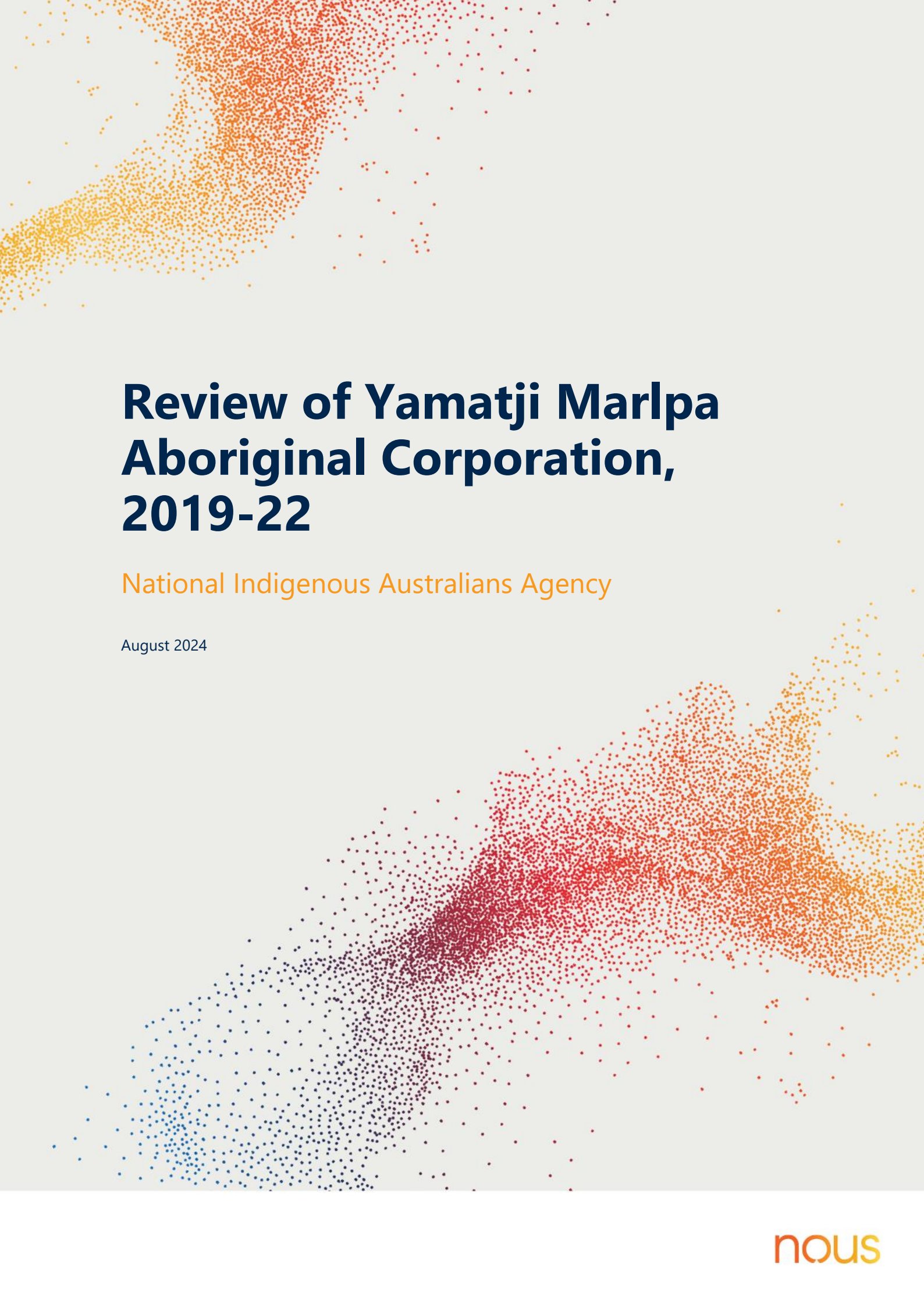




Review of Yamatji Marlpa Aboriginal Corporation, 2019-22

National Indigenous Australians Agency

August 2024

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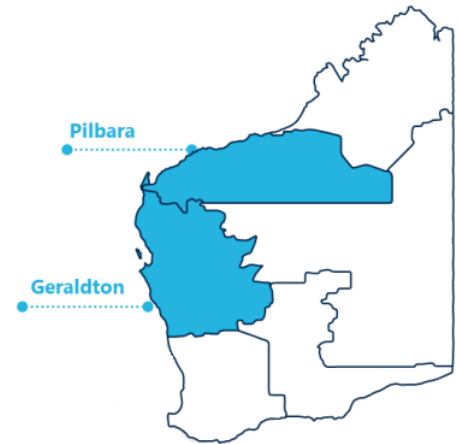
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1 Profile of the Yamatji Marlpa Aboriginal Corporation

Yamatji Marlpa Aboriginal Corporation (YMAC) has offices in Perth, Geraldton, Port Hedland and Carnarvon, and provides services across the Pilbara, Murchison and Gascoyne regions of Western Australia

YMAC is the recognised Native Title Representative Body (NTRB) for both the Pilbara and Geraldton Representative Aboriginal/Torres Strait Islander Body (RATSIB) areas in Western Australia. The organisation was incorporated in December 1994 under the name Yamatji Barna Baba Maaja Aboriginal Corporation and initially served only the Geraldton region. In 2000 its RATSIB area was expanded to encompass the Pilbara region as well. The organisation changed its name to the Yamatji Marlpa Aboriginal Corporation in 2008.

YMAC's two separate RATSIB areas – the Pilbara (Marlpa) representative area and the Geraldton (Yamatji) representative area (pictured right) – cover about 750,000 square kilometres and account for about 28 per cent of Western Australia's land area. At the end of the Review period (1 July 2019 to 30 June 2022), more than 95 per cent of land in these areas had been claimed through native title.



A total of 56 determinations of native title have been made in the RATSIB areas, with 13 of these within the Review period. YMAC acted for the applicant in eight of these determinations. During the Review period, YMAC also made three new applications for native title on behalf of claim groups. At 30 June 2022, YMAC represented eight active claims.

There are 34 Prescribed Body Corporates (PBCs) in the RATSIB area. During the Review period, 14 PBCs received at least one year of basic support funding, with a further ten PBCs receiving additional support via fee-for-service arrangements.

The Board of Directors is comprised of 12 Indigenous members, six from the Pilbara region and six from the Geraldton region. The Board is led by two Co-Chairpersons, one from each region, who are included in the total count of Directors. Directors are elected from within larger regional committees established by YMAC that represent their respective regions.

