29 notifications (right-to-negotiate)	Registered with NNTT	Agreements in development
2019-20	1,697	149	23	8	Not reported
2020-21	1,798	145	12	7	Not reported
2021-22	729	197	97	8	Not reported

Examples of the NQLC's efforts to secure benefits for clients from Future Acts and ILUAs included:

- Working with PBCs to ensure ILUAs related to mining and exploration were implemented to their fullest extent (for example, by rectifying non-payment of compensation payments and other environmental and trespass breaches).
- Delivering an ongoing ILUA Implementation Project which was focussed on working with a number of PBCs on the implementation, formal review and some renegotiation of ILUAs.
- Negotiations for the development of Cultural Heritage Management Agreements or plans, agreements for large infrastructure projects and ILUAs for tenure changes.
- Assisting five PBCs to set up legal, corporate and financial structures to manage significant agreements with large financial benefits (such as the construction of numerous wind farms) – and, as part of this, approaching the Australian Institute of Company Directors to seek expressions of interest from relevant individuals to assist PBCs (for example, with employment law advice).

⁸ NQLC. NQLC Annual Reports. Accessed June 2023.

⁹ National Native Title Tribunal. National Native Title Tribunal Register. 2023. Accessed in June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>

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

The NQLC supported two determinations and four ILUA settlements during the Review period

As shown in Table 4, during the Review period the NQLC filed only two new claims, secured two determinations and four ILUA settlements resulting in extinguishment of native title in return for benefits packages. These numbers suggest that the NQLC achieved positive outcomes for native title parties during the Review period, albeit at a slower rate than previously.

Table 4 | Number of claims resulting in determination of native title or ILUA settlement for the NQLC¹⁰

Period	Total number of claims filed-	Number of ILUAs resulting in extinguishment of native title or settlement	Number of determinations of native title
From 1 July 2019 until 30 June 2022	2	4	2
From conception of the NQLC until 30 June 2022	87	25	54

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

The NQLC only used brief out arrangements to external lawyers where necessary

NQLC staff reported that assistance via brief out arrangements to external commercial lawyers was rare. This usually only occurred when a high priority case needed urgent attention and claims team capacity was low. In general, even where external experts such as anthropologists or barristers were used, cases were still managed by a team consisting of at least a lawyer and anthropologist from within the NQLC. Staff estimated there would not have been more than two cases that were wholly briefed out to external lawyers during the Review period.

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

Approximately half of the claimable land within the RATSIB area was not subject to a registered claim or determination

The NQLC RASTIB area covered approximately 943,000 square kilometres of land and waters, with 411,164 square kilometres of that being land. The approximate area determined in the NQLC RATSIB area was 154,544 square kilometres. This figure includes the Juru People Part A and Yuwibara determinations, both predominantly sea claims totalling about 4965 square kilometres. It also incorporated the Yirendali People Core Country Claim determination, where native title was found not to exist over 40,317 square kilometres in the south of NQLC's RATSIB area. The NQLC did not act for this claim.

¹⁰ National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>

This means that the total determined land area was approximately 149,579 square kilometres, or 36 per cent of the NQLC’s total land coverage (with approximately 109,262 square kilometres or 26.57 per cent of the NQLC’s land coverage under positive determination).¹¹ Approximately 15 per cent of the NQLC’s land (and another 10,000 square kilometres of sea) was under current active claim. Therefore, approximately 50 per cent of the claimable land within the NQLC RATSIB area was not subject to a registered claim or determination.¹²

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

The NQLC’s average time between filing an application for determination of native title was comparable to Federal Court benchmarks

The age of active claims as at 30 June 2022 is shown in Table 5. The average age of an active claim as at 30 June 2022 was 4.72 years. For the two determinations that took place during the Review period, the average time between the filing of the application to the date of determination was 6.1 years. For all the claims from the inception of the NQLC until 30 June 2022, this figure was 9.25 years.

The Federal Court has set a claim resolution target of five years for all claims lodged since 2011. For claims lodged before 2011, it is ten years.¹³ For comparison, the median time for resolution of applications determined in June 2013 was 12 years and 11 months.¹⁴ The performance of the NQLC is comparable to these benchmarks.

Table 5 | Age of active claims as at 30 June 2022¹⁵

Less than 1 year	1 to 3 years	3 to 5 years	5 to 8 years	More than 8 years
0	2	4	5	0

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

During the Review period, the NQLC did not submit any applications for native title compensation.

5.1.2 TOR 1: External factors

This section presents an analysis of factors that impacted on performance that were beyond the NQLC’s control.

¹¹ Based on data provided from the NQLC. 2023.

¹² Based on GIS data from National Native Title Tribunal. Native Title Vision. 2023. Accessed June 2023. <https://nntt.maps.arcgis.com/apps/webappviewer/index.html?id=a4fab24b605b43bd9049d3a372d79e62>

¹³ Collier, B. Prioritisation of Native Title Cases in the Federal Court of Australia. 2011. Accessed 30 June 2023. <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-collier/Collier-J-20110527.rtf>

¹⁴ Australian Human Rights Commission. Social Justice and Native Title Report 2014. 2014. Accessed 30 June 2023. <https://humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf>

¹⁵ National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>

State government policy and legislation

The Queensland Government's position had a moderate impact on the NQLC's ability to achieve native title outcomes during the Review period

At the time of consultations for the Review, the Queensland Government expressed a position that it would consider all options to resolve native title by agreement (either through a consent determination or otherwise) prior to resorting to litigation. Historically, the Queensland Government has had a less favourable position. The current government has sought a more collaborative relationship, as demonstrated by its launch of "Tracks to Treaty – Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders" in July 2019, a process that culminated in the signing of Queensland's "Path to Treaty Commitment" in August 2022. The consultations leading up to this collective pledge demonstrated that there is a need for all parties to progress native title with greater willingness, not be as adversarial and reframe engagements with the government.

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

Despite this more recent (and perhaps temporary) attitude, the NQLC's staff advised that the team responsible for handling the bulk of the NQLC cases within the Queensland Government adopted an adversarial approach over some claims throughout the Review period. Staff reported that there had been a hardening of attitude with regards to the level of connection material required by the State during the Review period. This harsher attitude may be attributed to the complexity of the claims, which led to greater amounts of evidence and a need for higher quality in the connection reports. The NQLC's lawyers noted that recent cases to the south of the NQLC's region (including *Blucher vs Queensland, QUD400/2012*¹⁶ and *Malone vs Queensland, QUD17/2019*¹⁷) where the dispossession wrought by colonisation has been similarly severe, are examples of the State fighting connection rather than seeking to negotiate.

Overall, the Review assessed that the Queensland Government's policy position in response to native title claims has had a moderate impact on the achievement of native title outcomes within the Review period for the NQLC. This position is based on consultations with the organisation's legal staff, Federal Court stakeholders, Queensland Government stakeholders and comparisons with other jurisdictions.

Changes to state legislation have had a range of indirect and direct impacts on native title claims at the NQLC

State legislation has had a moderate impact on the NQLC's ability to perform its functions, but less so than in other states. Such legislation has the potential to interfere with the ability of an NTRB-SP to deliver native title outcomes effectively and efficiently. There are three Queensland Acts that could conceivably have had such an impact on the NQLC (see Table 6).

Table 6 | Relevant state legislation

Legislation	Description	Impact
<i>Aborigines and Torres Strait Islanders (Land</i>	The <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> was the predecessor of the <i>Aboriginal Land Act 1991</i> , which is now the	Low – Within the NQLC's RATSIB area, there have been several <i>Aboriginal Land Act 1991</i> transfers, but these constitute a small

¹⁶ *Blucher on behalf of the Gaangalu Nation People v State of Queensland*. 2018. QUD400/2012. Federal Court of Australia, FCA 1369.

¹⁷ *Malone on behalf of the Western Kangoulu People v State of Queensland*. 2020. QUD17/2019. Federal Court of Australia, FCA 1188.

Legislation	Description	Impact
<i>Holding) Act 1985/Aboriginal Land Act 1991</i>	principal piece of legislation that governs the transfer of certain land parcels to be held by a trustee for the use and benefit of Aboriginal people in Queensland. Under the <i>Aboriginal Land Act 1991</i> , the Minister can declare ownership and management of land (including unclaimed native title land) can be transferred to Aboriginal and Torres Strait Islander people.	proportion of the overall area and overall have had a low direct impact on native title claims. It is important to note that going forward compensation will be considered by the Queensland Government as a holistic package where ILUA and land transfers may be seen alongside direct native title compensation. This may increase the impact of the <i>Aboriginal Land Act 1991</i> into the future.
<i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i>	The <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i> is a repeal of the <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> . The <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i> rectifies issues with the <i>Aborigines and Torres Strait Islanders (Land Holding) Act 1985</i> (for example, residential and infrastructure boundaries that were incorrectly established).	Low – The <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 2013</i> provides clarity regarding lingering ambiguity as to how the <i>Aboriginal and Torres Strait Islanders (Land Holding) Act 1985</i> and the modern <i>Aboriginal Land Act 1991</i> interact with one another.
<i>Aboriginal Cultural Heritage Act 2003</i>	The <i>Aboriginal Cultural Heritage Act 2003</i> provides for the legal protection of Aboriginal heritage in Queensland. It contains a “last man standing” rule: when an area is not subject to an active native title claim or determination, the last failed claim is deemed to be the Aboriginal party for Aboriginal heritage purposes. This can influence how claims are conducted and lead to disputes about who should administer cultural heritage work in a region. Furthermore, the NQLC receives requests for services to act for their native title clients in Aboriginal heritage related matters.	Moderate – The last man standing rule has led to disputes between native title groups. These tensions can cause further difficulties in discussions over who the Traditional Owners are for claims. The effect on the NQLC’s ability to progress claims, however, is not significant.

Complexity of land use and tenure

Complexity of land use and tenure was not a significant influence on the NQLC’s performance

Queensland’s systems and databases for capturing tenure information and land valuation data are strong. This makes the compensation process easier and faster when they occur. No stakeholder identified the complexity of land use and tenure as an influence on the NQLC’s ability to achieve positive native title outcomes.

History of previous claims

Issues with previous claims have impacted current claims

Some NQLC staff raised concerns about previous claims that were finalised rapidly with the result that certain details were incorrect, including boundaries, name lists and descendant numbers. Such mistakes have seen an increase of counterclaims lodged against current native title groups, further adding to the number of intra-disputes and complexity of stakeholder engagement. Previously aggrieved parties have

become more likely to resist new claimant applications and contest new evidence more rigorously because of this legacy.

Complexity of remaining claims

The complexity of remaining claims makes it harder for the NQLC to achieve native title outcomes

Most staff commented that areas with an obvious connection to a single core group had now been determined, and that the areas remaining were increasingly likely to be complex or contested. Areas where families had been removed from or to, or where multiple neighbouring clan groups overlapped, have been particularly challenging. The likelihood of Indigenous respondents in these circumstances has also increased, which leads to more costly and longer litigated rather than consent claims. The complexity of the remaining claims will require a greater level of cross-communication amongst teams, deeper community engagement and more extensive research from the NQLC.

Stakeholders reported intra-Indigenous and personal disputes influenced the NQLC's ability to achieve native title outcomes

This external factor has had a moderate impact on the NQLC's ability to achieve native title outcomes for clients. Various stakeholders reported that disputes between and within Indigenous groups could create challenges for the NQLC in progressing native title claims. They reported that historical and cultural disputes related to apical ancestors could hinder the progress of claims. Sources of disputes included disagreement over the boundary lines for an area or who its Traditional Owners were, prioritisation of certain claim groups over others and allegations that the wrong people had been included on a claim.

Settlement impacts were particularly significant in some areas of the region

Native title jurisprudence requires clients to prove connection to 1788 (the year the Crown declared sovereignty over the region). Since then, the history and impacts of colonisation in the RATSIB area have diminished the evidence that can be presented in native title proceedings, particularly in some areas. Forced removals in and out of the area can create challenges for demonstrating traditional connection to land. As an example, the establishment of Palm Island as a settlement for Aboriginal and Torres Strait Islander people forcibly removed and relocated from throughout Queensland can make identification of the right people for the right land challenging. The removal of Aboriginal people to reserves, including Palm Island, by the Queensland Government has made it difficult to prove their ongoing connection to their respective Countries. Frontier violence was also widespread across several parts of the RATSIB area, including across the Cardwell, greater Mackay districts, Hinchinbrook Island and the Atherton Tablelands. In many instances this resulted in significant deaths and has subsequently made it very challenging for demonstration of connection to some parts of the RATSIB area (for example, due to a loss of cultural knowledge and the resulting difficulty in drawing out connection evidence).

COVID-19

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

The NQLC proactively implemented a range of measures to mitigate the risk of COVID-19 to their staff, clients and community. Some of these measures included¹⁸:

- health screening assessment for guests and staff
- weekly office cleaning (twice per week) for each office
- working from home measures for all staff
- risk management assessments (which were used to assess the nature of a meeting, including the venue, attendance numbers, meeting arrangements and vaccination status of attendees)
- limitations on face-to-face and site visits.

Many staff noted that COVID-19 allowed the NQLC to make better use of technology (such as videoconferencing and Microsoft Teams). The use of technology videoconferencing has also been adopted by PBCs and Traditional Owners. Some staff said some RNTBCs now prefer to conduct the majority of their meetings virtually.

COVID-19 nonetheless caused significant disruption. For example, COVID-19 outbreaks and associated restrictions prevented the collection of evidence on the ground and delayed certain cases from progressing, as staff were unable to meet with Traditional Owners, and meetings and court appearances stopped. In some instances, using emerging technology was difficult for Traditional Owners, who did not have access to laptops or computers. Regional forums and training sessions the NQLC had previously convened for PBCs were unable to go ahead during the COVID-19 period. However, these have recently resumed and staff have reported that they have been quite successful.

The COVID-19 period also presented certain concerns for staff, due to uncertainty over the funding and future operations of the NQLC. During the COVID-19 period, staff from the Townsville and Mackay offices had strong concerns about their job security and the future of their offices. The Mackay office was closed shortly after the outbreak of COVID-19, causing staff to relocate or resign. Further, both new staff and relocated staff had challenges having to integrate into a new office environment while online.

Amount of funding

Total funding received was comparable to other NTRB-SPs relative to size but not claims

Excluding PBC support, total funding that the NQLC received from the NIAA over the Review period was \$22.8 million. This was comparable to the total funding for similar NTRB-SPs. Funding relative to the RATSIB area (see Table 7) was similar to the figure from the previous Review.

As a broad measure for comparative purposes, the Review assessed the amount of funding received relative to determinations achieved within the Review period and active matters still to be determined. For the NQLC this calculation produced on average about \$1.7 million per claim, which was more than double the figure from the previous Review.

¹⁸ NQLC, COVID-19 safe plan, 2020. Accessed June 2023., NQLC, COVID-19 safe plan (2022 updated). 2022. Accessed June 2023., NQLC. COVID-19 Health Screening Assessment for guests and staff, 2021. Accessed June 2023., NQLC. Meeting attendance forms – for clients. 2019. Accessed June 2023. NQLC. COVID risk management assessments. 2020. Accessed June 2023.

Table 7 | Total funding relative to factors of interest¹⁹

Factor of interest (denominator)	Ratio
NQLC's total land and sea area: 943,400 square kilometres	\$24.20 per square kilometres
NQLC's total land area: 411,164 square kilometres	\$55.51 per square kilometres
Number of active claims (11) and determinations (two) as at 30 June 2022: 13	\$1,755,691.46 per claim

Based on the above factors, the Review believes that the amount of funding received has not had a significant impact on the NQLC's ability to achieve native title claims and determination outcomes for clients.

5.1.3 TOR 1: Recommendations

RECOMMENDATION

1

Implement a formal and regular mechanism to collect feedback on the NQLC's client satisfaction with the services it provides.

RECOMMENDATION

2

Continue to liaise and communicate openly with Queensland Government representatives to ensure that claims progress efficiently.

RECOMMENDATION

3

Prioritise the recruitment of sufficient anthropology staff to ensure that research supports the progress of claims and is well understood by claimants.

¹⁹ These estimates were calculated based on the total funding received from the NIAA excluding PBC support during the Review period, which was \$22.8 million.

5.2 TOR 2 | Extent to which each organisation assesses and prioritises applications for assistance in a manner that is equitable, transparent and robust, and is well publicised and understood by clients and potential clients.

Summary

The previous Review recommended that the NQLC should review its assessment, prioritisation and resourcing decision-making process to ensure that it was clear, easy to understand and facilitated consistent high-quality decisions. It also recommended that the NQLC should document key decisions to improve transparency of the decision-making process. The NQLC reported that these changes had not been actioned as anticipated over the Review period (likely due to the instability of senior leadership).

Many of the concerns raised by some stakeholders during the previous Review, such as concerns about favouritism in the prioritisation of claims, continued to be raised during this Review period.

The NQLC had a Policy Manual, which was last updated in 2016. While the Policy Manual provided guidance on factors used to assess an application for assistance, decisions about the prioritisation of claims was still not formally recorded and information on the factors that informed prioritisation was still not readily available to clients or potential clients.

