Review of the Northern Land Council, 2019-22

National Indigenous Australians Agency

June 2024

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Contents

1 Profile of the Northern Land Council

The Northern Land Council (NLC), based in Darwin with 12 regional offices, provides native title services across the northern part of the Northern Territory

The NLC was established in 1973 and, three years later, became an independent statutory authority of the Commonwealth under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The NLC commenced its native title function as a Native Title Representative Body (NTRB) in 1994. The NLC's native title function is one of several it performs and as of 2022 constituted approximately ten per cent of its total activity.[1] Aside from native title, the NLC also engages in land management, community development, policy advocacy and provides other legal assistance for community members.

Under the *Native Title Act 1993* (Cth) (the NTA), the NLC provides native title services across the northern part of the Northern Territory. It is the recognised Native Title Representative Body (NTRB) for the Representative Aboriginal/Torres Strait Islander Body (RATSIB) area in the northern part of the Northern Territory, which includes the Top End, the Groote Archipelago, the Tiwi Islands and an extensive area of coastal and offshore waters. The NLC divides the Top End into the following seven regions:

- Borroloola/Barkly
- Darwin/Daly/Wagait
- East Arnhem
- Katherine
- South East Arnhem
- Victoria River District
- West Arnhem.

Under the NTA, the NLC's RATSIB area also includes the Groote Archipelago and the Tiwi Islands.

The NLC established the Top End (Default PBC/CLA) Aboriginal Corporation (TED PBC) in 2013. The TED PBC was the Prescribed Body Corporate (PBC) for all determined claim groups in the RATSIB area between 1 July 2019 and 30 June 2022 (the Review period).

As of 30 June 2022, the NLC RATSIB area covered about 1,140,323 square kilometres, of which 571,733 square kilometres is land and land waters.[2] Of the NLC RATSIB area:

- about 220,908 square kilometres have been subject to a positive native title determination, equating to 39 per cent of the RATSIB land area
- 45,697 square kilometres have been assessed as non-claimable (44,737 square kilometres) or subject to a negative determination (960 square kilometres) by the National Native Title Tribunal (NNTT), equating to eight per cent of the RATSIB land area

[1] Northern Land Council, NLC Annual Report 2021-22, 2022. Measured by the percentage of NLC's expenditure attributed to native title.
[2] Flood waters, rivers and creeks. Not sea water.

- about 79,643 square kilometres are subject to an active claim, equating to 14 per cent of the RATSIB land area.

Much of the RATSIB area is covered by land rights granted through the ALRA.

There have been 86 positive determinations of native title within the NLC RATSIB area since the passage of the NTA, 11 of which occurred during the Review period. Lawyers employed by the NLC were the solicitors on the record for the applicants in all determinations during the Review period. There were 17 active claims in the NLC RATSIB area as of 30 June 2022.

The NLC is governed by its Full Council and an Executive Council. The 83-member Full Council, including 78 elected representatives from the NLC's seven regional areas and five co-opted women (to ensure gender representation), provides overall guidance.[3] These 83 Full Council members elect the NLC's 16-member Executive Council which carries out functions delegated by the Full Council and manages business between Full Council Meetings. The Executive Council comprises the Chair, the Deputy Chair and two members from each of the NLC's seven regions.

As of 30 June 2022, the NLC employed 347 full-time and part-time staff, of whom approximately 60 per cent were Aboriginal. It is one of the largest employers of First Nations people in the Northern Territory. As of 30 June 2022, the NLC employed 24.2 full time equivalent staff in its native title function.

The Northern Territory has a distinct native title operating context, which is relevant to the scope of the NLC's functions and the delivery of its native title activities

The legislative backdrop is important as it contextualises the NLC's performance and operations relating to its native title responsibilities explored throughout this report. Five Northern Territory and Commonwealth Acts are relevant. The three Commonwealth Acts that impact the NLC's native title functions are:

- ***Native Title Act 1993* (Cth):** The NTA governs the core, mandatory functions of an NTRB.
- ***Aboriginal Land Rights (Northern Territory) Act 1976* (Cth):** The ALRA established a system in the Northern Territory where Aboriginal people could make traditional land claims to unalienated Crown land and alienated Crown land in which all estates and interests are held by Aboriginal people. The system was sunsetted in 1997 and no new claims can be made. Land rights granted under the ALRA can co-exist with native title rights and interests.
- ***Public Governance, Performance and Accountability Act 2013* (Cth):** The *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) works to strengthen the performance of Commonwealth bodies and increase accountability by ensuring plans and actions deliver results.[4]

The two pieces of Northern Territory legislation that impact the NLC's native title functions are the:

- ***Northern Territory Aboriginal Sacred Sites Act 1989***
- ***Pastoral Land Act 1992* (NT)**

This Review focuses only on the NLC's performance under the NTA as a NTRB. Its performance in all other domains is not in scope.

[3] Northern Land Council, About Us: Our Council, NLC website, (2023).
[4] Department of Finance *Public Governance, Performance and Accountability Act 2013* (Cth).

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 NTA over a time period of 1 July 2019 to 30 June 2022.

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

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

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

The complete TOR are included in Appendix A.

Methodology

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

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

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

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

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

Limitations

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

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

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

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

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

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

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

3 List of abbreviations

Abbreviation	Meaning
AAPA	Aboriginal Areas Protection Authority
ABA	Aboriginal Benefit Account
ABAC	Aboriginals Benefit Account Advisory Committee
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALRA	*Aboriginal Land Rights (Northern Territory) Act 1976*
CEO	Chief Executive Officer
DAC	Djalkiripuyngu Aboriginal Corporation
FANs	Future Act notifications
GM	General Manager
GRC Unit	Governance, Risk and Compliance Unit
HR	Human resources
IDAC	Indjalandji-Dhidhanu Aboriginal Corporation
IEO	Index of Education and Occupation
ILUA	Indigenous Land Use Agreement
IRSD	Index of Relative Socioeconomic Disadvantage
LGA	Local government area
LIR	Land Interest Reference
NIAA	National Indigenous Australians Agency
NLC	Northern Land Council
NNTT	National Native Title Tribunal
Nous	Nous Group
NTRB-SP	Native Title Representative Body and Service Provider
ORIC	Office of Registrar of Indigenous Corporations

Abbreviation	Meaning
PBC	Prescribed Body Corporate
PGPA Act	*Public Governance, Performance and Accountability Act 2013*
PLB	Pastoral Land Board
PLO	Principal Legal Officer
RATSIB	Representative Aboriginal/Torres Strait Islander Body
RNTBC	Registered native title bodies corporate
TED PBC	Top End (Default PBC/CLA) Aboriginal Corporation
The CATSI Act	*Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)
The NTA	*Native Title Act 1993* (Cth)
The Review period	1 July 2019 to 30 June 2022
TOR	Terms of Reference

4 Executive summary of performance and recommendations

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

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

The NLC made significant progress in achieving native title determinations despite the challenges posed by COVID-19, with 11 consent determinations during the Review period. The NLC also pursued strategically important claims, such as the McArthur River Mine compensation claim, and objections and new claims over land subject to development proposals. At the end of the Review period, the NLC was pursuing 16 active claims, although five of these claims had been active for over 20 years. Thirty-nine per cent of the claimable land within the RATSIB area was not subject to a registered native title claim or determination, although much of this land is held by Aboriginal Land Trusts under the ALRA.

While the NLC had a highly experienced legal team, concerns were raised both internally and externally that there was insufficient supervision of junior lawyers by lawyers more experienced in native title.

External anthropologists noted that the NLC's anthropological function had improved significantly since the previous Review (financial year (FY) 2016-17 to FY2018-19). Specifically, the NLC had improved its peer review processes and the field support it provided to external anthropologists. The NLC's Land Reference System – a geographically indexed collection of genealogies, reports, observations, maps, research and literature – was well regarded by staff and external anthropologists, although external anthropologists raised concerns about the NLC's processes for generating maps. Feedback also indicated that at times lawyers did not consult sufficiently with other experts such as anthropologists on key decisions such as claim group composition.

Traditional Owners consulted by the Review expressed mixed views on the native title outcomes delivered by the NLC. Some pointed to the NLC's historic achievements in land rights and native title. Some others were concerned that the immense influence and resources of the NLC meant that it should be doing more to achieve positive native title outcomes and benefits and had instead, in their view, become overly bureaucratic.

The NLC had significantly improved its delivery of the notification function under the NTA since the previous Review. The NLC worked closely with the Aboriginal Areas Protection Authority (AAPA) to respond to Future Act notifications (FANs) effectively and continued to advocate to the Northern Territory Government about its interpretation of the activities that constitute a Future Act. Over the Review period, the NLC also supported four ILUA settlements.

RECOMMENDATION 1

The NLC should deliver more intensive and effective supervision and support for junior native title lawyers and commit to deliver stronger supervision of their work.

RECOMMENDATION 2

The NLC should design and deliver training to support legal and anthropological staff to better understand their respective roles in native title.

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 NLC's approach to assessment and prioritisation of native title applications was set by the Executive Council in consultation with the Chief Executive Officer (CEO) and senior NLC staff. Awareness of the approach was limited among more junior staff. During the Review period, the NLC prioritised claims over land subject to development proposals in order to protect sacred sites and secure the right to negotiate.

To remain flexible, the NLC chose not to establish a publicly facing prioritisation policy. Given the role of the NTRB in supporting Traditional Owners to exercise their rights and providing transparency for constituents, it would be preferable for the NLC to publish information on its website about its approach to assessment and prioritisation of applications for assistance.

The focus of the prioritisation process on responsive claims resulted in a slower rate of progress for claims where there was no immediate development application. This was a long-standing dynamic and disadvantaged Traditional Owners exercising their rights in areas with no immediate development processes on foot. The NLC maintained that equitable access to native title outcomes was not an objective of its prioritisation process.

Traditional Owners consulted by the Review were generally satisfied with their level of awareness of reasons for prioritisation decisions and did not raise concerns.

RECOMMENDATION 3

The NLC should create an internal facing assessment and prioritisation policy which includes the likelihood that land subject to a development application will be prioritised.

RECOMMENDATION 4

The NLC should publish information on the NLC website about the ways in which the NLC assesses and prioritises applications for assistance to improve transparency for Traditional Owners.

RECOMMENDATION 5

The NLC should consider how to resource and deliver native title outcomes in areas that are not currently subject to development claims in order to support more equitable access to native title outcomes.

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 NLC had an established approach to how it supported culturally appropriate and respectful engagement through its native title work that operated throughout the Review period. Cultural competency and respectful practices are embedded into the organisation's practices, corporate documents and policies in a tailored and appropriate manner. The organisation has a longstanding history of working directly with the community (through native title and more broadly). Stakeholders reported that the NLC generally engaged respectfully and professionally with clients. While feedback was positive, some stakeholders felt there could be greater transparency in communication. In addition, some staff reported feeling under-supported in building their skills for culturally appropriate engagement and how to run effective meetings.

Following the Review period, the NLC updated its complaints handling process and provided a complaint form on its website. However, there is still a need for expanded information about the process and for further training and clarification to support staff and Traditional Owners in making a complaint. During the Review period, the NLC received eight complaints related to native title (including indirectly via the NIAA) and only one of these remained unresolved at the end of the Review period. One request for internal review was managed appropriately.

Following the Review period the NLC developed and adopted a formal Internal Review Policy which it makes available to all constituents who apply for assistance.

RECOMMENDATION 6

The NLC should update the Complaints section of its website to include information on the process for handling complaints and the timeframes in which a complainant will receive a response.

TOR 4 | Extent to which each organisation performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.

The NLC's expenditure on native title was variable across the Review period with staff salaries and consultant fees being the highest native title expenses. Compared to most other NTRB-SPs, the NLC expended approximately twice as much on consultants as a proportion of total native title expenditure. The NLC reports that this was largely due to its prioritisation of complex claims and responsive claims requiring additional resources, as well as labour shortages in the Top End. The size and remoteness of the RATSIB area and the relatively high proportion of non-English speakers in the RATSIB area contributed to the complexity and costs of delivering native title functions.

The NLC identified and implemented a range of cost saving strategies across its native title functions and a cost recovery model was in place. The NLC conducted claim group meetings appropriately and had established policies to ensure staff and clients were supported to travel to claim group meetings. The NLC benefited from its ability to leverage its other funding for delivery of its native title functions, thus delivering added value to its native title performance across the Review period.

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 NLC's Chair and CEO fulfilled their responsibilities as an accountable authority under the PGPA Act. The Full Council and Executive Council, in consultation with the Regional Councils and CEO were responsible for setting the strategic direction of the NLC, including for its native title functions. The roles and responsibilities of the Councils and CEO in delivering native title functions were clearly defined. However, some NLC staff felt the Executive and Full Councils did not act in a strategic or transparent way regarding native title.

The Review was not made aware of any significant concerns about the financial management of the NLC's native title function. The NLC prepared comprehensive budget documents each year to secure funding and had policies in place to delegate procurement and reporting processes throughout the organisation. The Audit Committee was responsible for overseeing the NLC's compliance with financial reporting requirements. The NLC had clear and appropriate policies denoting the process for handling conflicts of interest.

In 2021, the NLC implemented a new Learning and Development team and Learning Management system to manage the training and professional development of staff. The NLC's thorough induction and training requirements were effective although the intended annual performance reviews were often delayed or did not occur. Since the Review period, the NLC has invested heavily in promoting a positive staff culture.

The Review received feedback that some staff who worked on native title matters experienced the culture of the NLC as unsafe. They felt unable to safely give feedback and participate in improvement processes. Several staff indicated to the Review that they had experienced bullying or harassment and that they did not feel adequately supported when these incidents were reported.

RECOMMENDATION 7

The NLC should implement mechanisms to help create and maintain a culture where staff feel safe to give and receive feedback, and behavioural issues can be constructively managed.

RECOMMENDATION 8

The NLC should ensure that performance reviews are held annually to ensure staff have opportunities to develop and are adequately supported to deliver high quality work.

RECOMMENDATION 9

The NLC should improve its responsiveness to allegations of bullying and harassment, with managers to ensure that formal and informal reports regarding alleged incidents and/or patterns of behaviour are referred to the correct channels within NLC.

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

During the Review period the NLC supported a single PBC known as the TED PBC, for all native title holders in its RATSIB area. All Directors of the TED PBC were concurrently members of the NLC Executive. The TED PBC, supported by NLC staff, performed the administrative and compliance functions required under the NTA and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) for all determined claims at no charge to native title holders. The intention of this arrangement was to eliminate the administrative burden and risk of non-compliance for native title holders, many of whom may not have the knowledge, skills, or desire to operate a compliant PBC.

NLC staff commented that the TED PBC was established to deal with what they believed were unique circumstances in the Top End where there was already a Land Council to facilitate decision making by Traditional Owners, and multiple Aboriginal corporations and associations across the Top End, established under the ALRA, with at least one in every major community. NLC advised that Traditional Owners generally declined to set up PBCs as a vehicle for self-determination because they were already operating pre-existing corporations and associations for these purposes. Groups generally experienced the operation of PBCs as onerous, costly and uninteresting. For these reasons, the Top End PBC was seen as an attractive alternative.

The NLC reported that claimants enter this arrangement with informed consent. Claimants are informed during the lead-up to a determination of a range of options to fulfil their obligations under the NTA. Feedback from consultations confirmed this.

However, some Traditional Owners consulted by the Review raised concerns about the TED PBC arrangement. These concerns included:

- There was limited information and support available to those wishing to leave the TED PBC to establish their own PBCs.
- The process for establishing an independent PBC for groups of common law holders who were existing members of the TED PBC was opaque and extremely slow.
- The TED PBC was an extra layer of bureaucracy.
- As it represented a diverse range of Traditional Owners from across the RATSIB area, the TED PBC hindered the self-determination of groups of common law native title holders.

NLC staff commented that the NLC remained open to groups of common law holders developing their own PBCs. Only one separate PBC has been established in the NLC's RATSIB area. The Djalkiripuyngu Aboriginal Corporation (DAC) was registered on 1 May 2020 for the purpose of functioning as the PBC for the Blue Mud Bay native title determination. To ascertain consent, the NLC conducted a broad and complex consultation process across numerous groups of Traditional Owners. In 2023, following the Review period, the DAC formally became the PBC for the Blue Mud Bay determination area. Traditional Owners involved reported that the process had been frustrating, difficult and lacking in transparency. The NLC reported that the process was lengthened because the Blue Mud Bay determination is the largest and most culturally complex determination in the RATSIB area. The challenge of ascertaining consent from a large number of Traditional Owners, many of whom were uncertain about their preferred PBC arrangement, together with the impacts of the COVID-19 pandemic, lengthened the process.

The Review considers that groups of common law holders should be supported to leave the TED PBC if they wish and there should be a clear pathway to achieve this. This will create transparency and support free, prior and informed consent.

While the NLC does not have a formal policy in place for return of cultural materials, it advised that a repatriation policy was being established.

RECOMMENDATION 10

The NLC should prioritise the development and pro-active communication of a policy and related processes through which common law holders can elect to leave the TED PBC and establish their own PBC. These processes should be timely, transparent and efficient.

RECOMMENDATION 11

The NLC should prioritise the finalisation and implementation of a new NLC Repatriation Policy for cultural materials, including the process of obtaining and retaining consent for the collection of cultural materials.

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

As of 30 June 2022, the NLC's strategic planning for post-determination was well progressed. The NLC is one of the NTRB-SPs with the largest number of successful determinations and relatively little claimable land remaining (when Aboriginal land recognised under ALRA is considered).

The NLC established the Projects, Planning and Land Management Division to focus resources into NLC's post-determination era. For example, the Community Planning and Development branch of this division supported Traditional Owners to use payments from ILUAs to drive their own development and secure lasting benefits from their land. The NLC's "Activating Land and Sea Rights" initiative is focussed on delivering Traditional Owners' rights and interests through native title and ALRA. The extent to which these initiatives were available to members of determined claims is unclear. The process used to monitor the aspirations of claim groups seeking to benefit from their native title rights and interests is also unclear.

The Review believes there is a need to clarify the extent to which these services will be available for claim groups that seek to leave the TED PBC and establish their own PBC.

The NLC's approach to compensation is well progressed compared to other NTRB-SPs. This includes the determination of the Timber Creek matter, as well as active compensation claims in other regions, such as over the McArthur River Mine.

RECOMMENDATION 12

The NLC should develop and implement a process that enables regular feedback in relation to post-determination priorities of groups of common law holders of native title in the 86 determinations represented by the TED PBC.

