



Review of South Australian Native Title Services, 2019-22

National Indigenous Australians Agency

June 2024

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1 Profile of South Australian Native Title Services

South Australian Native Title Services (SANTS) is based in Adelaide and provides native title services in South Australia in addition to neighbouring jurisdictions

SANTS was established on 1 July 2008 as the Native Title Service Provider (NTSP) for the Greater South Australian Representative Aboriginal/Torres Strait Islander Body (RATSIB) area. From 1994 the region had been serviced by the Native Title Unit of the Aboriginal Legal Rights Movement Inc. (ALRM). SANTS is registered with the Australian Charities and Not-for-profits Commission as a public company limited by guarantee.

The SANTS RATSIB area covers all South Australia, approximately 984,377 square kilometres. Much of the state is now subject to a determination of native title or is Aboriginal freehold. The total determined land area is approximately 681,970 square kilometres.¹ This is about 69 per cent of South Australia. Approximately 122,769 square kilometres is under current active application (about 12 per cent of the total RATSIB area). Therefore, 19 per cent of the claimable land within the SANTS RATSIB area is not subject to a registered application or determination.



From establishment of SANTS in 2008 until 30 June 2022 there were 34 determined claims in the SANTS RATSIB area. Between 1 July 2019 to 30 June 2022 (the Review period) there were nine native title applications filed and four determinations of native title. SANTS represented one of those determined claims and facilitated outcomes in the others to varying degrees. Three of the determinations within the Review period were achieved by consent. The one determination represented by SANTS was achieved through litigation. However, since the Review period there have been five determinations of native title in the SANTS RATSIB area, all achieved through consent and all represented by SANTS. There were 19 active native title applications in the SANTS RATSIB area on 30 June 2022. SANTS is listed as the representative on 14 of these applications.

As at June 2022, there were 20 Prescribed Body Corporates (PBCs) within the RATSIB area. SANTS had service agreements with ten of these and provided varying levels of service to a further six PBCs.

SANTS is primarily funded by the National Indigenous Australians Agency (NIAA). SANTS received \$12,373,190 in native title funding in financial year (FY) 2021-22, \$8,048,450 in FY2020-21 and \$9,811,250 in FY2019-20. SANTS also generates income through providing financial and human resources (HR) services to PBCs. SANTS does not manage or have full or part ownership over any subsidiary entities.

SANTS has a skills-based Board of nine directors, who are appointed by a Board Selection Committee. The Board must include a majority of Aboriginal persons, a lawyer, an accountant and a person with lengthy experience in public administration or a corporate manager or leader. The Chairperson of the Board is elected by the Board and must be an Aboriginal person.

SANTS has four senior management staff: the Chief Executive Officer (CEO), the Principal Legal Officer (PLO), the Corporate and Community Development Manager, and the Chief Finance and Operations Officer. A third of SANTS employees identify as Aboriginal and/or Torres Strait Islander, including the CEO.

¹ Total area recognised under native title may include areas that overlap other states or territories.

2 Scope of the Review

The NIAA has engaged Nous Group (Nous) to undertake an independent review of 13 Native Title Representative Bodies and Service Providers (NTRB-SPs).

The purpose of this Review was to assess the individual and comparative performance of NTRB-SPs in delivering native title outcomes for Aboriginal and Torres Strait Islander people and communities under the *Native Title Act 1993* (Cth) (the NTA) over a time period of 1 July 2019 to 30 June 2022.

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

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

- has achieved positive native title outcomes for persons who hold or may hold native title in its region taking account, where relevant, of disruptions caused by COVID-19
- assesses and prioritises applications for assistance in a manner that is equitable, transparent and robust and is well publicised and understood by clients and potential clients
- deals respectfully, equitably, transparently and in a culturally appropriate manner with persons who hold or may hold native title in its region, including by adequately investigating and resolving complaints
- performs its functions in a cost-effective manner, including by identifying the key cost drivers for the organisation
- has governance and management structures, and organisational policies and an organisational culture that support efficient and effective project delivery
- is adequately supporting 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
ALRM	Aboriginal Legal Rights Movement Inc.
CEO	Chief Executive Officer
CFO	Chief Finance Officer
FAN	Future Act notification
First Nations of SA	First Nations of South Australia Aboriginal Corporation
FY	Financial year
HR	Human resources
ILUA	Indigenous Land Use Agreements
NIAA	National Indigenous Australians Agency
Nous	Nous Group
NTBC	Native Title Briefing Committee
NTRB-SP	Native Title Representative Body and Service Provider
NTSP	Native Title Service Provider
ORIC	Office of the Registrar of Indigenous Corporations
PBC	Prescribed Body Corporate
PBC Forum	PBC Regional Forum South Australia
PLO	Principal Legal Officer
RATSIB	Representative Aboriginal/Torres Strait Islander Body
RNTBC	Registered native title body corporate
SANTS	South Australia Native Title Services
The NTA	<i>Native Title Act 1993</i> (Cth)
The Review period	1 July 2019 to 30 June 2022
TOR	Terms of Reference

4 Executive summary of performance and recommendations

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

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

During the Review period, SANTS filed nine native title claims, represented one litigated native title determination that native title existed (which was subsequently overturned) and provided assistance to three other native title claims determined during the period. During the Review period, there were 19 active claims across the RATSIB area. SANTS was the representative on 15 of these claims and provided support to the remaining four claims.

By the end of the Review period, most of the claimable land within the SANTS RATSIB area was subject to an application or determination, with only 19 per cent of the claimable land not subject to a determination or a registered claim.

SANTS staff described activity across the Review period as intense, primarily driven by the ambitious scale of orders managed by the Federal Court at the time. The high workload created stress within the legal team, some of whom believed a more structured approach to work allocation would improve effectiveness.

The efforts of SANTS during the Review period culminated in five consent determinations immediately following the Review period, with SANTS serving as the solicitor on record for all five determinations. SANTS enjoyed a constructive relationship with the Federal Court throughout the Review period.

In addition to providing inhouse legal assistance, SANTS also exercised its functions by providing financial assistance to external legal firms, primarily due to conflicts of interest from competing claims, or claim groups having pre-existing relationships with external legal practitioners.

The Oodnadatta Common Overlap Proceeding was litigated during the Review period, with SANTS representing one of the claim groups and funding external lawyers to represent the other claim group. Although the Federal Court made a determination in favour of the Walka Wani people, represented by SANTS, this was overturned after the Review period, so that neither claimant established native title. This result was described as having had a profound and detrimental impact on client groups and their respective communities.

Consent determinations in South Australia were routinely accompanied by a settlement ILUA between the native title holders and the state. These settlement ILUAs included additional benefits for the clients in exchange for settling all potential compensation claims the native title holders may have against the state. This reduced the opportunities for other compensation claims.

SANTS also facilitated negotiations for four ILUAs, one of which resulted in the surrender of native title in return for other benefits. Only a small number of Future Act notifications (FANs) were received by SANTS as most were sent exclusively to PBCs under the South Australian regime.

Traditional Owners consulted by the Review were generally satisfied with SANTS's delivery of native title outcomes. Despite diverse views and reported experiences from PBC representatives, a majority of

stakeholders were impressed by the progress SANTS achieved for its clients during the Review period, despite the challenges of the COVID-19 pandemic.

RECOMMENDATION

1

Consider a more structured approach to the allocation of legal work across claims to increase the effectiveness of teams.

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.

SANTS had a defined assessment and prioritisation process and policy that outlined several key criteria for requests for assistance. It had remained unchanged since 2013. The policy was not a significant deciding factor in the assessment and prioritisation of claims through the Review period, particularly given the low volume of remaining claims. SANTS advised that all active claims were funded. Prioritisation of resources was primarily based on Federal Court-imposed timelines.

The Review received positive and negative feedback from Traditional Owner groups regarding assessment and prioritisation. Some Traditional Owners were positive about the timeliness and outcomes of SANTS response to applications for assistance. On the other hand, some Traditional Owners were not satisfied with the response they received from SANTS regarding requests for funding to be a respondent to a claim. In response, SANTS noted that funding respondents to claims that NIAA had funded SANTS to prosecute would not comply with its obligations under the NTA nor its funding guidelines.

The policy document was not externally published on the SANTS website or distributed, contributing to concerns about transparency and limited understanding among some clients regarding key elements of the policy.

RECOMMENDATION

2

Make the Facilitation and Assistance Policy available online.

RECOMMENDATION

3

Ensure that guidelines for Traditional Owner requests for funding to respond to claims are accessible and provide clear and timely justifications for decisions.

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.

Stakeholders consulted as part of the Review reported that SANTS generally communicated well with them during the Review period. SANTS was pro-active in its communication: it produced a monthly e-newsletter that was sent to native title groups and stakeholders; a quarterly newspaper called Aboriginal Way distributed to 10,000 subscribers locally and nationally; and a weekly radio show and podcast that aired on multiple community stations and featured on Spotify and the SANTS website. These publications served as an effective means of disseminating information to a diverse audience.

SANTS staff were conscientious about working in a culturally appropriate way and SANTS implemented several strategies to develop the cultural competency of staff. Examples of this included cultural awareness

training undertaken at least twice per year by the Centre for Cultural Competence Australia and on-Country talks and educational activities with different Traditional Owner groups. Development of an integrated, respectful and consistent approach to repatriation of cultural materials was commenced and is ongoing.

SANTS improved the accessibility of its complaints process and its internal review process by publishing these policies online. It did not receive any formal complaints and did not receive any requests for internal review during the Review period.

While the organisation occasionally received ad hoc, informal feedback, it did not systematically collect structured feedback from the community or clients to assess its performance. There is an opportunity to collect broader feedback from its clients regarding its performance as a way of continually improving performance.

RECOMMENDATION

4

Develop proactive mechanisms for seeking and managing feedback from clients across all services to support long term relationship management across Traditional Owner groups and native title holders.

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 Review was satisfied that SANTS operated in a cost-effective manner during the Review period despite operating costs (including total activity, corporate and PBC expenditure) continuing to rise. Core operational funding from NIAA was relatively stable and salaries continued to be the main cost driver for SANTS.

As recommended by the previous Review (FY2015-16 to FY2017-18), outsourced roles such as the Chief Finance Officer (CFO), payroll and HR were brought back in-house as a cost-savings strategy. The Finance and Business Services function, now led by the Chief Finance and Operations Officer, included previously outsourced functions.

External consultants were used sparingly and were focused on discrete tasks or to support internal capability development. SANTS offered some fee-for-service activities for PBCs which increased revenue during the Review period. The continued growth of these services was an important consideration for SANTS funding viability going forward.

SANTS adopted appropriate processes for working in efficient and cost-effective ways with claim groups. Claim group meetings were generally productive, with total costs of these meetings varying significantly during the Review period. SANTS had documented travel policies to ensure efficient travel assistance for community meetings.

RECOMMENDATION

5

Continue to explore opportunities for continued growth in fee-for-service and other revenue.

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.

SANTS is governed by a Board of nine directors who are accountable for the direction and overall performance of the company. The Board is a skills-based board and has a suitable mix of skills and experience to undertake its functions.

The Board provides strategic direction only and is not involved in the daily operations of SANTS. There was an appropriate delegation of responsibilities between the Board, Chair, CEO and senior staff during the Review period. SANTS had clear policies for conflicts of interest and robust financial management strategies and systems.

SANTS has benefitted from long tenured leadership; the CEO has been at SANTS for nearly 25 years, while the PLO and the Head of the Community Development Team have also been at SANTS for 15 to 20 years. The Board reflected that this continuity has been highly beneficial to building relationships with the community, accumulating deep institutional knowledge and fostering a stable positive culture within SANTS over time. However, many Board members acknowledged that, given the long-tenured leadership, succession planning was important. The Board reported it had commenced succession planning during the Review period.

Most staff reported that SANTS had a good work culture and was a positive place to work. However, there were mixed views regarding whether SANTS was consistently aligned to its values. While many SANTS staff had positive experiences, several staff reported that they would like to see collaboration within and between some teams strengthened. The institutional knowledge and technical expertise of long-tenured staff was valued; however, the Review heard that there was more scope for long-tenured employees to mentor others. Staff reported some incidents of bullying and poor behaviour during the Review period. The Review understands that this has been subsequently managed by SANTS.

SANTS had sound financial management strategies and systems in place, including frequent reporting to staff, the CEO and the Board, and audited financial statements. A new financial system was implemented in 2020 to improve financial management and reduce the risks of duplicated data entry.

SANTS experienced some turnover during the Review period, particularly in the legal team with high workloads presenting potential psychosocial risks. SANTS remained committed to workforce development, providing ample training opportunities across all functions. However, some employees reported that workforce development was deprioritised during busy periods and training opportunities were limited by stretched operational funding. Staff expressed a desire for more structured coaching and mentoring from senior staff to enhance their professional skills, knowledge and resilience.

RECOMMENDATION

6

Continue to plan for the workforce and leadership capability required in the coming years, including supporting succession planning for long-tenured senior staff.

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

A core pillar of the SANTS Strategic Plan 2020-2025 is to “work with native title corporations to build independence, capability and self-determination”. SANTS consistently provided strong support to PBCs throughout the Review period.

Agreements were in place with ten of the 20 PBCs in the RATSIB area, offering a variety of services, including financial and HR support on a fee-for-service basis. The level and scope of assistance varied,

aligning with the maturity and individual needs of each PBC. Some PBCs required basic support for fulfilling corporate responsibilities, while others needed additional help to achieve strategic goals.

SANTS used a combination of the PBC support funding, operational funding and service-generated revenue to deliver its PBC support work. Staff responsiveness to the needs of PBCs led to staff being thinly stretched across a range of different support activities within the available funding so that SANTS was not able to deliver the depth and breadth of PBC services that staff believed were required. Staff noted that some PBCs who had historically used other legal and service providers due to enduring relationships were increasingly looking towards SANTS for services, given cost issues in the sector and the significant depth of experience within SANTS. However, SANTS had limited capacity to undertake additional support.