Staff held conflicting views on how the assessment and prioritisation process worked in practice and reported it had been strained by a lack of resourcing in the anthropology unit, a backlog of existing claims and frequent changes in senior leadership.

5.2.1 TOR 2: Assessment of performance

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

Equity, transparency and robustness of assessment and prioritisation process

The Policy Manual provides guidance on factors used to assess and prioritise an application for assistance

The NQLC had a Policy Manual, which was last updated in 2016. Section five of the NQLC Policy Manual specified the factors used to assess new applications for assistance. These factors included:

- the appropriate scope and assistance sought
- extent to which there would be follow on costs for the NQLC if assistance was granted
- the existing historical anthropological and other research held by the NQLC in relation to the claim group and claim area
- whether assistance could be provided in-house
- extent of assistance the group had received from the NQLC in the past.

Staff were generally familiar with these factors, but agreed that perceived strength of the claim, strength of the NQLC’s existing relationships with key members of the claim group, strength of opposition to the claim and perceived ease of resolution also influenced the assessment decision.²⁰

The NQLC Policy Manual also described the factors influencing the prioritisation process, which included:²¹

- Federal Court orders and agreed priorities
- position of claims with respect to Federal Court proceedings
- the NQLC’s own priorities
- availability of required consultants or other service providers.

There was general agreement among staff that the prioritisation of claims was consistent with the terms outlined in the NQLC Policy Manual and driven primarily by external factors, such as Federal Court orders and scheduling, the State’s acceptance or rejection of connection to Country and the availability of resources. Staff reported that the process was often reactive and ad-hoc, though the broader system overall made it necessarily so.

The Administrative Procedures Manual detailed the processes for reviews and complaints

Chapter four of the NQLC Administrative Procedures Manual described the review of decisions process and chapter five described the complaints and grievances procedure. These processes are covered in greater detail under TOR 3.

Staff reported that whenever a new client submitted an initial application for assistance, the NQLC provided them with copies of both its Policy Manual and Administrative Procedures Manual.

Existing assessment and prioritisation policies cover most relevant criteria

To ensure equitable resourcing and defensible decisions, there was select criteria which prioritisation policies should address explicitly. These are shown in Table 8 alongside the corresponding section from the relevant NQLC Policy Manual where available. Most but not all of these are adequately addressed.

Table 8 | NQLC prioritisation policies

Prioritisation policy criteria	Relevant NQLC Policy Manual extract
Considerations such as Federal Court-imposed timelines and the service of section 29 notices that require the lodgements of claims within four months are expected to be built into the relevant prioritisation policies.	<i>Section 5.3.4 of the NQLC Policy Manual</i> “Generally, but not always, priorities will reflect Federal Court agreed priorities, Federal Court Orders, position of claims with respect to Federal Court proceedings, NQLC’s own priorities and availability of required consultants or other service providers.” <i>Section 5.12 of the NQLC Policy Manual</i> “When a Non-Claimant Application or Future Act Notice is issued any native title holders whose traditional Country is affected by the proposed grant of a mining interest, but who do not yet have a claim lodged over the area subject to the mining interest, generally have three (3) months in which to lodge a claim. The NQLC’s ability to respond in these circumstances will be determined by our current funding allocations and priorities as well as the possession of enough anthropological material for the group to lodge a native title claim capable of passing the

²⁰ Based on NQLC staff surveys.
²¹ NQLC. Policy Manual, 2016. Accessed June 2023.

Prioritisation policy criteria	Relevant NQLC Policy Manual extract
	registration rest within the timeframes indicated above. All requests for assistance in this situation will be given due consideration but the NQLC cannot guarantee it will be able to respond by lodging a claim...”
Clear description of the specific decision-makers for assessment and prioritisation decisions (for example, Board, Board sub-committee, CEO and/or Executive).	<i>Section 5.12.4 of the NQLC Policy Manual</i> “For the purpose of this policy, the decision maker shall be either: (a) The CEO; or (b) Such other person appointed by the CEO to be the decision maker. If a person other than the CEO is appointed to be the decision maker, that person may be either an in-house employee of the NQLC or may be an external consultant or service provider. If the decision maker is not the CEO, then their decision may be subject to review by the CEO. Where the CEO is the decision maker, the CEO may seek such advice as he/she thinks fit from the anthropology or legal departments of the NQLC and he/she may seek copies of any material held by the NQLC about the group making the application or any other relevant material.”
Clear description of processes and decision-makers for the conduct of internal reviews of prioritisation decisions (when requested).	<i>Chapter 4 of the NQLC Administrative Procedures Manual</i> “In compliance with section 203BI of the <i>Native Title Act</i> the following procedure shall apply to internal review of decisions and actions made or taken in the performance of NQLC functions or the exercise of NQLC powers...”
Clear description of the circumstances in which matters may be briefed out prior to decision-making.	Not described in relation to assessment or prioritisation of applications for assistance.

Assessment of new claims was challenging during the Review period due to lack of resourcing in the anthropology unit, backlog of existing claims and changes at the senior management level

Staff reported that previously, applications for assistance would go to the anthropology coordinator who, with the assistance of the in-house anthropology team, would verify if there was sufficient evidence for a claim. Following this review of evidence, a recommendation would be made at a claims planning meeting attended by the CEO and senior leadership of the claims team.

These claims planning meetings ceased at some point during the Review period due to the ongoing changes at the CEO and PLO level as mentioned under TOR 1. In addition, the personnel and structural changes in the anthropology unit, also described under TOR 1, meant the capacity of the remaining in-house anthropologists was already stretched and left them less able to take on this work.

There was limited consensus among NQLC staff regarding how new claims were assessed in practice. Some staff reported that the CEO made the final decision on whether or not to further pursue requests for assistance, while others reported that there seemed to be a reluctance to accept any new claims at all until more of the existing claims were determined.

The clarity and transparency of the NQLC's assessment and prioritisation process could be improved

There was a lack of staff awareness of the assessment and/or prioritisation of claims process. While many NQLC staff were familiar with the factors influencing assessment and prioritisation of claims in principle, few were clear in regard to the process in practice. Board members also said they had little visibility of claims prioritisation and assessment.

The previous Review made a recommendation that:

The NQLC should review its assessment, prioritisation and resourcing decision-making process to ensure it is clear, easy to understand and facilitates consistent high-quality decisions. This should include the factors considered in the initial decision to provide assistance (or not), considerations related to prioritisation of different claims/matters and the interaction of these factors with resourcing decisions. The organisation should also document key decisions to improve the transparency in the decision-making process.

The Review found that this recommendation had not been implemented during the Review period. Implementation was likely to have been affected by the significant turnover at the senior Executive level during the Review period, given that senior Executives have been the key decision makers in the assessment and prioritisation process.

Client and potential client awareness of the process

Clients were not clear on the assessment and prioritisation process

Clients did not clearly understand the NQLC's assessment and prioritisation process. While the Policy Manual containing the factors influencing assessment and prioritisation was reportedly provided to all initial requests for assistance, there were many instances where claims might take many years or had to be amended for various reasons, and the visibility of the processes in these circumstances might be limited.

The previous Review included a recommendation that:

[The] NQLC needs to more clearly communicate its prioritisation process and factors internally and externally to ensure stakeholders have a clear understanding of why claims are being progressed (and prioritised). For staff, this should make the interaction between the prioritisation process and the budget process clear. For clients, this should outline, at a high-level, the key decision-making factors.

The NQLC has advised that a more fulsome communication strategy remains to be developed.

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

Some Traditional Owners expressed frustration at the lack of communication from the NQLC

A frequent concern expressed by the small number of Traditional Owners who spoke with the Review was that the NQLC's assessment and prioritisation process was not well communicated to them. This created a perception amongst these Traditional Owners that there was queue-jumping and favouritism of certain claim groups. This was a sentiment echoed by some NQLC staff members consulted by the Review, who reported a perception that certain claim groups consistently had engagements occurring, while others had been on the waitlist for years.

5.2.2 TOR 2: External factors

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

Number of claims relative to NTRB-SP size and resourcing

Claims have become more complex in relation to funding

NQLC staff consistently held the view that staff numbers had not kept up with the claim load over the Review period. They mentioned that few departing staff were replaced, so existing staff were often given additional responsibilities, reducing their capacity for their original roles. Several staff felt that their workload was unreasonable and that they had been working beyond capacity for some time. This is not a sustainable position for staff as remaining claims are of increasing complexity and will inevitably take longer to resolve.

5.2.3 TOR 2: Recommendations

RECOMMENDATION

4

Review and confirm the NQLC's assessment and prioritisation decision-making policy and process, ensuring that it is documented clearly and transparently. The updated policy should include the factors considered when making decisions in relation to the:

- initial decision to provide assistance
- prioritisation of different claims/matters
- interactions of these factors with resourcing decisions.

Once confirmed, communicate this policy and process to internal and external stakeholders, including publicly (for example, by publishing the process on the NQLC website) and for individual decisions (for example, by sharing the reasoning for decisions with relevant parties).

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

Summary

The importance of engaging respectfully with Traditional Owners was generally understood within the NQLC; however, the quality and extent of the NQLC's communication and level of transparency varied. Some Traditional Owners reported they were engaged in appropriate ways and had strong relationships with the NQLC; others raised concerns about how the NQLC engaged with them.

The Review notes that the NQLC did not have documented policies, procedures, recruitment processes, professional development, or other support to aid culturally appropriate engagement. This lack of formal approaches was exacerbated by the reduction in the number of project officers through a voluntary redundancy process in FY2020-21. Based on experience through the Review period, there remains an opportunity to consider how cultural competency can be more strongly embedded across the entire employee lifecycle, including through tailored formal training. The Review notes the move to re-employ Aboriginal project officers since the Review period.

The NQLC did not have formal policies and procedures regarding its use of cultural materials. However, in practice cultural materials were managed by the anthropology unit while the claims process was active and the EDST unit for any return requests made by PBCs. There was a lack of understanding on the part of Traditional Owners about the NQLC's use of cultural materials throughout the claim process and thereafter. Traditional Owners also expressed concerns regarding consent, storage, access and ownership of cultural materials to the Review.

The NQLC's complaints and internal review policies were publicly available on its website. During the Review period, the NQLC received six complaints (including indirectly via the NIAA) and four requests for internal review. Both staff and clients lacked clarity about how complaints were handled.

5.3.1 TOR 3: Assessment of performance

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

Respectful and transparent engagement

Respectful engagement was communicated as a value of the NQLC

The NQLC's Board and staff members consistently recognised the importance of engaging community and claimants in a respectful and transparent way. Staff were vocal about their intention to serve the community and help claimants receive self-determination through face-to-face groundwork. There appeared to be a shared understanding across the organisation that transparency leads to stronger long-term relationships within the community.

The general importance of respectful and transparent engagement was also recognised on the NQLC's website and throughout its corporate documents. The NQLC's 2021-2022 Annual Report states that some of the organisation's key values include:

- "Transparent, accountable, responsible and just operations and processes"
- "Honesty, professionalism and accountability to Traditional Owners in the delivery of ... services"

- “Maximum participation of and collaboration with, Traditional Owners and other stakeholders in native title processes.”²²

Nonetheless, the NQLC did not formally define what respectful and transparent engagement involves or how it is practiced externally with clients (for example, through policies, procedures, or methodologies).

The level of communication with clients varied, depending on their relationships with staff and the NQLC’s capacity

Stakeholders held mixed views about the extent to which the NQLC engaged with clients and potential clients respectfully and transparently. Traditional Owners with more frequent dealings with the NQLC (such as PBCs the NQLC actively supports) generally said the organisation’s engagement with them was respectful and transparent. In one instance, a Traditional Owner mentioned in consultations how the NQLC reached out to them quite often and “works quite well in a culturally appropriate way” when attending their PBC Board meetings. Another stakeholder shared similar sentiments as they recalled the support they were provided in having their Board meetings set up and business plans drafted. However, some Traditional Owners did also note that they often waited long periods to hear back from the NQLC. Consistent with this, the NQLC’s staff generally reported they had good relationships with their direct clients and could maintain these relationships.

Some Traditional Owners consulted by the Review who had less frequent dealings with the NQLC (such as claimants on slower progressing claims or PBCs receiving less active support) were generally dissatisfied with the organisation’s engagement with them. These stakeholders said the NQLC’s communication with them was infrequent or inconsistent and, related to this, they were unaware of the current state or next steps for their claim. Some had sent emails or letters to the NQLC and not received a reply for weeks, months or at all. These issues diminished these Traditional Owners sense of trust in the NQLC.

The NQLC’s apparently inconsistent engagement with Traditional Owners appears to result from staffing constraints and limited capacity. For example, staff explained that:

- “We need more internal resources...It’s not that we don’t want to do it, it’s more of a capacity issue.”
- “We don’t have capacity to do this work, so we often have to brief it out to contractors.”
- “With all the [internal] disruptions we don’t have capacity to take much on.”

Some PBCs recognised how the limitations on capacity would have an impact on the support they received. As they stated:

- “Sometimes they’re not available because they’re stretched so thin. Sometimes I can’t get hold of anyone, but they do everything else quite well”.
- “They need to either get more funding or more staff. They seem to be doing a lot for the little amount of staff that they have.”

When the NQLC staff did contact Traditional Owners, the level of detail and information provided to them was not always consistent. Stakeholder consultations and survey responses explain that some Traditional Owners did not receive enough information when undergoing the submission of their claims. In other instances, Traditional Owners were not given enough opportunities to meet face-to-face to discuss their concerns with the NQLC. According to these Traditional Owners, when they did meet with the NQLC in-person, the meetings were not effective in providing them with clear information. Further communication issues Traditional Owners raised with the Review included:

²² NQLC. NQLC Annual Report 2021-2022. Accessed June 2023.

- Not having the purpose of meetings explained to them and not having the meeting minutes read or sent to them.
- Not having clear information provided to them on the progress of their claims during, and after, meetings and not having their questions properly answered or followed up after meetings and consultations.
- Not having enough information distributed to them to explain the process, systems or people involved (that is, not having access to physical information and documents), including not understanding why certain contractors were being used for their claim.
- Not having frequent communication and further details on their claim, including the NQLC staff not making time to visit Traditional Owners face-to-face.

Several staff confirmed that these issues could occur, explaining that a lack of preparation on the part of the NQLC (for example, limited communication with Traditional Owners before meetings) directly impacted the effectiveness of meetings between the NQLC and their clients.

A high proportion of Traditional Owners who were surveyed had attended meetings organised by the NQLC. As revealed in consultations, such meetings are key for Traditional Owners in claim groups to understand the details of native title and make key decisions within their group.²³ There were some concerns mentioned in consultations and Traditional Owner surveys about how claim group meetings were run, with Traditional Owners from at least two claim groups saying the meetings were not well advertised, with the result that not all relevant persons were in attendance. Members of one Traditional Owner group claimed that the identities of those in attendance at a meeting conducted by the NQLC were not verified. In response, the NQLC advised that staff acknowledged and respected confidentiality requirements, and that it was also the responsibility of Traditional Owners to keep their details up to date so that they could be contacted.

Some Traditional Owners consulted by the Review felt that language, tone and communication from the NQLC were barriers to their understanding of the process

A common concern of the small number of Traditional Owners who spoke with the Review was that they were unclear about native title processes for example, the next steps for applications, the processes for claims (and why these differed between claims) and the technical or legal nuances of the native title system. While clients did not require language interpreters in consultations with the NQLC, they felt there was a barrier in the type of language and communication used by the NQLC's staff, due to differences in cultural upbringing and education. One claimant said they did not understand the language and legal jargon being used throughout consultations with the NQLC's staff, making it difficult to feel confident in their claim and transparency in their dealings with the NQLC. Another claimant said the process was explained in a "confusing way" which added to their stress. The process became even more confusing for claimants to follow when they also had to engage with multiple different people across the NQLC (who they felt sometimes gave them conflicting advice or information).

The Review notes that the lack of clarity about these issues in large part reflects the complexity of native title and the protracted and/or uncertain nature of the processes it involves. For example, some clients said it took several years after initiating their application to understand the full depth of their claim and what it would involve.

²³ Based on NQLC Traditional Owner surveys.

Some Traditional Owners said that the NQLC staff did not respect their level of education and they felt they were spoken down to when having the process explained to them. In one instance, a claimant said that the NQLC, “can be patronising and talk to you like you’re stupid”.

Some clients would like to engage with other claimants to understand the overall context of their claim

Several clients who spoke with the Review said they would benefit from a broader understanding of what other claimants were submitting and the kinds of information they were using. For example, they would like to have group sessions with other claimants, instead of only having one-on-one meetings with the NQLC, to broaden their understanding of the native title process and its complexities and potentially find harmony with other claimants. Isolated forms of engagement, or “hearing things through the grapevine”, led some clients to feel there was not as much transparency from the NQLC as they had expected. This included hearing about communications between the NQLC and other parties (for example, Ministers, government bodies). As a result, some long-standing clients felt that not hearing these details through formal communications impacted the outcome of their claim. In response, the NQLC noted that the confidentiality of individual claims must be respected. Nevertheless, the Review suggests that the NQLC could do more to communicate regularly with the community about its work in native title.