RECOMMENDATION 13

The NLC should clarify the extent to which their post-determination services are available to independent PBCs, on what conditions and at what price.

5 Performance assessment

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

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

Summary

The NLC made significant progress in achieving native title determinations despite the challenges posed by COVID-19, with 11 consent determinations during the Review period. The NLC also pursued strategically important claims, such as the McArthur River Mine compensation claim, and objections and new claims over land subject to development proposals. At the end of the Review period, the NLC was pursuing 16 active claims, although five of these claims had been active for over 20 years. Thirty-nine per cent of the claimable land within the RATSIB area was not subject to a registered native title claim or determination, although much of this land is held by Aboriginal Land Trusts under the ALRA.

While the NLC had a highly experienced legal team, concerns were raised both internally and externally that there was insufficient supervision of junior lawyers by lawyers more experienced in native title.

External anthropologists noted that the NLC's anthropological function had improved significantly since the previous Review (FY2016-17 to FY2018-19). Specifically, the NLC had improved its peer review processes and the field support it provided to external anthropologists. The NLC's Land Reference System – a geographically indexed collection of genealogies, reports, observations, maps, research and literature – was well regarded by staff and external anthropologists, although external anthropologists raised concerns about the NLC's processes for generating maps. Feedback also indicated that at times lawyers did not consult sufficiently with other experts such as anthropologists on key decisions such as claim group composition.

Traditional Owners consulted by the Review expressed mixed views on the native title outcomes delivered by the NLC. Some pointed to the NLC's historic achievements in land rights and native title. Some others were concerned that the immense influence and resources of the NLC meant that it should be doing more to achieve positive native title outcomes and benefits and had instead, in their view, become overly bureaucratic.

The NLC had significantly improved its delivery of the notification function under the NTA since the previous Review. The NLC worked closely with the AAPA to respond to FANs effectively and continued to advocate to the Northern Territory Government about its interpretation of the activities that constitute a Future Act. Over the Review period, the NLC also supported four ILUA settlements.

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 NLC has been effective in progressing native title determinations during the Review period, despite the disruptive impacts of COVID-19

Over its history, the NLC has achieved 86 positive determinations of native title within the RATSIB area. During the Review period, the NLC:

- filed **12 native title applications**, two of which were determined and one of which was discontinued
- achieved **11 successful native title consent determinations**, all of which found native title existed in parts[5] of the determination area
- achieved **one successful application for a variation of an approved determination of native title**
- had **zero unsuccessful native title determinations** with a judgement that native title did not exist.

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

Table 1 | Successful native title claims during the Review period[6]

PBC	Claim	Federal Court file number	Date filed	Date of determination	Status commentary
Top End Aboriginal Corporation registered native title bodies corporate (RNTBC)	Nutwood Downs Pastoral Lease	NTD20/2013	12/11/2013	9/09/2020	The claim was determined by consent and covers approximately 4,360 square kilometres of land in the Roper Gulf Region, approximately 50km northeast of Daly Waters.
Top End Aboriginal Corporation RNTBC	Hodgson River Pastoral Lease	NTD21/2013	12/11/2013	9/09/2020	The claim was determined by consent and covers approximately 1,109 square kilometres of land in the Roper Gulf Region, approximately 90km northeast of Daly Waters.
Top End Aboriginal Corporation RNTBC	Powell Creek Pastoral Lease Proceeding	NTD6038/2001, NTD1/2018	21/05/2001 8/01/2018	28/10/2020	The claim was determined by consent and covers approximately 7,892 of square kilometres land in the Barkly Region, located south of Elliot.
Top End Aboriginal Corporation RNTBC	Helen Springs Pastoral Lease Proceeding	NTD6005/2001, NTD6038/2001, NTD32/2011	31/01/2001 21/05/2001 8/09/2011	28/10/2020	The claim was determined by consent and covers approximately 12,032 square kilometres of land in the Barkly Region, located on the Powell Creek Station.

[5] The Review notes that most native title determinations in the NLC region, especially those on land with a pastoral lease, will only recognise the claim group native title in parts of the area, with limited activity rights.
[6] NNTT. Register of Native Title Applications, Registration Decisions and Determinations.

PBC	Claim	Federal Court file number	Date filed	Date of determination	Status commentary
Top End Aboriginal Corporation RNTBC	Banka Banka West Pastoral Lease Proceeding	NTD61/2017	19/12/2017	28/10/2020	The claim was determined by consent and covers approximately 1,529 square kilometres of land in the Barkly Region, located north of Tennant Creek.
Top End Aboriginal Corporation RNTBC	Banka Banka East Pastoral Lease Proceeding	NTD6005/2001, NTD60/2017	31/01/2001 18/12/2017	28/10/2020	The claim was determined by consent and covers approximately 5,071 square kilometres of land in the Barkly Region, located north of Tennant Creek.
Top End Aboriginal Corporation RNTBC	Hidden Valley Pastoral Lease	NTD25/2015	8/09/2011	29/10/2020	The claim was determined by consent and covers approximately 2,811 square kilometres of land in the Roper Gulf Region, located northwest of Elliot.
Top End Aboriginal Corporation RNTBC	Buchanan Downs Pastoral Lease	NTD26/2015	19/12/2017	29/10/2020	The claim was determined by consent and covers approximately 1,264 square kilometres of land in the Roper Gulf Region, located northwest of Elliot.
Top End Aboriginal Corporation RNTBC	Nathan River Pastoral Lease	NTD43/2017	31/01/2001	29/06/2021	The claim was determined by consent and covers approximately 3,697 square kilometres of land in the Roper Gulf Region, located in the Katherine Region.
Top End Aboriginal Corporation RNTBC	Lorella #2 Pastoral Lease	NTD18/2016	18/12/2017	29/06/2021	The claim was determined by consent and covers approximately 3,834 square kilometres of land in the Roper Gulf Region, located on the Lorella Pastoral Lease (Lease #757, Portion 1333).
Top End Aboriginal Corporation RNTBC	Billengarrah #2 Pastoral Lease	NTD21/2016	25/05/2015	29/06/2021	The claim was determined by consent and covers approximately 2,104 square kilometres of land in the Roper Gulf Region, located on the Billengarrah Pastoral Lease (Lease #1069, Portion 1323).

During the Review period, the NLC also negotiated a total of four ILUAs. Further details about these ILUAs are provided below.

The NLC achieved considerably more determinations in the Review period than in the previous Review period, during which the NLC achieved four determinations of native title. The previous Review acknowledged that the NLC achieved a modest number of native title determinations because it was prioritising larger claims and issues that had significant impact on native title rights and set a precedent for future claims. For example, the NLC prioritised the Timber Creek compensation claim, the first successful litigated compensation claim in Australia.

In this Review period, the NLC continued to support strategically significant cases, such as seeking compensation from the Northern Territory Government over environmental damage to land that was part of McArthur River Pastoral Lease determined area.

Further details on the NLC's approach to prioritisation can be found under TOR 2.

As of 30 June 2022, the NLC had 16 native title claims active in the region

The NLC had 17 active claims at the beginning of the Review period. The NLC filed 11 claims for native title during the Review period, ten of which remained active as of 30 June 2022. One claim was discontinued. Six claims that were filed prior to the Review period remained active, including five polygon claims that have been active for over 20 years.

Polygon claims are claims that reflect the boundaries of mineral and petroleum exploration. The boundaries of polygon claims reflect areas in which there are imminent proposals to develop the land and may not correlate with the potential native title holdings of particular groups of Traditional Owners. The NLC submitted polygon claims to secure the right to negotiate and not necessarily to achieve a determination of native title.

Table 2 presents information about NLC claims active at the end of the Review period.

Table 2 | Summary of active claims at 30 June 2022[7]

Claim	Application type	Date filed	Registration decision status
Mary River West	Claimant	1/02/2001	Accepted for registration (new decision in progress – section 190A)
Ban Ban Springs	Claimant	13/03/2001	Accepted for registration
Dalmore Downs	Claimant	8/05/2001	Accepted for registration
Dalmore Downs South	Claimant	12/03/2002	Accepted for registration
Burramurra	Claimant	3/07/2002	Accepted for registration
Town of Katherine #2	Claimant	16/11/2018	Accepted for registration
Rocklands Pastoral Lease Proceeding	Claimant	25/07/2019	Determined 8/09/2022
Austral Downs Pastoral Lease	Claimant	26/07/2019	Not accepted for registration
Avon Downs Pastoral Lease	Claimant	26/07/2019	Not accepted for registration
Burramurra Pastoral Lease	Claimant	26/07/2019	Not accepted for registration
Wagiman ML 32105 Claim	Claimant	29/10/2019	Accepted for registration

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

Claim	Application type	Date filed	Registration decision status
Dalmore Downs Pastoral Lease	Claimant	1/11/2019	Not accepted for registration
Jawoyn Bolmo, Matjba and Wurrkbarbar ML(A) 32257 and ML(A) 32258	Claimant	11/03/2020	Accepted for registration
Huckitta Native Title Determination Application	Claimant	11/03/2020	Accepted for registration
Uwynmil ML(A) 32327 and ML(A) 32328 Claim	Claimant	21/12/2020	Accepted for registration
Liyi (ML(A) 32351, ML(A) 32352, ML(A) 32353 and ML(A) 32354)	Claimant	21/12/2020	Accepted for registration

The NLC was involved in nine litigated native title matters during the Review period

The NLC was involved in nine litigated native title matters in the Northern Territory Civil and Administrative Tribunal, Supreme Court of the Northern Territory, Federal Court of Australia and High Court of Australia. These nine matters are described in Table 3.

Table 3 | Litigated matters that involved the NLC during the Review period

Name of litigated matter	Nature of the NLC's involvement
Australian Ilmenite Resources Pty Ltd v Chattahoochie Registered Native Title Claim and Ors (NTCAT File No. 21748548)	Legal Representative
Australian Ilmenite Resources Pty Ltd v Chattahoochie Registered Native Title Claim and Ors (SC No. 120 of 2017 (21758157))	Legal Representative
Mark Raymond and Ors v Top End (Default PBC/CLA) Aboriginal Corporation RNTBC NTD 28/2020	Legal Representative
Kevin Lance Quall v Native Title Registrar NTD 9/2021	Respondent
Raylene Singh on behalf of the Tommy Lyons Group v Northern Land Council (2021-01510-SC)	Respondent
Friday v Minister for Primary Industry and Resources NTD 40/2019	Legal Representative
Harvey and Ors v Minister for Primary Industry and Resources NTD 16/2021	Legal Representative
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs and Ors v Shayne Paul Montgomery S192 of 2021	Intervener
Harvey and Ors v Minister for Primary Industry and Resources (D4/2022 and D9/2022)	Legal Representative

The legal team performed competently, although junior lawyers could be better supported

During the Review period, the NLC had a total of 38 employees in its legal branch. Nine lawyers were employed under native title funding and four under PBC support funding. The NLC's native title legal team was led by a highly experienced core of senior lawyers with a strong record of achievement continuing into the Review period. Much of the native title work was done by junior lawyers, who were then supervised by the Legal Practice Manager (Native Title), Legal Branch Manager and Principal Legal Officer (PLO).

Some observers felt that the NLC's decision making over legal matters was not always informed by a strategic understanding of the issues involved and the NLC's position. In response, the NLC noted that lawyers employed by the NLC act on their client's instructions, not on the direction of the NLC and that such commentary might indicate strong performance, even if it involves displeasing a government.

Observers also indicated to the Review that they believed this lack of an informed understanding often arose due to a lack of involvement by senior lawyers who had a broader view of the issues involved. This view was reinforced by some junior lawyers who commented that they felt too many decisions were left to them to make and they struggled to get time from senior lawyers to discuss decisions they had made.

Traditional Owners who engaged with the Review had mixed views on the outcomes delivered by the NLC

When seeking feedback on the NLC from Traditional Owners it was difficult to isolate discussion to the NLC's performance on native title. The views expressed tended to be about the wider performance of the NLC and therefore, should not necessarily be taken to reflect only on the NLC's performance of its native title functions.

Some Traditional Owners expressed positive views about the NLC. Several recognised the NLC's involvement in historic developments in land rights and native title. Others recognised that the NLC does "a big job" and were generally approving of its performance.

Many Traditional Owners perceived the NLC as having immense influence and resources. Considering this, some felt that the NLC should be doing more to achieve positive native title outcomes and providing more significant income to Traditional Owners. Some thought that the NLC was more interested in representing its own interests rather than the interests of Traditional Owners, which manifests in the NLC pursuing certain claims. Related to this, some perceived the NLC as a bureaucracy through which Traditional Owners had to work to achieve their aspirations.

Anthropological research

The NLC had around 30 staff in its anthropology branch, one third of whom worked on native title

Over the Review period, the NLC had approximately 30 staff in its anthropology branch. In July 2023, the NLC's anthropology branch had 26 staff and 11 vacant positions (number of positions for the Review period were not available). NLC staff explained that a shortage of anthropologists in the Top End had made it difficult to replace staff when they left. Both NLC staff and external anthropologists reported the anthropology branch was overstretched during the Review period due to a high number of vacant positions and the high workload.

Approximately one third of NLC's anthropologists work under the NTA, two thirds under the ALRA. Some senior anthropologists work across both the NTA and the ALRA. In contrast to ALRA anthropologists, NTA anthropologists are less regionalised because the NLC's native title program is not necessarily structured around the NLC's seven regions, two of which wholly comprise Aboriginal land under the ALRA. This means that NTA anthropologists can be required to work across the entirety of the RATSIB area, but in practice they will often build up expertise in certain regions and work predominantly in those regions. Representatives from the anthropology branch explained that they made efforts to regionalise their anthropologists so they could establish relationships with Traditional Owners and build expertise in that area.

The NLC's focus on submitting responsive claims imposed time constraints on the anthropology branch

During the Review period, the NLC focussed on submitting responsive claims over land subject to imminent development proposals (further details on the NLC's prioritisation of claims are provided under TOR 2). This required the NLC to submit claims quickly to secure the right to negotiate. As such, the anthropology branch was often required to expedite research to meet tight time constraints. Some concerns were expressed that these time constraints sometimes resulted in lawyers being involved in anthropological work, which may have affected the quality of anthropological work. NLC lawyers did not believe this to be the case. However, this suggests there is an opportunity to improve the communication between NLC's branches and to clarify the roles and responsibilities of lawyers and anthropologists.

The perception of external anthropologists is that the NLC anthropology branch conducts high-quality anthropological research

According to external anthropologists, the research of the NLC's native title anthropologists was of a high quality. External anthropologists reported that many of the NLC's anthropologists were inexperienced, but the branch managed and coordinated well to ensure the anthropological evidence provided to support claims was high-quality.

The previous Review recommended that the NLC should strengthen, clarify and confirm the processes for peer review and quality assurance for connection reports and anthropological research that supports native title. The NLC has addressed this recommendation by appointing a new senior anthropologist as the anthropology branch manager. According to external anthropologists who have had their work reviewed by the NLC, the comments they received on reports during the Review period were largely informed and sensible.

The NLC provided competent briefs and support to external consultants

NLC staff reported that the anthropology branch contracted external anthropologists when it required increased capacity or expertise in a specific region; for example, to provide peer review to an internal anthropologist who lacked expertise in that region.

The perception from external anthropologists was that the NLC provided competent and detailed briefs and adequate support to external anthropologists during the Review period. Brief-outs included enough detail and clear guidance for the external anthropologists to have the information required for the project. Anthropologists also had the opportunity to ask for as many clarifications as were needed to undertake the project. This lends support to the perception that the anthropology was well conducted over the Review period.

The NLC's Land Interest Reference system is effective

Both NLC staff and external anthropologists reported that the NLC's Land Interest Reference (LIR) system was highly effective and efficient. The LIR system is a digitised repository of anthropological materials that have been collected and stored over time. The LIR system also keeps a record of all the requests registered each year by those with an interest in using Aboriginal land or water and the information used to support these requests. These requests may come from businesses, government stakeholders, or other proponents. The NLC's LIR system has over 50 years of information about anthropological issues, containing approximately 50,000 documents. These documents are geographically and ethnographically indexed so that anthropologists could easily access materials from the system as they were needed. The LIR system enables NLC and external anthropologists to efficiently gather and analyse anthropological information and materials about a given area for native title matters. The information contained within the LIR system was only accessible to anthropologists within the NLC anthropology branch and staff in the LIR team.

Future Acts and ILUAs

The NLC significantly improved its delivery of the notification function under the NTA

The previous Review found that the NLC did not consistently deliver the notification function under section 203BG of the NTA over the previous Review period. Three recommendations of the previous Review were that:

1. The NLC should take immediate action to remedy its approach to Future Acts to ensure it is delivering on its legislative responsibilities under the "Notification Function" of the NTA.
2. The NLC should engage with the AAPA to confirm respective roles and responsibilities and develop an agreed process for the response to Future Acts. This will help ensure appropriate protections are optimised through the NTA and *Northern Territory Aboriginal Sacred Sites Protection Act 1989*.
3. The NLC should further improve its Future Act processes by documenting and implementing a clear process for the receipt, assessment, notification and response to FANs. This should include:
   - clearly defined roles and responsibilities
   - clarification of handover points between internal NLC team/roles
   - confirmation of who is ultimately accountable for this function.

The NLC made efforts to address these recommendations over the Review period. The NLC reported that in early 2020 it commenced an internal review of its approach to Future Act matters, including notification and negotiation processes and procedures. This resulted in the development of a documented process flowchart for the receipt, notification and response to Future Act functions across the NLC. This informed the creation of clearly defined handover points and accountabilities for the NLC's receipt, notification and response to FANs. Relevant members of the NLC staff received training about the new Future Act processes and procedures.

During Review period, the NLC engaged regularly with the AAPA and delivered the notification function under the NTA much more effectively. For example, AAPA received significantly more requests from the NLC for information to support objections to Future Acts. During the Review Period, the NLC received 298 notices under section 29 of the NTA, of which 266 related to pending Future Acts to which the expedited procedure was deemed to apply by the Northern Territory Government. The NLC also objected to land clearing notices on a regular basis and advocated to the Northern Territory Government to change its position that land clearing and water extraction did not constitute Future Acts.

The NLC negotiated four ILUAs during the Review period

The NLC negotiated four ILUAs during the Review period, listed in Table 4.