Internal and external stakeholders valued SANTS for its responsiveness to the diverse needs of PBCs, highlighting its timely assistance. PBCs supported by SANTS generally reported being satisfied with SANTS's services during the Review period, while highlighting one or two areas they would like to see strengthened. Those consulted by the Review broadly agreed that the services SANTS provided were helpful stepping stones towards PBCs becoming more established.

SANTS was proactive in how it engaged with PBCs and facilitated networking more broadly including through running the PBC Regional Forum South Australia and working closely with the peak body – First Nations SA.

SANTS commenced the development of a consistent and respectful approach to the repatriation of cultural materials but further work remained to be done.

Financial sustainability remained a challenge for many PBCs in the SANTS RASTIB area. One factor associated with this challenge was the relatively low industry activity in some areas with established native title, which restricted the possibility and/or value of ILUAs. However, new industries, such as green energy, may offer opportunities for the future.

RECOMMENDATION

7

Consider ways to most effectively target support for PBCs within the limitations of resource capacity.

RECOMMENDATION

8

Finalise the development of a consistent and respectful approach to the repatriation of cultural materials.

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

SANTS staff consulted as part of the Review were confident that all remaining native title applications would be determined by the Federal Court within the five years that follow this Review. Completion of all active applications would mean that all Traditional Owner groups in South Australia would have native title in at least one area. SANTS was already, in effect, operating in a post-determination environment.

SANTS had a Strategic Plan in place until 2025 to guide its post-determination planning. The SANTS Board was aware of the impending change the post-determination environment would bring and how this would impact its organisational value proposition and sustainability. The Board initiated preliminary discussions during the Review period regarding its long-term organisational strategy.

During the Review period, a single compensation claim was lodged for the Antakirinja Matu-Yankunytjatjara Aboriginal Corporation RNTBC, pertaining to the Coober Pedy area in Central South

Australia. It is anticipated that fewer compensation claims will be submitted compared to other RATSIB areas, as the prevailing approach in South Australia involves settling compensation claims concurrently with determinations through collaboration with the state government.

Once all claims are determined, SANTS's focus will shift towards providing PBC services, ensuring sector sustainability and exerting policy influence. However, a comprehensive long-term strategic and organisational plan has not yet been formulated. SANTS staff members and other stakeholders, including clients, sought increased involvement in future strategic planning.

RECOMMENDATION

9

Undertake a planning process to explore what services SANTS should provide in a post-determination environment. This planning process should involve a variety of internal staff and external stakeholders.

RECOMMENDATION

10

Fast track the development of an operating model for post-determination which defines sustainable resource requirements and guides future funding discussions with NIAA.

5 Performance assessment

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

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

Summary

During the Review period, SANTS filed nine native title claims, represented one litigated native title determination that native title existed (which was subsequently overturned) and provided assistance to three other native title claims determined during the period. During the Review period, there were 19 active claims across the RATSIB area. SANTS was the representative on 15 of these claims and provided support to the remaining four claims.

By the end of the Review period, most of the claimable land within the SANTS RATSIB area was subject to an application or determination, with only 19 per cent of the claimable land not subject to a determination or a registered claim.

SANTS staff described activity across the Review period as intense, primarily driven by the ambitious scale of orders managed by the Federal Court at the time. The high workload created stress within the legal team, some of whom believed a more structured approach to work allocation would improve effectiveness.

The efforts of SANTS during the Review period culminated in five consent determinations immediately following the Review period, with SANTS serving as the solicitor on record for all five determinations. SANTS enjoyed a constructive relationship with the Federal Court throughout the Review period.

In addition to providing inhouse legal assistance, SANTS also exercised its functions by providing financial assistance to external legal firms, primarily due to conflicts of interest from competing claims, or claim groups having pre-existing relationships with external legal practitioners.

The Oodnadatta Common Overlap Proceeding was litigated during the Review period, with SANTS representing one of the claim groups and funding external lawyers to represent the other claim group. Although the Federal Court made a determination in favour of the Walka Wani people, represented by SANTS, this was overturned after the Review period, so that neither claimant established native title. This result was described as having had a profound and detrimental impact on client groups and their respective communities.

Consent determinations in South Australia were routinely accompanied by a settlement ILUA between the native title holders and the state. These settlement ILUAs included additional benefits for the clients in exchange for settling all potential compensation claims the native title holders may have against the state. This reduced the opportunities for other compensation claims.

SANTS also facilitated negotiations for four ILUAs, one of which resulted in the surrender of native title in return for other benefits. Only a small number of FANs were received by SANTS as most were sent exclusively to PBCs under the South Australian regime.

Traditional Owners consulted by the Review were generally satisfied with SANTS's delivery of native title outcomes. Despite diverse views and reported experiences from PBC representatives, a majority of stakeholders were impressed by the progress SANTS achieved for its clients during the Review period, despite the challenges of the COVID-19 pandemic.

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

Four determinations were achieved within the RATSIB area during the Review period, with SANTS representing one of these and assisting the other three

During Review period, SANTS:

- **filed nine native title applications**
- **represented one of the four determinations made:** a litigated native title determination that native title existed in parts of the determination area, which was appealed and overturned after the Review period
- **provided assistance for remaining determinations** by funding private legal representation through brief out arrangements
- **negotiated four ILUAs**, with one resulting in the surrender of native title in return for other benefits.

Table 1 outlines the determination activity that occurred in the SANTS RATSIB area during the Review period, including for those claim groups which SANTS did not represent but for which it provided assistance through brief out arrangements.

Table 1 | Native title determinations during the Review period, 1 July 2019 to 30 June 2022²

Application	PBC	Representative	Date filed	Determination	Judgement
Arabana No 2 – Part 1	Arabana Aboriginal Corporation registered native title body corporate (RNTBC)	Camatta Lempens Pty Ltd	1/03/2013	Consent	Native title exists in parts of the determination area.
Barngarla (Port Augusta Proceeding)	Barngarla Determination Aboriginal Corporation RNTBC	Norman Waterhouse Lawyers	4/04/1996	Consent	Native title exists in parts of the determination area.
Nukunu (Area 2)	Nukunu Wapma Thura (Aboriginal Corporation) RNTBC	Sykes Bidstrup	10/04/1996	Consent	Native title exists in parts of the determination area.
Oodnadatta Common Overlap Proceeding	-	SANTS	12/04/2013	Litigated ³	Native title exists in part of the determination area (in favour of Walka Wani). ⁴

² National Native Title Tribunal Register of Native Title Applications, Registration Decisions and Determinations.

³ This determination, the Oodnadatta Common Overlap Proceeding, was later appealed and overturned. It has been considered as a successful determination during the Review period as the appeal had not yet been heard.

⁴ The Oodnadatta determination was later appealed by the State of South Australia and Arabana applicants. The appeal resulted in the determination of native title in the area to be overturned.

The litigation and dismissal of native title in the Oodnadatta area was significant for SANTS and Traditional Owner groups within the region

The Oodnadatta Common Overlap Proceeding was a significant event for SANTS during the Review period. It related to overlapping native title applications brought by the Arabana People and the Walka Wani People. SANTS represented the Walka Wani People for whom SANTS had historically provided legal advice over nearly two decades. Concurrently, SANTS assisted the Arabana People by providing litigation funding to the external lawyers who had previously represented the Arabana people. Mediation was sought but was unsuccessful. The matter was litigated in the Federal Court.

The Federal Court considered evidence from claimants, linguists, anthropologists and historians about the Arabana and Walka Wani's connection to Oodnadatta and its surrounds. In a judgment of 21 December 2021, the Court found that the Arabana people previously held native title rights and interests in the area in accordance with their traditional laws and customs. However, the Court found that the Arabana had not continued their connection. As a result, their application was dismissed. The Walka Wani were found to have maintained their connection and were determined to be the native title holders.

In April 2022 the Arabana People and the State of South Australia appealed against the above findings. Following the Review period the Full Court (by judgement of 14 August 2023) upheld the dismissal of the Arabana application while allowing the appeal against the Walka Wani determination. As a result, no native title was granted to either claim group. During consultations for the Review in late 2023, native title recognition remained contested in the Oodnadatta area. Stakeholders consulted during this Review described this outcome as "disappointing" and "exhausting". The outcome was described as having had a profound and detrimental impact on client groups and their respective communities. Some stakeholders suggested that the negative effects of the decision will have an enduring impact, resulting in an indefinite delay to resolution of native title in the Oodnadatta area.

There was significant determination activity immediately following the Review period, which built on native title activities conducted by SANTS during the Review period

SANTS staff noted that there were often "peaks and troughs" of native title activity due to the nature of the claims and the ambitious Federal Court orders at the time. Although COVID-19 caused disruptions to business-as-usual processes, the Review period was a productive time and resulted in a concentration of determination activity immediately following the Review period. SANTS was the representative in five of the six determinations finalised since the Review period and funded private legal representation for the remaining claim under a brief out arrangement, with all claims achieved by consent.

Table 2 | Summary of determined native title claims soon after the Review period (at 31 October 2023)

Recent determinations	Status update	Determination date
Wirangu People – Part A	SANTS as the representative. Native title achieved by consent.	8/12/2022
Wirangu No 2 (Part B), Wirangu No 3 (Part B), Wirangu Sea Claim #2 and Nauo #3	SANTS as the representative. Native title achieved by consent.	10/02/2023
Narungga Nation Native Title Claim	SANTS as the representative. Native title achieved by consent.	14/03/2023
Nauo People	SANTS as the representative. Native title achieved by consent.	15/05/2023

Recent determinations	Status update	Determination date
Ngadjuri	SANTS as the representative. Native title achieved by consent.	13/07/2023
Wilyakali	Camatta Lempensas as the representative. Native title achieved by consent.	28/08/2023

Responding to the scale and timing of Federal Court program orders required significant effort from SANTS throughout the Review period

In consultations for the Review, SANTS reported that it had enjoyed a constructive relationship with the Federal Court throughout the Review period. This view is supported by the South Australian Government and Federal Court stakeholders who were consulted for the Review. The Review did not identify any concerns from the Federal Court about SANTS's ability to support native title outcomes and interact with the Federal Court.

After Justice White was appointed the docket judge for South Australian native title in 2013, the Federal Court shifted towards proactive case management, issuing programming orders for those applications on which little progress had been made. The Federal Court's new focus has had a significant impact on the case load management of both SANTS and the state. Previously, the parties had worked more collaboratively with the Court to prioritise and schedule the sequence of matters and progress them at a manageable pace. Subsequently, the Review understands that the Federal Court sets priorities with a greater emphasis on individual matters rather than the native title docket as a whole.

SANTS prioritised its work during the Review period based on Federal Court-imposed timelines. This meant that all cases during the Review period were listed for trial and would go through a litigation process unless they could be resolved before the listed trial date. This produced a significant amount of work for SANTS. At one point SANTS was working on three trials at once.

Some SANTS staff reported that the way work was allocated across claims could be improved to increase the effectiveness of teams. The Review heard feedback that there was low transparency around decision-making for resource allocation to different claims, particularly in the legal team. Some staff suggested that SANTS could be doing more to collaboratively assess the complexity and priority of matters to determine the required staffing resource, and to identify the most helpful resources, precedents and information for those working on the matter. SANTS staff believed that this would help to increase organisational efficiency and effectiveness.

SANTS used external legal counsel in a few claims

During the Review period, most legal claims work was delivered through SANTS's in-house lawyers. External legal counsel was used for a minority of claims where this was both the claim group's preference and considered by SANTS as optimal due to its likely effectiveness. SANTS briefed counsel to assist with the Oodnadatta Common Overlap Proceeding, the Far West Coast Sea Claim trial (determination not made during the Review period) and the Yandruwandha Yawarrawarrka 2 trial which crossed state boundaries with Queensland and New South Wales.

SANTS had effective processes to manage circumstances where there were multiple parties requiring representation

The main reason for SANTS providing financial assistance to external legal firms was where a conflict of interest was involved (that is, when there were competing claim groups). SANTS also used brief out arrangements in some cases when a claim group had historical relationships with the external legal

practitioner and it was sensible for that existing relationship to continue. Funding provided to respondent applications is discussed under TOR 2.

SANTS funded the filing of one compensation claim during the Review period

One compensation claim was funded by SANTS during the Review period. This claim was for the Antakirinja Matu-Yankunytjatjara Aboriginal Corporation RNTBC, which related to the Central South Australia Coober Pedy area. It was filed in May 2022. The small number of claims reflects the approach taken in South Australia of settling compensation claims with the state government alongside consent determinations and accompanying ILUAs.

Satisfaction of Traditional Owners with SANTS's delivery of native title outcomes was broadly positive, with some areas for improvement identified

Generally, Traditional Owners consulted as part of the Review were satisfied with SANTS's delivery of native title outcomes during the Review period. Most stakeholders were impressed by the progress SANTS made for its clients, noting that most of South Australia is now determined.

"Without SANTS in South Australia – no one would have been able to get native title. I think they go above and beyond in their duties."

PBC representative

The Review received feedback that clients were particularly grateful for SANTS's ability to work diligently with a wide range of different stakeholders to navigate hurdles and ultimately facilitate native title outcomes. Many clients reflected on the high level of trust that they had in SANTS and acknowledged the strong relationships they had with SANTS staff.

The Review was made aware of some areas identified as requiring improvement, including some circumstances where SANTS's communication could be improved, or processes or outcomes were not ideal for some individuals. While no systemic issues surfaced during the Review period, some stakeholders underlined the need for greater transparency around SANTS's internal conflict of interest processes and more responsive communication regarding the process of funding distribution and application. These issues are discussed in further detail under TOR 3.

Anthropological research

The anthropological team was embedded within the legal services team, requiring proactive steps to maintain independence of research

Both legal and anthropological staff reported to the SANTS PLO. SANTS staff consulted for the Review reported that the collaborative approach was a strength of the SANTS organisational model and that the legal and anthropological staff generally worked well together.