Culturally appropriate engagement

The native title process remains highly emotional and stressful for claimants and the wider community

All Traditional Owners consulted by the Review commented on the emotional burden of undertaking a native title claim and its impact on their mental wellbeing, physical health and relationships with family and community. Native title is inextricably linked with Indigenous people’s identity and culture, making the process a pivotal part of their lives. Nearly all clients consulted by the Review commented on the mental health impacts the native title process had on themselves and their Elders over prolonged periods of time.

Traditional Owners wanted more culturally appropriate engagement aligned with their cultural protocols and practices

Nearly all Traditional Owners consulted through the Review expressed a view that many of the NQLC’s staff did not sufficiently understand Indigenous culture, practices and protocols or engage in culturally appropriate or sensitive ways and that this could be distressing for Traditional Owners. The Review is not able to verify or refute these perceptions, but they are reported here as they were presented to the Review. These Traditional Owners identified various examples of where they felt the NQLC could better align with cultural protocols and practices:

- Having a greater number of Indigenous staff members to liaise with (particularly Indigenous staff at senior levels and Indigenous male staff).
- Understanding cultural practices particular to a claim group and implementing those practices more in engagements (for example, correctly practicing men’s business and women’s business by only having male staff members address cultural sites specific to men).
- Understanding and practicing the connection to, and value of, Country in engagements (for example, holding meetings face-to-face on Country so Traditional Owners do not have to travel off Country for meetings about their own Country).

- Understanding the value of respecting and engaging with Elders and practicing this during consultations (for example, addressing Elders by their correct title, considering further medical or accessibility requirements they may need, considering the stress and impact native title has on Elders).
- Understanding the full complexity of issues between overlapping and neighbouring tribes and clan-groups (including when to engage and not engage neighbouring groups).
- Remaining visible enough in the community and across the region.
- Using language and communication that is culturally safe and trauma-informed (for example, addressing and acknowledging when a client is distressed and affirming how they feel).
- Avoiding any inappropriate use of Indigenous NQLC Board or staff members to make “influential decisions over tribes that they do not belong to or have cultural authority over”.

The Review notes that a number of these issues reflect funding constraints (as described in section 5.2.2), for example, on staffing or travel budgets for meetings.

The NQLC had limited policies, procedures and training regarding culturally appropriate engagement

The NQLC’s 2021-2022 Annual Report described cultural sensitivity as a core value of the organisation, defining it as “the respect for traditional lore and customs of native title groups.”²⁴ In addition, the NQLC’s Administrative Procedures Manual included one policy relating to cultural appropriateness:

Culturally Appropriate: Dress standards should be culturally appropriate when interacting with Traditional Owners i.e., moderate (sic) attire.

However, the Administrative Procedures Manual did not provide further guidance for NQLC staff members about cultural appropriateness. The NQLC had no other policies or procedures regarding how staff should engage in culturally safe ways and handle culturally sensitive issues. Related to this, the NQLC had no policies or procedures regarding trauma-informed engagement.

The NQLC’s 2019-2020 Annual Report stated the organisation provided cultural capability training to its staff. However, a number of staff indicated to the Review that they did not have access to formal training, induction, or other forms of professional development to improve their cultural competency. A majority of respondents in the staff survey stated they did not receive any or very little cultural competency training. A few staff said they made decisions on cultural engagement based on their own discretion. The lack of support aligns with a recommendation of the previous Review, which stated that:

The NQLC should introduce measures across the employee lifecycle to ensure high levels of organisational cultural competence. This should include:

- *consideration of cultural competence in recruitment decisions*
- *formal tailored cultural competence training for new starters*
- *process for reflection and continuous development of current staff members*
- *active consideration of succession planning for Indigenous staff members.*

The NQLC did not have any specific processes or systems within its recruitment process to ensure new candidates adhered to a certain level of cultural competency.

NQLC staff members were strongly aware of the need to improve their cultural capability and engagement with the community. As revealed in consultations, many staff recognised the importance of having cultural

²⁴ NQLC. NQLC Annual Report 2021-2022. Accessed June 2023.

competency training as the basis for an Indigenous organisation that serves Traditional Owners. One staff member observed that, “we miss the mark with engaging with our community” and this engagement included both a “physical and digital presence” throughout North Queensland. Many staff agreed that a cultural induction should be provided to all members of the organisation regardless of their level. A few staff recalled that Traditional Owners pointedly suggested to them that the NQLC’s staff needed to improve their cultural competency and undertake cultural training.

Due to the lack of training, many staff members said they did not feel competent or equipped to navigate culturally sensitive issues with clients. Throughout consultations, staff from both the Cairns and Townsville offices mentioned that not being able to communicate in a culturally competent way often made them take longer to complete their tasks, further adding to their workload. In instances where staff did feel confident in their cultural engagement, they acknowledged that it was due to:

- having an Indigenous project officer or Indigenous staff member to work with
- having a stronger relationship with the client due to having greater capacity to meet their needs
- using the cultural awareness training they had received at previous workplaces.

Some staff members said they had requested cultural competency training, but this had not yet been provided.

A lack of Indigenous project officers continued to impact community engagement and created a greater burden for other Indigenous staff

Indigenous project officers had a key relational role in connecting the NQLC with Traditional Owners and the broader Queensland community. Part of their duties consisted of logistical work to enable community engagement, connecting with community members and keeping the NQLC in contact with what was happening across the NQLC RATSIB district. Prior to the Review period, Indigenous project officers were distributed across the three offices – Cairns, Townsville and Mackay²⁵ – to cover the towns closest to those offices.

Many staff acknowledged this role as key to providing the foundations for community connection by liaising with the North Queensland community. Indigenous project officers were highly valued across the organisation. For example, one NQLC staff member described the contribution that Indigenous project officers made towards grass roots community engagement, ensuring they were in face-to-face contact with clients and could build strong relationships with them.

In FY2020-21, the NQLC offered voluntary redundancies to all staff as a cost-saving strategy (as discussed further in section 0). A number of Indigenous project officers took up this offer. While the NQLC has recently been able to find the resources to commence recruitment of more Indigenous project officers, the voluntary departures affected the NQLC’s engagement with clients and the productivity of the NQLC’s staff overall. NQLC staff highlighted that at the time of consultations with the Review, there was only one project officer who worked between the Cairns and Townsville offices to liaise with Traditional Owners across the entire RATSIB area. This directly resulted in the project officer having severely reduced capacity to service Townsville office clients.

Several NQLC staff members from both offices voiced their unhappiness with the loss of Indigenous project officers. They noted that in their view this had resulted in:

- Indigenous staff having to take on a higher workload and risking burnout by having to service the community more and handle culturally sensitive areas in claims, due to the lack of cultural capability in

²⁵ The Mackay office closed prior to the Review period.

staff. They added that community engagement was often not a part of their role and deflected them from their core work.

- Indigenous staff having a greater level of pressure and emotional burden from dissatisfied clients (as Indigenous staff often received harsher criticism from community and Board Directors compared to non-Indigenous staff).
- Indigenous staff not having any key support to address the added cultural and emotional burden at the NQLC, often leading to them becoming more isolated at work.
- Other staff being less aware of the cultural events and issues happening in the broader community (for example, sorry business).

Consultations with stakeholders both internal and external to the NQLC emphasised that Indigenous project officers remain a key role within the NQLC and require greater support to increase their engagement and relationships with the community.

Complaints

The NQLC had its Complaints and Internal Review policies published on its website

The previous Review recommended that the NQLC publish its Complaints and Internal Review policies on its website. Both policies are now publicly available and explain concisely in plain language the mechanism for stakeholders to make complaints about the NQLC's activities and decisions, request internal review on eligible decisions and subsequently request external review.

The NQLC's Complaints and Internal Review policy was not consistently understood or applied

The NQLC Administrative Procedures Manual outlined the differences between informal and formal complaints, and a brief overview of the process which staff and complainants may follow. The Administrative Procedures Manual included details on the differences between the Informal Resolution Procedure and the Formal Resolution Procedure using clear, neutral and accessible language. However, the Administrative Procedures Manual did not provide sufficient detail as to how complaints processes are communicated to staff or clients, or how they are handled in a culturally sensitive manner.²⁶

Despite the procedures being outlined in the Administrative Procedures Manual, the Review found that many NQLC staff did not understand how client complaints were handled by the NQLC. The staff survey indicated that a majority of respondents were not familiar – or had only limited familiarity – with the complaints handling processes. Some staff expressed a limited understanding of how complaints were handled, for example:

- "The complaints process seems random with no actual process despite there being a policy for it. It is nothing official...it is disjointed, clunky and not transparent [for staff or the people receiving the complaint]."
- "I think they do have a complaints process but what that looks like in practice I'm not sure. It's written in our policies, but I don't know how it comes through. I don't know if anyone follows the process."
- "More transparency is needed. Staff usually do not hear about them."

When the NQLC received complaints (informal or formal) about the organisation or particular staff members, the affected staff were not always notified formally. Rather, staff were told or given ad hoc emails to inform them of a complaint, instead of through a formal mechanism. This informal process was

²⁶ NQLC. NQLC Administrative Procedures Manual. Accessed June 2023.

used to notify staff about all complaints, which sometimes made it confusing for staff to understand the nature of the complaint (and whether it was informal or formal). Staff consultations also highlighted that when they had to engage in a complaint resolution conversation with a client, they were not always given enough notice beforehand. In one instance, a NQLC staff member said they were told they had a complaint made against them, leaving them feeling unprepared when they then had to enter a resolution conversation with a client on that same day.

Other staff members said the handling of client complaints was the responsibility of senior staff at the NQLC, such as the CEO, PLO, or their manager, especially when the complaint was serious. As they explained:

- “In my unit, my manager is straight onto it if she has any concerns or complaints. There’s no issue there. They nip things in the bud.”
- “Individual complaints are passed on to the PLO and CEO. Don’t know about much of what happens to complaints.”
- “I’ve received complaints, they were questioning the integrity of the NQLC. I escalated it to the CEO.”

Many NQLC staff members preferred to escalate complaints and concerns to senior management who could directly deal with the complaint. Overall, NQLC staff members could make little distinction between informal and formal resolution procedures, despite the differences being outlined in the Administrative Procedures Manual.

The NQLC received six complaints from clients during the Review period

During the Review period, the NQLC received a total of six complaints from clients (see Table 9). This included complaints made directly to the NQLC and indirectly via the NIAA. One complaint was received after the Review period via the NIAA.

Table 9 | Number of complaints received by the NQLC directly or indirectly

Type	FY2019-20	FY2020-21	FY2021-22	FY2022-23
Complaints received directly by the NQLC	3	0	0	0
Complaints received indirectly from the NIAA	0	1	2	1

The complaints made to the NIAA related to concerns about:

- delays by the NQLC in deciding an assistance application for land claims matters (one complaint)
- decisions by the NQLC not to assist with native title claims (one complaint)
- governance of a PBC and its relationship with the NQLC (two complaints)
- NQLC staff showed lack of respect when handling a given land claim matter (one complaint)
- incorrect parties being considered Traditional Owners (two complaints).

Some clients said they did not understand how to make a complaint, or chose not to lodge a complaint as they did not trust the complaints process

The NQLC provided certain materials to clients on the complaints process, which was included with their copy of the service agreement. Nonetheless, understanding of the complaints process varied across clients, with those in more regular contact with the NQLC often having a clearer understanding. A few

clients said they would know how to make a complaint if needed, as the NQLC clearly explained the complaints process during community forums and meetings.

Clients who did not know how to submit a complaint, or chose not to submit a complaint, said it was because:

- They were unclear about the complaints process, including how to submit a formal complaint.
- They thought they needed to have a strong relationship with the NQLC or deal with certain employees to submit a complaint.
- They expressed their complaint verbally rather than formally, as this felt easier and more comfortable, but this meant the complaint was not taken seriously.
- They did not view the complaints system as trustworthy or transparent (for example, because they believed staff and Board members would have influence over the decision).
- Poor communication and engagement in previous meetings with the NQLC made them feel like they would not be listened to.
- They had heard through word of mouth that the complaints process was very long.

Some clients the Review consulted with explained that they were more inclined to make complaints through alternative pathways, rather than directly to the NQLC. This included privately engaging with their own lawyers, the Federal Court or writing directly to the Indigenous Affairs Minister or the NIAA.

Clients with whom the Review engaged who had made complaints were generally unhappy with the response to their complaint, often feeling that they were not respectfully listened to or had their core concerns dismissed. The Review appreciates that this may not necessarily be a reflection on the performance of the NQLC as the issues at stake may be very challenging. Nevertheless, more formal processes are likely to assist in improving these perceptions. In some cases, stakeholders were not provided with any mediation when making complaints involving other parties, creating further resentment.

Internal review

The NQLC website outlined the internal review process

Section 203BI of the NTA says that:

The internal review functions of a representative body are:

- a) to provide a process for registered native title bodies corporate, native title holders and persons who may hold native title to seek review by the representative body of its decisions and actions, made or taken in the performance of its functions or the exercise of its powers, that affect them; and*
- b) to publicise that process appropriately.*

The NQLC website defined an internal review in concise language and clearly outlined the process and guidelines clients must follow to submit their request for an internal review.²⁷ During the Review period, the NQLC website did not contain any information on the external review mechanism (which was separate from an internal review and escalated claim matters to the NIAA, or other peak bodies).

²⁷ NQLC. NQLC website. Accessed June 2023. <https://nqlc.com.au/>

The NQLC received four requests for internal review during the Review period

The breakdown of these requests by year is shown in Table 10²⁸.

Table 10 | Number of requests for review of decisions not to assist

FY2019-20	FY2020-21	FY2021-22
0	2	2

Of the two internal reviews requested in FY2020-21:

- One concerned the NQLC's decision not to provide assistance to a claim – this review ceased when the matter for which assistance was requested was dismissed by the Federal Court.
- One concerned the NQLC's cessation of funding and legal representation for a claim – this review resulted in the external reviewer upholding the NQLC's decision.

The groups who requested these reviews reported that the process was unclear, stressful and excessively long. Both groups were dissatisfied with the outcome of their review and disagreed with the final ruling.

The Review did not receive information about the two internal reviews requested in FY2021-22.

Use of cultural materials

Clients wanted further clarity on the collection and distribution of cultural materials, including custody over cultural information that involved their family knowledge and genealogies

Traditional Owners defined cultural materials in consultations as the physical, verbal and cultural documentation detailing the genealogical, anthropological, environmental and cultural elements of an Indigenous group. Cultural materials are required from Traditional Owners to prepare and submit a claim but are also important in themselves as physical records of the culture and history of their family. Clients who had submitted claims emphasised the personal importance of the materials (in the contents of the materials and the time taken to source the materials), as they often had to collect materials themselves, through their own research and collaboration with Elders. This self-research often required large amounts of personal time. Some Traditional Owners felt that verbal forms of cultural materials (information told through storytelling and oral history) could be overlooked by the NQLC when submitting their claims.

The lack of internal understanding and policies on cultural materials was reflected in Traditional Owners' lack of awareness of how cultural materials are used for their claims. Their concerns in relation to cultural materials included:

- the consent process of providing cultural materials (what they are consenting to when providing the NQLC with documentation)
- what providing cultural materials entails within and beyond submitting a claim
- where the cultural materials are stored and preserved and who has access to, or is using, the cultural materials and for what purposes
- who is granted ownership over the cultural materials now and in the future and how they can receive access to their cultural materials if they are not given ownership.

²⁸ NQLC. NQLC Annual Report 2020-2021. Accessed June 2023., NQLC. NQLC Annual Report 2021-2022. Accessed June 2023.

Certain clients felt they had lost ownership over their own cultural materials and information, as they had been denied access to them or not had them returned directly to them. In other instances, Traditional Owners explained how their cultural materials and genealogies had been specified as the property of the PBCs but not of the Traditional Owners themselves, making it harder to access them. This has seen several Traditional Owners raise concerns over the conflicting policies between the NQLC and a PBC on cultural materials, as PBCs have their own deed for the return of cultural materials independent from the NQLC. In one circumstance, Traditional Owners were highly distressed about the alleged destruction of cultural materials and the lack of communication from the NQLC about this occurrence.

The NQLC did not have formal policies or procedures regarding its use of cultural materials

While the NQLC collects cultural materials for native title purposes, there were no formal documented guidelines or parameters over the use and distribution of cultural materials or how this was to be communicated to Traditional Owners. The NQLC's staff were unsure about how to address issues relating to cultural materials. During the previous Review of the NQLC information was provided in a series of emails about the process that staff followed relating to cultural materials,²⁹ but this information was no longer documented during the recent Review period. In practice, cultural materials were managed by the anthropology unit while the claims process was active and the EDST unit for any return requests made by PBCs. The latter is discussed further under TOR 6.