Table 4 | Summary of ILUAs in the NLC region during the Review period[8]

ILUA name	ILUA type	Subject matter	Date filed
Project Sea Dragon ILUA	Area Agreement	Development, Fishing	19/12/2019
Kenbi ILUA	Area Agreement	Extinguishment, Tenure Resolution	26/02/2021
Kneebone Community Living Area ILUA	Body Corporate	Community, Community Living Area	6/08/2021
Tiwi Pontoon Project ILUA	Area Agreement	Infrastructure, Development	13/08/2021

The NLC advised that the requirement for or advisability of an ILUA depends on the particular Future Act or acts proposed and is ultimately a matter for the proponent and the native title party. Northern Territory Government policy supports the making of section 31 agreements and does not require ILUAs in relation to matters where the native title party has the right to negotiate[9]. NLC staff indicated that they believed that this mechanism provided a better alternative and was more cost effective. The Review has found no evidence to suggest this approach was either more or less effective in achieving outcomes for those with native title rights and interests. The NLC was successful in all ILUA negotiations during the Review period.

As of 30 June 2022, the NLC was actively involved in several Future Act and ILUA matters

As of 30 June 2022, the NLC was involved in the following matters through both its NTRB-SP and TED PBC functions:

- Consulting with the native title holders of the Beetaloo region about native title decision-making, and petroleum and gas exploration and production proposals.
- Facilitating negotiations between native title holders and company representatives toward proposed ILUAs for the:
  - McArthur River Mine Project
  - Sun Cable Renewable Energy Project
  - Origin/Tamboran Petroleum Production Project.
- Advising and assisting native title holders to negotiate ILUAs for releasing land in Borroloola, Timber Creek and Pine Creek townships where there were native title determinations.
- Consulting with native title holders about the application of the expedited procedure to exploration licence applications that posed a particularly high risk to sacred sites, and lodging and prosecuting objections, if instructed.
- Consulting with native title holders across the Top End pastoral estate about proposals that will affect native title rights and interests.

The NLC pursued objections to the expedited procedure for exploration license applications

During the Review period the NLC opposed the application of the expedited procedure to exploration licence applications that posed a particularly high risk to sacred sites in the NLC region. An expedited

[8] NNTT Register of Indigenous Use Land Agreements.
[9] The Right to Negotiate under Sibdiv P of Div 3 of Part 2 of the Act.

procedure typically involves shorter timeframes and simplified criteria to assess the eligibility of the exploration license. The NLC filed objections on behalf of native title claimants or the TED PBC in relation to 35 different matters. In one of these objections, the NNTT accepted the NLC's submissions and found that the grantee party had not satisfied its obligation to negotiate in good faith[10]. Of the remaining objections, 12 went on to the NNTT and on seven occasions the NNTT ruled in favour of the NLC-represented party.

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

As shown in Table 5, during the Review period the NLC filed 12 native title applications (one of which was subsequently discontinued), secured 11 determinations that native title exists and one ILUA resulting in native title extinguishment. This indicates that for the Review period the NLC continued to pursue claims at the same rate that it resolved claims. At the beginning of the Review period there were 17 active claims; at the conclusion of the Review period, there were 16. Over the NLC's lifetime, the NLC has filed 265 applications and had 93 native title determinations or ILUAs resulting in native title settlement. The NLC's strategy of lodging responsive polygon claims over pastoral land that has pending exploration licences accounts for many of the applications that have not been determined.

Table 5 | Proportion of claims resulting in determination of native title or ILUA settlement

Period	Total number of applications 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	12	1	11
From the passing of the NTA (24 December 1993) until 30 June 2022	265	6	87

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

There were four native title proceedings in the Review period in which the applicant was assisted by lawyers and other service providers external to the NLC, but where the NLC provided the applicant with indirect assistance, such as funding or support in contested litigation. In two cases, both in the Katherine region, the NLC assisted the claim group through brief out arrangements. These claim groups had contested overlapping claims. The NLC had an established relationship with both groups and so decided not to represent either to avoid tensions or any real or perceived conflicts of interest. Further details on the claims that the NLC has supported indirectly are included in Table 6.

[10] David Trow & Trojon Enterprises Pty Ltd v Aaron Banderson & Another on behalf of the Wagiman People [2021] NNTTA 68.

Table 6 | Claims that the NLC has supported indirectly

Claim	Nature of the NLC's involvement
Jawoyn Town of Katherine #3	On 24 November 2017, private lawyers filed this claim on behalf of the applicants. From 2018, the NLC assisted the applicant by acquitting the funding provided to their private lawyers.
Gove Compensation Proceeding	On 28 November 2019, private lawyers filed two native title applications in the Federal Court: a native title determination application and a native title compensation claim (Gove Compensation Proceeding). The NLC did not provide direct assistance to the applicant in these matters. The NLC did not fund the applicant or any Indigenous party in these matters. However, the NLC was joined as a respondent to the proceedings, as the relevant RATSIB and on behalf of the Arnhem Land Aboriginal Land Trust and was actively involved in the Federal Court hearings, making submissions in support of the positions taken by the applicant and the other Aboriginal parties.
Katherine Families' Town of Katherine #2	**Assisted via brief out:** On 2 October 2020, private law firm MPS Law assumed carriage of this claim from NLC lawyers. The NLC continued to assist the applicant by acquitting funding made available to MPS Law.
Katherine Families' Beds and Banks	The NLC offered to provide funding to applicants of both the Jawoyn Town of Katherine #3 and Katherine Families' Town of Katherine #2 claims to pursue a native title determination over the beds and banks of part of the Katherine River that was formerly the subject of the Katherine Region Land Claim No. 240 under the ALRA. On 9 December 2021, this claim was filed with MPS Law as the representative and funding provided by the NLC.

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

The NLC RATSIB area covers approximately 1,140,323 square kilometres, of which 571,733 square kilometres is land and land waters.[11] Of the land area in the RATSIB area, approximately:

- 220,908 square kilometres have been subject to a positive native title determination, equating to 39 per cent of the RATSIB land area.
- 45,697 square kilometres have been assessed as non-claimable (44,737 square kilometres) or subject to a negative determination (960 square kilometres) by the NNTT, equating to eight per cent of the RATSIB land area.
- 79,643 square kilometres are subject to an active claim, equating to 14 per cent of the RATSIB land area.

This means that approximately 39 per cent of the claimable land within the RATSIB area was not subject to a registered native title claim or determination at the end of the Review period. Much of this land was held by Aboriginal Land Trusts under ALRA, which delivers stronger rights and interests and is generally the preferred option for Traditional Owners seeking to regain their traditional lands.

[11] Flood waters, rivers, and creeks. Not sea water.

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

The Federal Court has set a claim resolution target of five years for all claims lodged since 2011. For claims lodged before 2011, this target was ten years[12]. For the 11 applications determined within the Review period, the average time between the NLC filing the application and the determination being made was 9.13 years.[13] This is considerably greater than the target of five years set by the Federal Court. However, this average is heavily skewed by five claims that were active for over 15 years. These claims were lodged before 2011. Historically, the average time between the NLC filing an application to the determination date was 3.98 years. The age of active claims as of 30 June 2022 is shown in Table 7.

Table 7 | Age of active claims as of 30 June 2022[14]

Less than 1 year	1 to 3 years	3 to 5 years	5 to 15 years	More than 15 years
0	10	1	0	5

This shows that most of the current claims are recent and that many older claims have been resolved or withdrawn.

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

The NLC filed one application for compensation during the Review period (the McArthur River Mine compensation claim). The McArthur River Mine is a zinc-lead mine situated approximately 70km southwest of Borroloola.[15] The mine opened in 1995 and has had multiple expansions since. On 14 December 2020, the NLC filed a compensation claim against the Northern Territory Government on behalf of the Gudanji, Yanyuwa and Yanyuwa-Mara people related to infringements of native title rights in and around the McArthur River Mine and Bing Bong port area. The claim aims to restore the claimants to the economic position they would be in today, had they had the opportunity to bargain over the surrender of their native title rights when the mine first opened. The claim is currently active.

5.1.2 TOR 1: External factors

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

[12] Justice Berna Collier. Prioritisation of Native Title Cases in the Federal Court of Australia. 2011. https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-collier/Collier-J-20110527.rtf

[13] This figure has been calculated using the earliest date of filing for each case. In some cases, determinations have multiple dates listed in the "Date Filed" column. In these cases, the case was first filed at the first date listed with updates made to the claim on the subsequent dates.

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

[15] Gibson, Native Title holders seek compensation from Northern Territory Government over McArthur River Mine, 2020. Accessed March 2023.

State government policy and legislation

The Northern Territory Government's policy position had a moderate impact on the NLC's ability to achieve native title outcomes

The Northern Territory Government continued to demonstrate a willingness to resolve native title by agreement with all 11 claims determined during the Review period agreed via consent. The Northern Territory Government also explicitly listed delivering on "the economic and social aspirations of Aboriginal Territorians" through land and sea ownership as a key priority.[16] The Northern Territory Government's commitment to native title claims was demonstrated by its broad openness to agreements, including, for example, its acceptance of summary (as opposed to full) research reports for consent determinations.[17]

The Northern Territory Government's approach to Future Acts created some challenges for the NLC. Internal and external stakeholders noted that the Northern Territory Government sees large infrastructure development as a way to achieve economic growth in the Northern Territory. Consistent with this, it simplified the processes for getting permission to clear land. For example, the Northern Territory Government no longer required proponents to provide clearances for sacred sites for land clearing or water extraction. As a result, the NLC objected to land clearing notices on a regular and consistent basis, advocating that, as a bare minimum, sacred sites need to be identified and protected.

The NLC advised that when the Pastoral Land Board (PLB) issued a permit to clear land within an area where there were also native title rights, they were required to notify the NLC.[18] However, they did not. Therefore, the NLC actively monitored the PLB website to effectively respond to land clearing applications and provide assistance and advice to native title holders on how to respond to these proposals. Similarly, the NLC reported that there was an unprecedented increase in the number of applications to the Controller of Water Resources for licenses to extract surface or groundwater. The granting of these applications is a compensable Future Act under the NTA, and the Controller of Water Resources did not notify the NLC, PBC or registered claimants of the applications.[19] In response, the NLC monitored the Department of Environment, Parks and Water Security website for new extraction licence applications in order to notify and support native title holders. This placed additional pressure on the NLC which diverted resources and impacted its ability to achieve native title outcomes.

State legislation had a low to moderate impact on the NLC's ability to achieve native title outcomes

There is one Commonwealth Act and two Northern Territory Acts that could conceivably interfere with the NLC's ability to deliver native title outcomes effectively and efficiently (Table 8).

Table 8 | Relevant Commonwealth and Northern Territory legislation

Legislation	Description	Impact
Aboriginal Land Rights (Northern Territory) Act 1976	The ALRA provides legal recognition of inalienable free-hold title, defined as "Aboriginal Land", which is formally vested in	**Moderate** – ALRA historically has had an impact on the options available to Aboriginal people living within the NLC's region. The

[16] Northern Territory Government. Office of Aboriginal Affairs: Priorities. 2020. https://aboriginalaffairs.nt.gov.au/our-priorities

[17] Australian Government Australian Law Reform Commission. (2014). Consent determinations. https://www.alrc.gov.au/publication/review-of-the-native-title-act-1993-dp-82/9-promoting-claims-resolution/consent-determinations/

[18] The PLB is a statutory authority established under the *Pastoral Land Act 1992* (NT).

[19] Section 24HA of the NTA.

Legislation	Description	Impact
(Cth)	an Aboriginal Land Trust on behalf of Aboriginal people living in the area. Under ALRA, Aboriginal land may be acquired either by a grant of land made by a Commonwealth Minister on recommendation of the Aboriginal Land Commissioner or through an Act of Parliament adding the relevant area to a schedule of the ALRA.	more extensive nature of ALRA, and the focus on identifying those with spiritual responsibility for land,[20] makes it the primary form of land rights in the Northern Territory. The ALRA does not extinguish or detract from native title; however, the rights attached to Aboriginal land under the ALRA are considered in many ways superior to the rights and protection afforded under the NTA. As a result, native title rights are considered unnecessary on freehold Aboriginal land where an ALRA determination has already occurred except in the case where there is a case for native title compensation, such as in the case of the Gove compensation claim.
Northern Territory Aboriginal Sacred Sites Act 1989	The *Northern Territory Aboriginal Sacred Sites Act 1989* provides protections over Aboriginal sacred sites across the Northern Territory. Protection measures include penalties for entering, working on or desecrating a sacred site. The nature of the *Northern Territory Aboriginal Sacred Sites Act 1989* means all proposed developments that cover an area where there are sacred sites should apply to the AAPA for an authority certificate. There is jurisdictional overlap between AAPA and the four Northern Territory Land Councils, including the NLC. This arises from a 1987 amendment to the ALRA that gives Land Councils a function to assist in the protection of sacred sites both on and off Aboriginal Land. This overlap can impact ILUA negotiations.	**Low** – The extent to which this legislation impacts the operations of an NTRB-SP is regularly overstated. In practice, the *Northern Territory Aboriginal Sacred Sites Act 1989* essentially offers site protection and provides Northern Territory NTRB-SPs with an extensive list of sacred sites in their RATSIB area. The *Northern Territory Aboriginal Sacred Sites Act 1989* offers site protection through the issue of authority certificates.
Pastoral Land Act 1992 (NT)	The *Pastoral Land Act* allows Aboriginal peoples who ordinarily reside on the leased land, or by Aboriginal tradition are entitled to use or occupy the land, to enter and be on the leased land. They are also permitted to take and use the water from the natural waters and springs on the leased land; to take or kill animals for food or for ceremonial purposes; and to take naturally growing vegetable matter for food or for ceremonial purposes.[21] It does not permit Aboriginal peoples to erect or use a structure on the leased land that would serve as a permanent shelter for human occupation, other than at the place on the leased land where they ordinarily reside.[22]	**Low** – Pastoral leases do not provide the leaseholder with freehold land rights. Therefore, pastoral leases only partially extinguish native title. The effect on NLC's ability to progress claims is not significant.

[20] *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)
[21] *Pastoral Land Act 1992* (NT). As in force at 1 May 2016.
[22] *Pastoral Land Act 1992* (NT). As in force at 1 May 2016.

Complexity of remaining claims

The complexity of remaining claims made it harder for NLC to achieve native title outcomes

The NLC RATSIB area is home to approximately 51,000 Aboriginal people, 80 per cent of whom live in regional and remote areas across nearly 200 Aboriginal communities.[23] Internal stakeholders noted that there were intense intra-Indigenous disputes in many regions that significantly impacted the NLC's ability to achieve native title outcomes. These claims may require more time and resources than have historically been required to achieve native title outcomes.

The NLC reported that the history of colonisation and violence against Aboriginal people is likely to continue to impact the complexity of remaining claims. The removal of Aboriginal people through government laws, policies and practices has impacted the collection of evidence of claimants' pre-colonial traditional rights, system of laws and customs, and ownership of the land. The complexity of the remaining claims will require a greater level of cross-communication amongst teams, community engagement and research from NLC.

History of previous claims

The NLC's history of previous claims supported its ability to achieve native title outcomes

NLC staff noted that the NLC pursued strategically significant, precedent-setting cases and did so successfully. NLC staff believed that this has had a positive impact on the NLC's ability to achieve native title outcomes. For example, the outcome of the *Northern Territory v Griffiths* [2017] FCAFC 106 (the Timber Creek compensation claim) was a landmark decision with implications for other compensation claims across the country. The Federal Court's decision to compensate Ngaliwurru and Nungali People was a significant outcome for people with native title interests. Staff commented that this case influenced the NLC's interest in and pursuit of compensation claims. The NLC was able to establish precedent around how compensation should be calculated when native title rights and interests have been extinguished.

Complexity of land use and tenure

Complexity of land use and tenure made it hard for the NLC to achieve native title outcomes

Previous ALRA work provided the NLC with access to a large database of anthropological material. This material can facilitate the claims research process. In addition, the Northern Territory experienced a great deal of mining, and petroleum and gas exploration and development projects during the Review period.[24] This generated a high volume of heritage clearances, requests for engagement with Traditional Owners and Future Acts. These demands decreased the capacity available for native title claim work.

COVID-19

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

The NLC, like many other organisations, was forced to transition into new ways of working because of the COVID-19 pandemic and subsequent government requirements, some of which closed remote

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[23] Northern Land Council, NLC Annual Report 2021/22.
[24] Northern Land Council, NLC Annual Report 2021-22.

communities for long periods. The NLC proactively implemented a range of measures to mitigate the risk of COVID-19 to their staff, clients and community. These included:

- Providing personal protective wear to staff to support safe workplace behaviours and reduce the risk of infection.
- Limiting face-to-face meetings and site visits.
- Working from home measures for NLC staff.
- Producing information guidance for communities to boost health literacy by increasing public understanding of the pandemic and the government requirements.
- Lobbying the government for greater access to vaccination programs for remote communities.[25]

As noted by many NLC staff and the NLC Annual Report 2019-20, the NLC invested in technology (such as videoconferencing, Microsoft Teams and TeamViewer) to support the Council workforce and business continuity.[26] The network services were extended to every remote office and ranger station, allowing access to the NLC network and resources from very remote locations. Staff commented that the introduction of Microsoft Teams a year earlier meant that the transition to daily videoconferencing as a communication channel was relatively easy.

Nonetheless, COVID-19 caused significant disruption. NLC staff consulted as part of the Review identified that an inability to conduct the previous levels of travel and in-person engagement with community affected the NLC's ability to conduct its activities. For example, COVID-19 outbreaks and associated restrictions meant council meetings and consultations with Traditional Owners were postponed and often cancelled. NLC staff reported it was challenging to conduct consultations with constituents via phone or video. NLC staff also said that some meetings held before COVID-19 had to be redone (as too much time had elapsed). The subsequent lifting of COVID-19 restrictions allowed for the completion of many activities and meetings that had been stalled. This caused an influx in meeting activity across the organisation, which caused a strain on resources.

Some NLC staff expressed concern that staff who commenced working at the NLC during the COVID-19 pandemic had limited experience holding consultations and completing site surveys.

Amount of funding

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

The NLC receives most of its funding from the Aboriginal Benefit Account (ABA), and positions and activities funded through the ABA can be leveraged to create efficiencies in its native title work. In addition, the NLC receives NTA funding from the NIAA, as well as various grants from government and non-government agencies, and generates its own income through fee-for-service activities.

Excluding PBC support, the NLC received $16.1 million from the NIAA over the Review period. Funding relative to RATSIB area is presented below (Table 9).

[25] Northern Land Council, NLC Annual Report 2020-21, 2021.
[26] Northern Land Council, NLC Annual Report 2019-20, 2020.