The Review notes the importance of anthropology research remaining objective and independent, which could potentially be threatened by this close collaboration. SANTS staff consulted as part of the Review were confident that anthropology remained independent. Maintaining this independence relied in part on the individuals, as well as supporting systems and processes.

Consultant anthropologists were only used in a few instances and mostly to provide expert opinion to the Federal Court or to provide mentorship to SANTS staff. Having access to in-house legal and anthropological services was cost-effective.

The Review received feedback that clients were mostly happy with SANTS's anthropological research and that SANTS anthropological staff built trusted relationships with the community. One client particularly noted that SANTS anthropological staff were very knowledgeable about Country and respectful of the community's history and understanding. The SANTS anthropological staff reported being especially skilled

in mediation between Traditional Owner family groups given the high likelihood of disputes. The priority for research was stipulated by the Federal Court orders, however, the SANTS anthropological staff worked with the deep knowledge of Traditional Owner groups to ensure that the needs of a community were considered throughout the research process. For example, where an elder was unwell, SANTS anthropologists reported that they prioritised speaking with them to ensure their knowledge and experience was retained through the research.

Several Traditional Owner groups and other stakeholders noted a perceived tension between SANTS playing dual roles as both a facilitator of funding (through brief out arrangements) and a provider of anthropological research when it represented competing or adjacent legal claims. This was due to the perception that SANTS was holding material for the party it was representing as well as for parties whose representation was briefed out to external lawyers.

There was also a perception that, given SANTS legal and anthropological staff were situated within a common team, applicants who used SANTS's services had an advantage due to their access to SANTS's institutional knowledge and support. Some stakeholders believed that this contributed to conflicts between Traditional Owner groups and that these functions should be separated. The Review was not made aware of any evidence that suggested the organisational structure had compromised the independence of anthropology or the ability of external legal firms to progress claims.

Future Acts and ILUAs

SANTS was responsive to ILUAs and economic development activity within the RATSIB area

SANTS recognised that ILUAs provide a valuable tool to resolve native title and Future Act matters. ILUAs delivered benefits to clients and procedural rights afforded in the Future Act provisions of the NTA could be converted into benefits for their clients.

Very few stakeholders consulted for the Review had direct visibility of SANTS's Future Act service provision, partly because of the comparatively low levels of Future Act activity. Those who could comment expressed views that SANTS performed its Future Act functions to a high professional standard.

During the Review period, SANTS successfully negotiated four ILUAs, one of which resulted in surrender/extinguishment of native title in return for other benefits. This is summarised in Table 3.

Table 3 | Overview of the ILUAs registered during the Review period

ILUA name	ILUA type	Subject matter	Date registered
Nukunu Area 1 Settlement ILUA	Area agreement	Tenure resolution, mining, petroleum/gas	12/03/2022
Port Spencer ILUA	Area agreement	Commercial, development, industrial, infrastructure	11/09/2020
Cultana Industrial Estate Crown Lands Transfer (No.1)	Body Corporate	Extinguishment, commercial	22/01/2021
Barngarla Determination ILUA (No. 2)	Area agreement	Native title settlement, tenure resolution	11/02/2022

Some stakeholders consulted as part of the Review suggested that SANTS could be more effective in advocating on behalf of native title holders throughout the ILUA process. These stakeholders were of the

view that more assertive negotiation by commercial legal representatives could result in better agreement terms for clients. There was no evidence to suggest that this perception was correct or that clients were dissatisfied with the ILUA terms.

Future Act numbers were low and largely subject to an alternative regime

Future Act numbers were relatively low across the area, due to the comparatively low levels of relevant activity. Staff estimated that approximately 100 to 200 FANs are made within the SANTS RATSIB area each year and that Future Act activity levels had remained comparable with the previous Review period.

South Australia is the only jurisdiction to have established an alternative Future Act regime, pursuant to section 43 of the NTA⁵. This has meant that in most cases Future Acts were dealt with as part of the settlement ILUA under which FANs were sent exclusively to PBCs. SANTS staff reported that they received FANs directly addressed to SANTS and some FANs which were sent to PBCs. Where SANTS was the legal representative, SANTS sought instructions from the PBC/Applicant and responded/actioned accordingly. Where SANTS was not the legal representative, SANTS ensured that the native title group (or legal representative) also received the FAN by forwarding it on. If the FAN related to a function of SANTS, staff responded/actioned accordingly. The FANs were then filed in a Future Act register using SANTS records management system.

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

As outlined in Table 4, there were four determinations of native title during the Review period.

Table 4 | Number of applications resulting in determination of native title or ILUA settlement with SANTS involvement during the Review period

Total number of native title applications filed	Number of determinations of native title	ILUA settlements
9	4 ⁶	4
93	34	113

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

At the end of the Review period, SANTS was the legal representative on 15 active native title claims

At the end of the Review period, SANTS was the legal representative listed on 15 of the 19 active claims in its RATSIB region⁷ and provided assistance to the remaining four claims under brief out arrangements. A summary of SANTS active claims at the time of the Review is provided in Table 5.

⁵ See section 9B of the *Mining Act 1971* (SA), the *Land Acquisition Act 1969* (SA) and the *Opal Mining Act 1995* (SA).

⁶ Note: one of the determinations during the Review period was the Oodnadatta Common Overlap Proceeding, which was later appealed against. This determination has been included in the calculations until June 2022 because at that point it had not been overturned.

⁷ Note: data was provided by the NIAA and SANTS.

Table 5 | Summary of active South Australian active native title claims at 30 June 2022

Application name	Representative	Date filed
Antakirinja Matu-Yankunytjatjara	Tim Wooley	22/04/2022
Arbana #2	Camatta Lempens	01/03/2013
Far West Coast Sea Claim	SANTS	09/03/2016
First Nations of the Southeast #1	SANTS	04/08/2017
First Nations of the South East # 2	SANTS	07/07/2017
First Peoples of the River Murray and Mallee Region #2	SANTS	20/08/2019
Narungga Nation	SANTS	25/03/2013
Nauo	SANTS	17/11/1997
Nauo #2	SANTS	21/06/2016
Nauo #3	SANTS	16/03/2018
Nauo #4	SANTS	15/11/2021
Ngarrindjeri and Others Native Title Claim	Chalk and Behrendt	06/07/1998
Ngadjuri Nation #2	SANTS	21/11/2011
Walka Wani Oodnadatta #2	SANTS	14/09/2018
Wilyakali	Camatta Lempens	08/02/2012
Wirangu #3	SANTS	28/10/2019
Wirangu No 2 Native Title Claim	SANTS	28/08/1997
Wirangu Sea Claim #2	SANTS	18/05/2021
Yandruwandha Yawarrawarrka People claim in south-west Queensland ⁸	SANTS	28/04/2021

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

Most of the claimable land within the SANTS RATSIB area is subject to a registered claim or determination

The SANTS RATSIB area covers about 984,377 square kilometres – the whole of South Australia. The total land area over which it has been determined that native title exists is about 681,970 square kilometres.⁹

⁸ SANTS worked with Queensland South Native Title Services to provide assistance to the Yandruwandha Yawarrawarrka claim during the Review period. The trial commenced in April 2022.

⁹ Total area recognised under native title may include areas that overlap other states or territories.

This is about 69 per cent of the SANTS RATSIB area. About 122,769 square kilometres is under current active application (about 12 per cent of the total RATSIB area). Therefore, approximately 19 per cent of the claimable land within the SANTS RATSIB area is not subject to an application or determination.

SANTS notes that this calculation does not include small areas around the state where claims have been dismissed, some of which are also covered by an ILUA. It is likely that the remaining claimable land is therefore less than the 19 per cent.

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

SANTS's average claim resolution time improved but was still greater than Federal Court benchmarks

The age of active claims on 30 June 2022 is shown in Table 6. The average age of an active claim on 30 June 2022 was 15.8 years. For the one determination that took place during the Review period in which SANTS represented the applicants, the time between filing the application and the determination was 8.7 years.

The Federal Court has set a claim resolution target of five years for all applications lodged since 2011. For claims lodged before 2011, the claim resolution target was ten years.¹⁰ SANTS's average claim resolution times exceeded these targets, suggesting that SANTS's determinations were taking longer to process than the Federal Court would prefer. For claims lodged before 2011, the average SANTS claim resolution time was 24 years. For claims submitted after 2011, the average SANTS claim duration was six years.

Table 6 | Age of active native title claims at 30 June 2022 where SANTS is listed as the representative¹¹

Less than 1 year	1 to 3 years	3 to 5 years	5 to 8 years	More than 8 years
1	2	4	2	6

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

SANTS and the South Australian Government continued to apply a localised approach to applications for native title compensation

SANTS had a localised approach to negotiating ILUAs with the South Australian Government to address compensation at the time of a consent determination. Consent determinations in South Australia are routinely accompanied by a settlement ILUA between the native title holders and the state. The settlement ILUAs include additional benefits for the clients that contribute to Aboriginal advancement. Such benefits could include protected areas for the benefit of Aboriginal people, joint management of the conservation estate, Aboriginal heritage protocols, modest financial contributions and shared access arrangements.

In exchange for these benefits, the ILUAs settle all potential compensation claims the native title holders may have against the state. Stakeholders consulted as part of the Review stated that a key benefit of this approach was that the native title holders obtained access to financial compensation sooner than they

¹⁰ Collier, B. Prioritisation of Native Title Cases in the Federal Court of Australia. 2011. Accessed 5 September 2023. <https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-collier/Collier-J-20110527.rtf>

¹¹ National Native Title Tribunal. Native Title Applications, Registration Decisions and Determinations. 2023. Accessed June 2023. <http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/default.aspx>

would have otherwise and that they did not have to go back to litigation for the compensation. SANTS viewed this concurrent process of claim and compensation as effective and efficient.

5.1.2 TOR 1: External factors

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

State government policy and legislation

The South Australian Government's position did not significantly impact SANTS's ability to achieve native title outcomes. Stakeholders consulted for this Review reported that the South Australian Government adopted a position that it would consider all options to resolve native title by agreement (either through a consent determination or otherwise) before resorting to litigation.

Complexity of remaining claims

Much of the SANTS RATSIB area had a determination of native title or is Aboriginal freehold. As a general dividing line, almost all land north of Port Augusta was in these categories. The areas which had not had a determination of native title or were not under application generally had heavier settlement impacts, resulting in more fragmented evidence, complex layers of historical tenure that extinguish large areas and fractured relationships within the community. This had the potential to create delays, increase costs and reduce the quality of outcomes.

The increased complexity of determination applications was an increasing influence on SANTS's performance during the Review period. Staff who have worked at SANTS for a long time felt/considered that the applications determined during this Review period were more complex than in the previous Review period.

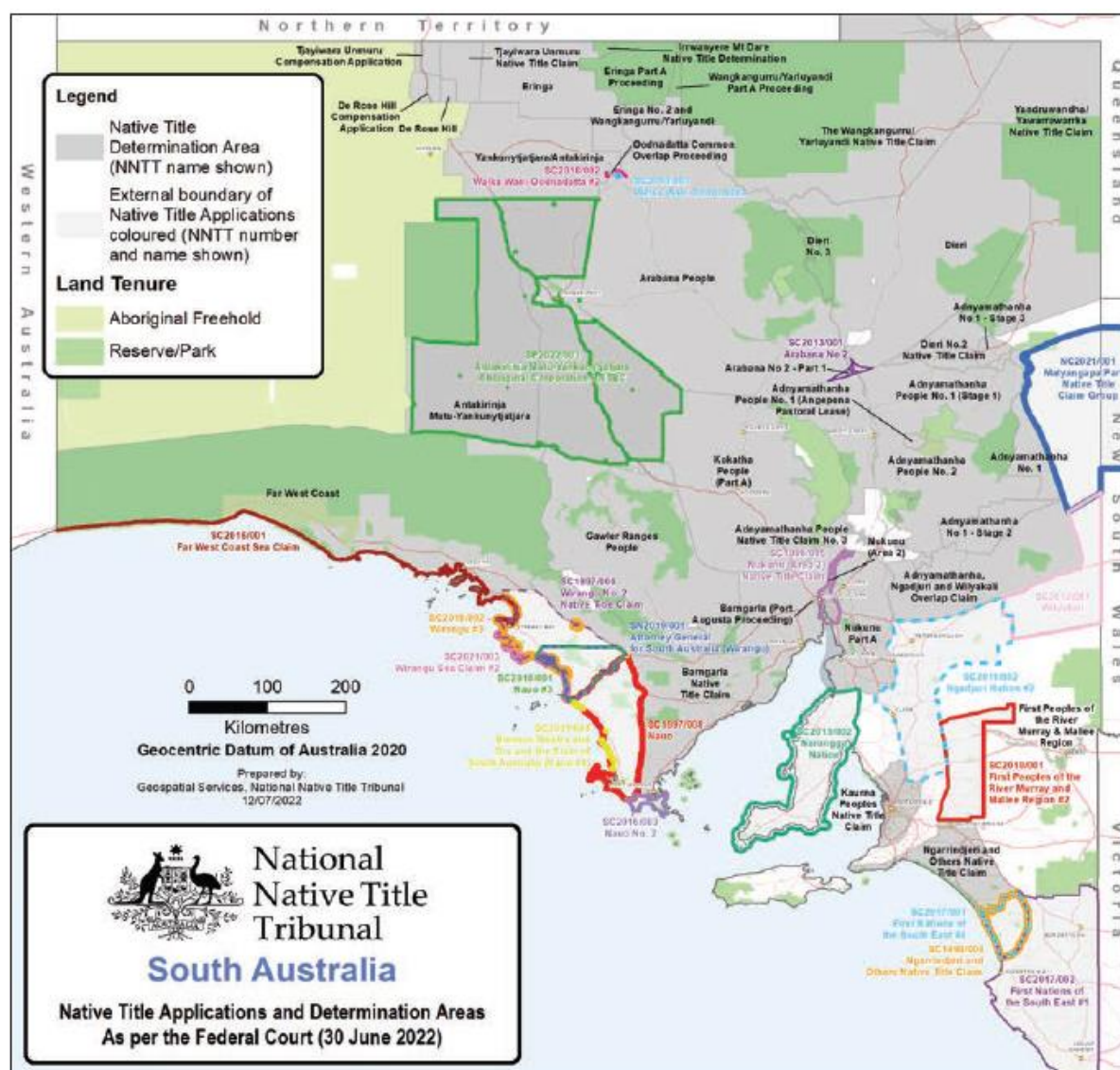
History of previous claims

There are several areas within South Australia that have a fraught native title application history. For example, the Lake Torrens area was subject to major disputes. While the history of such areas would impact the ability to achieve native title outcomes, the Review did not find evidence that this impact influenced the approach in other areas of the state.