YMAC received a consistent \$9.65 million of base operational funding annually from the National Indigenous Australians Agency (NIAA) over the Review period. However, due to significant additional demand driven funding, variations and advance payments, the total funding YMAC received from the NIAA varied somewhat from this number from year to year.

The organisation is a not-for profit, registered charity. It is also a 50 per cent shareholder of Pilbara Solar Pty Ltd, a for-profit developer and distributor of solar energy generation assets. This increased from a 25 per cent ownership stake in Pilbara Solar prior to the Review period. Pilbara Solar operates independently from YMAC, though two YMAC Directors also sit on Pilbara Solar's Board of Directors.

2 Scope of the Review

The NIAA has engaged Nous Group (Nous) to undertake an independent review of 13 Native Title Representative Body and Service Provider (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
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CSEC	Core Stakeholder Engagement Consultation
EMT	Executive Management Team
FY	Financial year
FAN	Future Act notification
HR	Human resources
ILUA	Indigenous Land Use Agreement
IPA	Indigenous Protected Area
IRSAD	Index of Relative Socio-economic Advantage and Disadvantage
KLC	Kimberly Land Council
NIAA	National Indigenous Australians Agency
Nous	Nous Group
NTRB	Native Title Representative Body
NTRB-SP	Native Title Representative Body and Service Provider
ORIC	Office of the Registrar of Indigenous Corporations
PBC	Prescribed Body Corporate
PLO	Principal Legal Officer
RATSIB	Representative Aboriginal/Torres Strait Islander Body
RNTBC	Registered native title bodies corporate
The CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i>
The NTA	<i>Native Title Act 1993 (Cth)</i>
The Review period	1 July 2019 to 30 June 2022
TOR	Terms of Reference
YMAC	Yamatji Marlpa Aboriginal Corporation

Abbreviation	Meaning
YNSRA	Yamatji Nation Southern Regional Agreement

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 YMAC achieved positive native title outcomes for its clients. It represented the applicants in six successful claims, negotiated over 30 ILUAs, responded to thousands of Future Act notifications (FANs) and filed three new claims.