Table 9 | Total funding relative to factors of interest

Factor of interest (denominator)	Ratio
NLC's total land and sea area: 1,140,323 square kilometres	$14.11 per square kilometres
NLC's total land and land waters area: 571,733 square kilometres	$28.16 per square kilometres

Based on the above factors, the Review believes that the amount of funding received has had a low to moderate impact on the NLC's ability to achieve native title outcomes for clients.

5.1.3 TOR 1: Recommendations

RECOMMENDATION 1

The NLC should deliver more intensive and effective supervision and support for junior native title lawyers and commit to deliver stronger supervision of their work.

RECOMMENDATION 2

The NLC should design and deliver training to support legal and anthropological staff to better understand their respective roles in native title.

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 NLC's approach to assessment and prioritisation of native title applications was set by the Executive Council in consultation with the CEO and senior NLC staff. Awareness of the approach was limited among more junior staff. During the Review period, the NLC prioritised claims over land subject to development proposals in order to protect sacred sites and secure the right to negotiate.

To remain flexible, the NLC chose not to establish a publicly facing prioritisation policy. Given the role of the NTRB in supporting Traditional Owners to exercise their rights and providing transparency for constituents, it would be preferable for the NLC to publish information on its website about its approach to assessment and prioritisation of applications for assistance.

The focus of the prioritisation process on responsive claims resulted in a slower rate of progress for claims where there was no immediate development application. This was a long-standing dynamic and disadvantaged Traditional Owners exercising their rights in areas with no immediate development processes on foot. The NLC maintained that equitable access to native title outcomes was not an objective of its prioritisation process.

Traditional Owners consulted by the Review were generally satisfied with their level of awareness of reasons for prioritisation decisions and did not raise concerns.

5.2.1 TOR 2: Assessment of performance

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

Equity, transparency and robustness of assessment and prioritisation process

Prioritisation decisions were made at the senior levels of the organisation

NLC staff explained that decisions regarding the prioritisation of certain native title claims occurred at the Executive Council level, in consultation with NLC's senior staff. Regional discussions around prioritisation were communicated to the Executive Council through the regional representatives who sat on the Executive Council. Through this process, the NLC advised that the priorities of Traditional Owners were balanced against each other and the NLC could make informed prioritisation decisions.

Some external commentators reported their perception that at times the NLC placed a greater focus on achieving the NLC's broader strategic objectives, such as pursuing compensation claims and advocating for the Northern Territory Government to notify the NLC of land clearing and water extraction proposals, rather than responding to the direct requests of Traditional Owners. The Review did not see any evidence that the NLC failed to effectively represent claim groups while at the same time pursuing its strategic objectives.

The NLC reported that it deliberately did not provide a publicly accessible prioritisation policy, to allow the organisation the flexibility to adjust its prioritisation of activities as needed. While this enabled the NLC to take a flexible approach to prioritisation, it created a lack of transparency for both NLC staff and prospective claimants. There is an opportunity for the NLC to develop a public facing policy to improve the transparency of its prioritisation decisions. This will assist in clarifying NLC's reasons for pursuing particular claims and related issues and improve transparency for those who hold or may hold native title. The Review recognises the NLC's desire to remain flexible in its approach to prioritisation and suggests that this could be included as a prioritisation criteria in the policy.

NLC staff reported that the NLC reassessed, reworked and formalised its instrument of delegation regarding the performance of the NLC's representative body functions. The NLC commenced preparing a workflow document that clearly identified the roles and responsibilities of governing committees and relevant staff members in the making and implementation of native title decisions. At the end of the Review period, this workflow document had not yet been completed. The workflow document would most likely only be distributed to NLC staff; however, it has the opportunity to improve the clarity of the process for making prioritisation decisions. Some staff reported that they were not very aware of the NLC's prioritisation policies.

During the Review period, the NLC prioritised responsive claims and strategically important claims

As described above, during the Review period the NLC prioritised responsive claims (that is, claims on lands subject to an imminent development proposal or claims on land with frequent FANs). The NLC focused its attention on registering claims in these areas, particularly in the Daly River area, to give potential native title holders the right to negotiate. However, this meant the NLC had less capacity and fewer resources for native title claims in the southern region of the RATSIB area not subject to immediate development, many of which were pastoral lease claims.

The NLC's capacity to progress pastoral lease claims was further eroded by its focus on pursuing matters of strategic importance to broader native title outcomes. Senior lawyers estimated that about 20 to 25 per cent of their work was dedicated to strategically important claims. The McArthur River Project compensation claim was a key example of this. Further details of the McArthur River Project compensation claim are included in section 5.1. The McArthur River Project compensation claim has the potential to build on the Timber Creek compensation claim, to pave the way for future native title compensation claims.

While these strategic goals have achieved positive outcomes for native title holders generally, the NLC has devoted its focus to these for the last six years, at the expense of more straight-forward claims. Nonetheless, this did not appear to reduce the NLC's effectiveness in obtaining successful determinations during the Review period. However, it has influenced the geographic areas in which the claims were achieved.

Client and potential client awareness of the process

Despite not having a formal prioritisation policy during the Review period, feedback suggested that clients and potential clients were satisfied with their awareness of the NLC's prioritisation process

Traditional owners consulted for the Review were aware of the process through which their regional interests were represented at the NLC. It is likely that they understood that this process had the potential to influence prioritisation decisions. Senior lawyers reported that they would often be invited to speak to their prioritisation decisions to clients and potential clients. Evidence suggests that the NLC explained prioritisation decisions when asked. The general lack of commentary on the topic from Traditional Owners suggests that clients were satisfied with their awareness of the NLC's prioritisation decisions. One Traditional Owner reported that while unhappy with the NLC's decision in a certain case, they understood the reason for the decision.

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

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

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

External anthropologists reported that clients and potential clients in the Beetaloo Basin were broadly satisfied with the prioritisation decisions of the NLC. However, the Review notes that the Beetaloo Basin is an area that received significant attention from the NLC during the Review period. It is possible that clients and prospective clients in regions of the RATSIB area that have received less attention from NLC were less satisfied with the NLC's approach to prioritisation.

5.2.2 TOR 2: External factors

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

Number of claims relative to NTRB-SP size and resourcing

The NLC delivered efficient native title outcomes relative to its size and total funding

During the Review period, the NLC represented a total of 28 claimant groups in native title proceedings. This number included claims that were determined or discontinued during the Review period and claims that remained active at the end of the Review period. On a per claim basis, the NLC received on average $628,571 per claim. As shown in Table 10, the funding for the NLC's native title activities during the Review period was mostly consistent and did not significantly impact its ability to achieve native title claims.

Table 10 | Native title income during the Review period

Financial year	Native title income
2019-20	$5.7 million
2020-21	$6.2 million
2021-22	$5.7 million
Total	**$17.6 million**

5.2.3 TOR 2: Recommendations

RECOMMENDATION 3

The NLC should create an internal facing assessment and prioritisation policy which includes the likelihood that land subject to a development application will be prioritised.

RECOMMENDATION 4

The NLC should publish information on the NLC website about the ways in which the NLC assesses and prioritises applications for assistance to improve transparency for Traditional Owners.

RECOMMENDATION 5

The NLC should consider how to resource and deliver native title outcomes in areas that are not currently subject to development claims in order to support more equitable access to native title outcomes.

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

Summary

The NLC had an established approach to how it supported culturally appropriate and respectful engagement through its native title work that operated throughout the Review period. Cultural competency and respectful practices are embedded into the organisation's practices, corporate documents and policies in a tailored and appropriate manner. The organisation has a longstanding history of working directly with the community (through native title and more broadly). Stakeholders reported that the NLC generally engaged respectfully and professionally with clients. While feedback was positive, some stakeholders felt there could be greater transparency in communication. In addition, some staff reported feeling under-supported in building their skills for culturally appropriate engagement and how to run effective meetings.

Following the Review period, the NLC updated its complaints handling process and provided a complaint form on its website. However, there is still a need for expanded information about the process and for further training and clarification to support staff and Traditional Owners in making a complaint. During the Review period, the NLC received eight complaints related to native title (including indirectly via the NIAA) and only one of these remained unresolved at the end of the Review period. One request for internal review was managed appropriately.

Following the Review period the NLC developed and adopted a formal Internal Review Policy which it makes available to all constituents who apply for assistance.

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 highlighted in NLC's corporate documentation

The general importance of respectful engagement was recognised in NLC's corporate documents. The NLC's 2021-2022 Annual Report stated that some of the organisation's key values included:

- "Respect our stakeholders and those we work with."
- "Act with integrity, honesty and fairness."
- "Promote the rights and participation of Aboriginal people to achieve equity, fairness and opportunity." [27]

The NLC 2019-2020 Annual Report stated one of its core values as to "be open, transparent and accountable" but this was not reflected in its 2020-21 or 2021-22 annual reports.[28] The NLC did not

[27] NLC, NLC Annual Report 2021-2022.

formally define what respectful and transparent engagement involved or how it was practiced externally to clients (for example, through policies, procedures or methodologies).

During the Review period, the NLC followed a Guide to Running Meetings document

During the Review period, the NLC's approach to meetings was supported by the Guide to Running Meetings document. The Guide to Running Meetings detailed the processes staff needed to follow before, during and after the meeting. These processes ensured meetings were well planned, ran smoothly and demonstrated cultural competence. It was updated regularly to align with other organisational policies, procedures and tools. Key principles to support culturally competent meetings outlined in the document include:

- **Involvement of Traditional Owners and community members as active participants.** This includes in the planning and delivery of meetings and helps participants build their skills, and shift power and control from staff to constituents.
- **Ensuring correct stakeholders are engaged.** Staff must implement a planning process prior to the meeting to ensure the correct stakeholders are engaged, meeting material is digestible and is translated into language where appropriate.
- **Facilitators must demonstrate respect.** Facilitators must have respect for Aboriginal participants and their protocol, including avoidance relationships, the ability to present subject matter in a neutral manner and demonstrate a willingness to share power.

NLC staff noted that they prioritised relationships and that regular contact was maintained with native title holders. Several staff noted that during meetings and consultations, there was space for constituents and native title holders to ask clarification questions. If required, the NLC arranged additional meetings to ensure constituents understood the matters at hand. Consistent with this, NLC staff noted that the NLC had specific employees to communicate with Traditional Owners ahead of and at meetings to explain complex information in an understandable way (for example, trained staff to help explain complicated legal information in simplified language). In addition, the NLC advised that it delivered training to equip NLC staff with the tools necessary to engage with communities in a respectful and transparent way. Further information on training is discussed below.

While feedback was generally positive, some stakeholders felt that information could be shared in a more timely manner

The Review consulted native title holders from four parts of the NLC's RATSIB area. Most Traditional Owners the Review spoke with were positive about the NLC's engagement with them. Even where Traditional Owners were negative about the NLC overall, they tended to speak highly of the local NLC staff with whom they directly engaged. Some Traditional Owners commented that consultations were competently conducted.

The exception to this was that some Traditional Owners felt that the NLC's communication with them was insufficient. For example, they noted that their contact at the NLC had too much on and as such, had limited time to see them. Consistent with this, several Traditional Owners reported that they would have liked more or more timely information (for example, about claims in progress or meetings they had been unable to attend). This perspective came from several Traditional Owners who held generally positive views about the NLC. They commented that the "NLC doesn't give us information" and that they "want more information sometimes." This suggests that in some cases, Traditional Owners felt that the NLC's

[28] NLC, NLC Annual Report 2019-2020.

decision-making processes and information sharing was not as transparent as they should have been. Related to this, some NLC staff commented that many Traditional Owners had questions about what was happening on their Country. One staff member noted that the NLC should consider investing in holistic resources, such as accessible information on the website expressed in plain English, to communicate complex information more effectively.

Culturally appropriate engagement

Formal processes were in place to support the cultural competency of staff and the organisation

The NLC reported that it has been working with Traditional Owners and native title holders for over 40 years and has strong experience working in culturally appropriate and informed ways. In addition to this longstanding organisational connection, several approaches were formalised that aimed to support cultural competency of staff and the organisation. The NLC's 2021-2022 Annual Report stated that one of its core values was to "act in a manner that is appropriate and sensitive to cultural differences". [29] Further, NLC staff noted that during the hiring process, the NLC tried to employ people who had lived in the Northern Territory. Once employed, new staff were partnered with a more experienced employee to help them adapt to the NLC's way of working.

The NLC delivered multiple training courses to assist staff in engaging with communities in a way that was culturally safe, trauma informed, respectful and transparent. The NLC engaged with the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) to provide core cultural learning.[30] This is was an online course composed of ten interactive modules designed to develop and strengthen an organisations' cultural capability. The course provided a detailed exploration of Aboriginal and Torres Strait Islander peoples and issues to enhance an individual's personal and professional capacity to engage effectively and respectfully in an intercultural context. AIATSIS offered its cultural competency training package to the NLC for free. These modules were to be completed within 90 days of commencement at the NLC.

In addition, the NLC ensured that necessary staff completed an Aboriginal Mental Health First Aid two-day course and an induction on the Aboriginal Interpreter Service detailing the importance of communicating across languages. The NLC advised that before native title staff go into the field to lead consultation with native title holders, they were required to:

- undertake cross cultural training
- attend multiple consultations as an observer
- be observed by an experienced/senior staff member when running meetings until capable.

Consistent with this, NLC staff noted that they had good training in place. Some staff noted that manager training included cultural awareness and language training that helped staff better explain complex legal concepts. Further, NLC staff commented that senior project officers completed regional language training programs.

Despite these arrangements the Review received some feedback from staff that they felt under-supported and were tasked with running meetings with Traditional Owners before they felt competent to do so. This was perceived to be as a result of large workloads meaning that there were not enough staff available to carry out mentoring and shadowing that was recognised as desirable.

[29] NLC. NLC Annual Report 2021-2022.
[30] AIATSIS. Accessible at https://aiatsis.gov.au/about/what-we-do/core-cultural-learning

Traditional Owners expressed satisfaction with engagement processes

Several Traditional Owners commented on how the NLC consulted the relevant Traditional Owners and clan groups to ensure it was "telling the right stories" and getting the right clan groups for different areas. Consistent with this, some NLC staff commented that the regional teams specifically had "really good connections to the community" which helped the NLC identify the right groups to speak with. For example, one staff member noted that the NLC was doing good work in terms of engagements for the McArthur River compensation claim, especially given the trauma it had brought the native title holders. The NLC's lawyers worked hard to maximise the extent to which native title holders understood the complex legal information surrounding this case.

The NLC devoted significant resources to improving consultation materials for clients

In the previous Review, it was recommended that the NLC should assess its approach to informing community about native title. The NLC advised that it devoted substantial resources to improving consultation materials for clients, specifically in relation to native title over pastoral leases, PBCs, Future Act processes, and mineral and petroleum exploration and extraction. The NLC advised that some of these materials were used in consultation with instructors on petroleum matters, however due to proliferation of major Future Act activity in the NLC RATSIB area, the publication of these materials was delayed. The work was led by NLC's anthropologists, Future Act officer and native title lawyers.

Complaints

The NLC received eight complaints relating to native title during the Review period

During the Review period, there were a total of eight formal complaints made directly to NLC relating to native title proceedings. At the end of the Review period, seven had been resolved and one remained open. Of the seven resolved claims, four were resolved within 30 business days. The unresolved complaint related to constituent behaviour.

The NLC had a clear complaints policy and a portal for constituents to submit complaints through the NLC website

The External Complaints Policy detailed the NLC's approach to handling complaints from people or organisations affected by the operations of the NLC. At a high level, the External Complaints Policy details the:

- guidelines for what constitutes a complaint
- timeframes in which complaints will be addressed
- the processes for distributing complaints to the relevant NLC staff member
- the responsibilities of different NLC staff for handling complaints (including the governance of different types of complaints)
- the processes for reviewing the outcome of a complaint.

The complaints portal on the NLC website accommodates the range of activities delivered by the NLC.

The NLC's Complaints Coordinator oversees the NLC's approach to managing complaints and is responsible for:

- Receiving complaints in person, by phone, letter or email and via the NLC online complaints portal from constituents, NLC officers and stakeholders.

- Producing NLC acknowledgement of complaints.
- Coordinating a timely and professional response to the complainant within 20 days.
- Allocating complaints to the relevant NLC manager and actioning officer.
- Liaising with managers on complex issues and providing advice on standard managing approaches and template responses.
- Managing the collection, storage and usage of information contained in complaints.
- Maintaining the Complaints Register.
- Escalating complaints to Senior Manager Policy and Projects if there is inaction.
- Coordinating referral of complaints to the relevant external agency.
- Assisting constituents, NLC officers and stakeholders with the NLC complaints process and procedures.
- Coordinating biannual reviews of this policy and procedures including administration.
- Managing the online complaints portal with Information Communications and Technology.
- Providing data and accompanying analysis for quarterly Audit Committee meetings, Annual Reports and Regional Council meetings.

The External Complaints Policy states that a final response should be sent to the complainant by the Complaints Coordinator within 30 business days of receiving the complaint. The External Complaints Policy states that if a complainant has received a finalised response and does not accept it, they are able to approach the CEO for a review. As determined by the CEO, a review will only be undertaken if there are legitimate grounds. If a review is not granted, the complainant will receive a notification advising of the decision. If a review is granted, it will be completed in 20 days. It is unclear whether the term "review" in the Complaints Policy is used in the generic sense or refers to the internal review process under section 203BI of the NTA.

The NLC kept a Native Title Complaints register to ensure oversight of the status of complaints and any accountabilities related to the complaint. The Native Title Complaints register was maintained by the Complaints Coordinator.

The Auditor-General's performance audit on the governance of the NLC[31], reported that the NLC had improved its complaints handling system since the Auditor-General's last review, although the report stated that training had not been provided to relevant staff. Some NLC staff reported that there was "not a clear and well understood complaints process" and commented that they were not very familiar with the complaints handling process. After the Review period, the NLC was undertaking an internal audit into its complaints management arrangements following the Auditor-General's report.

Feedback from Traditional Owners suggests some were knowledgeable about the complaints process

There was variation in whether Traditional Owners knew how to make a complaint to the NLC. Several Traditional Owners said they did not know how or to whom they could make a complaint. Other Traditional Owners commented that there was someone at the NLC they would call to make a complaint. Of those who had made complaints, the outcomes varied. One Traditional Owner noted that they were happy with the response. Another was still waiting to hear back. Related to this, some NLC staff

[31] Auditor-General for Australia, Governance of the Northern Land Council, Australian National Audit Office, Canberra, 2023.

commented that the formal complaints process was slow, so people tended to rely on informal processes. This suggests there is a need for more consistent communication with Traditional Owners about how to make complaints.