Complexity of land use and tenure

A significant part of South Australia is covered by the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA), *Maralinga Tjarutja Land Rights Act 1984* (SA) and the *Aboriginal Lands Trust Act 2013* (SA). A large proportion of the land within the SANTS RATSIB is recognised under these Acts. Consultations with SANTS staff indicated that these three pieces of legislation have had little impact on day-to-day operations in relation to native title. These Acts provide for land titles to be held by Aboriginal people in large parts of the state. These forms of title provide a much stronger set of rights than native title rights. Accordingly, there was no demand for native title services in these areas. Figure 1 provides an overview of the land tenure and use in the SANTS RATSIB area as of June 2022.

Figure 1 | Overview of native title claimant applications and determination areas as at June 2022¹²



COVID-19

SANTS's performance during the Review period was impacted by COVID-19; however, the organisation made efforts to adapt to this challenge. A COVID-19 response team and safety plan were established. SANTS implemented several measures to keep staff and community safe, including closing the office, working from home for all staff, no face-to-face meetings, no travel and a renewed reliance on technology to keep in touch with staff and clients. While the COVID-19 pandemic created somewhat uncertain conditions for SANTS, overall, it created an

"The advent of the COVID-19 pandemic in the latter part of the year has had a significant impact on our operations... Nevertheless, it was still a very productive period with claims continuing to be progressed, digitisation of records, catching up on filing and having some respite from the frenetic pace of Court ordered activity."

Keith Thomas (CEO), 2020-21 Annual Report

¹² Map sourced from the National Native Title Tribunal, September 2023.

opportunity for the organisation to work differently in a technologically supported and COVID-safe manner.

COVID-19 caused a slowdown in the trial process and mediations for all SANTS cases due to border restrictions and rules against face-to-face meetings imposed by the South Australian Government. Two native title claims (the Narungga and the Wirangu) set for consent determinations were delayed during FY2020-21 due to COVID-19 disruptions and the inability to safely hold on-Country events. Part of the Walka Wani Oodnadatta No.1 and No.2 and Arabana No.2 overlapping claim trails were also rescheduled due to COVID-19.

Amount of funding

SANTS reported that escalating operational costs had not been adequately addressed through an increase in its core funding. The Annual Report for FY2021-22 underscored that "salaries, fixed costs and service delivery expenses have reached a point where SANTS can no longer cover all of its operational costs." While additional funding for litigation supported relevant claims, SANTS remained concerned about the strain on core operational expenditure.

The Review found that on a by-area basis, SANTS received on average \$12.57 per square kilometre¹³ of funding from the NIAA to the area of the RATSIB that is land and water.

5.1.3 TOR 1: Recommendations

RECOMMENDATION

1

Consider a more structured approach to the allocation of legal work across claims to increase the effectiveness of teams.

¹³ The SANTS RATSIB area covers all South Australia, approximately 984,377 square kilometres and received \$12,373,190 NIAA funding in FY2021-22.

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

SANTS had a defined assessment and prioritisation process and policy that outlined several key criteria for requests for assistance. It had remained unchanged since 2013. The policy was not a significant deciding factor in the assessment and prioritisation of claims through the Review period, particularly given the low volume of remaining claims. SANTS advised that all active claims were funded. Prioritisation of resources was primarily based on Federal Court-imposed timelines.

The Review received positive and negative feedback from Traditional Owner groups regarding assessment and prioritisation. Some Traditional Owners were positive about the timeliness and outcomes of SANTS response to applications for assistance. On the other hand, some Traditional Owners were not satisfied with the response they received from SANTS regarding requests for funding to be a respondent to a claim. In response, SANTS noted that funding respondents to claims that NIAA had funded SANTS to prosecute would not comply with its obligations under the NTA nor its funding guidelines.

The policy document was not externally published on the SANTS website or distributed, contributing to concerns about transparency and limited understanding among some clients regarding key elements of the policy.

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

SANTS had an assessment and prioritisation policy, but it was not needed throughout the Review period

SANTS had assessment and prioritisation policies as set out in its Facilitation and Assistance Policy. This policy document was developed over ten years ago and had not been updated since then. It outlined SANTS's "Merit Assessment Criteria" (see Table 7), which were developed to assess requests for assistance and ultimately decide whether applicants would receive assistance. It outlined the circumstances under which SANTS might agree to fund external service providers and it outlined applicants' rights to seek a review when assistance was refused, through SANTS's Internal Review Policy.

Requests for assistance during the Review period were submitted to the SANTS Native Title Briefing Committee (NTBC) for consideration. The NTBC comprised the PLO, the Senior Legal Officer(s) and other key SANTS representatives, including the Corporate and Community Development Manager, and the Chief Finance and Operation Officer.

Table 7 | Merit Assessment Criteria – SANTS Facilitation and Assistance Policy

Criterion	Description
Functional and capable claim group	a) The native title claim group has a clear decision-making process and has demonstrated its ability to make and implement decisions in accordance with this process. b) The native title claim group is generally functional and has the ability to resolve disputes internally; and c) SANTS is satisfied that the Applicants have the clear authority of the native title claim group.
No overlaps or disputes with neighbouring groups	d) The nature and extent of overlaps with other native title claim groups, including actual claim overlaps and claims which cover another group's Country; and e) Where overlaps are agreed between native title claim groups, whether clear principles of accommodation and interaction have been identified by the groups.
Legal merit – evidence of connection, and traditional laws and customs	f) Evidence of an identifiable group that recognises and observes traditional laws and customs in relation to the claimed land and waters. g) Evidence of continuing connection to the claimed lands and waters in terms of the native title claim group's traditional laws and customs. h) The existence of sites of cultural significance within the claim area; and i) The strength and credibility of the available evidence to support (a) – (c).
Extinguishment and tenure	j) The extent to which native title is likely to have been extinguished in the claim area.
Additional considerations	k) The resources SANTS has already provided to the claim group or other groups in the region and the outcomes achieved. l) The level of resources required to obtain the identified outcomes. m) Existing means available to the group, for example money or income received from mining or other negotiations. n) Whether the claim deals with important legal principles and the possibility of a favourable legal precedent being set; and o) The flow-on effects for other groups in the region or the state.

SANTS's use of its Facilitation and Assistance Policy during the Review period was limited. SANTS did not reject any funding applications for native title claims in the Review period. Staff reported that while SANTS had historically relied more heavily on the criteria, the criteria had become used less over time and all claims were funded during the Review period. Staff reported that SANTS had relied more on corporate knowledge to assess applications, particularly in recent years, but used the Merit Assessment Criteria for large funding applications. As discussed under TOR 1, the prioritisation of legal work was based on Federal Court timeframes.

SANTS staff reported their view that refreshing the Facilitation and Assistance Policy would not be valuable, as the existing policy was still broadly relevant. In terms of the implementation of the Facilitation and Assistance Policy, SANTS staff reflected that there was likely little need for the policy given the extent of the RATSIB area already determined and the strong pipeline of applications already filed.

The SANTS Facilitation and Assistance Policy was not externally published and was not available on SANTS's website during the Review period. SANTS had been proactive in approaching Traditional Owner groups in the undetermined areas to see if they wished to apply for a native title determination.

Client and potential client awareness of the process

Clients were unaware of any formal prioritisation or assessment process

During the Review period the Facilitation and Assistance Policy was not published online and this inhibited transparency around the funding criteria unless potential clients engaged with SANTS. SANTS noted that the demand for this information was not very high, given that all claims were funded during the Review period. The high levels of native title determinations already achieved across the state meant that demand had slowed.

Some clients were dissatisfied with the process for seeking funding for individual respondents to claims

While all applicant groups during the Review period received assistance or funding for their claim, some individual respondents had their application for funding refused. The Review received feedback from Traditional Owners that the process to receive funding from SANTS as a respondent to claims was not clear and that there was not adequate guidance around the process. Lack of transparency including hard to find application forms online and no explanation around the different avenues for funding on the SANTS website was noted as a concern by one Traditional Owner group. The unavailability of published guidelines was of concern to some Traditional Owners, contributing to a misperception that SANTS operated as a “black box” around funding decisions.

In response, SANTS advised that from its perspective funding people to become respondents to oppose the claims that NIAA has funded SANTS to prosecute would not comply with SANTS’s obligations under the NTA nor its funding guidelines. This was particularly so when Traditional Owners applied for funding to try to stop a consent determination as it was nearing finalisation (and in some cases where they were already members of the claim group). SANTS noted that its advice that no funding would be made available in those circumstances was unlikely to be received well. SANTS further noted that the applicants for funding were always made aware of their rights for reviews. No successful reviews were made during the Review period (see TOR 3).

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

Traditional Owners were mostly satisfied with the assessment and prioritisation process

The Review did not receive extensive feedback from Traditional Owners around the assessment and prioritisation process, as many Traditional Owners consulted had not been involved in the early stages of the claim process. Some Traditional Owners reported that they saw no issue with the process.

One Traditional Owner group was not satisfied with the response they received from SANTS to requests for funding to be a respondent to an application. They felt there was a lack of transparency around the decision-making process, lack of timeliness and unsatisfactory reasons from SANTS as to why funding was not made available.

5.2.2 TOR 2: External factors

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

Number of claims relative to NTRB-SP size and resourcing

During the Review period, SANTS represented a total of 22 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, SANTS received on average \$1,244,904 per claim. As shown in Table 8, the funding for SANTS’s native title activities during the Review period was mostly consistent and did not significantly impact its ability to achieve native title claims.

Table 8 | Native title income received from NIAA during the Review period

Financial year	NIAA funding for application activity ¹⁴
2019-20	\$8,976,250
2020-21	\$7,123,450
2021-22	\$11,288,190
Total	\$27,387,890

5.2.3 TOR 2: Recommendations

RECOMMENDATION	2
Make the Facilitation and Assistance Policy available online.	
RECOMMENDATION	3
Ensure that guidelines for Traditional Owner requests for funding to respond to claims are accessible and provide clear and timely justifications for decisions.	

¹⁴ Application activity funding includes the base agreement, mid-year funding and additional litigation funding received during the Review period. The total funding does not include funds carried over after the Review period.

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

Stakeholders consulted as part of the Review reported that SANTS generally communicated well with them during the Review period. SANTS was pro-active in its communication: it produced a monthly e-newsletter that was sent to native title groups and stakeholders; a quarterly newspaper called *Aboriginal Way* distributed to 10,000 subscribers locally and nationally; and a weekly radio show and podcast that aired on multiple community stations and featured on Spotify and the SANTS website. These publications served as an effective means of disseminating information to a diverse audience.

SANTS staff were conscientious about working in a culturally appropriate way and SANTS implemented several strategies to develop the cultural competency of staff. Examples of this included cultural awareness training undertaken at least twice per year by the Centre for Cultural Competence Australia and on-Country talks and educational activities with different Traditional Owner groups. Development of an integrated, respectful and consistent approach to repatriation of cultural materials was commenced and is ongoing.

SANTS improved the accessibility of its complaints process and its internal review process by publishing these policies online. It did not receive any formal complaints and did not receive any requests for internal review during the Review period.

While the organisation occasionally received ad hoc, informal feedback, it did not systematically collect structured feedback from the community or clients to assess its performance. There is an opportunity to collect broader feedback from its clients regarding its performance as a way of continually improving performance.

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.

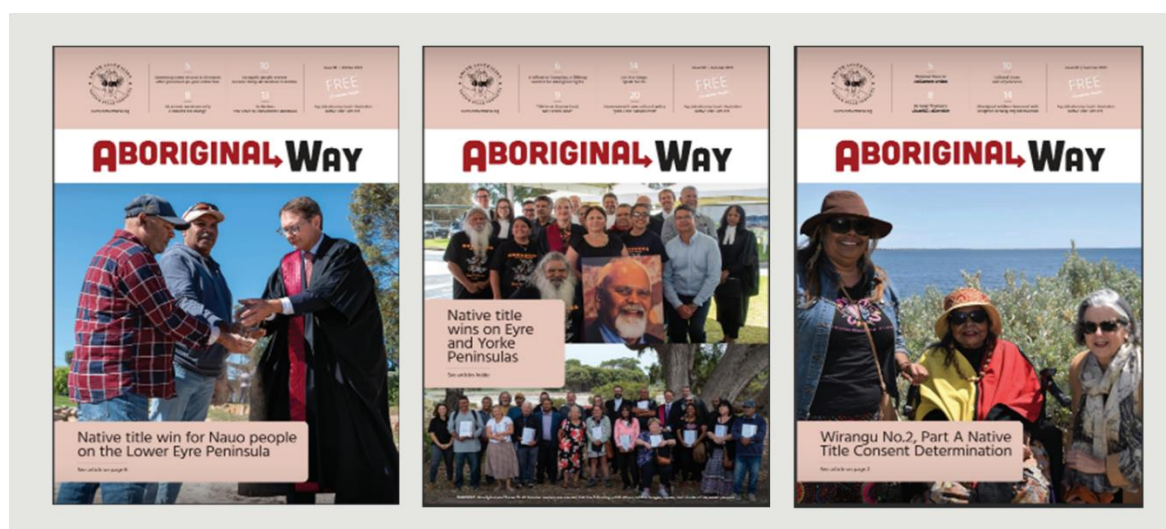
Respectful and transparent engagement

Stakeholders consulted as part of the Review reported that SANTS broadly communicated well with stakeholders

During the Review period, SANTS was creative in engaging with native title holders and Traditional Owner groups in a respectful and transparent way. SANTS produced a newspaper, *Aboriginal Way*, which was circulated quarterly to an audience of nearly 10,000 people locally and nationally. SANTS helped to produce a weekly radio show and podcast that aired on community radio stations and streaming services.