YMAC was particularly successful in supporting its clients in some challenging cases, including resolving the Yamatji Nation claim and the longstanding Gnulli claim. It took a particularly unique approach to the former, conducting an information sharing expo to facilitate authorisation across a large claim group, an approach which was praised by both Traditional Owners and other external stakeholders.

Most of YMAC's work was conducted internally by its anthropology and legal teams with YMAC using external experts for specialised inputs. YMAC provided assistance to some privately represented groups, for example as part of the Yamatji Nation claim but did not brief out any whole matter during the Review period. YMAC advised that it only briefed out whole matters when there was a real conflict of interest.

YMAC pursued compensation matters as part of claim determination but did not progress any compensation applications as mentioned in section 61(1) of the NTA during the Review period.

Legal stakeholders were generally positive regarding YMAC's performance in achieving positive native title outcomes, describing YMAC as competent and professional although relationships were sometimes challenging. The limited number of Traditional Owners who engaged with the Review expressed either very positive or negative sentiments. The primary cause of Traditional Owner dissatisfaction was the perceived accuracy of claim group membership, which is a recurring theme in Traditional Owner feedback due to the nature of native title. Some stakeholders advised the Review that they had chosen not to have YMAC represent them in claims.

In recognition of the critical shortage of native title anthropologists, YMAC commenced an anthropology internship in connection with Curtin University, dedicated to generating more interest in working in anthropology for NTRB-SPs, particularly among First Nations candidates.

A few Traditional Owners and PBC members who spoke with the Review expressed a view that YMAC was not sufficiently proactive in pursuing native title opportunities in unclaimed areas. YMAC notes that it progressed research in unclaimed areas through consultations and fieldtrips during the Review period.

During the Review period, YMAC faced some impacts from external factors, many of which they were able to successfully mitigate, including the barriers to travel created by COVID-19. YMAC staff were actively involved in the public campaign about the introduction and repeal of the *Aboriginal Cultural Heritage Act (2021)* (WA), which impacted workloads. High mining activity and state government support through Closing the Gap priorities meant relatively rapid progression to a successful native title outcome when compared to other regions.

RECOMMENDATION

1

Prioritise the development of a strategy and process for pursuing native title compensation applications.¹

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.

A clear process for assessing applications for assistance was publicly and easily accessible via YMAC's website. This took the form of a flowchart and included information on the timeframes applicants could expect. Limited guidance was provided regarding how requests for assistance were prioritised once accepted by YMAC.

YMAC also had a detailed internal written policy governing its assessment of applications for assistance. An application would usually be reviewed by the Principal Legal Officer (PLO) and then a briefing prepared for the Board to make a decision at its next meeting.

YMAC staff who spoke with the Review were familiar with the assessment process. The policy appeared to be adhered to consistently.

YMAC has advised that its new Application for Assistance form outlines the process on how applicants can make applications for assistance including for native title compensation.

RECOMMENDATION

2

Clarify the policy and process for determining the priority given to claims once an application for assistance has been accepted.

RECOMMENDATION

3

Ensure that all decisions about applications for assistance and assessment are clearly conveyed in an appropriate and timely manner to potential claimants.

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.

The importance of respectful and transparent engagement was recognised throughout YMAC's corporate documents and on its website. Staff consistently pointed to their engagement with Traditional Owners as a highlight of their work and were vocal about the high quality of the cultural training they received at YMAC. This included cultural awareness training as part of induction for new staff, online modules, annual on-Country excursions and a cultural awareness component that was always part of the annual staff conference.