There was some feedback that the family backgrounds of staff in regional offices determined the response to complaints. They alleged that complaints and their response were used as a tool in family-based conflicts. The Review has no evidence to support or refute this allegation.

Internal review

The NLC received one request for an internal review during the Review period

The NLC's internal review process involved the Executive Council reviewing decisions made by the CEO or delegates of the NLC. Internal reviews were carried out by the Executive Council. The NLC did not have a publicly available Internal Review Policy during the Review period which is required under section 203BI of the NTA. The NLC has advised that following the Review period it developed and adopted a formal Internal Review Policy which it makes available to all constituents who apply for assistance.

During the Review period, the NLC received one request for an internal review regarding the decision not to assist various respondents in the Gove native title proceedings. To conduct the internal review, the Executive Council was provided with extensive background information on the case and the legislative framework, relevant considerations about the case and advice to the Executive Council from the NLC's legal team. The internal review was completed following the Review period. The Executive Council resolved to uphold the decision of the NLC's CEO to refuse funding in the case concerned. Evidence indicates that the Executive Council acted in compliance with all requirements of the NTA and that conflicts of interest were managed appropriately.

Use of cultural materials

The NLC's approach to the use of cultural materials was well-developed but lacked direction on the repatriation of materials

As noted under TOR 1, the NLC has an extensive collection of cultural material. NLC staff commented that they had all materials necessary for the remaining native title claims. The NLC noted that it had a longstanding and embedded organisational practice of ensuring that cultural materials were only used with informed consent of the Traditional Owners of the relevant information. In addition, NLC lawyers were bound by their professional ethical obligations when dealing with materials provided to them by Traditional Owners.

The Review notes that the NLC was developing a policy for the repatriation of cultural materials (see TOR 6). This policy could also cover the collection and ongoing consent for cultural materials.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

5.3.3 TOR 3: Recommendations

RECOMMENDATION 6

The NLC should update the Complaints section of its website to include information on the process for handling complaints and the timeframes in which a complainant will receive a response.

5.4 TOR 4 | Extent to which each organisation performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation.

Summary

The NLC's expenditure on native title was variable across the Review period with staff salaries and consultant fees being the highest native title expenses. Compared to most other NTRB-SPs, the NLC expended approximately twice as much on consultants as a proportion of total native title expenditure. The NLC reports that this was largely due to its prioritisation of complex claims and responsive claims requiring additional resources, as well as labour shortages in the Top End. The size and remoteness of the RATSIB area and the relatively high proportion of non-English speakers in the RATSIB area contributed to the complexity and costs of delivering native title functions.

The NLC identified and implemented a range of cost saving strategies across its native title functions and a cost recovery model was in place. The NLC conducted claim group meetings appropriately and had established policies to ensure staff and clients were supported to travel to claim group meetings. The NLC benefited from its ability to leverage its other funding for delivery of its native title functions, thus delivering added value to its native title performance across the Review period.

5.4.1 TOR 4: Assessment of performance

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

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

Native title funding for the NLC was relatively consistent over the Review period

The NLC received consistent base funding for native title of $4.2 million per year from the NIAA over the Review period. The NLC also received $500,000 per year for PBC support. Additional funding was provided for unforeseen litigation and other approved purposes, such as funding to expedite complex or responsive claims. The NLC received relatively consistent levels of total native title funding over the Review period. It received a slightly larger amount of additional funding in FY2020-21, as shown in Table 11. This additional funding was provided to support the NLC to assist with six complex and urgent projects.

Table 11 | Overview of the NLC's native title funding during the Review period

Financial year	Base agreement	PBC support	Additional funding	Total
2019-20	$4.2 million	$500,000	$1 million	$5.7 million
2020-21	$4.2 million	$500,000	$1.5 million	$6.2 million
2021-22	$4.2 million	$500,000	$1 million	$5.7 million

Staff salaries and consultants were the most significant cost drivers for the NLC

A breakdown of the NLC's expenditure on native title during the Review period is shown in Table 12.

Table 12 | Overview of the NLC's expenditure on native title during the Review period

Expense category	FY2019-20	FY2020-21	FY2021-22	Average
Total expenditure on salaries (legal, anthropological, corporate)	**$3,101,000**	**$3,044,000**	**$2,904,000**	**$3,016,333**
Expenditure on project salaries (legal, anthropological)	$2,279,000	$2,641,000	$2,412,000	$2,594,000
Expenditure on corporate salaries (including cost of key management personnel acquitted to the native title function)	$372,000	$403,000	$492,000	$422,333
Expenditure on legal and anthropological consultants	**$1,364,000**	**$1,680,000**	**$1,059,000**	**$1,367,667**
Total expenditure on meetings (travel, accommodation, meeting expenses, vehicles, vehicle maintenance)	**$407,000**	**$424,000**	**$300,000**	**$377,000**
Motor vehicles (including maintenance)	$112,000	$118,000	$11,000	$80,333
Claimants (travel)	$37,000	$17,000	$10,000	$21,333
Staff (travel) – attributable to native title	$64,000	$103,000	$77,000	$81,333
Accommodation	$165,000	$150,000	$143,000	$152,667
Claimants (meetings)	$26,000	$36,000	$43,000	$35,000
Equipment hire	$3,000	$0	$16,000	$6,333
Expenditure on PBC support	**$82,000**	**$286,000**	**$384,000**	**$250,667**
Other costs	**$582,000**	**$466,000**	**$442,000**	**$496,667**
Total expenditure	**$5,536,000**	**$5,900,000**	**$5,089,000**	**$5,508,333**

Expenditure on native title was variable during the Review period. It increased by seven per cent from FY2019-20 to FY2020-21 and decreased by 14 per cent between FY2020-21 and FY2021-22.

In each year, staff salaries were the biggest item of expenditure for the NLC. Project staffing costs accounted for an average of 47 per cent of the NLC's native title costs over the Review period. Consultants were also a significant expense for the NLC over the Review period. On average, the NLC expended 25 per cent of its native title expenditure on consultants. The rationale for the NLC's use of consultants is discussed further below.

Cost-saving actions, strategies and/or discussions

The NLC took several cost-saving measures over the Review period. These are discussed below.

The NLC had a cost recovery model in place

The NLC had a model in place to recover costs from proponents who seek an interest or a right to access, use, or operate on native title land. As outlined in the NLC's publicly available cost recovery policy, proponents who submitted a proposal to the NLC were expected to bear all reasonable costs incurred by the NLC and associated with the NLC's provision of services. The NLC's cost recovery was managed by the project officers who oversaw the native title proceeding. The NLC's finance team was available to provide support. NLC staff reported that this system worked well and was contributing to reduced demands on funding.

The NLC leveraged its broader functions to increase its cost effectiveness in delivering native title functions

The NLC leveraged its size and broader functions as a Land Council to cross subsidise native title, particularly for administrative and managerial costs. This enabled the NLC to share corporate staff and key management personnel across its various functions. Therefore, the NLC only acquitted a portion of the remuneration paid to corporate staff and key management personnel to the native title function. Over the Review period, the NLC acquitted an average of $422,333 on corporate salaries, including on key management personnel, representing eight per cent of the NLC's expenditure on its native title function.

The NLC's regional offices reduced travel and accommodation costs

The NLC has a range of regional offices across the RATSIB area. Regional officers engaged with local and prospective clients and assisted with the arrangement of meetings when necessary. The regional model resulted in improved service delivery and nuanced client engagement, as well as cost savings, by reducing the time that travelling lawyers and anthropologists needed to spend at regional sites.

Appropriate processes for claim group meetings

The NLC adopted a strategic approach to meetings and travel, coordinating legal and anthropological meetings

Meetings accounted for approximately seven per cent of total native title expenditure across the Review period. The NLC's large and remote RATSIB area contributed to the cost of meetings. Travel, accommodation and vehicle maintenance were the most significant cost drivers for meetings. Lawyers and anthropologists were often required to travel significant distances from Darwin to regional locations to attend meetings. Where possible, the NLC aimed to coordinate legal and anthropological meetings when they were with the same or similar groups of people. Rather than arranging separate meetings, the NLC encouraged lawyers and anthropologists to arrange one meeting in which both were present. Combining meetings wherever possible reduced many of the costs associated with arranging a meeting. NLC staff and external consultants reported that this approach did not compromise the quality of meetings. Several external consultants reported that NLC meetings with Traditional Owners were conducted appropriately and effectively. The NLC also aimed to arrange meetings for the dry season, to avoid the complications and additional costs of travelling in the wet season. During the wet season, some areas ordinarily accessible by land were cut off by road and the only option was to fly.

Annual yearly expenditure per claimant group

The NLC represented 29 claimant groups with an average annual expenditure of $273,865 per group

Over the Review period, the NLC represented a total of 29 claimant groups in native title proceedings. This number included claims that were determined or discontinued during the Review period and claims that remained active at the end of the Review period. Over the Review period, the NLC expended an average of $273,865 per claimant group per year that the claim was active, as shown in Table 13.

Table 13 | Average annual expenditure per claimant group during the Review period

Native title group meetings	FY2019-20	FY2020-21	FY2021-22	Total
Total expenditure on native title	$5,536,000	$5,900,000	$5,089,000	**$16,525,000**
Number of claim groups supported (years)[32]	22.7	20.64	17	**60.34**
Average cost per claimant group	$243,877	$285,852	$299,253	**$273,865**

Travel assistance policies for claim group meetings

The NLC supported staff and claimants to travel for business purposes as outlined in the NLC's Travel Policy

According to the NLC's Travel Policy, all persons travelling on behalf of the NLC were provided with appropriate travel and accommodation arrangements to support their business travel requirements. This included the cost of airfares, taxis, vehicle hire, fuel, accommodation and meals. The NLC also covered the travel and accommodation costs of claimants that were required to attend meetings, as well as council members who attended meetings. Claimants were entitled to receive a mileage allowance from the NLC when driving a personal vehicle. Consultants and contractors were required to pay for their own travel expenses, although this cost was built into their service agreements with the NLC.

The Travel Policy contained several measures to ensure travel was cost-effective. For example, the NLC had a fleet of four-wheel drive vehicles to reduce vehicle hire costs. NLC staff could hire these vehicles through the Property and Fleet Coordinator. Hire vehicles and personal vehicles were only used where the employee could demonstrate it would be more cost-effective. NLC staff were also expected to minimise the cost of travel, including their use of taxis.

Appropriate rationale for use of external consultants

The NLC engaged external consultants for a variety of reasons

The NLC engaged external consultants for both legal and anthropological work. The anthropology branch engaged external consultants when it required increased capacity or expertise in a specific region, as detailed under TOR 1. The legal branch tended to engage consultants for litigated matters (for example, barristers) and when a claim covered multiple conflicting groups. Competitive procurement was used to

[32] This represents the sum of the number of years for each claim group that the NLC supported. A claim group supported for six months in a given year would be considered 0.5 claim groups in that year. A claim group supported over the whole Review period would contribute three years to the total column.

deliver good value for money in briefing out. NLC staff reported that this was a major expense for the NLC. As stated in the NLC's Procurement Policy, NLC staff that wished to engage external consultants had to seek approval from the relevant Financial Delegate.

The NLC's use of external consultants was high when compared to other NTRB-SPs

The NLC's average annual cost of consultants during the Review period was $1.37 million, as shown in Table 14. At 25 per cent, the NLC had a high expenditure on external consultants as a proportion of its total native title expenditure when compared to other NTRB-SPs. In the previous Review period by contrast, expenditure on consultants averaged 13 per cent of total native title expenditure across all NTRB-SPs. The average ratio of consulting costs to staff costs was on average 53 per cent. However, the NLC consistently expended less money on consultants than it budgeted for. This suggests the NLC budgeted conservatively for its use of consultants.

Table 14 | Overview of the NLC's expenditure on project staffing costs and consulting costs during the Review period

Costs by type	FY2019-20	FY2020-21	FY2021-22	Average
Project staffing costs (legal, anthropological)	$2,729,000	$2,641,000	$2,412,000	$2,594,000
Consulting costs	$1,364,000	$1,680,000	$1,059,000	$1,367,667
Ratio consulting/staffing costs	50%	64%	44%	53%
Consulting budget	$1,933,000	$2,631,000	$1,731,000	$2,098,333
Use of budget	71%	64%	61%	65%

The relatively high expenditure on external consultants was driven by a range of NLC specific factors

The comparatively high use of external consulting resources was driven by two key factors. Firstly, the NLC's strategic approach to claims was to respond to development applications. This placed tighter timelines on claim work than might otherwise have been the case. These tight timelines were a factor in driving up consulting costs, as the internal team did not have sufficient resources to meet deadlines set by developers and the court. Secondly, the shortage of lawyers and anthropologists in the Top End contributed to the NLC's reliance on consultants.

5.4.2 TOR 4: External factors

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

Size of RATSIB area

The size and scale of the NLC's RATSIB area increased the costs of delivering native title outcomes

The NLC operates in a RATSIB area of 1,140,323 square kilometres, of which 571,733 square kilometres is land and land waters. Distance was therefore a significant cost driver for native title functions of the NLC.

Many NLC staff consulted for this Review commented on distance being a significant barrier for the NLC to achieve native title outcomes as it made facilitating meetings with Traditional Owners logistically challenging. Further, staff commented that often Traditional Owners were spread out over or even beyond the large RATSIB area, compounding this logistical issue.

Remoteness of RATSIB area

The remoteness of the NLC's RATSIB area increased the costs of delivering native title outcomes

Under the Australian Bureau of Statistics remoteness classifications, all land in the NLC RATSIB area is classified as either "very remote" or "remote" except for Darwin, which is classified as "outer regional".[33] Access to many communities across this vast area is limited by weather conditions and a lack of sealed roads. For example, some areas are not accessible by road during the wet season (from December to March or April) and flights can be cancelled due to heavy rains. NLC staff noted that meetings were typically scheduled for the dry season, which meant there was a minimum of four months of every year when the NLC was unable to facilitate in-person meetings and site-visits. Even when communities were accessible, their remoteness meant field costs (for example, travel, accommodation, food, first aid) were high.

Average number of people within a claim group

The NLC advised that it does not collect the data to readily calculate this figure. The Review notes that the number of individuals within each claim group can vary significantly. Further, some claims are on behalf of a single extended family group while others are on behalf of multiple estate groups with many members in each. For example, the NLC noted that the McArthur River Project compensation claim, according to the facts filed in the Federal Court, had a claim group consisting of 11 estate groups numbering between 799 to 804 adults in total. These factors made it very difficult to accurately estimate the exact number of people across multiple communities that form part of a claim group.

Interpreters

The NLC relies on Northern Territory Government interpreters

The NLC 2021-2022 Annual Report stated that a majority of the NLC's constituents speak an Aboriginal language as their first language and that English may be an individual's third or fourth spoken language.[34] Interpreters are therefore important in NLC's operating context to ensure that people with native title rights and interests can be appropriately informed about key decisions. The NLC relied on Northern Territory Government interpreters. NLC staff noted that relying on Northern Territory Government interpreters was difficult because of high demand for their services and the challenge of finding an available interpreter that was impartial (as they may be affected by the claim or decision on which the consultation focused). The Review notes that the Northern Territory Government's interpreter service lacked capacity to support the NLC's requests for support and that this is a systematic challenge outside the direct control of the NLC.

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[33] Australian Bureau of Statistics, 12700.55.005 – Australian Statistical Geography Standard (ASGS): Volume 5 – Remoteness Structure, July 2011.

[34] NLC Annual Report 2021-22

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 NLC's Chair and CEO fulfilled their responsibilities as an accountable authority under the PGPA Act. The Full Council and Executive Council, in consultation with the Regional Councils and CEO were responsible for setting the strategic direction of the NLC, including for its native title functions. The roles and responsibilities of the Councils and CEO in delivering native title functions were clearly defined. However, some NLC staff felt the Executive and Full Councils did not act in a strategic or transparent way regarding native title.

The Review was not made aware of any significant concerns about the financial management of the NLC's native title function. The NLC prepared comprehensive budget documents each year to secure funding and had policies in place to delegate procurement and reporting processes throughout the organisation. The Audit Committee was responsible for overseeing the NLC's compliance with financial reporting requirements. The NLC had clear and appropriate policies denoting the process for handling conflicts of interest.

In 2021, the NLC implemented a new Learning and Development team and Learning Management system to manage the training and professional development of staff. The NLC's thorough induction and training requirements were effective although the intended annual performance reviews were often delayed or did not occur. Since the Review period, the NLC has invested heavily in promoting a positive staff culture.

The Review received feedback that some staff who worked on native title matters experienced the culture of the NLC as unsafe. They felt unable to safely give feedback and participate in improvement processes. Several staff indicated to the Review that they had experienced bullying or harassment and that they did not feel adequately supported when these incidents were reported.

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 NLC's Chair and CEO formed the accountable authority as required for a corporate Commonwealth entity under the PGPA Act

As a Commonwealth entity, the NLC must comply with the PGPA Act. Under the PGPA Act, the NLC must meet high standards of governance, performance and accountability; provide meaningful information to the Parliament and the public; use and manage public resources properly; and work cooperatively with others to achieve common objectives, where practicable. Under the PGPA Act, the Chair of the Executive

Council and the CEO formed the accountable authority.[35] Among their legal duties, the accountable authority was responsible for governing the NLC; establishing and maintaining systems relating to risk and control; encouraging cooperation with others and minimising administrative requirements that were imposed on other parties; and keeping the Ministers of Indigenous Affairs and Finance informed.[36] These responsibilities applied across all functions delivered by the NLC, of which native title represented a small part.

Roles and responsibilities of the Councils, CEO, Deputy CEO and senior staff were clearly defined

The responsibilities and powers of the Full Council, Executive Council and Regional Councils were separate from the CEO and NLC staff. The NLC's Full Council was the highest decision-making body of the NLC. The Full Council contained 78 elected members from the NLC's seven regions, as well as five co-opted women (to ensure gender representation).[37] Full Council elections were held every three years. Full Council meetings were held twice each year, in which councillors set the strategic directions and policies for the NLC and approved ILUAs and mining and exploration tenements for which Traditional Owners had given their consent.