The NQLC has reported that since the Review period they are in the process of drafting a cultural materials policy which is undergoing review. Having a clearer strategy would enable the NQLC to clarify how it will address these concerns and how PBCs supported by the NQLC will create their own policies about cultural materials. The Review recognises this is a challenging issue that many NTRB-SPs are grappling with and, as such, there may be opportunities for collaborative development of policies and procedures.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

5.3.3 TOR 3: Recommendations

RECOMMENDATION

5

Introduce measures across the employee lifecycle to improve the NQLC's organisational cultural competency, including but not limited to:

- consideration of cultural competency in recruitment decisions
- formal tailored cultural competency training for new starters and regular refresher training for existing staff
- easily accessible guidance on what respectful, transparent and culturally appropriate engagement looks like in practice
- visual, plain English resources about the native title process that staff can provide to clients
- increased numbers of Indigenous project officers and Indigenous people on NQLC staff more broadly.

²⁹ Nous Group. 2019. North Queensland Land Council Final Performance Report.

RECOMMENDATION

6

Support staff and clients to consistently understand and apply the NQLC's complaints processes by providing relevant information in appropriate formats:

- For staff, upon commencement of employment and periodically thereafter through clear written guidance.
- For clients, upon commencement of their relationship with the NQLC and at key points in the native title process thereafter.

RECOMMENDATION

7

Initiate additional group engagement opportunities with Traditional Owners to improve claimant understandings of the native title process, the NQLC's relationships with claimants and relationships between different claimant groups.

RECOMMENDATION

8

Work with stakeholders and other NTRB-SPs to develop a policy for the NQLC's use of cultural materials. This policy should address key issues including how the NQLC will explain and obtain consent for potential uses of cultural materials when first engaging with a claim group and how it will continue to communicate with claim groups regarding its ongoing use of cultural materials.

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

Staff salaries made up the greatest component of spending for the NQLC, on average about half of its annual expenditure. Consultant costs (anthropology and legal) were a key cost driver for the organisation. Despite this, the NQLC's use of external resources appeared to be effective and appropriate.

The NQLC implemented a range of savings measures during the Review period: for example, voluntary redundancy packages, an independent in-house anthropology unit and a blanket policy of no claims meetings on Sundays. Not all of these were successful: staff reported that the voluntary redundancies had a detrimental impact on the NQLC's operation with Indigenous project officers and legal officers leaving the organisation. The establishment of an in-house independent anthropology team was subsequently disbanded. However, the increase in community acceptance of videoconferencing during COVID-19 created significant efficiencies.

The NQLC's policies and processes for claim group meetings balanced considerations of cost-effectiveness with the importance of supporting equitable participation. Meetings were generally productive and support effective use of time and resources, though there were some calls for them to be better organised and communicated.

Some external factors had an impact on the NQLC's ability to achieve native title outcomes in a cost-effective way, including the size and remoteness of the RATSIB area.

5.4.1 TOR 4: Assessment of performance

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

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

While base funding for the NQLC was consistent over the Review period, additional funding fluctuated markedly

The base funding the NQLC received from the NIAA over the Review period was consistent at \$6.1 million per annum. The NQLC also received approximately \$1.6 million per year for PBC support. A fluctuating amount of additional funding was provided for unforeseen litigation and other approved purposes. As discussed under TOR 5 in relation to financial management, NQLC accrued significant annual underspends across the period.

The NQLC's funding from NIAA over the period was supplemented by fee income, interest income and sundry payments as shown in Table 11.

Table 11 | NQLC income FY2019-20 to FY2021-22³⁰

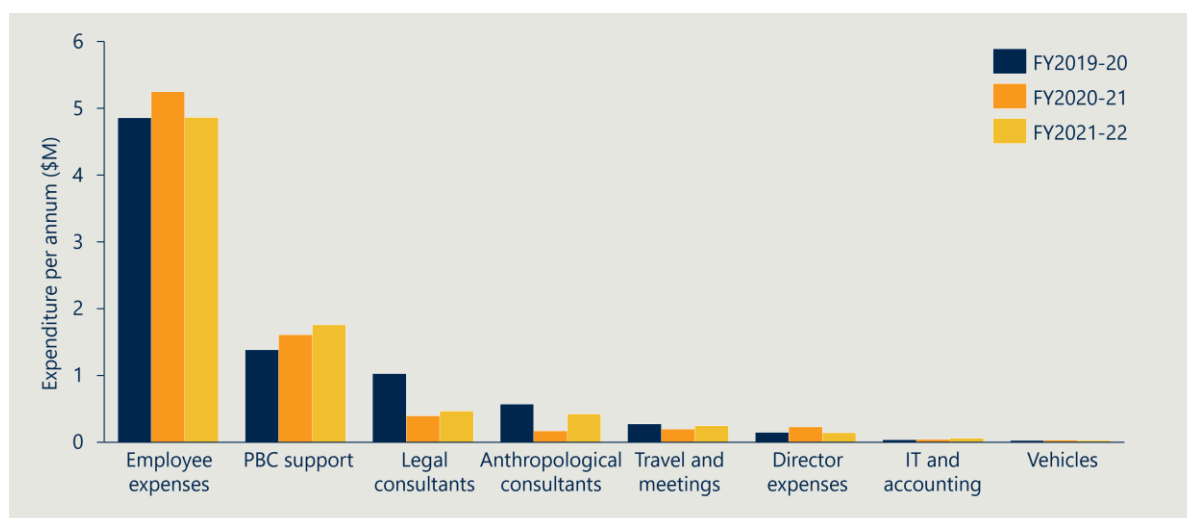
Funding	FY2019-20	FY2020-21	FY2021-22
NIAA funding	\$9,225,708	\$9,146,108	\$10,004,197
Fee income	\$1,108,846	\$1,127,195	\$190,245
Interest income	\$22,829	\$543	\$538
Sundry payments	\$50,000	\$50,000	-
Total	\$10,407,383	\$10,323,846	\$10,194,980

Staff salaries were the greatest expenditure item for the NQLC over the Review period

In each year, staff salaries were the greatest expenditure item for the NQLC, equating to roughly half its annual expenditure. Many senior staff recognised that the level of staff salaries reflected the difficulty in recruiting and maintaining staff with professional native title expertise in the very competitive market, especially in a regional area like Northern Queensland.

Total NQLC expenditure was similar in FY2019-20 and FY2020-21 at about \$10.5 million per year but dropped almost ten per cent in FY2021-22 to \$9.5 million per year. As shown in Figure 2, the relative breakdown of key line items also fluctuated across the Review period, in some instances due to the limiting effects of COVID-19 on certain travel and research engagements. For example, the costs for anthropological consultants, legal consultants, travel and meetings dipped sharply in FY2020-21 from FY2019-20, before trending upwards again in FY2021-22. Conversely, Director expenses increased sharply in FY2020-21 before returning to previous levels in FY2021-22.

Figure 2 | Costs by type, FY2019-20 to FY2021-22³¹



³⁰ NQLC. Annual Reports 2019-20 to 2021-22.

³¹ NQLC. Annual Financial Reports. 2019-20 to 2021-22.

Cost-saving actions, strategies and/or discussions

Savings measures were implemented at the organisational and individual level at the NQLC

The NQLC outlined a number of cost-saving measures in its most recent Strategic Plan, including to:

- utilise the most cost-effective and efficient professional services for the advancement of claims
- resolve claims through negotiation, agreement and consent rather than through litigation
- maximise the use of in-house legal representation
- maximise the use of internal anthropologists for the preparation of connection reports
- continue to utilise established ILUAs as templates for a wide variety of purposes to minimise the cost of ILUA developments
- continue to streamline procedures for processing FANs
- maintain efficient and effective procedures for notification.

NQLC staff consulted for the Review were very aware of the cost constraints across their organisation. They identified a number of savings measures the NQLC implemented during the Review period. This included:

- keeping work vehicles for eight years rather than four years before trading them in
- migrating the organisation's computing infrastructure from Telstra to Microsoft Azure, which was not only cheaper but also more stable, effective and efficient
- asking for high level advice which could be applied across a broad range of clients when engaging external experts for legal advice
- employing a blanket policy of no claims meetings on Sundays, which incurred double-time award rates for staff in addition to time-off-in-lieu at a later date.

As noted in section 5.1.1, the NQLC trialled a new approach to anthropology (an in-house research unit), which was intended in part to reduce consultant costs. However, this approach may not have reduced expenditure in practice where work had to be redone by external consultants due to the State's perception of a lack of independence. These changes are discussed in greater detail under TOR 1.

As noted in section 5.1.2, COVID-19 increased the uptake of videoconferencing technology on the part of the NQLC and its stakeholders. This in turn reduced travel and meeting expenditure and increased time savings and work efficiency, especially for shorter meetings.

The decision to offer voluntary redundancy packages had a significant impact on the NQLC's performance

In FY2020-21, the NQLC offered voluntary redundancies to all its staff as a cost saving strategy. Seven staff took up this offer, including a number of Aboriginal project officers and lawyers.

Many staff reported that the NQLC lost multiple long term and experienced staff, including a number of Indigenous staff. The staff who left during this time were not replaced, due to the need to make savings. With the staff departures, existing responsibilities were shared among remaining staff. Work previously undertaken by project officers, such as arranging mailouts, meeting logistics, etc., was incorporated into the administrative officer's role. Staff reported that this meant the community engagement component of the previous project officer role lost out.

Employee expenses for the FY2020-21 period when the redundancies occurred was about \$400,000 higher than either the FY2019-20 or FY2021-22 periods, which the Review understands included the cost of the redundancy packages.

The NQLC applied strategies at the operational level to manage finances

Staff reported that rigour and care were applied by the Corporate Services Unit to monitor the NQLC's finances; for example, checks for accuracy and sense when people submitted expenses, monitoring when additional funding for claims could be needed so that it was included in upcoming budgets and ensuring that the NQLC did not commit to moving ahead on certain activities until sufficient funding was confirmed. Funds committed from previous years were also monitored, as the NIAA required that the NQLC justify retaining any previously unspent funds.

The previous Review recommended that the NQLC should explore alternate ways or a more appropriate mechanism to track resource use on claims, to more accurately determine performance and efficiency of individual claims. The Review understands that the NQLC produced monthly management reports tracking expenditure of activities against the approved budget and financial expenditure to budget acquittal reports with variance analyses. A more formal HR measurement tool was expected to be designed in the FY2022-23 period to more substantively inform efficiencies and effectiveness.

Some staff felt the NQLC's scrutiny of expenditures sometimes had unintended consequences

Staff reported that managers examined expenditure carefully and that this resulted in savings for the organisation. However, some staff felt this rigour was detrimental to the workplace culture and relationships with clients. Examples cited included:

- Applications for staff training and development, where staff reported having to write a detailed case proposal to justify the NQLC funding their attendance to conferences or networking events, which were then further questioned.
- The organisation's policy about its office premises, including the continued use of the office in Cairns which some staff reported as being cramped, lacking privacy and no longer fit for purpose, while in Townsville, the office premises seemed to be constantly changing and moves distracted staff from their work.
- Its criteria for funding claimant meetings, and staff and clients' travel to those meetings, which was variously described as "stingy", "economical" and "examined with a fine tooth comb" by different members of staff.

The Review acknowledges that while these strategies were not always accepted by staff, they reflected good faith efforts to ensure prudent use of the NQLC's funding.

Appropriate processes for claim group meetings

Claim group meeting processes were generally appropriate despite some client concerns

Feedback during the Review indicated that claim group meetings were generally productive and achieved what they set out to do, which supported the effective use of time and resources. Concerns expressed by some clients about these meetings are discussed under TOR 3.

Both clients and staff acknowledged that the lack of project officers in the organisation made claim group meeting logistics more challenging, as there was less capacity and capability within the organisation to liaise with community and ensure good communication with local families and PBCs well ahead of the event. This is discussed at greater length under TOR 3.

Where physical meetings were required, the dispersed nature of clients could represent a significant financial impost, with some staff reporting that the logistics of a large meeting could cost about \$40,000. A number of staff also commented that the expectation of hybrid-format meetings which emerged after the pandemic was particularly challenging, as these have been surprisingly more difficult to run than purely virtual or physical meetings.

Annual yearly expenditure per claimant group

Annual expenditure varied greatly between claimant groups

Over the Review period, costs of the different claims and for the same claim from year to year were highly variable, with the progress of many also impacted by COVID-19 (see Figure 3). The NQLC's expenditure demonstrated the reactive nature of the environment in which many of their claims sit.

Figure 3 | Annual yearly expenditure per claimant group³²



Travel assistance policies for claim group meetings

Travel assistance policies were noted in the NQLC Policy Manual and well understood by staff

According to the NQLC Policy Manual, the organisation provided funding only for authorisation meetings and determinations. It did not, other than in exceptional circumstances, fund travel allowance to attend working group meetings, applicant meetings, community meetings and other ordinary meetings conducted by the NQLC in representing native title interests for groups.

Staff reported that this was generally true in practice, though the NQLC also often funded claim group mediation meetings, as they had found from past experience that it was sometimes impossible to move claims forward without these taking place.

Claim group meetings could result in significant costs for a NTRB-SP. Travel and meeting costs were relatively stable over the Review period for the NQLC, with annual figures at about \$200,000 at its lowest in FY2020-21, to about \$275,000 at its highest in FY2019-20, as shown in Figure 3.

³² NQLC. Annual operational reports to the NIAA (unpublished). 2020 to 2022.

Costs varied depending on several factors, including location, size of the group, number of people attending and the nature of the meeting. Due to the COVID-19 pandemic, there were also fewer in-person meetings over the Review period. Policies around not generally supporting weekend meetings were also intended to keep costs down for claim group meetings (as noted above).

Appropriate rationale for use of external consultants

The NQLC used the services of external consultants appropriately

The NQLC had guidelines as described in section 8.7 of the NQLC Administrative Procedures Manual to ensure that commissioned external consultants deliver value for money. This included the adoption of a competitive tendering process for anthropological and legal consultants (in accordance with the procurement guidelines from the Australian Government). According to the Administrative Procedures Manual, the CEO authorised all consultants engaged and used an in-house lawyer or anthropologist to supervise the consultants' work. In practice, staff reported that work was briefed out to external lawyers when in-house lawyers were at capacity or there was urgent time pressure (for example, to respond to certain FANs).

The Review notes that external anthropological consultants were engaged on a number of occasions to manage a view from the Queensland Government that connection reports authored by NQLC anthropologists might not be objective. These issues are further discussed under TOR 1.

5.4.2 TOR 4: External factors

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

Size of RATSIB area

The NQLC's RATSIB area is moderate in size but diverse in terrain

The North Queensland RATSIB area covers approximately 943,300 square kilometres, of which 411,164 square kilometres is land. This accounts for around 24 per cent of the land area of Queensland. While this area is comparable to other RATSIB areas in Queensland and Western Australia in size, the terrain is diverse and includes many mountainous areas, which have an impact on travel time and costs.

The region is as diverse in its landscapes as it is in its culture, from the marine environment of the Great Barrier Reef to the coast and upland to the western areas which covers seven bioregions on land. These bioregions include the Central Queensland Coast, Brigalow Belt and Wet Tropics of the coastal and upland areas, then the Einasleigh Uplands and Desert Uplands to out west to the Mitchell Grass Downs and the Savannah Gulf Plains. There is a major concentration of Indigenous population on the coast that becomes less dense as you move westwards.

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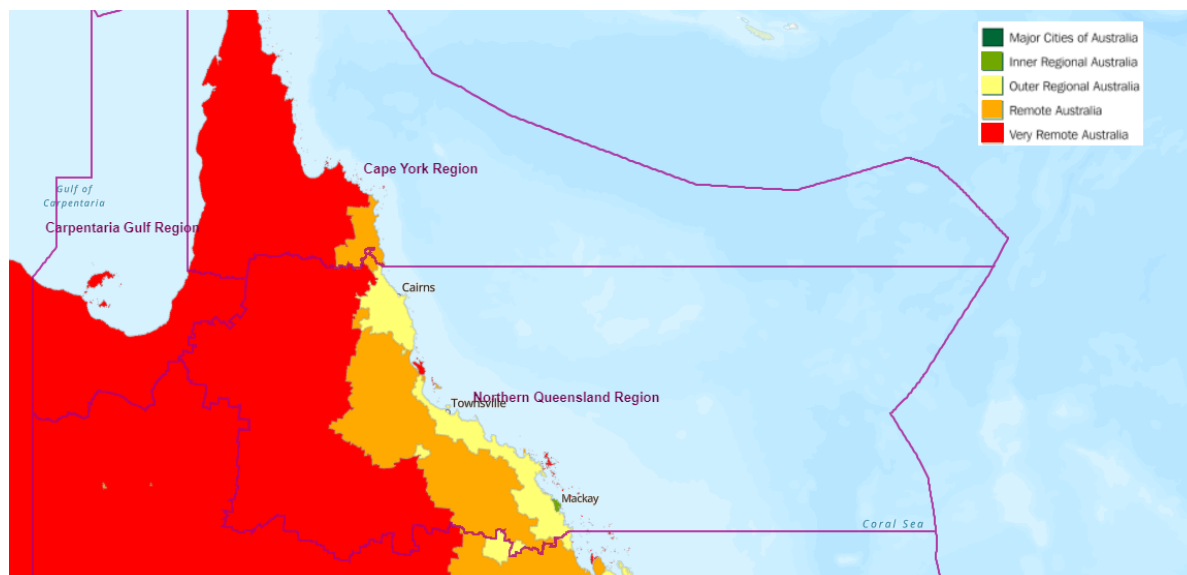
Remoteness of RATSIB area

The North Queensland RATSIB area is regional and remote

The remoteness of the NQLC's RATSIB area increased the costs associated with delivering native title outcomes for clients and the amount of funding it required. Under the Australian Bureau of Statistics remoteness classifications (ASGS 2016), most of the coastal area belonging to the North Queensland

RATSIB area is classified as “outer regional”, with the exception of the Mackay area, which is classified as “inner regional”. The remaining inland area is “remote” or “very remote”, as shown below in Figure 4.³³

Figure 4 | Remoteness of RATSIB areas for Queensland



The remoteness of some services could impact the cost-efficiency of the NQLC’s operations. For example, it could make field costs (travel, accommodation, food, first aid, etc.) higher than for organisations that operated in less remote areas. For this reason, the Review assesses that the remoteness of the region has had a moderate impact on the ability of the NQLC to achieve native title outcomes in a cost-effective manner.