These publications were an effective way of reaching a diverse audience, engaging with those involved in native title matters across the state, sharing success stories and raising the profile of SANTS generally in the community. For example, the *Aboriginal Way* mailing list included individual subscribers, Aboriginal organisations, government entities, libraries, universities, TAFE SA, government schools and preschools, childcare centres and small businesses. SANTS staff reported that *Aboriginal Way* was a positive way of communicating with its key stakeholders across South Australia and enhancing transparency around its operations.

Figure 2 | Recent SANTS Aboriginal Way publications



Culturally appropriate engagement

SANTS was conscientious about working in a culturally appropriate way

There was a common consensus amongst staff that SANTS behaved in a culturally appropriate and safe way both with its employees and with Traditional Owners. Staff were alert to the risks of retraumatizing clients (for example, by having discussions about past events, loss of lives and other impacts of colonisation), and they were conscious of this in their approach to working with clients through the determination process. SANTS used interpreters as required. Traditional Owners and PBCs consulted as part of the Review reported that SANTS conducted itself in a respectful and culturally appropriate way. No examples of culturally unsafe engagement by SANTS were reported during this Review.

SANTS implemented several strategies to develop the cultural competency of staff

During the Review period, SANTS made efforts to improve methods of engagement, identifying training opportunities and educating staff on a small number of occasions where necessary to maintain a positive and respectful relationship with their clients and potential clients. All staff underwent cultural awareness training through the Centre for Cultural Competence Australia and there were regular cultural activities that employees could participate in. For example, SANTS provided cultural awareness training to staff at least twice per year and organised on-Country talks and educational activities with Traditional Owner groups. SANTS had a policy on cross-cultural awareness which further reinforced the commitment to promoting a culturally safe environment.

Complaints

SANTS improved the accessibility of its complaint process but could do more to receive feedback from the community

Since the previous Review, SANTS published its complaints policy on its website. This improved the accessibility and transparency of the complaints process with current and prospective clients. When asked by the Review, stakeholders external to SANTS were aware of the process required to make a complaint and knew who to contact internal to the organisation to provide feedback.

The policy indicated that people dissatisfied with SANTS services had the right to make a complaint and that their complaints would be handled in a fair, confidential and responsive way.

SANTS did not have any informal mechanisms for asking for feedback from its clients either during or after determinations, or for potential clients seeking assistance from SANTS. Mechanisms for seeking feedback in addition to the formal complaints process would help support long term relationship management. This will help to facilitate a culture of continuous improvement across the organisation and will help to support relationship building with applicants and native title holders.

Internal review

SANTS did not receive any requests for internal reviews during the Review period

SANTS established a policy and process for internal review, which was used prior to the Review period. Following a recommendation from the previous Review that the Internal Review document should be made publicly available, SANTS published its Internal Review policy brochure on its website (see Figure 3). The brochure includes an overview of the SANTS review process, key information on an internal review and guidance for circumstances where a decision can be appealed.

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

Figure 3 | SANTS Internal Review policy



Use of cultural materials

The Review did not hear any complaints from Traditional Owners about SANTS's approach to obtaining, using and retaining cultural materials in support of claims. SANTS reported that it had started to develop a policy to return cultural materials (see TOR 6), however this remained ongoing at the time of the Review.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

5.3.3 TOR 3: Recommendations

RECOMMENDATION

4

Develop proactive mechanisms for seeking and managing feedback from clients across all services to support long term relationship management across Traditional Owner groups and native title holders.

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 Review was satisfied that SANTS operated in a cost-effective manner during the Review period despite operating costs (including total activity, corporate and PBC expenditure) continuing to rise. Core operational funding from NIAA was relatively stable and salaries continued to be the main cost driver for SANTS.

As recommended by the previous Review, outsourced roles such as the CFO, payroll and HR were brought back in-house as a cost-savings strategy. The Finance and Business Services function, now led by the Chief Finance and Operations Officer, included previously outsourced functions.

External consultants were used sparingly and were focused on discrete tasks or to support internal capability development. SANTS offered some fee-for-service activities for PBCs which increased revenue during the Review period. The continued growth of these services was an important consideration for SANTS funding viability going forward.

SANTS adopted appropriate processes for working in efficient and cost-effective ways with claim groups. Claim group meetings were generally productive, with total costs of these meetings varying significantly during the Review period. SANTS had documented travel policies to ensure efficient travel assistance for community meetings.

5.4.1 TOR 4: Assessment of performance

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

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

Funding for SANTS increased during the Review period

SANTS delivered native title services through a combination of operational and litigation funding. Operational funding, including mid-year funding, increased across during the Review period, while litigation funding fluctuated in response to litigation demand and was able to be carried over from year to year. SANTS's funding between FY2019-20 to FY2021-22 is shown in Table 9.

Table 9 | SANTS NIAA funding and income FY2019-20 to FY2021-22¹⁵

NIAA funding	FY2019-20	FY2020-21	FY2021-22
Base agreement	\$4,176,250	\$4,676,250	\$4,676,250
Mid-year funding	\$575,000	\$900,000	\$1,659,300
PBC support	\$860,000	\$925,000	\$1,085,000
Additional litigation funding	\$4,225,000	\$1,547,200	\$4,952,640

¹⁵ Funding data provided by the NIAA.

NIAA funding	FY2019-20	FY2020-21	FY2021-22
Total	\$9,836,250	\$8,048,450	\$12,373,190

Total activity, corporate and PBC expenditure increased during the Review period

During the Review period, SANTS's total expenses were highest in FY2019-20. Expenses in FY2020-21 and FY2021-22 remained relatively stable. An increase in communication/IT expenses over the Review period was due to the need to upgrade systems and implement cyber protections as a result of the COVID-19 pandemic.

The large proportion of expenses attributed to litigation was due to an increase in litigation activity occurring during the Review period, with three trials occurring at once during FY2019-20. Staff commented that as the remaining claims are likely to be resolved through consent, litigation expenditure going forward is expected to decrease.

Table 10 | SANTS's native title service expenses during the Review period¹⁶

Expense categories	FY2019-20	FY2020-21	FY2021-22
Capital	\$34,640	\$18,000	\$0
Activity expenditure			
Litigation	\$2,300,863	\$3,762,055	\$2,964,933
Employment costs	\$2,349,361	\$2,520,632	\$2,794,990
External lawyers, anthropologists and other professionals	\$6,766,843	\$329,571	\$686,076
Meeting and travel expenses	\$337,519	\$298,245	\$349,055
Other expenses	\$208,930	\$112,564	\$683,570
Total activity expenditure	\$11,963,516	\$7,023,067	\$7,478,624
Corporate expenditure			
Employment costs	\$1,025,880	\$1,061,959	\$1,177,502
Occupancy costs	\$311,299	\$320,121	\$350,487
Consulting fees	\$285,645	\$57,773	\$163,625
Communication/IT	\$108,036	\$220,966	\$309,835
Training and development	\$76,545	\$77,819	\$162,782
Total corporate expenditure	\$1,807,405	\$1,738,638	\$2,164,231
PBC activities	\$757,041	\$1,049,780	\$1,199,254

¹⁶ Financial data reported in the SANTS Annual Reports FY2019-20 to FY2021-22.

Expense categories	FY2019-20	FY2020-21	FY2021-22
Total	\$14,562,602	\$9,829,485	\$10,842,109

Staff salaries were a significant cost driver for SANTS and increased during the Review period

In each year of the Review period, activity expenditure and corporate employment costs were the greatest expenditure. Together they were approximately 35 per cent of total expenses in FY2021-22. From FY2019-20 to FY2021-22, activity employment costs increased by 18.9 per cent and corporate employment costs increased by 14.7 per cent. Staff reflected that this was due to shifting key corporate functions in-house and the growing difficulty in recruiting and retaining staff with professional native title expertise in a very competitive South Australian and national market.

Cost-saving actions, strategies and/or discussions

SANTS absorbed key corporate roles in-house as a cost saving strategy during the Review period

SANTS demonstrated effective cost management during the Review period. Since the previous Review, outsourced roles such as the CFO, payroll and HR were brought back in-house. This decision was primarily made to save costs and was aligned to the recommendations of the previous Review. The Finance and Business Services function, now led by the Chief Finance and Operations Officer, included previously outsourced functions.

SANTS noted inflation was a key issue which it continues to manage, particularly after COVID-19. Increases in rental agreements, insurance payments and wages placed pressure on costs. Investment in cyber security training and software was seen as an important investment during the Review period even though it was costly. SANTS continues to closely monitor expenses and find ways to minimise costs.

SANTS raised a modest amount of revenue through its recently established fee-for-service offers

SANTS developed a fee-for-service offer to provide financial and HR services to PBCs. These additional services provided an opportunity for SANTS to build closer partnerships with its clients and to support the operational efficiency of the PBCs. Revenue received from these PBC services increased during the Review period. Legal services related to the performance of the NTRB-SP functions continued to be provided for free as core services funded by the NIAA.

While the growth in services was significant, senior staff at SANTS advised that revenue from PBCs on fee-for-service arrangements would not be able to sustain SANTS financially going forward. SANTS has therefore not yet established a cost-effective model for providing fee-for-service activities that is self-sustaining. SANTS is considering the organisational capacity and capability that may be required for continued growth of these services, such as business advisory and consulting capabilities.

Appropriate processes for claim group meetings

Claim group meetings were generally productive and SANTS was proactive in creating efficiencies for meeting costs where possible

Costs for claim group meetings during the Review period ranged between \$298,245 and \$349,055 per year. Claim group meeting activity decreased during COVID-19 due to travel restrictions. As mentioned under TOR 1, the remoteness of many communities involved in claim group meetings meant that transport and logistics were significant cost drivers. SANTS was proactive in creating efficiencies for

meeting costs where possible, including coordinating travel with other services and activities within the region. SANTS staff consulted as part of the Review indicated that these meetings were generally productive and achieved what they were set out to do, which supported effective use of time and resources.

Claim group meetings were planned and coordinated to make best use of available resources and to maximise engagement with Traditional Owner groups. Meetings were generally advertised one month in advance via various media and mail. SANTS worked with the applicant to select a date and location that would be appropriate and feasible for the meeting, before mailing out the advertisement of meeting notice. In addition to those SANTS staff conducting claim activities, other SANTS staff generally attended a meeting to make best use of the event. For example, a legal secretary was present to support the minutes and a research officer might attend to help with documenting the authorisation process.

Annual yearly expenditure per claimant group

Annual expenditure per claimant group varied significantly

Costs per claim group varied depending on several factors including location, size of the group, nature of meetings and form of determination (for example, consent or litigation). During the Review period, costs between claims and for the same claim from year to year were variable. The progress of many claims was impacted by COVID-19.

Travel assistance policies for claim group meetings

SANTS had a documented travel policy to ensure efficient travel assistance for community meetings

During the Review period SANTS had a documented Travel and Community Travel Allowance Policy which:

- outlined employee responsibilities regarding travel, accommodation, fuel, driver payments, carer assistance, meal allowances and travel allowances
- provided guidance on the application and approach to providing community support
- outlined the considerations for providing reasonable support to community.

SANTS staff reported that the policy was generally adhered to and that SANTS was committed to ensuring consistent and cost-effective support was provided to community groups and native title clients.

Appropriate rationale for use of external consultants

External consultants were focused on discrete tasks and supported internal capability development

SANTS's consultant costs were low relative to its overall staff costs. Total employment expenditure in FY2021-22 was \$3,972,492, whereas total expenditure on consultants was only \$849,701 (including both native title activity and corporate consultant expenses). SANTS reported that consultants were usually engaged either when SANTS did not have the resources to undertake specific tasks (usually discrete jobs that were not part of trial processes), or when SANTS's capability was lacking and external expertise was valuable to provide guidance and mentoring for SANTS staff. Consultants were used for a range of different reasons, but the primary use was for research and anthropology services. The Review concluded that this approach was effective for delivering native title outcomes and for supporting the development of internal SANTS capability.

Table 11 | Summary of consultant expenditure across the Review period

Expense categories	FY2019-20	FY2020-21	FY2021-22
Consultants and lawyers (conducting native title related activities)	\$6,766,843	\$329,571	\$686,076
Corporate consulting fees	\$285,645	\$57,773	\$163,625
Total	\$7,052,488	\$387,344	\$849,701

5.4.2 TOR 4: External factors

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

Size of RATSIB area

The size of the SANTS RATSIB area contributed to the cost to deliver native title outcomes. SANTS operates in a RATSIB area of 984,377 square kilometres. Distance was therefore a significant cost driver for the native title functions of SANTS. This impacted the planning of field trips and increased the cost of native title and PBC support activities, particularly when involving multiple claim groups from various communities.

Remoteness of RATSIB area

The remoteness of SANTS RATSIB area contributed to costs to deliver services. The Australian Bureau of Statistics classifies most of the SANTS RATSIB area as "very remote". The Review considers that the region's remoteness likely had a considerable impact on the efficiency with which native title outcomes could be achieved.

Average number of people within a claim group

SANTS reported that the average number of people within a claim group varied greatly. For example, a larger amalgamated group like the Far West Coast group had close to 3,000 native title holders, whereas a small group like Nukunu or Nauo would have only 200 to 300 native title holders.