The NLC's Executive Council was made up of members of the Full Council. The Executive Council comprised two representatives from each region, including a Chair and a Deputy Chair. The Chair, Deputy Chair and Executive members representing each of the NLC's seven regions were elected at the first meeting of the new Full Council. The Executive Council delivered more frequent strategic guidance than the Full Council. The Executive Council met regularly and provided more active support to the CEO, making strategic decisions between Full Council meetings as the delegate of the Full Council. Over the Review period, these decisions were informed, in part, by senior native title staff. Every two months, the NLC provided an update to the Executive Council on native title matters. This meeting was typically led by the PLO.

The NLC's Regional Councils represented the interests of constituents in each of the seven regions in the RATSIB area. Regional Councils reported the interests of their region to the Full Council, to be considered when the Full Council made strategic decisions. As a requirement of the ALRA, Aboriginal people living in the NLC region could request to inspect the NLC's meeting rules and minutes of the NLC Full Council, Executive Council and Regional Council meetings.

The roles and responsibilities of the Full Council, Regional Council, Executive Council, Chair of the Executive Council, Deputy Chair of the Executive Council and the CEO are clearly outlined in the NLC Handbook – Rules for Councillors. These are listed in Table 15.

Table 15 | Overview of the roles and responsibilities of the Full Council, Regional Councils, Executive Council, Chair, Deputy Chair and CEO

Body	Roles and responsibilities
Full Council	• Keep Aboriginal law and culture strong.

[35] Public Governance, Performance and Accountability Rule 2014, Rule 7A, states that the accountable authority of the NLC is "the group of persons made up of the Chair of the Land Council and the CEO of the Land Council".
[36] Australian Government Department of Finance (2020). Duties of accountable authorities. https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/duties/duties-accountable-authorities
[37] Northern Land Council, About Us: Our Council, NLC website, (2023).

<table>
<tr><th>Body</th><th>Roles and responsibilities</th></tr>
<tr><td></td><td>• Be aware of the CEO’s and Chair’s responsibilities under the PGPA Act as the accountable authority.
• Develop an understanding of the ALRA and the NTA.
• Attend and participate in all Regional and Full Council meetings.
• Listen to the views of Traditional Owners and community residents.
• Speak up at meetings about issues identified in their region.
• Make policy decisions and set the strategic direction of the NLC.
• Follow up on issues raised at previous meetings and consultations.
• Take information from Council meetings back to Traditional Owners and community residents.
• Provide constructive advice and feedback to the CEO and Chair on the operations of the NLC.
• Respect other Council members and staff of the NLC.</td></tr>
<tr><td>Regional Council</td><td>• Show leadership of their community, outstation or area on issues directly relevant to the Land Council.
• Consult communities in their region about issues to be raised at Regional Council meetings.
• Notify their Regional Development Manager or Executive Member of any agenda items.
• Make recommendations to the Full Council.
• Present resolutions regarding regional and local issues within delegations. Communicate with the Executive Member any issues affecting their local community, outstation or area.
• Communicate important issues back to their communities.
• Each Regional Council elects a member of the Aboriginals Benefit Account Advisory Committee (ABAC) who must attend and participate in meetings of the committee.</td></tr>
<tr><td>Executive Council</td><td>• Ensure all responsibilities of the NLC are fully discharged in accordance with the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), the NTA and PGPA Act.
• Appoint the CEO.
• Chair Regional Council meetings and show leadership at key events on behalf of the NLC and its constituents.
• Consider agreements and where agreed, execute those agreements.
• Communicate with their Regional Council on issues important to the community and the NLC.
• Collaborate and work with other members of the Executive Council to support the Chair in executing their statutory duties.
• Ensure and maintain a separation of powers is upheld between the Council and administration. Nominate two members to the Audit Committee.
• Report on the major decisions of the Aboriginal Investment Group.
• Be members and the Directors of the Top End (Default PBC/CLA) Aboriginal Corporation which acts as the agent for some native title holders in the NLC region.</td></tr>
<tr><td>Chair of the Executive Council</td><td>• Negotiate the CEO’s remuneration.
• Ensure Councillors adhere to the code of conduct. Comply with functions and accountability as the Accountable Authority under the PGPA Act.
• Convening and attending Executive and Full Council meetings.
• Attending Regional Council meetings.
• Attending at the offices of the NLC in Darwin to confer with the CEO from time to time; sign correspondence and documents on behalf of the NLC; and with the CEO, attend high-level meetings with third parties.
• Attending funerals on behalf of the NLC where the deceased is a former Council member or respected elder.</td></tr>
</table>

Body	Roles and responsibilities
	• Representing the NLC at official events in Darwin and elsewhere in the NLC area. • Accompany the CEO for official NLC representation at conferences, meetings, media and events outside the NLC area.
Deputy Chair of the Executive Council	• Provide support to the Chair and the CEO. • With, and under the delegation of the Chair, chair the Full and Executive Council meetings. • Discharge the duties of the Chair in his absence.
CEO	• Manage the day-to-day operations of the NLC. • Ensure all responsibilities of the NLC are discharged in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), the NTA, PGPA Act and the *Public Interest Disclosure Act 2013*. • Report to the Executive and Full Councils about policy, planning and compliance matters so that they may make informed decisions. • Ensure the goals of the Strategic Plan and Corporate Plan are achieved. • Monitor and report on the NLC's performance. • Be a principal point of contact for public affairs and, as required, act as media spokesperson for the NLC. • Identify issues which require policy decisions by the Full Council. Provide reports on NLC operations, as required, to the Minister for Indigenous Affairs.

The CEO also had formal responsibility (formally delegated from the Full Council) to make decisions on the following native title matters:

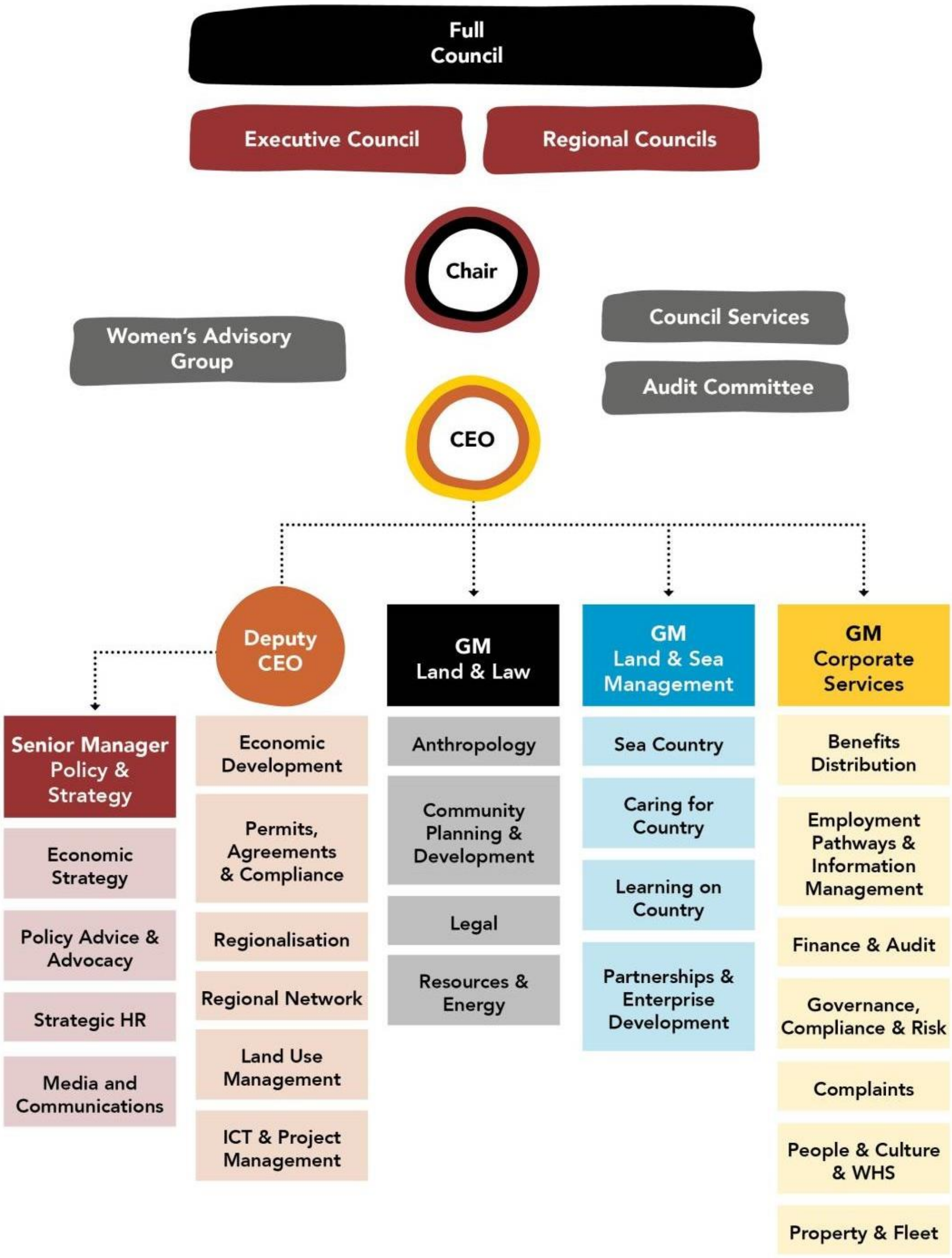
- certification of native title determination and compensation applications and ILUAs
- agreement making (execution of ILUA and section 31 agreements)
- facilitation and assistance
- internal review
- dispute resolution.

In the previous Review period, the *Northern Land Council vs Quall* case commenced in the Federal Court. The respondents successfully argued that the NLC did not have the power to delegate its certification function to the CEO, meaning that the application to register the Kenbi ILUA had not been validly certified. The NLC appealed this decision to the High Court. In 2020 (within this Review period), the High Court determined that the NTA did not prevent delegation of certification functions to the CEO of the NLC.[38]

NLC staff largely reported that the roles and responsibilities of senior staff were clear and well understood. The NLC's organisational structure is shown in Figure 1. Staff reported that the NLC has reassessed, reworked and formalised its instrument of delegation regarding the performance of the NLC's representative body functions. Since the Review period, the NLC has commenced preparing a workflow document that clearly identifies the roles and responsibilities of governing committees and relevant staff members in the making and implementation of native title decisions. This workflow document is still being developed.

[38] *Northern Land Council v Quall* [2020] HCA 33.

Figure 1 | NLC organisational structure, May 2022[39]



During the Review period, a Governance, Risk and Compliance Unit was created to strengthen corporate functioning and governance

The Governance, Risk and Compliance Unit (GRC Unit) was established in mid-2021 with a mandate to strengthen NLC's internal corporate functioning, including regular reporting to inform quality improvement. Over time the function of the GRC Unit widened and now includes a close working relationship with the People and Culture team, which has been substantially expanded post the Review

[39] NLC Organisational Structure. Accessed at https://www.nlc.org.au/about-us/our-structure, on 1 March 2023.

period. The GRC Unit was responsible for identifying and managing risks for the NLC. During the Review period, the GRC Unit took several measures to improve the NLC's management of risks, including supporting staff to attend risk courses run by Comcare and the Department of Finance, beginning to standardise the identification of risks and digitising the NLC's risk register. The GRC Unit contained the NLC's Audit Committee, which was responsible for overseeing the NLC's compliance with legislative requirements. The GRC Unit also adopted responsibility for the management of complaints and was responsible for ensuring that the NLC's policies and procedures were kept up to date and reflected current practices.

The Review observes that the GRC Unit appears to work closely with staff across the organisation and is likely to result in ongoing improvement in organisational practices that deliver high quality services to traditional owners.

Responsibility for native title functions was distributed across different parts of the organisation

The NLC's organisational structure at the time of the Review included seven Executive level positions, all of whom had a role in overseeing the delivery of the native title function. Given the broad focus of the NLC, only one of these positions was solely involved in the delivery of the NLC's native title functions. Primary responsibility for the delivery of native title functions and the progression of native title claims sat with the Legal Branch Manager who reported to the General Manager Land and Law.

A summary of the key executive and management roles, their interaction with native title functions and their funding source are outlined in Table 16.

Table 16 | Executive and management responsibilities for delivering native title functions

Position	Description
Chief Executive Officer	As described above.
Principal Legal Officer/General Manager (GM) Land and Law	The PLO is responsible for legal matters across the organisation, including native title legal matters. The role of GM was introduced into the NLC in early 2020. The GM is responsible for legal functions across the organisation, as well as anthropology, community planning and development, and mining, minerals and energy. The role has supervisory responsibility for native title matters (as well as a range of other areas). Since the role was introduced, the GM Land and Law has also held the position of PLO.
Legal Branch Manager	The Legal Branch Manager holds primary responsibility for native title matters within the organisation, as well as broader responsibility for legal matters (including ALRA). The Legal Branch Manager reports to the PLO.
Native Title Legal Practice Manager	The Native Title Legal Practice Manager is responsible for the day-to-day management of native title functions. The Native Title Legal Practice Manager reports to the Legal Branch Manager.
Anthropology Branch Manager	The Anthropology Branch Manager coordinates anthropological research and advice, and mapping assistance required for all native title matters. They lead a team of anthropologists, researchers and Geographic Information System (mapping) staff. The Anthropology Branch Manager reports to the GM Land and Law.
Resources and Energy	The Resources and Energy branch is responsible for dealing with applications for mining,

Position	Description
Manager	minerals and petroleum exploration and production on native title land (as well as Aboriginal land under ALRA). This includes playing a role on Future Act matters. The Resources and Energy Branch Manager reports to the GM Land and Law/PLO.

Board integrity and capability

The Review was not made aware of any concerns about the performance of the Full Council, the Executive Council or the Regional Councils in relation to native title matters. Governance of native title matters forms a part of the responsibilities of the overall governance structures of the NLC, as described above. A small number of staff expressed a view that the organisation was more reactive than proactive and that its strategic directions and intentions were not clear to them. There were no specific concerns raised by Traditional Owners about the operations of the Councils in relation to native title matters.

During the Review period, the NLC had a Fraud and Corruption Policy in place which provided a mechanism to promote the integrity of NLC Council members and staff. The policy outlined the NLC's approach to the issue, including the channels through which staff should report suspected fraud or corruption. The Fraud and Corruption Policy was supported by the NLC's Fraud and Corruption Control Plan. The NLC's Fraud and Corruption Control Plan articulated the prevention, detection, reporting and response strategies to counter fraud and corruption. The Fraud and Corruption Policy, and the Fraud and Corruption Control Plan were designed to promote a culture of honesty and integrity across the organisation.

Conflicts of interest

The NLC had a clear and appropriate Conflict of Interest Policy and supporting documents

During the Review period, the NLC had in place several documents that outlined the organisation's approach to conflicts of interest. The Conflict of Interest Policy outlined the processes for staff members, councillors and external consultants to manage conflicts of interest. The NLC also provided Conflict of Interest training to all new staff and Council members within their first week. The NLC Handbook – Rules to Counsellors – outlined conflict of interest practices for Full and Executive Council members.

Members of the NLC Executive Council were required to declare any conflicts as part of their annual Key Management Personnel reporting requirements and complete annual governance training. The NLC also had a factsheet that helped Council members, staff and consultants to understand and identify real and perceived conflicts of interest. The NLC had a Declaration of Conflict of Interest Form that had to be lodged if Council members, staff, or consultants believed they had a real, perceived, or potential conflict of interest.

During the Review period, the Conflict of Interest Policy and the Declaration of Conflict of Interest Form clearly outlined the process required to declare interests, what constitutes a conflict and potential conflict of interest, and the steps that needed to be taken as a result. This included withdrawing from particular discussions, restricting the flow of information to an individual, abstaining from decisions, reassignment of duties, and/or relinquishing the interest or the position. At the Full and Executive Council level (and sub-committees) conflicts were declared during the meeting to be recorded formally in the minutes. Within the NLC, conflicts of interest were managed at the branch level, with advice provided to the CEO. Conflict of interest principles were also embedded in broader policies of the organisation. For example, the NLC Code of Ethics outlined that staff should ensure there were no perceived or actual conflicts as they fulfilled their duties. As discussed under TOR 1, the NLC appropriately managed potential conflicts of interest by briefing out two competing claims to external lawyers.

Culture and values

The NLC's vision, purpose and values are outlined in its strategic plan

The NLC's vision, mission and values are shown in Figure 2.

Figure 2 | NLC's vision, mission and values[40]

Due to the NLC's broad remit, the vision, mission and values do not explicitly refer to native title, although they align with the intent of securing native title outcomes. The Review has found that the native title work of NLC staff broadly aligned with the vision, purpose and values of the NLC.

Reports from some staff of an unsafe working environment suggested that there was insufficient attention paid to creating and sustaining an internal culture that fosters transparency and respect

It is notable that the NLC's vision, mission and values statements reflect the functioning of the NLC for Traditional Owners. This reflects the ownership of the Strategic Plan and crafting of the vision, mission and values being a process that occurred at Board level and expressed Traditional Owner concerns and preferences.

These key organisational signposts did not include an element articulating a commitment to creating a culture at NLC that values and protects staff and supports them to deliver high quality work. Interviews conducted for the Review indicated that the NLC were aware of this and have committed resources to improve their People and Culture team and function in order to offer high quality support to staff. This work started during the Review period and has gathered pace since. This work includes improving their

[40] NLC Strategic Plan 2022-27.

case management system in response to complaints (from staff) and training senior managers in how to more effectively respond to complaints made. Post the Review period, the NLC are also introducing a stronger focus on building the skills of their senior management team through strategies such as 360 degree feedback and support to carry out their people management functions.

Several staff reported to the Review that they had experienced bullying or harassment at the NLC. Some had reported it. Over half of those who had reported it to management were unhappy with the handling of the process.

Financial management

Financial management of native title functions remained embedded within the broader organisation and was largely consistent with legislative requirements

The Native Title Program funding was embedded within the NLC's broader financial management responsibilities. The Accountable Authority was ultimately responsible for the financial management of the NLC. The Legal Branch Manager was responsible for the allocation and reporting of the NLC's native title funding. In May 2022, the CEO of the NLC approved an updated Financial Delegations Policy to assign delegations of authority regarding finance matters to improve transparency, accountability and fairness in procurement processes. The May 2022 approval superseded an August 2021 version of the policy.