The Review noted a significant disconnect between the positive outlook of senior staff about YMAC's engagement and the sentiment of the feedback received from the small number of Traditional Owners and their representatives who engaged with the Review, particularly those in the regional areas. These stakeholders expressed dissatisfaction with the way YMAC communicated with them, reporting that

¹ As mentioned in section 61(1) of the NTA.

communication was often slow, limited, last-minute or non-existent. There was a view that YMAC favoured groups that were quiet, passive and accepting of YMAC's direction, while groups that were vocal or raised questions with claim details or processes were cut-off from communications or labelled "troublemakers".

There was also a view from some Traditional Owners that they had witnessed or experienced actions from YMAC they felt were culturally inappropriate. The Review notes these concerns but does not believe they are representative of the broad majority of YMAC clients or potential clients.

The Review notes feedback from YMAC that after the Review period it introduced new feedback forms for use by staff for native title meetings and other events/forums coordinated by YMAC, and that the response overall had so far been positive.

YMAC recorded no complaints or requests for internal review during the Review period. The Review was advised by a small number of clients that they chose not to lodge a complaint as they did not believe it would result in meaningful change.

YMAC's policies for the management of cultural materials were well-considered and conscious of the need for security and safety. The Review heard from staff that YMAC took a very proactive approach to the collection and management of cultural materials. Noting that this is a very sensitive issue for claimants, the Review heard some concerns from Traditional Owners about how cultural materials were gathered and used by YMAC. The Review recognises this is a challenging issue that many NTRB-SPs are grappling with and that YMAC is generally regarded by other NTRB-SPs as a leader in the development of policies and procedures for the use of cultural materials.

RECOMMENDATION

4

Regularly review and assess YMAC's provision of proactive and timely communication with Traditional Owners, particularly for issues which may be culturally complex, challenging or sensitive.

RECOMMENDATION

5

Continuously improve the application of existing policies for respectful and culturally appropriate engagement with Traditional Owners to ensure that all parties have shared expectations on actions and outcomes in native title matters.

RECOMMENDATION

6

Strengthen the emphasis on maintaining relationships with all Traditional Owner groups within both of YMAC's RATSIB areas and develop the space for multilateral, genuine feedback and communication outside of formal avenues.

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.

Salaries were consistently the highest expenditure for YMAC during the Review period. Other costs fluctuated from year to year, including those for legal and anthropological consultants, attributable meeting costs, travel and allowances.

Cost-saving actions were emphasised in policy documents and administrative activities. This included reducing travel costs where possible through improved coordination and careful consideration before engaging external consultants or service providers.

Some business practices suggested that there was still room for resource constraint, with some Traditional Owners and other external stakeholders drawing attention to perceived generous PBC support arrangements and activities that could have been delegated by the executive. YMAC noted that funding was also provided for some activities by external proponents, hence increased staffing capacity is available to fulfil these functions.

YMAC had a clear intention, through its cost recovery policy, to recover all costs in dealing with third parties on behalf of native title clients. In addition, YMAC was effective in expanding its revenue streams, through fee for service work for PBCs and heritage survey work. YMAC advised that this revenue stream allowed it to have greater flexibility in the activities it could fund, which included, for example, sitting fees for Board Directors.

The Review found an ongoing concern among some Traditional Owners about some of YMAC's financial practices, such as the amount YMAC spent on regional and Board meetings, sitting fees and other income for Board Directors. This concern included a call for a forensic audit to provide assurance that native title funding was not being spent on non-native title activities. YMAC advised that the amount spent on these cost categories was proportionally low and that their financial statements were independently audited before reporting to the NIAA.

YMAC used innovative methods to conduct a number of large claim group meetings (with more than 500 attendees per meeting) during the Review period, including through an expo format in one instance that involved different displays about the claim in different rooms and the use of an interactive phone application in another instance.

External consultants were used sparingly and generally only in specific circumstances. YMAC reported that external expert anthropologists, legal counsel and/or senior counsel were engaged to provide advice and representation in particular matters, or where urgent action was needed and resources were not available in-house. This included matters that were complex, untested or highly contentious. YMAC had established procedures for engaging external consultants which required justification for their engagement.