Interpreters

SANTS used interpreters as required. Predominantly, interpreters were used with Western Desert clients in the north and in the far west coast. Interpreters were paid for their time and were chosen by the client. For trials, SANTS used accredited interpreters who were not from the relevant community.

Interpreters were paid at the SANTS rate of \$380 per day for interpreting and \$280 per day for travel days. Where the interpreting is Court based then the rate was \$500 per day and \$300 per day for travel days. Interpreters may receive mileage equivalent to the Australian Taxation Office kilometre rate for using their own vehicle to provide their service at an approved activity.

5.4.3 TOR 4: Recommendations

RECOMMENDATION

5

Continue to explore opportunities for continued growth in fee-for-service and other revenue.

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

SANTS is governed by a Board of nine directors who are accountable for the direction and overall performance of the company. The Board is a skills-based board and has a suitable mix of skills and experience to undertake its functions.

The Board provides strategic direction only and is not involved in the daily operations of SANTS. There was an appropriate delegation of responsibilities between the Board, Chair, CEO and senior staff during the Review period. SANTS had clear policies for conflicts of interest and robust financial management strategies and systems.

SANTS has benefitted from long tenured leadership; the CEO has been at SANTS for nearly 25 years, while the PLO and the Head of the Community Development Team have also been at SANTS for 15 to 20 years. The Board reflected that this continuity has been highly beneficial to building relationships with the community, accumulating deep institutional knowledge and fostering a stable positive culture within SANTS over time. However, many Board members acknowledged that, given the long-tenured leadership, succession planning was important. The Board reported it had commenced succession planning during the Review period.

Most staff reported that SANTS had a good work culture and was a positive place to work. However, there were mixed views regarding whether SANTS was consistently aligned to its values. While many SANTS staff had positive experiences, several staff reported that they would like to see collaboration within and between some teams strengthened. The institutional knowledge and technical expertise of long-tenured staff was valued; however, the Review heard that there was more scope for long-tenured employees to mentor others. Staff reported some incidents of bullying and poor behaviour during the Review period. The Review understands that this has been subsequently managed by SANTS.

SANTS had sound financial management strategies and systems in place, including frequent reporting to staff, the CEO and the Board, and audited financial statements. A new financial system was implemented in 2020 to improve financial management and reduce the risks of duplicated data entry.

SANTS experienced some turnover during the Review period, particularly in the legal team with high workloads presenting potential psychosocial risks. SANTS remained committed to workforce development, providing ample training opportunities across all functions. However, some employees reported that workforce development was deprioritised during busy periods and training opportunities were limited by stretched operational funding. Staff expressed a desire for more structured coaching and mentoring from senior staff to enhance their professional skills, knowledge and resilience.

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

There was an appropriate delegation of responsibilities between the board, chair, CEO and senior staff during the Review period

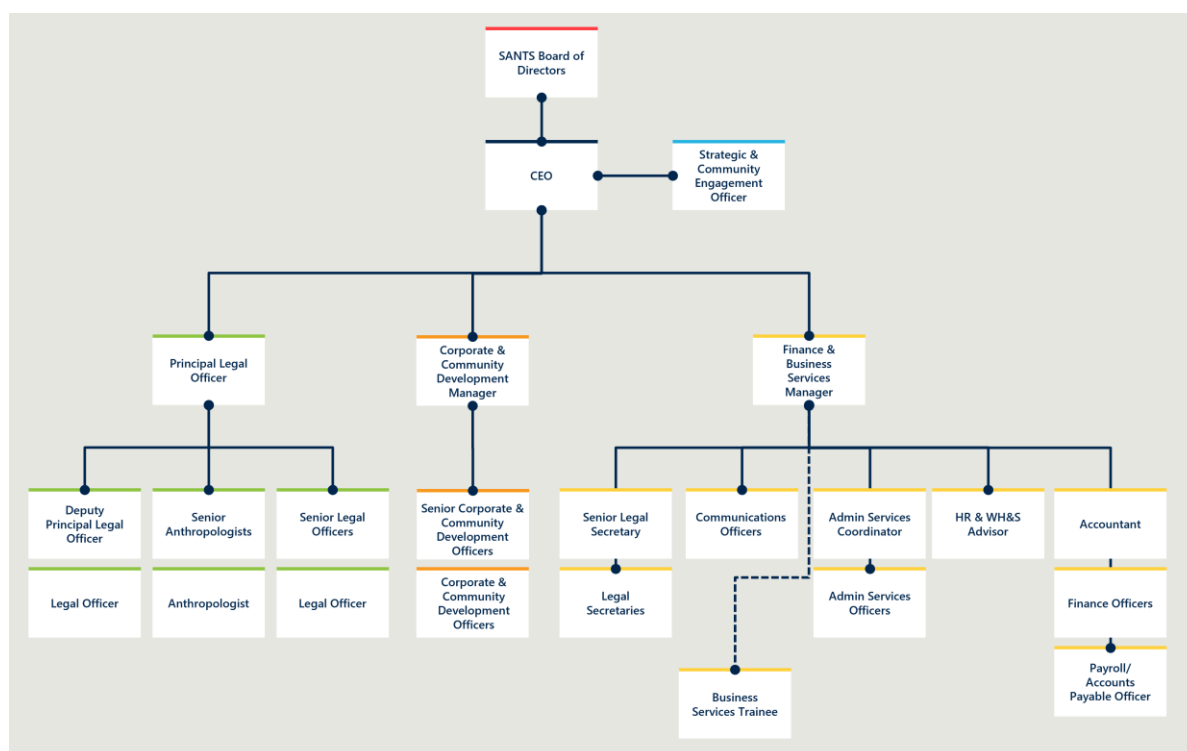
SANTS is a public company limited by guarantee and is governed by a Board of nine directors who are accountable for the strategic direction and overall performance of the company. SANTS had approximately 30 employees during the Review period, which were led by its Executive team. The SANTS Executive team was made up of the CEO, the PLO, the Chief Finance and Operations Officer, and the Manager of Corporate and Community Development.

The PLO function oversaw the legal officers and anthropologists. The corporate and community development function worked closely with PBCs to support them to receive services from SANTS, while the Chief Finance and Operations Officer managed the finance and business services function, which comprises HR, communications, administrative services, legal secretary and finance.

SANTS had an appropriate mix of skills and experience to undertake its functions

SANTS's Constitution outlines the requirements for the Board, including its membership. The Constitution outlines that the Board must comprise a majority of Aboriginal members, a South Australian legal practitioner, an accountant, a South Australian resident who has lengthy experience in public administration, in addition to other members the Board Selection Committee deems fit. The Board has a TOR which outlines the role of the Board more generally and the role of the Board Selection Committee. SANTS had a role description for the CEO during the Review period. Most stakeholders consulted also reported that the Board had a useful diversity of skills to effectively undertake its functions, including PBC, legal, financial, community and organisational leadership experience.

Figure 4 | SANTS organisational chart at 30 June 2022



Board integrity and capability

The Board was actively engaged in the governance of SANTS

During the Review period there were four new appointments to the Board of Directors with seven out of the nine directors identifying as Aboriginal. The Directors were not selected by a broader membership but were chosen by the Board Selection Committee, which comprised two Directors and two senior Aboriginal representatives from external Aboriginal organisations who vet new directors. The Board Selection Committee was appointed by the Board. The Directors were deliberately chosen from different parts of South Australia, which the SANTS Board believed was critical to ensure that the voices of many different communities across South Australia were represented.

Most SANTS staff and Directors consulted believed the SANTS Board was functioning well and provided the right level of governance oversight for the organisation. During the Review period, the SANTS Board met about four times a year and was primarily focused on the strategic direction of the organisation. It was not involved in operational matters. One Director reported being surprised that the Board met so infrequently and believed it would be beneficial to meet more often. Another Director commented that since the Board is voluntary, they sometimes struggled to have time to discuss important issues. However, other Directors reported that to ensure engagement the Board planned out-of-session meetings as required.

Conflicts of interest

SANTS had an appropriate conflict of interest policy

SANTS was required to notify and record incidents of conflict of interest under its funding agreement with the NIAA. SANTS had two conflicts of interest policies: one for general conflicts of interest and another specifically for conflicts of interest for legal representation. The latter clearly defines client conflicts, including where SANTS sought to act for two or more clients in the same related matters and where the clients' interests were adverse.

The Review believes that the policies adequately defined instances of conflicts of interest, the action required to manage conflicts and the consequences of non-compliance for all staff. Some stakeholders consulted as part of the Review, however, were not aware of these policies and how SANTS managed actual or perceived conflicts of interest.

Culture and values

SANTS has benefitted from long tenured leadership

SANTS has benefitted from retaining an experienced Executive team, the majority of who have been at SANTS for a long time. For example, the CEO has been at SANTS for nearly 25 years, while the PLO and the Head of the Community Development Team have been at SANTS for 15 to 20 years. Both staff and the Board reflected that this continuity has been highly beneficial to building relationships with the community, accumulating deep institutional knowledge and fostering a stable, positive culture within the organisation over time.

However, many staff and Board members acknowledged that, given the long-tenured leadership, succession planning was important. The Board reported it had commenced succession planning.

Most staff reported that SANTS had a positive work culture

The SANTS organisational values are: Respectful; Collaborative; Aspirational. Staff reported that SANTS was particularly strong on being respectful, but more work could be done for SANTS to be aspirational and

collaborative. Overall, feedback from most staff indicated that SANTS was a good place to work and had a positive work culture. Strengths included:

- stable leadership which reinforced a strong shared sense of purpose and organisational identity over time
- dedicated staff who were passionate about achieving native title outcomes for clients and progressing self-determination more generally
- a culturally competent and safe workforce that worked respectfully with community and Traditional Owners.

There were reports of potential psychosocial risks that should continue to be managed by SANTS management

Many staff reported that although SANTS had achieved a significant amount since July 2019, the last few years had been challenging. The demanding pace of work set by the Federal Court, the high working hours during the Review period (particularly in the legal and research teams), in addition to COVID-19 disruptions, placed significant strain on the organisation. Staff noted that the Review period was uniquely intense: at one point staff were working on three trials concurrently (including the Oodnadatta overlap matter and the Far West Coast Sea Claim matter).

Several staff expressed their concerns around their levels of stress during the Review period. Other staff members reported that despite workloads somewhat subsiding after the intensive trial period, burnout remained a key potential risk for the organisation. One staff member particularly raised the ongoing psychosocial hazards of working in native title due to the ongoing exposure to the trauma of the native title claimants experiencing cultural and other losses. The HR division reported that SANTS continued to support staff to mitigate psychosocial hazards by offering counselling services, undertaking mental health information sessions and supporting staff to take leave after busy periods.

The Review heard of isolated examples of poor behaviour between some staff, however, the Review understand that this had been subsequently managed by SANTS

A small number of SANTS staff reported experiencing bullying, harassment, aggressive language or poor behaviour from a member of staff whilst employed at SANTS. The Review received feedback that at least one case was satisfactorily resolved, but it was unclear how well other incidents were resolved. A small number of staff also reported deficiencies in how SANTS had handled previous cases of poor behaviour. Some stressed the importance of SANTS continuing to foster a positive and supportive workplace after these historical incidents.

Organisational collaboration and a shared sense of unity could have been improved, particularly when SANTS onboarded new staff

Many staff had positive experiences, but several staff reported that they would have liked to see collaboration within and between some teams strengthened. Obstacles to internal collaboration related to systems, structures and culture. The institutional knowledge and technical expertise of long-tenured staff was valued; however, it was difficult to access for some staff due to limited internal meetings and formal knowledge sharing, and poor information management. In some cases, these challenges were associated with a perception that some work was siloed and conducted in isolation. The Review believes there was more opportunity for long-tenured employees to share their deep expertise and to serve as mentors to newer team members, in addition to establishing team coordination activities which facilitate information sharing and collaboration.

Financial management

SANTS had robust financial management strategies and systems

SANTS complied with its legislative financial requirements during the Review period. SANTS's financial statements were audited by external auditors in accordance with Australian Accounting Standards. This formed the basis of SANTS's reporting to the NIAA. SANTS's financial team undertook continual financial training including workshops around superannuation, payroll, fraud and corruption. SANTS developed Financial Guiding Principles as part of its broader financial framework that aims to reinforce the importance of good financial management (see Figure 5).

Figure 5 | SANTS Financial Guiding Principles

Principle 1: Finances will be managed responsibly to enhance the wellbeing of Aboriginal peoples.

Principle 2: SANTS's financial position will be robust enough to reduce the impact of unanticipated events and absorb the volatility inherent in revenues and expenses where possible.

Principle 3: Resources will be allocated to those activities that generate community benefit.

The Review found that SANTS had sound financial management, including frequent reporting to staff, the CEO and the Board to ensure that everyone was abreast of budgets and forecasting. For example, the Finance Team met monthly with each SANTS team to discuss the team's financial position and monthly budgets. Fortnightly reporting was provided to teams whenever there were budgetary pressures. An in-depth paper was developed every quarter for the Board, which provided a detailed breakdown of SANTS's financial position including key trends for the period and forecasted future funding needs.

In 2020, SANTS implemented a new financial system to improve its financial management which combined payroll and other financial applications into one. This integration reduced the duplication of data and reduced the risk of other key errors including poor data transcription. SANTS also started to investigate implementing Power BI budget dashboards for staff to help staff to track and monitor their own budgets more accurately in real time.

Training and professional development

Workforce development was deprioritised in busy periods

SANTS provided ample professional development opportunities for all employees in support of their learning and development plans. This ranged from core training or specific professional development training to workplace, health and safety training (see section 5.3.1 for more on cultural competency training). There was a decline in training attendance in FY2021-22 due to the large volume of work leading up to the Oodnadatta Common Overlap Proceeding trial in March 2022. The trial preparation took precedence over the training programs that were initially planned for employees during that time.