In accordance with the PGPA Act, the NLC prepared a set of financial statements, included in its annual reports. The NLC prepared a separate financial statement for its native title function. The NLC also produced an annual performance report, included in its annual reports, in accordance with funding agreements and the Commonwealth Authorities (Annual Reporting) Orders 2011 (Cth). The Auditor-General found that the NLC's public reporting in the form of the Corporate Plan and annual reports was largely consistent with legislative requirements.[41]

The Audit Committee was responsible for overseeing the NLC's compliance with reporting requirements

The Audit Committee was independent of the NLC and reported to the Accountable Authority (under the PGPA Act). The Audit Committee was established to assist the NLC to discharge its responsibilities under the ALRA, NTA and PGPA Act, in respect to financial reporting, performance reporting, risk oversight and management, internal control, and compliance with relevant laws and policies. For example, the Audit Committee was responsible for reviewing annual financial statements and recommending whether the statements were suitable for signing by the Accountable Authority. The Auditor-General of Australia found that the Audit Committee was delivering all mandatory functions except in relation to the review of its performance reporting. The NLC agreed to make changes to address this.[42]

The NLC prepared a comprehensive budget for its native title function

In April each year, the NLC prepared and submitted a proposed three-year budget to the NIAA, which indicated the amount of funding it estimated the NLC would expend against each line item in the native title financial report. Over the Review period, the budget was prepared considering multiple and complex external factors, including:

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[41] Auditor-General for Australia, Governance of the Northern Land Council, Australian National Audit Office, Canberra, 2023.
This report, developed by the Auditor-General for Australia, was published in August 2023 (following the Review period) and provides insights and recommendations on the governance of the NLC.
[42] Auditor-General for Australia, Governance of the Northern Land Council, Australian National Audit Office, Canberra, 2023.

- the NLC's Strategic, Corporate and Native Title Operational Plans
- Federal Court orders
- pending Future Acts
- applications for assistance
- the pastoral lease native title claim schedule
- funding advice from the NIAA.

Estimates contained within the budget were published alongside actual expenditure each year in the annual report. Requests for essential additional resources were submitted only as required. Approved requests funded operational expenses, salaries and wages, and capital expenditure.

Training and professional development

The NLC introduced a new Learning and Development team and Learning Management system during the Review period

Prior to 2021, training and professional development for staff was delivered by the individual branches of the NLC. In 2021, the NLC introduced a new Learning and Development team and centralised many of its training resources through a new Learning and Management system named Dhukarr Marngidhinyamirri. The NLC Learning and Development team sits within the Corporate Services branch and includes four full-time staff. This team manages the Learning Management system, including all centralised induction resources and ongoing training resources, and ensures that staff comply with training requirements.

The NLC has a thorough induction process that includes a range of mandatory training modules over the first 90 days of employment

All staff were required to complete a centralised set of mandatory training resources when they joined the NLC. Different modules were required to be completed by different deadlines, with some required within the first week, the first 30 days, the first 60 days and the first 90 days. A full list of mandatory training resources is included in Table 17.

Table 17 | List of the NLC's mandatory centralised training resources

Deadline	Training resource
First week	• Word Health and Safety Induction • NLC Information Communication Technology • Conflict of Interest Policy and Annual Training • Workplace Bullying and Harassment Training • Leave Information • Payroll Information
First 30 days	• Corporate Induction • Records Management • Word Health and Safety for Workers (Comcare) • Core Cultural Learning Part 1 (AIATSIS) • Introduction to Word Health and Safety Risk Management (Comcare) • NLC Corporate and Strategic Plans

Deadline	Training resource
	• Using Microsoft Teams • CBB Salary Packaging • Social Media Policy • Probation and Performance Enhancement Program
First 60 days	• Core Cultural Learning Part 2 (AIATSIS) • Mandatory Reporting of Domestic and Family Violence • Mandatory Reporting of the Harm and Exploitation of Children • How to Use LinkedIn Learning • Gaining Skills with LinkedIn Learning
First 90 days	• Core Cultural Learning Part 3 (AIATSIS) • Cross-Cultural Communication • Difficult Conversations in the Workplace (Fair Work Ombudsman) • Managing Mental Health Risks at Work (Heads Up)

As well as compulsory training at induction, staff were able to request to undertake additional training.

As of 30 June 2022, the centralised training resources were only available to staff, although the NLC was planning to expand the induction program to include Councillors. The Learning and Development team could access the records of individual staff members to ensure they had completed the required training.

During the Review period, individual branches typically had additional mandatory training for staff to complete upon arrival. This training was managed by the individual branches, rather than the Learning and Development team.

Conflict of interest training was mandatory within a new staff member's first week. NLC staff explained that the concept of a conflict of interest could be difficult to explain to First Nations staff and First Nations people that the NLC engages with, as it is a western concept.

This new training system is well placed to provide strong support to staff working in native title and is likely to improve the consistency and quality of native title work, which will flow through to outcomes for those with native title rights and interests.

Every staff member was expected to have an annual performance review in which additional training may be requested or recommended

The NLC expected that every staff member had an annual performance review with their supervisor. As part of this performance review, the staff member may request to retake an element of their training or undertake additional training. The supervisor may also recommend that the staff member undertake additional training.

However, the Review heard from several staff members that over the Review period, annual performance reviews were inconsistent and often did not occur. There was a perception that this lack was part of a broader culture of insufficient attention to staff development from senior staff.

NLC staff reported that the skills-based training and cultural awareness training they received was helpful to their work

Staff survey respondents that completed skills-based training broadly reported that it was useful to their work related to native title. Similarly, survey respondents that completed cultural awareness training mostly reported that it was extremely or very useful to their work related to native title. Forty-five per cent of respondents reported they had not received cultural awareness training. This training only became mandatory in 2021, so it is possible that some staff commenced employment at the NLC ahead of the training becoming mandatory.

Level of staff turnover

The NLC as a whole had a high level of staff turnover during the Review period

NLC as a whole, including staff delivering its native title functions, experienced considerable staff turnover during the Review period. This is approximately aligned with broader social trends during and after the COVID-19 pandemic.[43] The NLC's annual staff turnover during the Review period ranged from 18.2 per cent in FY2020-21 to 26.7 per cent in FY2021-22, as detailed in Table 18. The Review was not able to identify whether this impacted on native title functions.

Table 18 | The NLC's level of annual staff turnover across the Review period

2019-20	2020-21	2021-22
23.11%	18.19%	26.69%

NLC staff reported that the anthropology branch experienced a particularly high level of staff turnover, as discussed under TOR 1. Staff largely attributed this to the transient nature of the Top End. Many staff did acknowledge the fast-paced and taxing nature of the work may have contributed to staff turnover. The NLC experienced difficulty in recruiting staff with the right skillset to replace outgoing staff and experienced challenges with staff shortages. Staff shortages contributed to the demands placed on remaining staff, which was a potential contributor to turnover.

5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

5.5.3 TOR 5: Recommendations

RECOMMENDATION 7

The NLC should implement mechanisms to help create and maintain a culture where staff feel safe to give and receive feedback, and behavioural issues can be constructively managed.

[43] Black and Chow, 2022. Job Mobility in Australia during the COVID-19 Pandemic, Australian Government, Department of Social Services.

RECOMMENDATION 8

The NLC should ensure that performance reviews are held annually to ensure staff have opportunities to develop and are adequately supported to deliver high quality work.

RECOMMENDATION 9

The NLC should improve its responsiveness to allegations of bullying and harassment, with managers to ensure that formal and informal reports regarding alleged incidents and/or patterns of behaviour are referred to the correct channels within NLC.

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

Summary

During the Review period the NLC supported a single PBC known as the TED PBC, for all native title holders in its RATSIB area. All Directors of the TED PBC were concurrently members of the NLC Executive. The TED PBC, supported by NLC staff, performed the administrative and compliance functions required under the NTA and the CATSI Act for all determined claims at no charge to native title holders. The intention of this arrangement was to eliminate the administrative burden and risk of non-compliance for native title holders, many of whom may not have the knowledge, skills, or desire to operate a compliant PBC.

NLC staff commented that the TED PBC was established to deal with what they believed were unique circumstances in the Top End where there was already a Land Council to facilitate decision making by Traditional Owners, and multiple Aboriginal corporations and associations across the Top End, established under the ALRA, with at least one in every major community. NLC advised that Traditional Owners generally declined to set up PBCs as a vehicle for self-determination because they were already operating pre-existing corporations and associations for these purposes. Groups generally experienced the operation of PBCs as onerous, costly and uninteresting. For these reasons, the Top End PBC was seen as an attractive alternative.

The NLC reported that claimants enter this arrangement with informed consent. Claimants are informed during the lead-up to a determination of a range of options to fulfil their obligations under the NTA. Feedback from consultations confirmed this.

However, some Traditional Owners consulted by the Review raised concerns about the TED PBC arrangement. These concerns included:

- There was limited information and support available to those wishing to leave the TED PBC to establish their own PBCs.
- The process for establishing an independent PBC for groups of common law holders who were existing members of the TED PBC was opaque and extremely slow.
- The TED PBC was an extra layer of bureaucracy.
- As it represented a diverse range of Traditional Owners from across the RATSIB area, the TED PBC hindered the self-determination of groups of common law native title holders.

NLC staff commented that the NLC remained open to groups of common law holders developing their own PBCs. Only one separate PBC has been established in the NLC's RATSIB area. The DAC was registered on 1 May 2020 for the purpose of functioning as the PBC for the Blue Mud Bay native title determination. To ascertain consent, the NLC conducted a broad and complex consultation process across numerous groups of Traditional Owners. In 2023, following the Review period, the DAC formally became the PBC for the Blue Mud Bay determination area. Traditional Owners involved reported that the process had been frustrating, difficult and lacking in transparency. The NLC reported that the process was lengthened because the Blue Mud Bay determination is the largest and most culturally complex determination in the RATSIB area. The challenge of ascertaining consent from a large number of Traditional Owners, many of whom were uncertain about their preferred PBC arrangement, together with the impacts of the COVID-19 pandemic, lengthened the process.

The Review considers that groups of common law holders should be supported to leave the TED PBC if they wish and there should be a clear pathway to achieve this. This will create transparency and support free, prior and informed consent.

While the NLC does not have a formal policy in place for return of cultural materials, it advised that a repatriation policy was being established.

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

THE NLC had a unique default arrangement as the PBC for all 86 determined claims

The TED PBC was the PBC for all 86 determined claims in the RATSIB area during the Review period. NLC staff were responsible for administering the TED PBC in line with a services agreement. This included providing legal, anthropological, notification, administrative and other services to enable the TED PBC to carry out its essential functions. The Auditor-General reported that the TED PBC performed the administrative functions required under the NTA at no charge to native title holders, with the intent of reducing the burden on them.

The TED PBC did not directly employ staff, engage consultants, negotiate with third parties or receive native title payments. These functions were undertaken by NLC staff. All NLC Executive Council members were also Directors of the TED PBC. Whilst the Directors were the same, NLC staff noted that separate meetings were held for TED PBC and the Executive Council as per a request from Councillors who wanted a clear delineation and the corporate requirements for being an independent entity. The Review recognises that the meetings of these two entities were legally and factually separate and that records required under the CATSI Act and PBC regulations were kept separate in relation to the TED PBC.

NLC staff commented that the TED PBC was established to deal with what they believed were unique circumstances in the Top End where there was already a Land Council to facilitate decision making by Traditional Owners, and multiple Aboriginal corporations and associations across the Top End, established under the ALRA, with at least one in every major community. These corporations were avenues for Traditional Owners across the Top End to pursue self-determination and self-sufficiency. For this reason, when the NTA commenced, NLC advised that Traditional Owners generally declined to set up PBCs as a vehicle for self-determination because they were already operating pre-existing corporations and associations for these purposes. NLC staff also reported that some PBCs that were set up in the 1990s and early 2000s in the NLC area either went into administration or the common law holders opted to replace them with the TED PBC. Groups generally experienced the operation of PBCs as onerous, costly and uninteresting. For these reasons, the TED PBC was seen as an attractive alternative.

NLC staff commented that the NLC remained open to groups of common law holders developing their own PBCs. Consistent with this, the NLC noted during consultations for the Review, that it was in early discussions with groups of common law holders of areas on the Newcastle Waters Pastoral Lease within the Borroloola Barkly region about establishing suitable Aboriginal Corporations that could, be nominated as their PBC. This was occurring outside the Review period.

Several NLC staff noted that Traditional Owners were presented with a real choice between forming their own PBC and joining the TED PBC, and that most were satisfied enough to go with the TED PBC. Observers commented that some Traditional Owners were already part of other PBCs in the NLC RATSIB area and did not want to take on another, making the TED PBC an attractive option.

The TED PBC was an efficient means of providing support to PBCs

During the Review period, the NLC received $500,000 per annum for PBC support. Funding was consistent over the three years of the Review period. The funds were intended to resource basic support of the TED PBC, which covered common law holders from 86 determinations. On a per determination basis this is

$5,814 per group, per annum – significantly less than if support was provided to each individual group if they had their own PBC.

Some Traditional Owners commented that this money should in future be spent assisting Traditional Owners to run corporations and setting up their own PBCs. The NIAA noted that should the landscape of PBCs in the NLC RATSIB change in the future, then the NIAA would review the funding needs accordingly.

The Review received mixed feedback about the TED PBC

Some TED PBC members were very pleased with the services provided and were relieved that they did not need to run their own PBC. As discussed below, some Traditional Owners were very unhappy with the TED PBC arrangement. Other feedback indicated frustration that the TED PBC seemed to be their only option.

Some Traditional Owners said the TED PBC was an intermediary layer of bureaucracy that prevented Traditional Owners on the ground from exercising their independence. In their view, while the TED PBC reduced the administrative burden on native title holders, the arrangement did not allow them to be truly self-determining. One NLC staff member noted that this was a source of frustration for Traditional Owners who had just been through protracted native title processes.

There was no established and efficient process for groups of common law holders wishing to leave the TED PBC and set up their own PBC

The Review notes that in September 2022 (following the Review period), the Indjalandji-Dhidhanu Aboriginal Corporation (IDAC) was appointed as the PBC for the approved determination in the Rocklands Pastoral Lease proceeding. The IDAC was registered across the border, in the Queensland South Native Title Service RATSIB area. The NLC was providing support to this PBC; for example, by providing advice on Aboriginal cultural heritage agreements.

In addition, the NLC reported that the DAC would be registered for the Blue Mud Bay determination (after the Review period) as the third PBC in the NLC region. Between 2018 and 2020, the NLC assisted group leaders to design and register the DAC. Between 2021 and 2023, the NLC consulted with the common law holders in the Blue Mud Bay areas about whether they wished to nominate DAC as their PBC. This consultation was complex, with multiple groups of stakeholders consulted to establish that they agreed with the proposal to leave the TED PBC. The final consultations occurred in April 2023.[44] Based on these consultations, Federal Court orders will be sought to replace the TED PBC with DAC for the common law native title holders of the Blue Mud Bay claim group. The NLC indicated that the TED PBC will consent to these orders.

The Review notes that this process has taken five years (including the entire Review period) and is not yet finalised. Feedback indicated that this process was difficult, long and frustrating for members. Members reported their perception that the NLC (or its staff) were not in favour of DAC becoming the PBC and sought to frustrate and delay the process. Feedback indicates that this may not have been the considered policy position of the NLC, but rather an incidental result of events as they unfolded, and the legal and consultative complexities of the task. Nevertheless, members perceived that these five years resulted in lost opportunities for them to receive NIAA funding, apply for other potential grants and to pursue their self-determination.

The experience of the common law native title holders of the Blue Mud Bay claim group highlights the need for the NLC to develop a considered and efficient pathway for claim groups who wish to leave the TED PBC and establish an independent PBC. This process needs to be well designed and well

[44] Djalkiripuyngu Local Decision Making Agreement. Accessed October 2023.

communicated so that groups understand the process, costs and timelines that will be involved. There also needs to be clarity on how the authorisation meeting will be organised, funded and conducted. Further, the NLC needs to develop a policy position that explicitly states its support for groups wishing to leave the TED PBC for alternative arrangements.

In response, the NLC noted to the Review that the Blue Mud Bay determination is the largest and most culturally complex determination in the PBC area and is not typical of the majority of determinations in the NLC area. It is therefore not a particularly useful comparator. The complexity of the process required for Blue Mud Bay exceeds the complexity required in relation to most other determinations in the NLC area. The COVID-19 pandemic also happened during the Blue Mud Bay consultation schedule and meetings in Arnhem Land were banned under Commonwealth law.

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

The Review understands that the TED PBC has not received formal intervention from ORIC or other regulators due to not fulfilling its obligations as a PBC.

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

The TED PBC governance structure limited the self determination of common law holders in the PBC

The NTA states that native title is held by a PBC and the TED PBC complies with this direction. For the entirety of the Review period the TED PBC was legally distinct from the NLC. But while separate meetings were held and separate records were kept, the two organisations shared identical governance. For this reason, the Review considers that the TED PBC did not offer an avenue for common law holders to promote their self-determination in regard to their native title holdings.

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

The NLC facilitated access to cultural materials but had no policy or formal process for repatriation

During the Review period, the NLC provided native title holders access to retained cultural material; however, the NLC did not have a written policy to guide the return of cultural materials and did not formally repatriate them. All requests received from native title holders were handled by NLC lawyers and supported by anthropologists as required. This approach is consistent with the NLC’s functions as the sole provider of support to the TED PBC.

In the previous Review, it was recommended that the NLC develop a clear policy document to formalise the return of cultural materials to native title holders. In August 2023, the NLC advised that it was working on a policy and pilot program regarding the return of these materials. The program intends to produce a policy architecture about classification that can be applied to post-determination materials held by the NLC and constituents. NLC staff advised that this is complex because they deal with both the NTA and ALRA. For example, when dealing with native title, the materials that could be useful may have originally been collected for a land rights claim and, in some cases, they are the same claimants. In addition, when returning materials, careful consideration needs to be given to each item as there may be cultural sensitivity issues around gender or family groups that could cause conflicts or disputes. This development is occurring post this Review period.

Similarly, throughout the Review period the NLC did not have a cultural materials storage policy. Following the Review period, significant investment has been made by the NLC in current material storage practices, which prioritise the security and safety of cultural material. Materials were held in a hard copy storeroom with restricted access. Many materials are also digitised to provide rapid access to relevant document information. The 2022 NLC Annual Report noted that the NLC is approaching 100 per cent digital status, but some material is too sensitive to be included in the digital catalogue at this stage.[45] Once digitised, materials are organised and stored in an online database managed internally by NLC staff. Where culturally appropriate, the digitisation of cultural material is considered best practice as access to digital copies means cultural material can be reviewed as needed without being physically handled. Additionally, it means there is a record of the material in the instance the physical copy is damaged or destroyed.