Average number of people within a claim group

The NQLC did not provide details of the average people within a claim group to the Review.

Interpreters

Most clients and staff agreed that Traditional Owners of the region had a good English fluency and use of an interpreter for any meetings was extremely rare. There is a history of forced removal and of missions in the NQLC RATSIB area. English is the first language for many Aboriginal and Torres Strait Islanders living in the area, even for those from older generations. There were limited expenses related to having an interpreter and it had limited effect on cost effectiveness for the NQLC.

³³ Native Title Vision. Queensland RATSIB areas with ARIA16 remoteness levels. 2023. Accessed June 2023. <https://nntt.maps.arcgis.com/apps/webappviewer/index.html?id=a4fab24b605b43bd9049d3a372d79e62>

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

Summary

The delineation of roles, responsibilities and decision making between the NQLC's Board, Chairperson, CEO and senior staff was clearly defined in its corporate documentation. In practice, however, it was clear to the Review that the delineation of responsibilities was not well understood by the Board Directors. Considerable dissatisfaction was expressed by Board Directors about the NQLC policy of "separation of powers" which they felt was locking Directors out of engagement with staff. This policy, initiated prior to the Review period, sought to clarify the role of Directors in relation to day-to-day management of the organisation.

The NQLC Board had a representative model based on a ward system. While there were efforts during the Review period to change the structure to include greater external expertise, a move to change the Rule Book to bring this into effect was voted down in 2021.

Throughout the Review period, the NQLC experienced considerable organisational disruption due to high levels of senior management changes, with an acting CEO in place for more than a year. The uncertainty created by changes in Executive leadership created a lack of capacity to undertake internal improvements and led to delays in some decision-making. The period of instability commenced with the sudden departure of the long-term PLO in late 2019 and included an ongoing series of leadership changes, including the departure of the CEO in 2021, resulting in acting or interim CEO incumbents through to the end of the Review period. The Review formed the view that the instability in leadership created significant challenges for the delivery of outcomes across the whole organisation.

Under the circumstances, the NQLC and those in interim leadership roles responded strongly to keep the organisation functioning as effectively as it did through this period of disruption. The NQLC has since recruited staff to the substantive key executive management roles, including a new PLO in late 2022 and a new CEO in mid-2023. Executive changes were compounded by high levels of staff turnover due to redundancies and ongoing tensions reported between teams and offices. Recruitment of professional staff continued to be challenging throughout the Review period.

While NQLC received unqualified audit reports across the Review period, the accrual of significant annual underspends and the need for a program of voluntary redundancies led the Review to the finding that overall financial management was not optimal. This finding was rejected by the NQLC as overly simplistic and failing to consider the unique complexities of funding and expenditure within NTRB-SPs.

Staff reported that training and development opportunities were limited or non-existent, with no cultural awareness training offered in any formal capacity. There were also isolated reports of bullying and harassment which the respondents felt the NQLC did not respond to appropriately. Nevertheless, staff generally found the NQLC to be a good workplace, and staff were broadly united on the values and mission of the organisation to deliver native title outcomes for clients.

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 NQLC had a clearly defined separation of powers policy

The NQLC's staff, Executives and Board Directors all generally reported that there was a clearly articulated distinction in the roles and responsibilities of Board Directors and Executive staff. The policy of separation of powers, which was established prior to the Review period, provided a distinct line of demarcation between the role of Board Directors and NQLC management. This separation of roles and responsibilities was outlined in key corporate documentation, including the NQLC Rule Book, the NQLC Policy Manual and the corporate governance section of each annual report.

The respective responsibilities of the CEO and Board Directors, as per the Rule Book, are summarised in Table 12. As outlined, the responsibilities of the Board relate to strategic and governance functions, while the role of the CEO is focused on operational matters related to implementing strategic decisions made by the Board.

Staff reported that they had limited interaction with the Board when performing their day-to-day activities. They also reported that major decisions were usually made by the CEO in consultation with the relevant senior staff.

Table 12 | Roles and responsibilities of Board and CEO

Board responsibilities ³⁴	CEO responsibilities ³⁵
• The setting of policy and of determining the priorities of the business or functions of the Corporation. • The setting of and approvals of budget plans. • Strategic planning. • Statutory functions. • Any functions required to be carried out by the Corporation in accordance with conditions attached to any grant of monies. • Appointment of auditors. • Appointment of an Executive Officer. • Setting, running and keeping records of all AGMs, General Meetings and Ward Meetings of the Corporation. • Appointment of a contact person. • Representing the Corporation at political forums, seminars and meetings relevant to the functions or objects of the Corporation. • General planning for the carrying out of the objects and goals of the Corporation.	• The day-to-day management and administration of the NQLC in accordance with the Policy and Procedure Manuals. • Implementing decisions of the Board. • Managing the day-to-day financial resources of the organisation within the Department of the Prime Minister and Cabinet (now NIAA) guidelines and in accordance with the approved budget and variations. • Managing the staff of the organisation including appointments, disciplinary and grievance procedures, and performance reviews. • Providing advice and assistance to the Board to facilitate effective decision-making processes for the performance of the functions of the NTRB. • Identifying funding sources and in-kind support from government and non-government agencies. • Ensuring that native title groups within the gazetted area of the NQLC are aware of the functions and framework of the organisation. • Ensuring the operations of the organisation are integrated with and complimentary to the operation of other Indigenous organisations within the region. • Promoting the role of the NQLC at a local, regional and national level.

³⁴ NQLC. NQLC Rule Book. 2017. Accessed June 2023. <https://nqlc.com.au/wp-content/uploads/2019/09/consolidated-rule-book.pdf>

³⁵ NQLC. NQLC Administrative Procedures Manual. 2016.

Board responsibilities ³⁴	CEO responsibilities ³⁵
	Developing advocacy positions and submissions on behalf of the NQLC.

Some Board Directors were unhappy with their decision-making rights in practice

As noted in Table 12, the NQLC Rule Book stipulates that the Board has responsibility for the setting of policy, determining the priorities of the business, the setting of and approvals of budget plans, and strategic planning.

Some Board Directors voiced concern to the Review that their role in these areas was sometimes only symbolic; for example, they would be presented the budget or organisational priorities and be expected to simply agree to and sign off on it, or initiatives that they wanted to pursue would be dismissed on the ground of lack of funding.

They also commented on how agenda papers for Board meetings were sometimes received very late before meetings, leaving them with little time to consider key issues thoroughly before having to reach a decision and move onto other items.

Many Board Directors were dissatisfied and frustrated by the NQLC's separation of powers policy

During consultations with the Board, the Review team heard that many Directors were frustrated by the separation of powers demarcation, which limited their access to the staff and to the building. The Review understands that the policy was introduced prior to the Review period to manage some instances of Board over-involvement in management issues.

Given the clear dissatisfaction of the Directors with the way the arrangement is working, the Review suggests there is an urgent opportunity for the NQLC, under its new CEO, to work with the Board to clarify roles and relationships.

The NQLC's executive staff roles were well defined

The NQLC organisational structure includes four executive positions. These are the CEO, the PLO, the CFO (who also holds responsibility for the HR function) and the EDST Manager. Role descriptions for the CEO and senior executive leadership team are summarised in Table 13. As shown in Table 12 and Table 13, the responsibilities of the leadership roles descriptions for the Board and executive staff were complementary and did not unnecessarily overlap or conflict.

Table 13 | Executive leader responsibilities³⁶

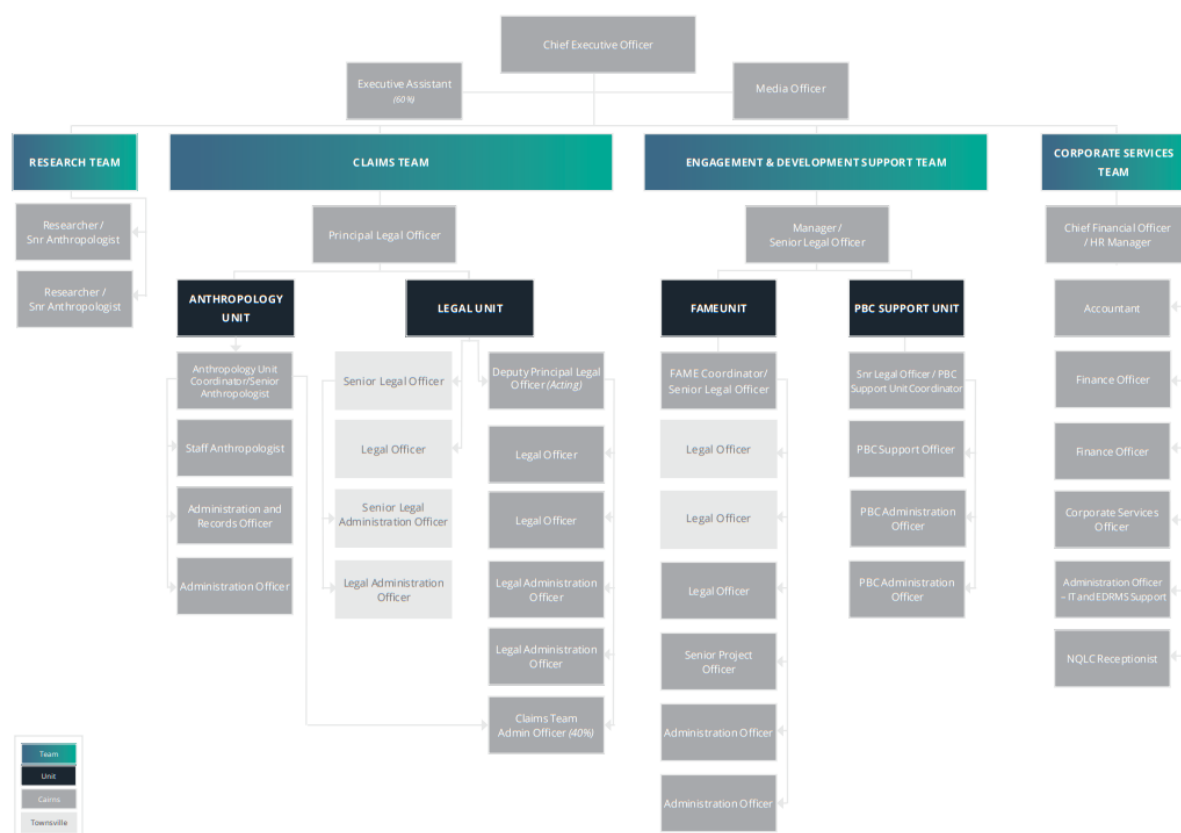
Executive position	Role description
Chief Executive Officer	The CEO is responsible for the day-to-day management and administration of the NQLC including implementing decisions of the Board, managing resources and managing staff. The CEO also facilitates effective decision-making processes, identifies funding sources and in-kind support from government and non-government agencies, and ensures native title groups are aware of the functions and framework of the organisation. They also promote the role of the NQLC locally, regionally and nationally, and develop advocacy positions and submissions on behalf of the NQLC.

³⁶ NQLC. NQLC Administrative Procedures Manual. 2016.

Executive position	Role description
Principal Legal Officer	The PLO is responsible for the management of the claims team, which includes the Legal Services Unit and the Anthropology Unit. The Legal Services Unit is responsible for providing legal and claims management services to the NQLC including representing and providing advisory services to native title clients. The NQLC's Anthropology Unit is responsible for the anthropological research required to progress applications for determination of native title.
Chief Financial Officer /Human Resources Manager	The CFO is responsible for the management of the Corporate Services Unit, the financials of the NQLC, budget submissions, financial reports and HR. The Corporate Services Unit is responsible for providing administrative and other corporate services to the NQLC including strategic financial planning advice. The Corporate Services Unit is also responsible for accounting and payroll services, reception services and coordinating IT services. HR responsibilities include managing the HR practices of the NQLC, employment contracts, recruitment and position descriptions.
Engagement and Development Support Team Manager	The Manager of the EDST is responsible for management of two sub-units; the PBC Support Unit (PBCSU) and the Future Acts Mining and Exploration (FAME) Unit. Both Units have regular ongoing dealings with clients in the post-determination space. The EDST is responsible for supporting PBCs build their administrative, governance and financial capacities, coordinating the operations of the PBCSU and FAME Unit to work cooperatively on capacity development services. The PBCSU is responsible for various capacity development activities to support, strengthen and consolidate their operations. The FAME Unit is responsible for Future Act services throughout the claim process and post-determination, dealings with Future Act proponents, and consolidating administrative and management practices in the context of dealing with third parties.

While the roles of key personnel and units are formally outlined in the NQLC Administrative Procedures Manual, some of these descriptions are no longer up to date, with some areas having changed line managers or names. However, staff the Review spoke with were clear as to which responsibilities sat with whom. The organisational structure as at 30 June 2022 is shown in Figure 5.

Figure 5 | The NQLC's organisational structure, June 2022³⁷



Board integrity and capability

The NQLC has a representative Board model based on a ward system

The NQLC has a representative Board of Directors. Board Directors were elected to represent a ward for a two-year term. There were ten wards, two of which (Cairns and Tablelands) had two representatives while the remainder had one representative each. The boundaries of each ward were specified in schedule three of the NQLC Rule Book.

Following the election of the Board through the ward representative voting system, a Chairperson, Deputy Chairperson, Correspondence Secretary and Treasurer are usually elected by Board members at the first meeting of the Board after the first General Meeting of the Corporation. These positions are eligible for re-election after each AGM.

The ward system supported greater participation and representation in the NQLC Board across the geographic areas covered by the NQLC. Board Directors were voted in based on annual community meetings held in each local ward. Ward elections were held at meetings in which eligible members were given 28 days' notice as to the meeting to be held in their respective Ward. Quorum for these meetings was set at 20 Eligible Ward Members or 20 per cent of the total Eligible Ward Members for that ward, whichever is higher. Where quorum was not met 30 minutes after the designated time, the Ward Meeting must be adjourned to seven days later at which notice was not mandatory and the quorum for an

³⁷ NQLC. NQLC Annual Report 2021-22. 2022.

adjourned Ward Meeting was the number equivalent to the number of members present at the commencement time for that adjourned meeting.

A small number of Traditional Owners consulted by the Review raised issues with the election process, suggesting it was a “majority rules” system which favoured candidates with the largest families and was inconsistent with traditional ways of conducting business, where each family group would have one vote regardless of the size of the family group.

Responsibilities of Board members were outlined in the Board Members Code of Conduct

The key responsibilities of Board members to the organisation were outlined in the Board Members Code of Conduct, which was a voluntarily adopted Code of Conduct for its meetings and processes. Key responsibilities are outlined in section 2.5 of the NQLC Policy Manual and also summarised in Table 14.

Table 14 | NQLC Board Members Code of Conduct³⁸

NQLC Board Members Code of Conduct
• A Director must act honestly, in good faith and in the best interests of the Corporation as a whole. • A Director has a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office. • A Director must use the powers of office for a proper purpose, in the best interest of the Corporation as a whole. • A Director must recognise that the primary responsibility is to the Corporation’s members as a whole. • A Director must not make improper use of information acquired as a Director. • A Director must not take improper advantage of the position of Director. • A Director must not allow personal interests to conflict with the interests of the Corporation. • A Director must declare any perceived or potential conflicts of interest to the Board. • A Director has an obligation to be independent in judgment and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Director. • Confidential information received by a Director in the course of the exercise of directorial duties remains the property of the Corporation from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by that body, or the person from whom the information is provided, or is required by law. • A Director should not engage in conduct likely to bring discredit upon the Corporation. • A Director has an obligation, at all times, to comply with the spirit, as well as the letter of the law and with the principles of this Code.

Broadly, these principles are consistent with good practice organisational governance in other organisations as well as the requirements under the CATSI Act.