During the Review period, SANTS continued to use an agency to hire Aboriginal and Torres Strait Islander trainees. While they were working at SANTS they were supported to undertake vocational training and progress through the organisation. SANTS facilitated the SANTS Annual Staff Workshop, which was held in Kingston in March 2022, with a focus on "Opportunities Post Native Title". The workshop was an opportunity to discuss topics such as cultural competency, health and wellbeing, code of conduct, change management and working from home.

Level of staff turnover

SANTS experienced some staff turnover during the Review period compared to a historically relatively stable workforce

SANTS employed between 31 and 33 staff during the Review period, with a turnover rate of about 11 per cent (see Table 12 and Table 13). SANTS reported that there were some staffing issues during the Review period, with some staff members taking extended leave, the resignation of a senior legal officer and the retirement of the senior anthropologist. Turnover within the legal team was especially significant during the Review period.

The loss of these key staff caused some disruption for SANTS, particularly during busy trial periods. This was compounded by the impacts of COVID-19 and ongoing health concerns continuing to impact other staff members. Staff interviewed cited a lack of internal progression opportunities and retirements as key factors contributing to this attrition.

Table 12 | SANTS staff profile during the Review period

Financial year	Employees			Indigenous employees		
	Full time	Part time	Total	Male	Female	Total
2019-20	22	9	31	6	5	11
2020-21	26	7	33	6	5	11
2021-22	27	6	33	6	5	11

Table 13 | SANTS turnover statistics 2019-2021

Turnover	Statistic
Average employees 2019-2021	32.7
Average resignation 2019-2021	3.7
Average new start 2019-2021	5
Turnover rate 2019-2021	11.2%

5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

5.5.3 TOR 5: Recommendations

RECOMMENDATION

6

Continue to plan for the workforce and leadership capability required in the coming years, including supporting succession planning for long-tenured senior staff.

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

Summary

A core pillar of the SANTS Strategic Plan 2020-2025 is to “work with native title corporations to build independence, capability and self-determination”. SANTS consistently provided strong support to PBCs throughout the Review period.

Agreements were in place with ten of the 20 PBCs in the RATSIB area, offering a variety of services, including financial and HR support on a fee-for-service basis. The level and scope of assistance varied, aligning with the maturity and individual needs of each PBC. Some PBCs required basic support for fulfilling corporate responsibilities, while others needed additional help to achieve strategic goals.

SANTS used a combination of the PBC support funding, operational funding and service-generated revenue to deliver its PBC support work. Staff responsiveness to the needs of PBCs led to staff being thinly stretched across a range of different support activities within the available funding so that SANTS was not able to deliver the depth and breadth of PBC services that staff believed were required. Staff noted that some PBCs who had historically used other legal and service providers due to enduring relationships were increasingly looking towards SANTS for services, given cost issues in the sector and the significant depth of experience within SANTS. However, SANTS had limited capacity to undertake additional support.

Internal and external stakeholders valued SANTS for its responsiveness to the diverse needs of PBCs, highlighting its timely assistance. PBCs supported by SANTS generally reported being satisfied with SANTS’s services during the Review period, while highlighting one or two areas they would like to see strengthened. Those consulted by the Review broadly agreed that the services SANTS provided were helpful stepping stones towards PBCs becoming more established.

SANTS was proactive in how it engaged with PBCs and facilitated networking more broadly including through running the PBC Regional Forum South Australia and working closely with the peak body – First Nations SA.

SANTS commenced the development of a consistent and respectful approach to the repatriation of cultural materials but further work remained to be done.

Financial sustainability remained a challenge for many PBCs in the SANTS RASTIB area. One factor associated with this challenge was the relatively low industry activity in some areas with established native title, which restricted the possibility and/or value of ILUAs. However, new industries, such as green energy, may offer opportunities for the future.

5.6.1 TOR 6: Assessment of performance

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

Satisfaction of PBCs/RNTBCs supported by the NTRB-SP

PBCs were generally satisfied with SANTS's services, although there were some areas for improvement identified by PBC representatives

PBCs who received services from SANTS and were consulted as part of the Review reported positive experiences working with SANTS. PBCs reported being highly appreciative of the support that they received from the SANTS legal team, who they saw as a valuable resource that provided comprehensive legal services. PBCs particularly noted the legal team's role in helping them comply with their statutory requirements and with negotiating agreements with private sector companies.

"I just feel that SANTS is professional with great professional services... They are always open to having dialogue and sitting down and discussing issues... There's nothing more that I think of that they could be doing."

PBC Representative

PBCs spoke positively of SANTS's financial services offer and were appreciative of SANTS staff in this area, who they said were dedicated and organised. The Review received positive feedback around the Corporate and Community Development team's support with training and connecting the PBCs with external organisations to help them with specific projects or development. SANTS's connection with government was seen as valuable. SANTS's help to broker relationships between PBCs and various government departments, in addition to helping PBCs apply for different government grants, was noted as a key strength.

In terms of areas for improvement, the Review received some feedback from PBCs that SANTS could improve its skills in negotiating agreements with private companies to secure the best outcome for their clients. Some thought that negotiators could be more assertive. The Review received feedback that SANTS could improve its capability around managing logistics, particularly for organising travel for member meetings, including booking flights and accommodation.

Overall, the Review heard that SANTS conducted itself in a professional manner and that SANTS staff were proactive in helping PBCs. PBCs reported that when any issues did arise, they felt comfortable raising these with SANTS and working together to resolve issues.

Traditional Owner groups saw self-sufficiency as moving away from being supported by SANTS over the longer-term for those PBCs that have the resources

The PBC stakeholders interviewed as part of the Review defined self-sufficiency as PBCs being able to derive their own source of income, have an established office with staff and manage all their own services. Most PBCs interviewed as part of the Review believed that in an ideal world established PBCs would not need to rely on SANTS for any services. However, they recognised that this was not possible for all PBCs, many of which had little or no independent income from sources outside SANTS. These PBCs will need to continue to be supported in the future in some way to perform their basic statutory functions.

Some staff and PBCs reflected that SANTS offering relatively low-priced PBC services was a helpful stepping stone in the medium-term while PBCs become more established. Having SANTS deliver services helped to spread the costs and risks while PBCs build their capability to seek out and negotiate commercial agreements. Self-sufficiency is achievable for some PBCs over the longer-term, however securing additional income outside SANTS funding is critical. Stakeholders reflected that while not all PBCs were able to benefit from mining or oil and gas operations, growing industries such as the renewable energy and decarbonisation industry provide promising new opportunities for sources of income for native title holders in the future.

"SANTS is all about government grants, and national parks and ranger programs – but there's not much about the real money."

PBC Representative

The Review received some feedback that it would be valuable for the NIAA to provide centralised training that is made available for all PBCs (possibly online). This could include governance training and financial literacy training. This could help to increase efficiencies and reduce PBCs' reliance on NTRB-SPs in the future.

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

The Review understands that no PBC supported by SANTS during the Review period received a 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

SANTS provided a broad range of services to support PBCs

A core pillar of the SANTS Strategic Plan 2020-2025 was to "work with native title corporations to build independence, capability and self-determination". During the Review period SANTS delivered services to ten of the 20 PBCs in its RATSIB area. SANTS had a dedicated Corporate and Community Development team comprising six staff. They delivered a broad range of services to support these PBCs to build capability, achieve their aspirations and comply with statutory requirements. This team, with other staff from the legal and finance functions, worked closely with PBCs to help them progress towards self-sufficiency. These services were funded by NIAA operational funding, PBC basic support funding and service activity-generated income. SANTS connected PBCs with external service providers as required.

SANTS provided a wide range of support services to PBCs such as:

- legal, governance and compliance services, including the development of policies
- financial and HR services (fee-for-service)
- general administrative support and facilitation of member meetings
- anthropology services
- strategy and business plan development
- negotiation of agreements with land users and scoping commercial opportunities
- management of active cultural heritage monitoring programs
- management of Future Acts including agreements with exploration companies
- helping PBCs to establish and maintain offices.

SANTS held and managed PBC funds, with a budget allocation for each supported PBC

SANTS's approach to managing PBC funds depends on the capability/position of the PBC and legal representation/independence from SANTS. Three different models were deployed in managing the funding:

1. SANTS funds PBC activities directly from PBC funds (for example through suppliers).
2. PBC funds up-front PBC activities and invoices SANTS to recover these funds for certain activities against the PBC funds held by SANTS.
3. A combination of the above.

The level of intensity and scope of SANTS services to PBCs varied significantly between PBCs

While some PBCs received a full suite of services from SANTS (including legal, financial, HR and community developments services), others received support as requested. During the Review period several new PBCs were established. SANTS staff reported that some PBCs who have historically used other legal and service providers due to enduring relationships have recently – including during the Review period – sought to engage SANTS in place of their former service providers. Staff believed this may have been associated with the cost savings of working with SANTS compared to market rates and the wide range of services that SANTS offered. Staff cited PBC preferences and the limited capacity of SANTS as the reason why other PBCs did not work with SANTS in South Australia.

Below is a summary of at least three categories of support that PBCs received from SANTS which the Review identified.

1. **High-touch support.** Several PBCs received full-service support from SANTS. For example, Kaurna Yerta Aboriginal Corporation received intensive full-service support during the Review period, which had increased SANTS's administrative workload significantly. This support included weekly meetings between the PBC and SANTS staff, a significant amount of corporate and community development work, and daily requests for legal advice from a dedicated SANTS lawyer who was working approximately half the week to service this PBC.
2. **Targeted support.** Some PBCs only required targeted assistance, particularly those with their own funding streams who were more self-sufficient. For example, Far West Coast Aboriginal Corporation RNTBC was self-funded from the interest earned from investments and mining royalties, and only accessed SANTS's legal services.
3. **Light-touch support.** Some PBCs, for example Kokatha Aboriginal Corporation and Wangkangurru Yarluyandi Aboriginal Corporation only required ad hoc support for some lighter-touch services, including facilitating member meetings and other small administrative tasks.

SANTS's approach to helping PBCs to become more self-sufficient was flexible and accommodating but may need to be more tightly targeted

SANTS staff advised that SANTS's approach to working with PBCs was flexible and accommodating. A staff member reflected that SANTS generally agreed to support any PBC with any request. This resulted in SANTS being spread thinly across the number of different services it provided to PBCs. This placed pressure to deliver to PBCs on the Corporate and Community Development Team, and the Finance and Business Services team.

During the Review period SANTS struggled to provide all the services that were requested by PBCs. SANTS sometimes connected PBCs to external support where SANTS did not have capacity. After the Review period SANTS has invested in employing a new finance staff member to support the growing requests from PBCs for financial support.

Given the reactive nature of service provision to PBCs and the resource challenges, SANTS may need to carefully consider which services it is able to provide within the resources it has available. Services could be more tightly aligned to PBCs' strategic plans and long-term goals.

Resource constraints inhibited service provision to PBCs

The Review received feedback that the workload of supporting PBCs had increased, with notable increases in the last two years of the Review period. This growth stretched SANTS PBC resources (including staff and funding) to the extent that SANTS was not able to deliver the depth and breadth of PBC services that staff believed were required across the PBCs.

SANTS had arrangements with many PBCs for fee-for-service activities and this additional income was helpful in addressing SANTS's resourcing constraints. However, SANTS reported that this additional income was not enough to supplement service provision to the extent they believed necessary. Staff reported that SANTS would benefit from increased resourcing for PBC support to continue to deliver the current level of services or to take on new clients.

SANTS was proactive in how it engaged with PBCs and facilitated networking more broadly

SANTS hosted a PBC Regional Forum South Australia (PBC Forum) once or twice a year. This PBC Forum connected PBCs across South Australia to discuss key issues that faced PBCs and to help facilitate connections and progress towards self-sufficiency and economic independence. While the PBC Forum was established before COVID-19, PBCs consulted as part of the Review reflected that it only really started to gain momentum after COVID-19 disruptions subsided. During the Review period, in March 2022, SANTS held a two-day PBC Forum in Renmark with over 30 attendees from about 15 PBCs, including government representatives such as the South Australian Attorney-General and the Minister for Aboriginal Affairs.

SANTS also worked closely with First Nations of SA, which is effectively a peak body for First Nations across South Australia. First Nations of SA was established with representatives of 18 PBCs and native title holders across South Australia as its members. The aspiration of First Nations of SA is to bring PBCs together to discuss common challenges and to be the "go to" body to address key policy issues with government and industry.

The Review received some positive commentary around the PBC Forum and First Nations of SA from SANTS staff and PBCs as achieving positive outcomes. There were several groups that facilitated discussions and networking between PBCs (including the PBC Forum, First Nations of SA and other forums run by other organisations including the National PBC Forum convened by the National Native Title Council). It is therefore important that the purpose of the groups and forums are clearly communicated so that PBCs are clear on the value of each opportunity. The Review received feedback that SANTS could improve its planning, logistics and communication around the PBC Forums to ensure that participants can easily participate in the future.

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

SANTS commenced development of an integrated, respectful and consistent approach to repatriation of cultural materials

Staff reported that SANTS was working to develop a policy around returning cultural materials to Traditional Owners. There was a general understanding within SANTS that materials were given back to family groups upon request. SANTS staff acknowledged that while other NTRB-SPs have started the process of returning claims materials to PBCs, SANTS had not yet begun.

SANTS was aware that privacy and data sovereignty are important issues and that developing a policy around returning cultural materials is a priority for SANTS as well as other NTRB-SPs across the country. SANTS staff consulted as part of the Review believed that funding was a key constraint to accelerating this process.

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

SANTS had formal agreements in place with ten out of the 20 PBCs in its RATSIB area

SANTS had a formal service agreement in place with all the PBCs it supports. The Review understands that at June 2022 ten out of 20 PBCs had formal service agreements with SANTS. This is in line with the previous Review, when SANTS supported eight of the 17 PBCs that existed at the time. SANTS provided ad hoc support to PBCs that used other service providers and did not have a formal service agreement with SANTS.