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

The TED PBC was supported by the NLC with a formal service agreement in place – equating to 100 per cent of PBCs in NLC's RATSIB area during the Review period.

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

TED PBC members did not raise any issues with the formal service agreement in place with the NLC.

5.6.2 TOR 6: External factors

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

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

The socio-economic profile of different areas varied significantly across the NLC RATSIB area

The level and nature of industry activity in a RATSIB area is one of the key determinants of the extent to which self-sufficiency is achievable.

Stakeholders outlined that the goal of self-sufficiency in much of the NLC region was impeded by limited natural resources and/or other opportunities for industry in the region and limited funding. Further, most native title claims covered land with limited economic potential. This may change in the near to mid-term future with the advent of large-scale renewable energy developments.

Another determinant of the extent to which self-sufficiency is achievable is the socioeconomic profile of the constituents. A summary of the socioeconomic and educational profile of the local government areas (LGAs) within the region are outlined in Table 19. A low Index of Relative Socioeconomic Disadvantage (IRSD) decile indicates the highest levels of socio-economic disadvantage. A low Index of Education and Occupation (IEO) score indicates the highest levels of educational disadvantage.

[45] NLC Annual Report 2021-22.

Table 19 | IRSD and IEO for LGAs in the NLC RATSIB area[46]

LGA	2021 IRSD	2021 IEO scores
Belyuen	1	1/5
Coomalie	2	2/5
Darwin	9	5/5
East Arnhem	1	1/5
Katherine	4	4/5
Litchfield	9	4/5
MacDonnell	1	1/5
Palmerston	8	4/5
Roper Gulf	1	1/5
Tiwi Islands	1	1/5
Victoria Daly	1	1/5
Wagait	6	5/5
West Arnhem	1	1/5
West Daly	1	1/5

The socio-economic profile of the NLC RATSIB area reflects the sharp distinction in socio-economic status that exists between urban and remote communities. This means that the NLC engages with a range of stakeholders from diverse socio-economic backgrounds. The ability of future groups of common law holders within the RATSIB area to be self-sufficient varies considerably.

The educational profile of the LGA, represented by the IEO, also varies across the RATSIB area. Scores across the RATSIB area are generally low relative to other parts of the country. This is likely to make it difficult for the TED PBC to execute its functions autonomously and therefore is likely to need more support from the NLC.

5.6.3 TOR 6: Recommendations

RECOMMENDATION 10

The NLC should prioritise the development and pro-active communication of a policy and related

[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

processes through which common law holders can elect to leave the TED PBC and establish their own PBC. These processes should be timely, transparent and efficient.

RECOMMENDATION 11

The NLC should prioritise the finalisation and implementation of a new NLC Repatriation Policy for cultural materials, including the process of obtaining and retaining consent for the collection of cultural materials.

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

Summary

As of 30 June 2022, the NLC's strategic planning for post-determination was well progressed. The NLC is one of the NTRB-SPs with the largest number of successful determinations and relatively little claimable land remaining (when Aboriginal land recognised under ALRA is considered).

The NLC established the Projects, Planning and Land Management Division to focus resources into NLC's post-determination era. For example, the Community Planning and Development branch of this division supported Traditional Owners to use payments from ILUAs to drive their own development and secure lasting benefits from their land. The NLC's "Activating Land and Sea Rights" initiative is focussed on delivering Traditional Owners' rights and interests through native title and ALRA. The extent to which these initiatives were available to members of determined claims is unclear. The process used to monitor the aspirations of claim groups seeking to benefit from their native title rights and interests is also unclear.

The Review believes there is a need to clarify the extent to which these services will be available for claim groups that seek to leave the TED PBC and establish their own PBC.

The NLC's approach to compensation is well progressed compared to other NTRB-SPs. This includes the determination of the Timber Creek matter, as well as active compensation claims in other regions, such as over the McArthur River Mine.

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

With the exception of the composition and positioning of the TED PBC, the NLC's approach to post-determination strategic planning was well progressed throughout the Review period

The Review notes that the NLC is one of the NTRB-SPs with the largest numbers of successful determinations and relatively little land remaining (when recognised Aboriginal land under ALRA is considered). This means that the NLC was operating as much in the claims space as the post-determination environment for native title holders (through the TED PBC) for the Review period.

In response to the previous Review, the NLC stated that:

> *The NLC recognises that, across Australia, the role of NTRBs is evolving with the ongoing growth in the numbers of determined native title claims and appointed PBCs. The NLC is committed to developing and delivering capacity development services to support native title holders in the post-determination environment, whether they nominate the TED PBC or a stand-alone PBC to be their RNTBC. Those services include supporting native title holders to:*
>
> - *develop and maintain sound corporate governance skills and systems*
> - *make informed native title decisions*
> - *strategically pursue cultural, economic and social goals and aspirations.*

The NLC advised that it provided a high level of post-determination support to native title holders. One component of this was the Activating Land and Sea Rights initiative. The Activating Land and Sea Rights initiative aims to aid in the transition from the claims space to the post-determination space by increasing the focus on activating Traditional Owners rights and interests in land and sea country.[47] The NLC reported that this initiative means "proactively managing Country, creating real opportunities, being a strong organisation and an effective voice for our constituents". The NLC noted that this support included:

- project negotiations, for example with proponents such as Sun Cable and Tamboran/Origin energy
- access negotiations
- strategic community advocacy and development services
- lodging objections for pending grants of mineral exploration licenses.

While the Review found some confusion among staff regarding whether this initiative was available for native title holders or solely targeted those with rights under the ALRA, the NLC confirmed that the Activating Land and Sea Rights initiative was explicitly said to apply to both ALRA and native title land and waters. The NLC also confirmed that supports are available to all constituents, regardless of which PBC they choose to have appointed.

In addition to the initiative, according to the NLC's 2021-22 Annual Report, the Projects, Planning and Land Management Division was established in December 2021 to focus resources into the NLC's post-determination era. It includes three units:

1. The Caring for Country unit hosts and provides administrative support to land and sea ranger groups across the region, policy support on land and sea management issues and contract management for high schools.
2. The Community Planning and Development unit "supports land-owning groups to use payments from land use agreements to drive their own development, including securing lasting benefits from their land, seas and waters".
3. The Partnerships and Planning unit will improve partnerships in joint management projects, capture opportunities in the carbon industry through improved fire management and increase rangers' capacity in reporting and managing incidents.

The Review supports the intention of these initiatives to promote benefits from the claimed lands for Traditional Owners.

An issue noted by the Review is the extent to which these services will be available (if desired) for groups of common law holders that seek to leave the TED PBC and establish their own PBC. The NLC's position on this issue needs to be clarified, as it was raised as an issue by groups who seek to consider the independent option. If the NLC does provide these services to independent PBCs they would need to be a part of the Services Agreement and be costed so that PBC members have transparency on what they purchase.

The NLC lacked a clear process for establishing or monitoring progress towards independence in the post-determination era

Unlike some other NTRBs the NLC did not have a clear framework or process for ascertaining the aspirations or progress of members of the TED PBC towards their strategic aspirations in the post-determination environment. The Review understands that the NLC governance structure provided avenues for input from people who hold native title. However (as described under TOR 6) the TED PBC does not

[47] Land Rights News, August 2023. https://www.nlc.org.au/uploads/pdfs/LRN-Aug-2023-WEB.pdf

offer any services that aim to achieve more active self-determination for common law holders in relation to land claimed through native title.

The TED PBC is designed and operated for functional compliance, rather than for independence and self-determination. The Review encountered a strong expectation that the TED PBC would remain static. Any change would be in response to vigorous and persistent representations by particular members.

The Review considers that this may represent a missed opportunity for some common law holders to further their self-determination should they wish to do so. One way to better understand this would be to systematically ascertain the aspirations of TED PBC common law holders for their native title country and then to monitor progress against the stated aspirations.

The NLC was well progressed in compensation claims

The NLC's approach to compensation was well progressed compared to other NTRB-SPs, as outlined under TOR 1. This included the determination of the Timber Creek matter, as well as active progression of other regions for compensation claims, such as the McArthur River Mine.

5.7.2 TOR 7: External factors

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

Progress towards a post-determination environment

The NLC has relatively little relevant land remaining to be determined under the NTA

As stated above, the NLC is one of the NTRB-SPs with the largest numbers of successful determinations and relatively little land remaining (when recognised Aboriginal land under the ALRA is considered). While the remaining claims, like in many other RATSIB areas, are complex and involve extensive conflict negotiation, the NLC was relatively well progressed towards a post-determination environment.

5.7.3 TOR 7: Recommendations

RECOMMENDATION 12

The NLC should develop and implement a process that enables regular feedback in relation to post-determination priorities of groups of common law holders of native title in the 86 determinations represented by the TED PBC.

RECOMMENDATION 13

The NLC should clarify the extent to which their post-determination services are available to independent PBCs, on what conditions and at what price.

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 NLC'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 NLC 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 during the week commencing 14 August and during September 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- fifteen Traditional Owners including:
  - clients who have been represented by the NLC (including members of PBCs)
  - potential clients in the NLC's RATSIB area
- the Federal Court of Australia
- the NIAA
- the Aboriginal Areas Protection Authority
- representatives of the Northern Territory Government
- NLC staff and contractors, including:
  - some current NLC staff
  - consultants engaged by the NLC to support native title work.

Appendix C Documents reviewed

Category	Description
Annual reports	NLC Annual Report 2021/22 NLC Annual Report 2020/21 NLC Annual Report 2019/20
Policies	NLC 001 Asset Management Policy NLC 002 Bush Safety Manual NLC 006 Conflict of Interest Policy NLC 008 Cost Recovery Policy NLC 009 Credit Card Policy NLC 015 Travel Policy NLC 018 Gifts and Benefits Policy NLC 022 Fraud and Corruption Policy NLC 024 Procurement Policy NLC 027 Risk Management Policy NLC 029 WHS Management System NLC 030 Public Interest Disclosure Whistle Blower Policy NLC 031 Work Health Safety Policy NLC 051 Code of Conduct NLC 104 Financial Delegations Policy NLC 118 External Complaints Policy NLC 186 External Assistance Applications Policy
Operational documents	NLC Native Title Operational Plan 2023-24 NLC Native Title Operational Plan 2022-23 NLC Native Title Operational Plan 2021-22 NLC Native Title Operational Plan 2020-21 NLC Native Title Operational Plan 2019-20 NLC Corporate Plan 2022-23 NLC Strategic Plan 2022 to 2027
Financial documents	NLC Application for Annual Native Title and PBC Support Funding – May 2023 NLC Application for Mid-Year Native Title Funding – October 2022 NLC Application for Native Title Test Case Funding – May 2022 NLC Application for Mid-Year Native Title Funding – October 2020 NLC Application for Contested Litigation Funding – January 2020 NLC Application for Mid-Year Native Title Funding – December 2019 NLC Application for Contested Litigation Funding – October 2019
COVID-19 planning documents	COVID-19 Return To Work Plan – 8 May 2020 Media Release – NLC starts rolling out COVID-19 information in language – 30 June 2021 NLC Covid-19 Management System – September 2021

Category	Description
	NLC Direction – No More NLC Meetings Until Further Notice – 14 January 2022 NLC Media Release – NLC Releases COVID-19 video series in 18 Aboriginal languages – 31 March 2020 NLC Media Release – Proof of COVID-19 Vaccination required for NLC Permits from 12 November 2021 NLC Media Release – Suspension of all permits to enter Aboriginal land for non-essential travel – 14 March 2020 NLC Media Release – Update on NLC Meetings and Offices – 18 January 2022 NLC Poster – Travel advice within the NLC Region – 30 June 2021 NLC15A NLC Interim Covid 19 Pandemic Travel Policy – 27 August 2021 Rules for NLC Meetings – 3 March 2022 Testing Rules for NLC Staff – 3 March 2022
Other	NLC Guide to Running Meetings Aboriginal Interpreter Service Induction – Using Interpreters Aboriginal Mental Health First Aid Information Sheet NLC New Employee – Induction Checklist 5 – 1st 60 Days NLC New Employee – Induction Checklist 6 – 1st 90 Days Future Act Process Flowchart 2017 NLC Handbook – Rules for Councillors Declaration of Conflict of Interest Form NLC Corporate Induction – Participant Handout NLC Governance Induction – Full Council NLC Fast Fact Sheet Conflict of Interest NLC Native Title Complaints Register 2019-2023 221st Executive Council Meeting Agenda Paper – Internal Review of a Decision to Refuse Funding – 24 August 2022 NIAA Letter to NLC – Outcome of Section 203FB Review – 30 August 2022 NLC Native Title Status Map – March 2023 227th Executive Council Meeting Agenda Paper – ANAO Performance Audit Final Report NLC ANAO Recommendations Implementation Tracker Various position descriptions

Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 20.

Table 20 | Glossary

Term	Meaning
Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)	The *Aboriginal Land Rights (Northern Territory) Act 1976* established a system in the Northern Territory where Aboriginal people could make traditional land claims to unalienated Crown land and alienated Crown land in which all estates and interests are held by Aboriginal people. The system was sunsetted in 1997 and no new grants and claims can be made. Land rights granted under the *Aboriginal Land Rights (Northern Territory) Act 1976* can co-exist with native title rights and interests.
Northern Territory Aboriginal Sacred Sites Act 1989	The *Northern Territory Aboriginal Sacred Sites Act 1989* provides protections over Aboriginal sacred sites across the Northern Territory. Protection measures include penalties for entering, working on, or desecrating a sacred site. Under the *Northern Territory Aboriginal Sacred Sites Act 1989*, any person who is proposing to conduct works on an area where there may be a sacred site is expected to apply for an Authority Certificate.
Applicant	Any person or persons who have been authorised as the selected representative(s) of a native title claim group in native title or determination proceedings.
Client	Any individual or group being provided assistance by a Native Title Representative Body and Service Provider (including assistance with claims, research and/or PBC support).
Connection evidence	Evidence to establish connection of the native title group to the area over which they have lodged a claim. This evidence must demonstrate that the group have continued to observe and acknowledge, in a substantially uninterrupted way, the traditional laws and customs that give rise to their connection with the claim area, from the time of the proclamation of sovereignty to the present day.
Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (the CATSI Act)	The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) is the law that establishes the role of the Registrar of Indigenous Corporations and enables Aboriginal and Torres Strait Islander groups to form Aboriginal and Torres Strait Islander corporations.
Determination	A decision by the Federal Court or High Court of Australia. A determination is made either when parties have reached an agreement (consent determination) or following a trial process (litigated determination). In the context of the Review, a "positive" determination is where the court finds that native title exists and a "negative" determination is a finding that native title has been extinguished or does not exist.
Extinguishment	Occurs over a defined area when Australian law does not recognise the existence of native title rights and interests because of legislation or common law precedent. Extinguishment can be whole or partial.
Future Act	A legislative or non-legislative act in relation to land or waters that may impact on the ability of native title holders to exercise native title rights; either through

Term	Meaning
	extinguishment or creating interests that are wholly or partly inconsistent with the continued existence of native title.
Indigenous Land Use Agreement (ILUA)	A voluntary, legally binding agreement governing the use and management of land or waters over which native title exists or might exist. The conditions of each Indigenous Land Use Agreement are determined by way of negotiations between native title holders and other interest holders (such as a state or mining company). These negotiations are often facilitated by Native Title Representative Bodies and Service Providers.
National Native Title Tribunal (NNTT)	An independent statutory body established under section 107 of the *Native Title Act 1993* (Cth) to assist people in resolving native title issues by: a) mediating between the parties to native title applications at the direction of the Federal Court b) acting as an arbitrator in situations where the people cannot reach agreement about certain Future Acts c) helping people to negotiate Indigenous Land Use Agreements. The National Native Title Tribunal maintains three registers relating to native title applications, determinations and Indigenous Land Use Agreements. It also maintains databases regarding Future Act matters and geospatial tools.
Native title	The communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders in relation to land and waters, possessed under traditional law and custom, by which those people have a connection with an area which is recognised under Australian law (section 223 of the *Native Title Act 1993* (Cth)).
Native Title Act 1993 (Cth) (the NTA)	The *Native Title Act 1993* (Cth) established the procedure for making native title claims and is the primary piece of Australian Government legislation allowing Indigenous Australians to seek rights over land and waters arising from their original ownership under traditional law and custom.
Native Title Representative Body (NTRB)	Recognised organisations which are funded by the Australian Government to perform functions to assist native title groups in a specific region, according to the provisions in Part 11 of the *Native Title Act 1993* (Cth).
Native Title Service Provider (NTSP)	Organisations funded by the Australian Government to perform all or some of the same functions as Native Title Representative Bodies in areas where Native Title Representative Bodies and Service Providers have not been recognised in law.
Native Title Representative Bodies and Service Providers (NTRB-SPs)	Native Title Representative Bodies and Service Providers refers to the cohort of Native Title Representative Bodies and Native Title Service Providers that are being evaluated by the Review.
Non-claimant application	An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.
Pastoral Land Act 1992 (NT)	The *Pastoral Land Act 1992* (NT) provides Aboriginal peoples in the Northern Territory with access to pastoral land, regardless of whether they hold native title or not. It does not permit Aboriginal peoples to erect or use a structure on the leased land that would serve as a permanent shelter for human occupation, other than at the place on the leased land where they ordinarily reside.
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

Term	Meaning
	land. Native title rights often co-exist with pastoral lease rights.
Post-determination	At a claim level, refers to the period following a determination that native title exists. At a Native Title Representative Body and Service Provider life cycle level, refers to the period following the resolution of all active applications within a Representative Aboriginal/Torres Strait Islander Body area.
Prescribed Body Corporate (PBC)	A body, established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), nominated by native title holders which will manage their native title rights and interests once a determination that native title exists has been made.
Registration test	The registration test is a set of conditions applied to the claims made in native title determination applications. The Native Title Registrar, or the Registrar's delegate, applies the test. If a claim satisfies the conditions of the registration test, details of the application are entered on to the Register of Native Title Claims. Once an application is registered, applicants can exercise the procedural rights stipulated in the Future Act provisions of the *Native Title Act 1993* (Cth).
Representative Aboriginal/ Torres Strait Islander Body (RATSIB) area	The area over which a Native Title Representative Body and Service Provider holds jurisdiction.
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 21.

Table 21 | 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

Reference	Function	Detail
		clients.
s203BJ	Other functions conferred by the *Native Title Act 1993* (Cth) or by any other law	These are largely concerned with cooperation between NTRB-SPs, consulting with Aboriginal and Torres Strait Islander communities, and providing education to these communities on native title matters.

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