Attendance at Board meetings has been appropriate, with most Directors having attended all Board meetings they were eligible to attend.

The Review understands that the Board participated in governance training (most recently in November 2021 but intended to be annual) and that the Board would undertake further governance training in the FY2022-23 period.

³⁸ NQLC. NQLC Policy Manual. 2016.

A move to update the NQLC Rule Book intended to improve governance efficiency was voted down in 2021

The previous Review recommended that the NQLC:

Consider opportunities to strengthen its governance model through increasing the skills set of the Board, including further training for current Board Directors, implementing minimum skill requirements for all new Directors and potentially utilising independent professional Board Directors.

The Review understands that the Rule Book revisions had been proposed to reflect the recommendations of the previous Review. The NQLC 2020-21 Annual Report noted that at the previously postponed 2019 and 2020 AGM held on 10 April 2021 on Nywaigi Country at Mungalla Station:

The Board put forward special resolutions to repeal and adopt a new NQLC Rule Book. The Rule Book was developed by the then Directors, with the assistance of Arma Legal with the intention of making things run more efficiently and to provide for a better working relationship between the Board and the Members of the Corporation. Unfortunately, when put to a vote, the members voted against the adoption of the new Rule Book.³⁹

While the 2020-21 Annual Report noted that the NQLC Board would take on feedback provided at the AGM with a view to present a revised version to the membership later in 2021, nothing further was reported on the matter in the 2021-22 Annual Report. The effectiveness of Board governance remains an outstanding issue for the NQLC to address.

Conflicts of interest

The NQLC's conflict of interest policies were clearly documented but challenging to uphold

The NQLC's conflict of interest policy was detailed in section 2.6 of the NQLC Policy Manual for Board Directors and in chapter 2.1 of the NQLC Administrative Procedures Manual for NQLC staff. The policy emphasised that Board Directors and staff should be aware of any potential for conflict of interest to arise. They were expected to act in good faith towards the NQLC and should always act in the best interest of the NQLC at all times. Board members were required to register any interest they had with respect to a native title claim, family association, kinship group, financial or business interest which might constitute a conflict of interest, perceived conflict of interest or otherwise adversely impact on dealings with the NQLC in a register of interests secured by the CEO. Staff were required to disclose any real or perceived conflict of interest to their supervisor.

Conflict of interest protocols were clear to staff and Board Directors interviewed during the Review. Despite this, the Review heard from some Traditional Owners who felt that Board Directors who had strong familial links to active claims or disputed areas could not realistically set those aside when acting in their roles as Board Directors.

Culture and values

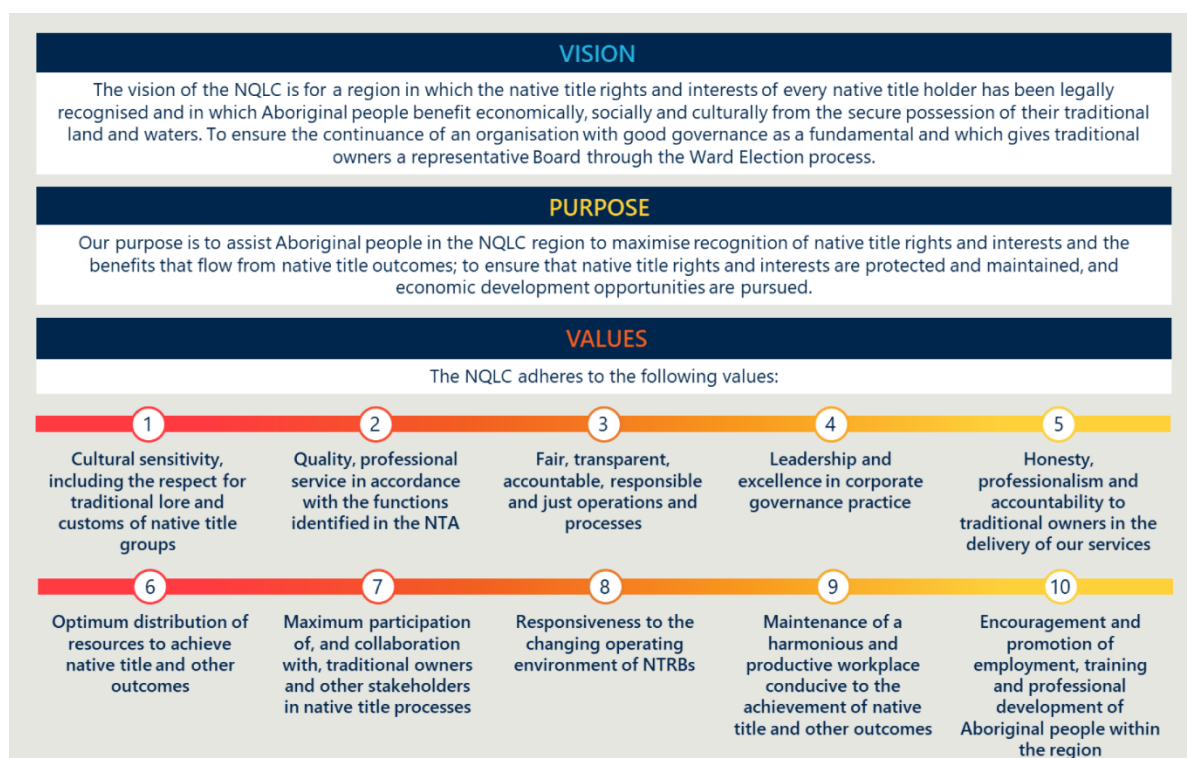
The NQLC's vision, purpose and values were outlined in its strategic plan

The vision for the NQLC (as illustrated in Figure 6) focused on legal recognition of native title across the organisation and the benefits that native title provides post-determination in terms of social, cultural and

³⁹ NQLC. NQLC Annual Report 2020-21. 2021. <https://nqlc.com.au/wp-content/uploads/2021/11/nqlc-2021-2020-annual-report-v1.0.pdf>

economic benefits. The NQLC's purpose was to assist native title holder interests in the region. This vision and purpose were supported by ten organisational values.

Figure 6 | NQLC vision, purpose and values⁴⁰



Throughout the Review almost all staff demonstrated that they understood the organisation's reason for being and were committed to the vision and purpose of the NQLC. Staff commented that despite all the changes in management and certain areas of friction between work units during the Review period, they genuinely believed in their work and felt that most others at the NQLC were united by the same mission. There were a number of long tenured staff who had been with the organisation for more than five years and in some cases more than ten or 15 years. Staff reflected that they generally found the NQLC to be a good workplace and that its people were a core strength of the organisation.

Staff sentiment towards management of the NQLC as an organisation through the Review period was mixed

Respondents to a staff survey had mixed views about the NQLC workplace, with roughly equal numbers of respondents reporting that they felt it was a well-run organisation or was badly run. Leadership of the NQLC was considered directional, with a top-down approach to decision making and changes. The majority of survey respondents reported that they found the NQLC to be a safe workplace.

A number of NQLC staff reported bullying and harassment without satisfactory resolution

Compared to other NTRB-SPs reviewed, a relatively high number of the staff who responded to the staff survey for the Review reported that they had experienced bullying/harassment during the Review period. All these respondents indicated that they had received an unsatisfactory response when they had reported it to management. In response, the NQLC considered the sample was biased due to self-selection. NQLC

⁴⁰ NQLC. NQLC Strategic Plan 2016-21. 2016.

advised the Review that formal complaints were always addressed professionally and that informal complaints were rarely escalated to formal complaints. In at least one case the NQLC had employed external consultants to investigate and produce an independent report.

Staff reported that organisational divisions can act as a barrier to communication

Staff repeatedly reported that they felt certain working areas were siloed or divided and that efforts to overcome these divisions had come from an individual level rather than an organisational level. For example, staff noted that there was a division between the Cairns and Townsville offices, with engagement between offices generally quite limited besides occasional visits from managers. Staff also noted that there had been some friction internally within the claims team in the past, compounded by the multiple changes in leadership and that at one point there had been an attempt at mediation through an external facilitator.

The previous Review recommended that:

The NQLC should take active steps to improve its organisational communication practices – particularly across the Cairns and Townsville offices. This may include the re-instatement of whole of organisation staff meetings and more regular communication of organisational performance.

The Review understands that in response to this recommendation, the NQLC aimed to hold regular monthly all-staff meetings, but that this had been challenging in the latter quarter of the Review period due to the significant Executive management changes.

The separation between the claims and EDST teams was not universally supported

As noted under TOR 1, the NQLC was clear about the rationale for the separation of the claims and EDST teams. This approach was also adopted in some other NTRB-SPs. However, some staff consulted by the Review noted it led to some issues including:

- Having two separate electronic record streams in the electronic document and records management system, which were substantially different and intentionally kept apart. Executive staff from the NQLC reported that the separation was based on functional responsibility and was necessary due to confidentiality issues and security.
- Having a PLO who did not have oversight of half the organisation's legal staff.
- Confusion for clients when they met with the claims legal team one day and then the EDST legal team a few days later or vice versa, and the two teams having almost no knowledge about the other team's dealings with the same client.
- Confusion for staff when they were contacted by clients about their dealings with the other legal team, particularly when they had been given news or information they did not like by that team.

The Review suggests that the issues raised could be more fully explored and ways to ameliorate them, such as better coordination and communication in the legal area at the NQLC, could be implemented.

Financial management

Organisational financial governance was supported by clear policies and procedures

Chapter eight of the NQLC Administrative Procedures Manual provided detailed guidance about financial management for all operational areas, including guidelines for delegation of financial authority and responsibility, record-keeping, expenses, procurement, appropriation, reporting, travel allowance, asset management and insurance. Annual financial statements were incorporated into every annual report,

which were published on the NQLC website and are available to the public. The NQLC received unqualified audit reports by an independent auditor for all three years of the Review period.

NIAA's funding for the NQLC required the organisation to submit detailed reports on budgeted and actual expenditure for its operations. The NQLC provided these in a timely and consistent manner half-yearly. While there have been some significant discrepancies between budgeted and actual spending figures, this is attributable to the effects the COVID-19 pandemic had on operations.

Significant annual underspends and the need for a program of voluntary redundancies to manage expenditure suggested there was room for better overarching financial management

The amount of additional funding provided by the NIAA varied from year to year. For FY2020-21, \$615,000 of additional funding was provided. This was almost \$1 million less than the amount of additional funding provided in FY2019-20 (and \$1.5 million less than the amount provided in FY2021-22).

The NIAA reported that the reduction in additional funding it provided in FY2020-21 was due to the significant annual underspends which had accrued in the NQLC's budget from previous years. As discussed under TOR 4 in relation to cost savings, the impact of a reduction in the amount of additional funding in FY2020-21 appeared to lead to a program of voluntary redundancies. The Review suggests that the need for the redundancies was in part due to a lack of alignment between the NQLC budget and its base funding, so that the NQLC was overly reliant on additional funding to carry out its core functions.

The NQLC advised that the impact of the six-month funding approach by the NIAA led to a level of uncertainty that impacted overall financial management. Senior management reported that the public health response to COVID-19 delayed operational activity and slowed expenditure during FY2019-20. They reported that while operating costs (including wages) increased, there was no corresponding increase in base funding from the NIAA and hence measures to reduce expenditure, including redundancies, were undertaken.

Training and professional development

There were limited opportunities for formal training and development

In the NQLC Administrative Procedures Manual, staff training and development was limited to a one sentence description under section 7.9: "A training and development program may be adopted annually." The Review was not made aware of the existence of such a program throughout the Review period.

Staff provided examples to the Review of what they saw as barriers to formal training:

- Having to collate evidence to build a business case to justify any courses they wanted to attend.
- Not receiving financial support from the NQLC to attend conferences.
- Limited opportunities through the NQLC to network with peers working in the native title space, leading to them feeling somewhat isolated in their job. Some staff reported that previously there had been more organisation-wide talks which all interested NQLC staff were welcome to attend. These talks had provided a development opportunity to all regardless of position, while also being a way to connect with one another. Staff reported that these opportunities were rarer during the Review period.
- No formal induction when they joined the NQLC and, related to this, having to rely heavily on their experience and training at previous workplaces. The NQLC noted that all new employees received a corporate service induction, which included among other things, payroll information, the employment agreement, IT, equipment and system access, and general office procedures including work health and

safety information. Beyond this it was up to specific teams to provide any further induction information.

- Reports from professional staff that the only skills development available was the online training required for the minimum number of continuing professional education points to maintain professional registration. In response, the NQLC advised that this was only the case during the COVID-19 pandemic.

In contrast, some staff members said they had great learning experiences through informal mentoring and training from more experienced staff at the NQLC (though this at times depended on how busy the individual manager or supervisor was with other work).

The lack of cultural awareness training is discussed in more detail under TOR 3.

Learning and development are part of the responsibilities of the CFO

The HR function at NQLC is incorporated into corporate services and managed by the CFO. A number of staff reported that this arrangement did not work well through the Review period, as key HR functions such as learning and development did not receive sufficient attention or championing at the Executive level. Senior management noted in response that learning and development was historically overseen by the CEO with no integrated approach and with a strong emphasis on legal and anthropological training.

Senior management advised that the HR functions had been delegated by the former CEO to the CFO due to the relevant qualifications of the individual concerned. The Review had a concern that this arrangement could lead to sensitive HR issues being handled by the same team looking after finances and payroll. However, the CFO noted that confidential HR files and records were not visible to finance and payroll staff.

Career progression pathways for Indigenous professional staff could be improved

Staff indicated that a clear career progression pathway for Indigenous administrative staff was in place through the Review period, with staff often starting at reception before moving onto other office tasks and eventually becoming project officers. However, the pathways for Indigenous professional staff remained less clear, with no documented strategies in place for developing their management and leadership skills or recruiting Indigenous graduates.

Staff commented that the NQLC previously engaged Indigenous interns through the Aurora program, but that this program had been discontinued and no alternative program had been put in place. Senior staff who had previously worked with interns through the program said they had found it to be a valuable experience.

The performance review process was variable and often ad-hoc

Staff matters were covered thoroughly in section 7.6 of the NQLC Administrative Procedures Manual, with sub-section 7.6.2 specifically relating to staff performance reviews. The Administrative Procedures Manual detailed when the performance review should take place and what should be reviewed.

On the anniversary of an employee's official engagement with the NQLC or as soon as is reasonably practicable after, the employee and their line manager must conduct a performance review that evaluates the main activities of the employee during the preceding 12 months, including punctuality, quality of work, meeting deadlines of tasks assigned, impediments to performance, any developmental needs and the employee's achievements, performance and development against the objectives of the employee's previous Performance Agreement. The employee must be given the opportunity to discuss other relevant issues.

The Administrative Procedures Manual also described the performance elements and how staff members could fill in the Progression Standard Form (which determined if a staff member progressed to the next pay point level).

Staff reported that in practice the performance review process varied across the organisation, with no central process or related resources. Some staff reported receiving feedback from their managers on an ad-hoc basis, but not always consistently if they were going through a busy period. Other staff commented that there had been instances when their annual performance review cycle was missed all together.

The Administrative Procedures Manual notes that the procedure for annual performance reviews should be read in conjunction with Schedule C of the Enterprise Agreement (EA) – Performance Management and Salary Progression Program. Staff noted that the previous EA expired during the Review period and attempts to initiate EA bargaining by staff had not been acted on by the Executive. However, they reported that they had still received pay rises as scheduled based on the previous EA.

A number of NQLC staff also said that there was no formal internal recruitment process when management positions became available during the Review period. Instead, staff members were appointed to these roles at the discretion of those in Executive positions.

Level of staff turnover

Changes in senior leadership created instability for the whole organisation

During the Review period, there was frequent turnover and change in the Executive management team. At the end of 2019, the longstanding PLO left the NQLC without notice after close to 20 years at the organisation. A commercial legal practitioner was engaged for several months to act as PLO until a new PLO commenced in early 2020.

In early 2021, the CEO resigned, at which time the new PLO became acting CEO, the Deputy PLO became acting PLO and a newly recruited lawyer became acting Deputy PLO.

The acting CEO (substantive PLO) resigned in early 2022 and the EDST Manager stepped into the acting CEO role. Meanwhile the acting PLO wished to return to their substantive position of Deputy PLO and so another commercial practitioner was engaged to act as PLO.

The NQLC's staff reported that changes at the Executive and professional levels significantly impacted the culture of the organisation and its ability to deliver outcomes, plan ahead and allocate resources effectively.

As discussed under TOR 1, these ongoing changes were felt particularly strongly by the claims team, with their acting manager changing five times during the Review period. Other staff also said the ongoing changes at the Executive level created instability and challenged the organisation's culture and direction.

The Review formed the view that the instability in leadership created challenges affecting the delivery of outcomes across the whole organisation. Senior staff attributed the turnover to personal circumstances affecting the individuals and the Review was unable to ascertain any broader underlying reasons for the series of departures from the NQLC. Under the given circumstances, the NQLC and those in interim leadership roles responded appropriately to keep the organisation functioning as effectively as it did through this period of disruption.