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

The Review received little feedback around the role of SANTS in negotiating service agreements with PBCs. SANTS remained flexible to help PBCs where they could through their services and to connect PBCs with external expertise when required. PBCs consulted as part of the Review reported that they were happy with the service agreements that they had. Service agreements around financial services provision were often standardised.

5.6.2 TOR 6: External factors

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

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

Low levels of industry activity in many areas where there had been a determination that native title exists has limited the ability for many PBCs to attract resources necessary for self-sufficiency

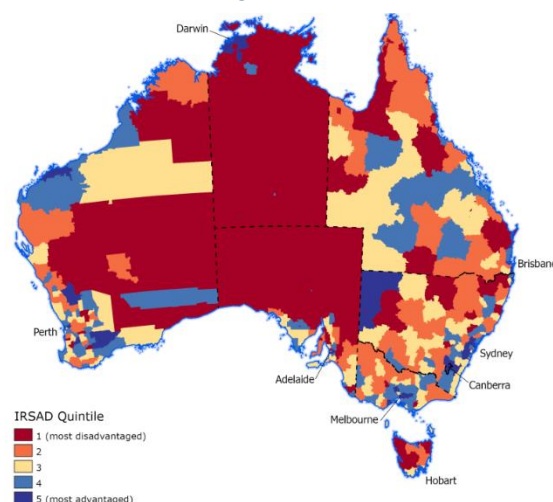
One of the key determinants of the extent to which self-sufficiency is achievable for PBCs in each RATSIB area is the level and nature of industry activity. For example, the natural resources within the RATSIB area and associated industry activity can result in agreements with substantial monetary compensation for PBCs. SANTS staff reported that there was not a significant amount of Future Act activity across South Australia. Not all PBCs have land earmarked for major development or industry areas as described above and SANTS staff reported their concern that self-sufficiency may therefore not be achievable for some PBCs.

The socio-economic profile of the SANTS RATSIB area also contributes to difficulty developing capability in PBCs

The socio-economic profile of a region can impact the extent to which self-sufficiency is feasible. For example, prevailing literacy and numeracy levels of a community will impact on the capability of PBC Boards and the availability of skilled staff to execute the functions of a PBC. The most remote areas across South Australia are considered highly disadvantaged. Most areas in the SANTS RATSIB area where there has been a determination of native title are in areas considered highly disadvantaged, so it is likely that additional support and services to PBCs and native title holders would be beneficial.

Figure 6 shows the Index of Relative Social-economic Disadvantage across Australia, showing the large proportion of SANTS area that is most disadvantaged.¹⁷

Figure 6 | Index of Relative Socio-economic Disadvantage across Australian local government areas, 2021



5.6.3 TOR 6: Recommendations

RECOMMENDATION

7

Consider ways to most effectively target support for PBCs within the limitations of resource capacity.

RECOMMENDATION

8

Finalise the development of a consistent and respectful approach to the repatriation of cultural materials.

¹⁷ Census of Population and Housing: Socio-Economic Indexes for Areas, 2021. Sourced from <https://www.abs.gov.au/statistics/people/people-and-communities/socio-economic-indexes-areas-seifa-australia/latest-release>

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

Summary

SANTS staff consulted as part of the Review were confident that all remaining native title applications would be determined by the Federal Court within the five years that follow this Review. Completion of all active applications would mean that all Traditional Owner groups in South Australia would have native title in at least one area. SANTS was already, in effect, operating in a post-determination environment.

SANTS had a Strategic Plan in place until 2025 to guide its post-determination planning. The SANTS Board was aware of the impending change the post-determination environment would bring and how this would impact its organisational value proposition and sustainability. The Board initiated preliminary discussions during the Review period regarding its long-term organisational strategy.

During the Review period, a single compensation claim was lodged for the Antakirinja Matu-Yankunytjatjara Aboriginal Corporation RNTBC, pertaining to the Coober Pedy area in Central South Australia. It is anticipated that fewer compensation claims will be submitted compared to other RATSIB areas, as the prevailing approach in South Australia involves settling compensation claims concurrently with determinations through collaboration with the state government.

Once all claims are determined, SANTS's focus will shift towards providing PBC services, ensuring sector sustainability and exerting policy influence. However, a comprehensive long-term strategic and organisational plan has not yet been formulated. SANTS staff members and other stakeholders, including clients, sought increased involvement in future strategic planning.

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

While the SANTS Board had commenced preliminary discussions about long-term strategy, the role of staff and other stakeholders in strategic planning was not clear

SANTS was guided by its Strategic Plan 2020-2025 during the Review period. The Strategic Plan 2020-2025 was implemented through SANTS's yearly operational plans, which outlined key milestones achieved and progress made against each activity undertaken with PBCs. In its annual reports SANTS also articulated its short-term and long-term objectives, which promote long-term self-sufficiency and self-determination for the Aboriginal people of South Australia (see Figure 7).

Figure 7 | SANTS' long-term organisational objectives

1. Relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness amongst the Aboriginal people of South Australia.
2. Recognise that such poverty, sickness, suffering, distress, misfortune, destitution and helplessness resulting from such Aboriginal people having been progressively dispossessed of their lands and/or waters, without compensation, as a consequence of which they have been socially, spiritually and economically disempowered and are now the most disadvantaged section of South Australian society, to assist such Aboriginal people to:
 - a. improve self-reliance and their economic, social and cultural circumstances
 - b. regain recognition of their rights and interests in lands and/or waters arising from their traditional laws and customs
 - c. access and enjoy their traditional lands and/or waters
 - d. have a voice in relation to the future use and exploitation of their traditional lands and/or waters; and
 - e. obtain compensation in relation to their dispossession from their traditional lands and/or waters, and in relation to the future use and exploitation of such traditional lands and/or waters, by providing legal, research and other services.

SANTS staff consulted by the Review were confident that all remaining native title applications will be determined by the Federal Court within the five years that follow this Review and that completion of all active applications would mean that all Traditional Owner groups in South Australia would have native title in at least one area. SANTS staff reported that SANTS was already, in effect, operating in a post-determination environment with many PBCs already having received a determination. Stakeholders believed that it was important for SANTS to continue to support the native title sector more broadly, particularly for new PBCs and those PBCs who were not able to benefit economically as much as others.

SANTS staff and directors noted that the next SANTS strategic plan, post-2025, will require deep consideration, given that all applications for native title determinations are likely to be resolved in the next five years. Increasingly, during the Review period the Board became alert to a need to adapt SANTS's strategic focus and it started preliminary discussions to prepare for this next horizon. The question of whether SANTS evolves into a membership-based structure was raised several times throughout the Review. Directors noted that SANTS should be doing more to raise its profile and be more engaged with the community in the future.

SANTS recognised that its operating model needs to evolve over the next few years; however, they were uncertain about what this means in practice for the organisation given the uncertain nature of future funding. Directors recognised the imperative to undertake rigorous strategic planning to explore what SANTS will look like in five to ten years. The role of SANTS staff and other stakeholders in a future strategic planning process has not been determined; however, staff reported that they would value the opportunity to be involved. Some staff interviewed believed that SANTS could be doing more to plan for its future and could involve staff in the discussion, as many staff wondered what their role would look like once all determinations are finalised.

Developing a clear vision for the future, linked to a funding base, is important not only to ensure that services align with client needs, but also to ensure that SANTS's employee value proposition means it can attract and retain the best possible staff.

Valuable lessons for post-determination operations have been learned during the Review period and are now being applied by SANTS through its service delivery for PBCs

Staff reflected on several valuable insights that have already been gathered from the work SANTS does with its PBC clients, these include:

- SANTS's ongoing administrative assistance for PBCs, particularly new ones, is highly valued by its clients, including preparation of meeting papers, correspondence, general administrative tasks, partnerships support and stakeholder engagement.
- SANTS's fee-for-service financial and HR service offering has been successful, driven by the relationship SANTS holds with PBCs and the relatively low price of services (as discussed under TOR 6).
- SANTS's deep knowledge and relationships with government across the system, as well as its ability to connect to government grants, is valuable for PBCs who are looking for additional opportunities outside of SANTS.
- SANTS's capability will need to evolve to have more commercial skills in-house, for example, in facilitating future business negotiations, investing capital and establishing trusts. These skills are essential as PBCs look to become more self-sufficient in the future.
- SANTS will still need in-house lawyers with native title expertise to manage any post-determination litigation or legal elements of the support for PBCs.

Future strategic planning activities therefore should consider market demand, the competitive landscape and the sustainability of a future operating model to deliver services to a range of PBCs at different levels of maturity. This could include provision of services to other community-led organisations.

SANTS engaged in policy discussions and legislative reform to progress native title holders' rights and interests more broadly

During the Review period, SANTS engaged in a wide variety of initiatives to advocate for the rights and interests of South Australian native title holders. SANTS was involved in making submissions around state government policy and legislative reform in several policy areas, including landscapes and pastoral land reform.

SANTS has also continued to advocate at a federal level to progress national reforms to protect Aboriginal heritage. SANTS's broad and proactive engagement across policy and legislative matters relating to Traditional Owner outcomes in South Australia shows its growing capability in strategically influencing the post-determination environment.

Given the approach to compensation claims being settled alongside ILUAs, SANTS did not expect further compensation claims to form a major part of post-determination work

One compensation claim was made during the Review period. This claim, for the Antakirinja Matu-Yankunytjatjara Aboriginal Corporation RNTBC, which was filed in May 2022, related to the Central South Australia Coober Pedy area. It is likely that fewer compensation claims will be filed compared to other states, given that the approach in South Australia is to settle compensation claims with the state government alongside consent determinations and accompanying ILUAs.

5.7.2 TOR 7: External factors

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

Progress towards a post-determination environment

All claimable land within the SANTS RATSIB area that has not yet been determined is expected to be determined within the next five years

By the end of the Review period much of the SANTS RATSIB area was subject to a determination of native title or was Aboriginal freehold. Only about 19 per cent of the claimable land within the SANTS RATSIB area was not either already determined or the subject of a current native title application. SANTS senior leadership reported that the outlook for the years to come is extremely positive, with the few remaining current applications expected to be finalised over the coming five years. SANTS is therefore relatively established in its post-determination environment.

5.7.3 TOR 7: Recommendations

RECOMMENDATION

9

Undertake a planning process to explore what services SANTS should provide in a post-determination environment. This planning process should involve a variety of internal staff and external stakeholders.

RECOMMENDATION

10

Fast track the development of an operating model for post-determination which defines sustainable resource requirements and guides future funding discussions with NIAA.

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

Face-to-face consultations took place in the week commencing 11 September 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- six Traditional Owners including:
 - clients who have been represented by SANTS (including members of PBCs)
 - potential clients in SANTS's RATSIB area
- the Federal Court of Australia
- representatives of the South Australian Government
- members of the Executive Committee and Board
- SANTS staff and contractors.

Appendix C Documents reviewed

Category	Description
Annual reports	SANTS Annual Report 2019-20 SANTS Annual Report 2020-21 SANTS Annual Report 2021-22
Policies	Conflict of Interest Conflicts of Interest (Legal Representation) (1) Information on SANTS Directors SANTS Board – Governance and Terms of Reference 20150527 SANTS Facilitation and Assistance Policy Code of Conduct – January 2021 Complaint Policy Cross Cultural Awareness Handling Complaints Internal Review Policy – 24102013 Procurement Policy Recruitment and Selection SANTS Constitution Training and Development Policy
Operational documents	EOI SANTS Director Ad 2023 Item 9 - Attachment 9.1 - SANTS Risk Management Plan 2019 -2020_Mid Year Report Item 9 - Attachment 9.1 - SANTS Risk Management Plan 2019_2020 Item 9 - SANTS Risk Management Plan 2018 -2019_Mid Year Report Risk Management Report – February 2021 Risk Management Report – February 2022 SANTS Risk Management (2) Culture and FTE information SA PBC Summary to June 2022 (Nous) SA regional forum – Report SANTS Strategic Plan 2020-2025
Financial documents	Financial Guiding Principles
Other documents	Copy of COVID-19 Safety Plan – updated 15 September 2020 COVID-19 Checklist COVID-19 Safety Plan – 10 February 2022 COVID-19 Safety Plan – 31 December 2021 COVID-19 Safety Plan-1 SANTS COVID 19 Safety Plan SANTS COVID-19 Guidelines – For Employees – 010222 SANTS COVID-19 Guidelines – For Managers (1) SANTS COVID-19 Guidelines for Handwashing and Hygiene

Category	Description
	SANTS COVID-19 Guidelines for Physical Distancing for SANTS Employees
	SANTS COVID-19 Guidelines for Visitors
	SANTS COVID-19 Guidelines for Working from Home
	SANTS COVID-19 Procedures for Cleaning for SANTS Employees

Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 14.

Table 14 | Glossary

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

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

Term	Meaning
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 15.

Table 15 | NTRB-SP functions under the NTA

Reference	Function	Detail
s203BB	Facilitation and assistance	NTRB-SPs provide assistance to native title interest holders in relation to native title applications, Future Acts, agreements, rights of access and other matters.
s203BF	Certification	NTRB-SPs certify applications for native title determinations and certify the registration of ILUAs.
s203BF	Dispute resolution	NTRB-SPs promote agreement and mediate disputes between native title groups.
s203BG	Notification	NTRB-SPs ensure that people with a possible native title interest are informed of other claims and of Future Acts and the time limits for responding to these.
s203BH	Agreement making	NTRB-SPs can be a party to ILUAs or other agreements.
s203BI	Internal review	NTRB-SPs have a process by which clients can seek a review of decisions and actions they have made and promote access to this process for clients.
s203BJ	Other functions conferred by the <i>Native Title Act 1993</i> (Cth) or by any other law	These are largely concerned with cooperation between NTRB-SPs, consulting with Aboriginal and Torres Strait Islander communities, and providing education to these communities on native title matters.



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