The Review notes that against this backdrop of senior Executive instability, the NQLC would benefit from a structured program of induction for the newly appointed CEO or other senior Executives.

The NQLC was affected by high levels of staff turnover during the Review period

As shown in Table 15 the NQLC was affected by high levels of staff turnover during the Review period, with almost 30 per cent of staff leaving the organisation in FY2020-21. The higher turnover was primarily due to redundancies as described under TOR 4.

NQLC staff reported that turnover occurred at all levels of the organisation, though some areas of the organisation were disproportionately affected. Seven staff accepted the redundancy package and left the organisation during this time. A number of these were experienced staff members from the claims team, including a number of Indigenous project officers and lawyers. This challenged the claims team particularly as courts resumed business virtually during this time. At the time of consultations, NQLC staff reported that the claims team continued to be under-resourced.

Table 15 | Staff turnover by designation⁴¹

Financial year	Turnover	Resignation	Retirement	Redundancy	Non-renewal of contract	Termination
2019-20	17.1%	4	1	-	2	-
2020-21	29.2%	4	-	7	-	1
2021-22	15.4%	6	-	-	-	-

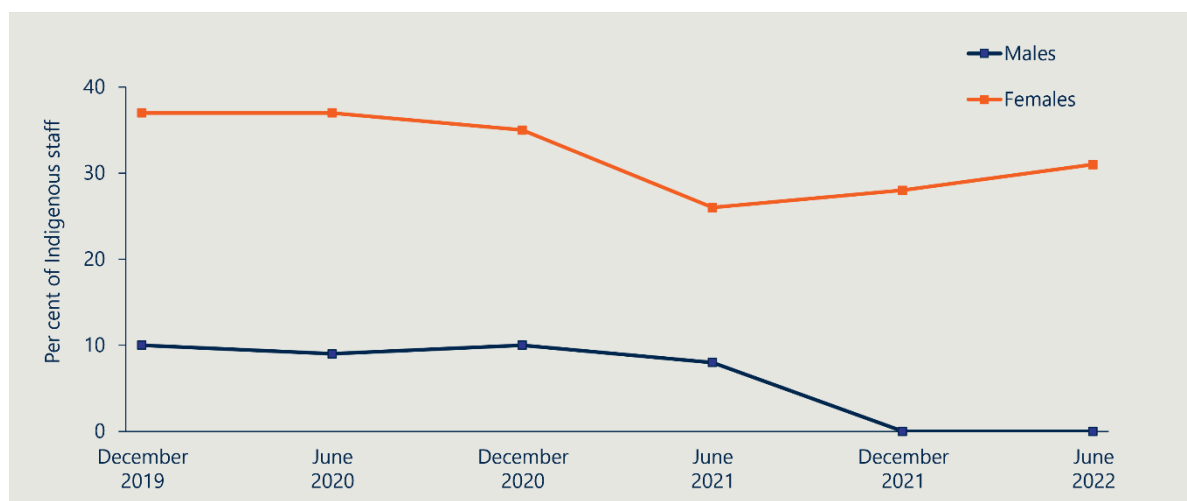
Indigenous staff numbers have reduced over time

A number of Indigenous staff left the NQLC during the Review period and were not replaced by other Indigenous staff members (see Figure 7). Many staff members, clients and Board Directors commented that they felt the number of Indigenous staff employed by the NQLC as an Indigenous Corporation was too low, particularly at the professional or management levels. Staff commented that not having any Indigenous males on staff made it particularly challenging when dealing with certain aspects of traditional culture or business.

As at 30 June 2022 the NQLC had 39 staff, of whom 25.64 per cent identified as Indigenous.

⁴¹ NQLC. NQLC Annual Reports 2019-20 to 2021-22.

Figure 7 | Per cent of staff at the NQLC who are Indigenous⁴²



Some of the NQLC's staff were of the view that the NQLC needed to be more diverse and representative of their client base. Staff consultations highlighted how Indigenous staff were highly valued for their experience, expertise and community relationships which were not easily replicated by non-Indigenous staff. Further, having an Indigenous staff member on a claim saw fewer issues created by culturally inappropriate engagement, leading to greater productivity for staff. One staff member said that with more Indigenous employees, "more claims would be completed", due to the role of project officers being able to navigate culturally sensitive and complex issues. The skillset of Indigenous employees has become more pertinent, due to the increasing complexity of remaining claims. Some Traditional Owners commented that the only Indigenous staff member they had been in contact with was the acting CEO. They felt that not having any other Indigenous staff at an Executive level affected the NQLC's ability to communicate in a culturally safe manner. One stakeholder commented on their excitement about an Indigenous CEO commencing at the NQLC (after the Review period), as it was "nice to have another Indigenous staff member starting, as we need more".

Recruitment was an ongoing challenge for the NQLC

Recruitment and retention of staff was an ongoing challenge for the NQLC. Senior staff mentioned that while recruitment to the native title sector has always been difficult, it became even more so following the COVID-19 pandemic. This was felt by the NQLC particularly acutely being in a regional area with roles that required a physical presence at the working location.

Staff mentioned that recruitment was especially challenging for professional positions. Some staff commented that other NTRB-SPs across Australia and even commercial law firms (which offer comparably higher salaries) in the North Queensland region had been struggling to get staff.

5.5.2 TOR 5 External factors

No external factors were identified for TOR 5.

⁴² NQLC. Key Performance and Data Indicators for the NIAA. 2019

5.5.3 TOR 5: Recommendations

RECOMMENDATION

9

Implement a process for the CEO and Board to work together to clarify their respective roles and relationships in line with the principles of good governance. Revisit previous efforts to strengthen the NQLC's governance model through increasing the skills set of the Board. This should include further training for current Board Directors, implementing minimum skill requirements for all new Directors and including a minimum of two independent professional Board Directors.

RECOMMENDATION

10

More clearly define the training opportunities and performance development processes available for all staff and ensure they are consistently applied. This should also include a clear employee value proposition, career pathways for Indigenous staff and adoption of a formal induction program for all new employees, including senior Executives.

RECOMMENDATION

11

Assess the benefits and cost of splitting out HR as a distinct and separate executive responsibility so that staff can feel more confidently supported in their professional development and growth in their workplace.

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

Summary

The NQLC supported 24 PBCs during the Review period and had service agreements in place with all of them. Staff provided tailored levels of support, dependent on the needs and demands of each PBC. Support was constrained by the limited resourcing available to proactively support PBCs in their journey towards self-sufficiency.

The NQLC engaged frequently with those PBCs who had more Future Act and ILUA activity, and the relationships were strong and positive. The NQLC was pro-active in supporting development opportunities for PBCs. PBCs who had less frequent contact with the NQLC were concerned about perceived favouritism and held less positive views about the support they received.

Most stakeholders agreed that support for PBCs was under-resourced and required greater investment from government to increase capacity.

While the NQLC did not have a formal policy in place during the Review period for the return of cultural materials, it has advised that templates have since been drafted for final consideration concerning the return of materials to PBCs.

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

PBC clients who spoke to the Review varied in their satisfaction with the NQLC's services

The Review notes that PBCs who were satisfied with their relationship with the NQLC were less likely to engage with the Review. However, a small number of those who engaged expressed general satisfaction with the level of support the PBC received from the NQLC. These PBC members reported that they received the level of assistance that was appropriate for their maturity level. For example, the NQLC provided higher levels of administrative support when the PBC was a young organisation; when the PBC was more mature, the NQLC supported the PBC to organise its own staff to perform those tasks.

Members of other PBCs expressed some concerns with the services they received. Issues raised in this regard included:

- A perception that those who spoke the loudest received the most attention from the NQLC, which created a perception that the NQLC was not impartial in its work or decision-making.
- Some specific issues, such as a view that the NQLC's staff needed more cultural awareness training and frustration at repeated attempts to get the NQLC to correct minor things such as the spelling of their name.

Similar issues were raised by members of PBCs not supported by the NQLC as reasons for not working with the NQLC.

Staff reported they had good relationships with their PBC clients, remarking for example that they often received calls from PBC Directors who were Traditional Owners to explain certain documents or PBC

activities. Staff said that this behaviour demonstrated trust in the NQLC. Staff and Board Directors commented that PBC forums reinforced the relationship between the NQLC and PBCs and that the engagement demonstrated the good rapport the NQLC had with clients in this area.

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 supported by the NQLC received regulator intervention

There were no PBCs supported by the NQLC during the Review period who had intervention from ORIC or any other regulator.

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

The NQLC provided a broad range of services to support PBCs

Chapter four of the NQLC Policy Manual detailed the organisation's services policy, including the provision of assistance to PBCs. This included but was not limited to:

- assistance or advice in relation to Corporate Governance
- assistance with compliance with the CATSI Act
- assistance with financial record keeping and acquittal of PBC support funds
- assistance with applications for funding
- assistance with determining if specified individuals were eligible for membership
- assistance with drafting of Rules or amendment to Rules
- any other approved activity detailed in the operational plan.

PBCs the Review spoke with generally agreed that the NQLC provided these services to them when requested. For example, they reported that early on in the life of their PBC, the NQLC provided the majority of their administrative services, such as invoicing or bookkeeping; as their PBC matured, it was able to hire its own staff and take on more of these responsibilities.

Mature PBCs mentioned that the assistance they needed was mostly in relation to legal or anthropological services and that it would be useful to get more training in these areas. In response, the NQLC noted that it is not a training provider and that this would require specific funding for the PBCs to undertake such training. The NQLC also reported that following the Review period, it has been trying to recruit a communications manager and that it plans to include a small PBCSU information pack with the PBC support funding letters for 2024 to clearly explain to PBCs the services that the NQLC does and does not offer.

Other PBC members also mentioned that greater support in terms of identifying new opportunities for business development or entrepreneurship would be worthwhile. Again however, they recognised that resources and capacity at the NQLC for these activities was limited.

NQLC staff reported that where mining or energy development opportunities did not exist, they had worked with PBCs to develop alternative options. For example, in wet tropical or beachside areas, the NQLC assisted PBCs to explore ILUA options and develop partnerships with the local council to promote tourism and employ Traditional Owners as campground managers. Staff remarked that they always tried to explore development opportunities with PBCs so that the organisations could have some financial self-

sufficiency, as without an income stream, even tasks such as maintaining a website could be difficult, which then created issues with proper organisational transparency and governance.

Limited resourcing from government for PBC support made it challenging for the NQLC to apply a consistent strategy for supporting PBCs towards self-sufficiency

In the Strategic Plan 2016-2021, the NQLC recognised the importance of the role PBCs play in the post-determination environment and provided commentary on how it supported them to fulfil this role. However, it also stated that a lack of adequate funding prevented it from properly doing this:

NQLC...notes that available funding to resource PBCs is limited. This has restricted the ability of NQLC to provide adequate assistance to PBCs. The NQLC will continue to work closely with regional PBCs to identify and promote business and economic development opportunities available through their native title rights. NQLC will expand its PBC Support Unit to provide greater support to PBCs to develop and build their capacity to achieve economic goals. NQLC remains concerned that funding of PBCs remains inadequate. The NQLC will continue to advocate for additional funding for PBCs and assist PBCs to explore additional funding sources.

During consultations, staff and clients reported that the NQLC's PBC support activities were under resourced. For example, one PBC representative said NQLC staff were "professional" and "do an awesome job" but could be difficult to contact due to a lack of staff. Another PBC representative said NQLC was under-resourced and was unsure if it had a PBCSU.

Despite the broad principles of PBC engagement described in the Strategic Plan 2016-2021, limited resourcing meant that the NQLC was often only able to take a reactive approach to supporting PBCs, responding to external factors such as the volume of FANs received or level of development activity in PBC areas, with limited overarching strategy to guide such work. As a result, the NQLC engaged more regularly with PBCs who had more economic opportunities. This had led to concerns of perceived favouritism from some NQLC staff and clients. Several PBCs reported to the Review that they felt that neglect from the NQLC had caused issues with their PBC's governance and finances.

PBC Directors demonstrated good awareness of their responsibilities and the rules around PBC corporate governance

PBC Directors the Review spoke with appeared to be appropriately aware of their responsibilities under the CATSI Act and were broadly familiar with the native title PBC Regulations, their rule book and existing Future Act agreements.

NQLC staff reported that they generally prepared for the formation of a PBC during the claims process, to ensure a smooth post-determination transition. As a result, those who eventually became PBC clients were often very familiar with native title law and processes by the time the PBC was formed. NQLC staff ran through details of the rule book and PBC corporate governance at the initial PBC meeting.

For longer standing PBCs, the NQLC tried to provide opportunities for corporate and professional training to help them maintain awareness of good governance. Staff members pointed to an example of asking for volunteers from large companies to deliver upskilling sessions for PBCs as an innovative way they approached this. Additionally, the NQLC also helped PBCs at the right stage of the self-sufficiency journey to develop and implement corporate checklists, so that they had a reference that could continue to guide them in navigating the corporate environment.

The NQLC also assisted PBC clients in rewriting their rule books and administering governance changes. In early 2021, the Australian Government passed amendments to the NTA and CATSI Act that introduced new rules and requirements for PBCs, including the requirement for existing PBCs to amend their rule

books within two years. The NQLC reports that at the time of writing, they have completed rule book changes for approximately 15 of the 24 PBCs they support.

PBCs not supported by the NQLC outsourced some aspects of their responsibilities to alternative service providers

Ten PBCs in the RATSIB area were not supported by the NQLC (some of these PBCs had land in the RATSIB areas of other NTRB-SPs and were supported by an alternate NTRB-SP). Some of these outsourced their administrative work to other service providers. Some also used funds to provide training and corporate skill development to their Board members through providers familiar with Indigenous corporation development. PBC Directors in this latter group reported that they felt more in control of their own affairs and had the power to find providers suited to the unique characteristics of their own organisation and land, in contrast to the support provided by the NQLC.

However, not all PBCs had been successful in managing their responsibilities, with multiple reports from Traditional Owners that there were a number of PBCs in the RATSIB area that had encountered financial trouble or had been put on notice for de-registration due to non-compliance.

The NQLC's staff commented that the current CATSI Act and the NTA put a lot of obligations onto a PBC, but only PBCs that had operations bringing in money were able to maintain paid staff to actively attend to these obligations. For PBCs with more limited resources, where a lot of their funding needed to be used just to meet these corporate obligations, investing in growth and development was challenging.

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

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

As noted under TOR 3, the NQLC did not have any policies or procedures regarding its use of cultural materials. Some staff mentioned that the NQLC was trying to be more proactive in returning cultural materials post-determination. However, new claims often relied on the research and evidence laid down by previous claims, making it necessary to maintain relevant documentation within the NQLC. Some stakeholders also reported that the format in which certain cultural information was handed over, such as electronic genealogy files, might not always be well understood or able to be maintained by PBCs or Traditional Owners. Without suitable training, what a PBC or Traditional Owner was able to do with those materials would be very limited.

Traditional Owners the Review spoke with often reported their dissatisfaction with the NQLC in relation to cultural material access. However, these issues sometimes concerned the privacy of others and therefore could not legally be disclosed to a third party. In other cases, issues were related to artefacts which individual PBCs, and not the NQLC, had responsibility for.

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

All PBCs supported by the NQLC had formal service agreements in place

Based on consultations with NQLC staff, the Review understands that all 24 PBCs supported by the NQLC during the Review period had formal service agreements in place.

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

Service agreements between the NQLC and PBCs were standardised and not generally negotiated

NQLC staff reported that formal service agreements were basic in structure and did not generally deviate from the standard template. While they stated that provisions in the agreements were consistently referenced and applied, in practice the NQLC provided the level of service required by the PBC (within the capacity of resources available to the NQLC and the limitations of the service agreement).

5.6.2 TOR 6: External factors

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

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

There was a relatively high volume of Future Act activity across the RATSIB as a whole

Compared to other NTRB-SPs, the NQLC received a high volume of FANs (see section 5.1.1). In general, FANs indicate a degree of economic development in an area and provide an opportunity for Traditional Owners to receive an income source from broader economic activity in their Country.

The level and nature of industry activity in a given RATSIB area is one of the key determinants of the extent to which self-sufficiency is achievable. Natural resources and associated industry activity can result in agreements with substantial monetary compensation for PBCs. These additional resources for PBCs can support more growth, training and ultimately impact on the extent to which they can sustainably fund their aspirations.

While the major industries in the NQLC RATSIB area had previously largely been small-scale mining and tourism, during the Review period the Northern Queensland Renewable Energy Zone was established as a joint project between the Queensland and Australian Governments, spanning from Far North Queensland down to Mackay and as far west as Barcaldine. This is an area identified by the Australian Energy Market Operator as having good potential for renewable energy. One of the major initiatives in the first stage is the Kaban Wind Farm, a 28 wind turbine renewable power hub expected to cost \$373 million and generate 250 direct jobs.⁴³

Northern Australia has also been the focus of Australia's Defence strategy in recent years and many regions within the NQLC RATSIB area have been earmarked as potential sites for Defence facilities or training hubs. The Townsville area particularly has had a longstanding Defence presence and local and state authorities are keen to increase this further, with potential actions outlined in the Queensland

⁴³ Powerlink. Developing the Northern Queensland Renewable Energy Zone. 2021.
<https://www.powerlink.com.au/sites/default/files/2021-09/Powerlink%20Queensland%20-%20Developing%20the%20Northern%20QREZ%20-%20Final%20Report.pdf>

FANs did not necessarily translate into opportunities for every PBC

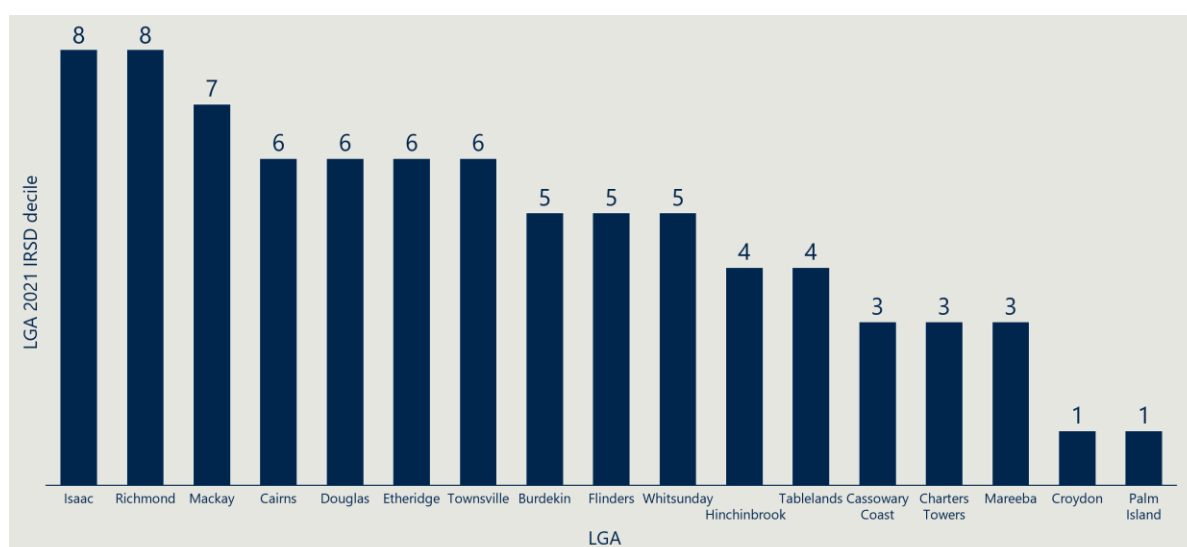
Not all PBCs had land earmarked for major development or industry areas as described above. A large proportion of FANs for the North Queensland area were issued under section 24HA by the Great Barrier Reef Marine Park Authority for tourism licences. While the right to comment may afford the native title holders with an opportunity to propose engagement with the licensee, it did not necessarily result in economic development opportunities.

There were also significant differences in the volume of FANs received between PBCs. While high volumes may indicate the existence of opportunities to participate in economic development and receive financial benefits, depending on the type of Future Act matters, it may equally impose an administrative burden for PBCs without the structures or corresponding financial benefit to manage them.

The NQLC's RATSIB area had a diverse socioeconomic profile

Another determinant of the extent to which self-sufficiency is achievable is socioeconomic profile. Some regions are highly disadvantaged, particularly regional and remote areas in the west of the region. A summary of the socioeconomic profile of the local government areas (LGAs) within the region are outlined in Figure 8. A low Index of Relative Socioeconomic Disadvantage (IRSD) decile indicates the highest levels of socio-economic disadvantage.

Figure 8 | IRSD for LGAs in the North Queensland RATSIB area⁴⁶



⁴⁴ Queensland Government. Queensland Defence Industries 10-Year Roadmap and Action Plan. 2022.

<https://www.statedevelopment.qld.gov.au/industry/critical-industry-support/defence-jobs-qld/qld-defence-industries-roadmap>

⁴⁵ City of Townsville. Townsville North Queensland Defence Strategy. 2021. <https://www.townsville.qld.gov.au/about-townsville/business-and-economy/townsville-north-queensland-defence-strategy#:~:text=The%20Townsville%20North%20Queensland%20Defence,Defence%20Force%20Forward%20Mounting%20Base.>

⁴⁶ Australian Bureau of Statistics. SEIFA by LGA. 2023. <https://www.abs.gov.au/statistics/people/people-and-communities/socio-economic-indexes-areas-seifa-australia/latest-release>

This affected the ability of the NQLC to support PBCs towards self-sufficiency in some parts of its RATSIB area. It also means the NQLC engaged with a range of stakeholders from diverse socio-economic backgrounds.

5.6.3 TOR 6: Recommendations

RECOMMENDATION

12

Increase transparency by clearly communicating to PBCs what support the NQLC can provide to them within its limited budget.

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

Summary

The NQLC's strategic planning for post-determination remained underdeveloped, with uncertainty about the role the organisation will play in a post-determination environment. The NQLC's most recent Strategic Plan spanned the period 2016-2021 and was yet to be replaced or updated. Consistent with this, people at all levels of the organisation said it did not have, or they were uncertain if it had, a strategic plan for the post-determination environment. This was likely a result of the instability of Executive leadership through the Review period.

There was limited monitoring of PBCs' progress in a post-determination environment, with no clear framework in place for assessing PBC maturity or attainment of their strategic aspirations. Some progress has been made since the Review period however, with joint projects currently under discussion.

The NQLC did not plan for or action any compensation claims during the Review period. The NQLC advised that while a great deal of internal work had taken place around compensation, legal advice obtained by the NQLC had generally been to wait until the issues were clarified due to the uncertain state of the law in this space.

While the NQLC still had many claims to progress, the high number of claims that had been determined and resulting PBCs meant the Review expected it to be further advanced in planning for post-determination.

5.7.1 TOR 7: Assessment of performance

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

Adequacy of post-determination strategic planning

The NQLC's strategic planning for post-determination remained underdeveloped, with uncertainty on the role the organisation would play in a post-determination environment

The NQLC's most recent Strategic Plan spanned the period 2016-2021 and was not replaced or updated during the Review period. At the time of the previous Review, in response to a recommendation that the NQLC's future strategic planning activities actively consider the role it would play in a post-determination environment, the NQLC stated that:

The NQLC Board is currently restructuring itself and the organisation in order to play a stronger role in the post-determination environment. Once the new structure is in place (expected end 2020) a comprehensive strategic planning review will be undertaken.

In September 2022, the NQLC advised the NIAA that:

The NQLC Board has given consideration to a range of activities and potential structures to operate in, and support PBCs in, the post-determination environment. These considerations have resulted in work to be substantively undertaken in the 2022-23 period to scope the economic engagement opportunities in North Queensland; the capacity and structural support required to meaningfully participate in the commercial environment. The primary outcome of that scoping work will be a report of options, strategies, implications and recommendations. Activities pursuant to that report will be expected to commence in the FY2023-24 period.

During consultations for the Review, the NQLC advised that its strategic plan (along with its Policy Manual and Administrative Procedures Manual) “will be subject to review by the Board in the coming months”. Consistent with this, people at all levels of the NQLC (Board, Executive and staff) said the organisation did not have, or they were uncertain if it had, a strategic plan for post-determination.

The NQLC lacked a clear monitoring process for post-determination

There had been limited monitoring of PBCs’ progress in a post-determination environment, with no clear framework in place for assessing PBC maturity or attainment of their strategic aspirations. The key performance indicators the NQLC was required to submit to the NIAA each year lacked any indicators relating to post-determination. The NQLC’s annual reports included several indicators relevant to post-determination, such as numbers of FANs received, responses to Future Acts issued and ILUAs concluded or in development, but these provided only an aggregate picture. Similarly, the NQLC’s annual operational plans included milestones relevant to post-determination, but these were high-level and it was not clear how progress against them was measured. The still upcoming strategic planning work was expected to encompass development of a consistent approach to post-determination and enable monitoring of progress against this.

The NQLC had two units focused on post-determination

The NQLC’s EDST comprised the FAME Unit and the PBCSU. Further information about these teams, including their staffing and roles, is shown in Table 16.

Table 16 | Staffing and roles of units within EDST

Unit	Staffing	Roles
FAME Unit	Seven staff including: - the FAME Unit Coordinator/Senior Legal Officer - three Legal Officers - a Senior Project Officer - two Administration Officers	- Reviews and maintains a register of FANs received by the NQLC. - Notifies the relevant native title group(s) of such notices and assists them to respond (including by making submissions to the proponents of the Future Act). - Negotiates and drafts ILUAs and other agreements between native title groups and proponents, particularly where a Future Act concerns mining and exploration. - Designs and delivers capacity development programs to support native title groups to deal with Future Act matters.
PBCSU	Four staff including: - a PBCSU Coordinator /Senior Legal Officer - a PBC Support Officer - two PBC Administration Officers	- Assists PBCs with legislative compliance. - Allocates and manages PBC support funding grants. - Identifies PBC training and support needs. - Develops and delivers regional PBC capacity building workshops. - Provides expert advice to PBCs on governance, strategic planning and business and economic development. - Acts as the primary point of contact for regional PBCs.

The Review formed the view that the FAME Unit and PBCSU provided valuable services. However, there remained some concerns, articulated by some staff, that these units were “reactive” in their approach, with a small number of PBCs with significant Future Act and ILUA activity receiving more support and others “left to fend for themselves” unless they specifically asked for assistance.

Related to this, the Review heard some concerns that the NQLC could more consistently provide support to Traditional Owners during the transition to post-determination; for example, to understand their aspirations, establish their governance and operations, and develop strategic and Country-based plans. These issues were widely attributed to insufficient staffing but may also reflect the absence of a strategic plan for post-determination (as discussed above).

The NQLC has not planned for or actioned any compensation claims

There have not yet been any compensation claims in the NQLC's RATSIB area.

5.7.2 TOR 7: External factors

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

Progress towards a post-determination environment

The NQLC had an ongoing claims load, but also a significant number of established PBCs in its RATSIB area

The NQLC had many claims still to progress. As noted in section 5.1, the NQLC had 12 claims in progress as of 30 June 2022 and around 50 per cent of the claimable land within the NQLC's RATSIB area was not subject to a registered claim or determination. This suggested there was still significant work to be done in progressing claims for clients who were yet to have a determination.

However, there was a significant number of PBCs in the NQLC's RATSIB area (33 in total, of which the NQLC supported 24). Given this, it is critical for the NQLC to be actively considering the role it will play in a post-determination context prior to finalisation of its existing claims load. As such, it would be expected that the NQLC would be further advanced in planning for the post-determination environment at this stage.

5.7.3 TOR 7: Recommendations

RECOMMENDATION

13

Determine the role (or set of roles) the NQLC will play in a post-determination environment, including preparation for future compensation claims. This could be facilitated by reviewing and updating the Strategic Plan and other key corporate documents to ensure that they remain fit-for-purpose and relevant to the current and future work environment.

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

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

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

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

- i. Has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19.

Performance indicators:

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

External factors:

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

- ii. Assesses and prioritises applications for assistance in a manner that is equitable, transparent and robust and is well publicised and understood by clients and potential clients.

Performance indicators:

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

External factors:

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

- iii. Deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints.

Performance indicators:

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

External factors:

No external factors have been identified for TOR 3.

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

Performance indicators:

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

External factors:

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

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

Performance indicators:

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

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

External factors:

No external factors have been identified for TOR 5.

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

Performance indicators:

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

External factors:

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

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

Performance indicators:

- Adequacy of post-determination strategic planning.

External factors:

- Progress towards a post-determination environment.

2. The Service Provider will provide the following reports, reflecting the Service Provider's independent views, to assist with Agency decision-making:
 - a. An individual report for each organisation reviewed, including recommendations on what changes, if any, the organisation could make to improve its performance against each of the criteria listed in 1(a) above.

Appendix B Stakeholders consulted

The Review held consultations in person and virtually with a range of stakeholders in relation to the NQLC's performance. The Review's approach to consultations was documented in the Consultation Plan, provided to all NTRB-SPs in advance of the Review. Nous used various approaches to engage with stakeholders who might wish to be involved with the Review. Surveys were distributed on behalf of the Review by the NQLC 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 22 May 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- over 30 Traditional Owners including:
 - clients who have been represented by the NQLC (including members of PBCs)
 - potential clients in the NQLC's RATSIB area
- the Federal Court of Australia
- the NIAA
- representatives of the Queensland Government
- NQLC staff and contractors, including:
 - NQLC CEO (including acting CEO and newly appointed CEO)
 - NQLC Board Directors
 - current and former NQLC staff
 - barristers
 - anthropologists.

Appendix C Documents reviewed

Category	Description
Annual reports	NQLC Annual Report 2021/22
	NQLC Annual Report 2020/21
	NQLC Annual Report 2019/20
Policies	NQLC Policy Manual, 2020
Financial, operational and performance documents	NQLC Consultants Report 2020/2021
	NQLC Consultants Report July 2020/December 2020
	NQLC Consultants Report 2018/2019
	NQLC Consultants Report July 2019 – December 2019
	NQLC Consultants Report July 2019 – June 2020
	NQLC Consultants Report July 2021 – December 2021
	NQLC Consultants Report July 2022 – December 2022
	Financial Report July 2022 – December 2022
	Financial Report July 2019 – June 2020
	Financial Report July 2020 – June 2021
	Financial Report July 2021 – December 2021
	Financial Report July 2019 – December 2019
	Financial Report July 2020 – December 2020
	NQLC Financial Acquittal Report July 2019 – June 2020
	NQLC Financial Acquittal Report July 2019 – December 2019
	NQLC Financial Acquittal July 2020 – June 2021
	NQLC Financial Acquittal July 2022 – December 2022
	NQLC Financial Acquittal Report July 2021 – December 2021
	NQLC Financial Acquittal Report July 2020 – December 2020
	Performance Report July 2022 – December 2022
	Performance Report July 2019 – June 2022
	Performance Report July 2020 – June 2021
	Performance Report July 2021 – December 2021
	Operational Plan Performance Report July 2019 – December 2019
	Operational Plan Performance Report July 2019 – June 2020
	Operational Plan Performance Report July 2020 – June 2021
	Operational Plan Performance Report July 2022 – December 2022
	NQLC Operational Plan July 2020 – December 2020
	NQLC Operational Plan July 2021 – December 2021
	NQLC Key Performance and Data Indicators June 2019
	NQLC Key Performance and Data Indicators June 2021
	NQLC Key Performance and Data Indicators December 2021
	Performance Report July 2019 – December 2019
	Performance Report July 2020 – December 2020

Category	Description
	NQLC Progress and Performance against Project document
COVID-19	Working from home checklist COVID-19 Health Screening Assessment NQLC staff out of office COVID-19 Visitor Health Screening Checklist v2 COVID Safe Plan For North Queensland Land Council V1 COVID Safe Plan For North Queensland Land Council V2 COVID Safe Plan For North Queensland Land Council V3 COVID Meeting Attendance List v1 NQLC Meeting – COVID Risk Management Assessment Covid Risk Assessment Register
Other	NQLC Rulebook NQLC Administrative Procedures Manual NQLC Organisational chart NQLC Strategic Plan 2016-2021 NQLC CEO Board report

Appendix D Glossary

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

Table 17 | Glossary

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

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

Term	Meaning
Representative Aboriginal/Torres Strait Islander Body (RATSIB) area	The area over which a Native Title Representative Body and Service Provider holds jurisdiction.
Terms of Reference (TOR)	Refers to the Terms of Reference provided by the National Indigenous Australians Agency which govern the scope of the project. These can be found in Appendix A.
Traditional Owners	Individuals of Aboriginal and/or Torres Strait Islander descent who identify as being a descendant of persons that occupied a particular area prior to European settlement.

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

Table 18 | NTRB functions under the NTA

Reference	Function	Detail
s203BB	Facilitation and assistance	NTRB-SPs provide assistance to native title interest holders in relation to native title applications, Future Acts, agreements, rights of access and other matters.
s203BF	Certification	NTRB-SPs certify applications for native title determinations and certify the registration of ILUAs.
s203BF	Dispute resolution	NTRB-SPs promote agreement and mediate disputes between native title groups.
s203BG	Notification	NTRB-SPs ensure that people with a possible native title interest are informed of other claims and of Future Acts and the time limits for responding to these.
s203BH	Agreement making	NTRB-SPs can be a party to ILUAs or other agreements.
s203BI	Internal review	NTRB-SPs have a process by which clients can seek a review of decisions and actions they have made and promote access to this process for clients.
s203BJ	Other functions conferred by the <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.



A bigger idea of success

Nous Group is an international management consultancy operating across Australia, New Zealand, the United Kingdom, Ireland and Canada. We are inspired and determined to improve people's lives in significant ways. When our strengths complement yours and we think big together, we can transform businesses, governments, and communities. We realise a bigger idea of success.

A bigger idea
of success

750

PEOPLE

75

PRINCIPALS

5

COUNTRIES

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