The vast size and remoteness of YMAC's RATSIB area, in addition to the large size of some claim groups, were factors that impacted YMAC's ability to deliver native title functions in a cost-effective manner.

RECOMMENDATION

7

Review the impact of YMAC's cost saving approach to external legal representation to ensure it is not disadvantaging some claim groups.

RECOMMENDATION

8

Given ongoing stakeholder concerns about the appropriate use of native title funding, devise ways to increase the level of transparency and provide clear communication about YMAC's various sources of funding and their application.

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.

YMAC had clearly defined roles and responsibilities for its Board and Chief Executive Officer (CEO), and a clear separation between strategy and day-to-day operations. The Review noted that the duties of the Board were appropriate, although the documentation would benefit from the inclusion of a more specific reference to best practice principles in terms of hearing from and listening to members or clients.

Roles of the Executive Management Team (EMT) were clearly articulated. The organisational structure of YMAC changed every year during the Review period, reflecting changed priorities such as the heritage area reporting to the Chief Financial Officer (CFO). YMAC staff reported that these changes improved the efficiency of the organisation and did not have a negative impact on their work.

The YMAC Board had 12 Directors with six elected from each of the Yamatji and Pilbara regional committees. The Yamatji regional committee was determined by popular vote among Yamatji members, while the Pilbara regional committee was determined by PBC nominations from within the Pilbara region. The Review spoke with a number of Traditional Owners and stakeholders who found the Board structure perplexing and rules surrounding election of Board Directors frustrating. Some PBC stakeholders felt that for fairness the Board should have PBC representation for both regions, though others felt that having Board Directors who were also PBC Board Directors created conflicts of interest for YMAC. The Review notes that this is an issue for YMAC members, who had previously decided against amending the existing YMAC Rule Book.

A further issue raised with the Review by some Traditional Owners was that there should be rules around family members serving on the Board together or for consecutive terms. There was a view that the YMAC Board was heavily weighted towards certain families and specific regions and that this took away the opportunity for other groups to have their voices heard. The Review found there is opportunity to consider how YMAC's governance might more effectively include other families who were keen to contribute to the Board.

Board Directors were subject to a maximum term of two years, however there were no limits on reappointment following expiry of this term. Several Directors had served continuously on the Board for some years, some for over 15 years. The Review notes that while there is a need for continuity in governance, there is also a need to balance this with encouraging renewal as well as providing opportunities for the development of other leaders. The Review notes that many PBC Rule Books impose a time limit on Directors' terms. While experience brings with it many advantages, there is a balance to strike with providing opportunity for new perspectives and voices.

Length of tenure is also relevant to the position of the CEO, with the incumbent having served in their position since 1996. This created a perception among some Traditional Owners that the CEO had disproportionate influence over the Board and YMAC's strategic direction.

YMAC had appropriate conflict of interest policies in place at the Board level, as well as for staff. These appeared to be adhered to, for example by Board Directors absenting themselves from meetings where a conflict arose. Some Traditional Owners who spoke with the Review expressed concerns that there was favouritism of certain family groups of individuals employed by YMAC or affiliated with the Board. The Review makes no judgment about the validity of the allegations made by these Traditional Owners but notes that their existence suggests there is an ongoing opportunity to improve both the communication and the enforcement of staff and Board conflict of interest policies. This would support greater monitoring and managing of any conflicts that arise and improve adherence to policies in practice. The addition of an external person on the recruitment panel for some positions would also help mitigate the risk of such perceptions.

During the Review period YMAC's Mission Statement broadened out beyond working with Yamatji and Pilbara Aboriginal people, and specific references to native title outcomes were removed from the Mission Statement and from the core principles. YMAC advised the Review that the Mission Statement is deliberately intended as a specific reference to native title outcomes in a way that is culturally appropriate and that the first priority of the Strategic Plan clearly addresses native title outcomes.

Staff reported that the culture of the organisation had improved during the Review period, particularly with the introduction of the role of People and Culture Specialist. They noted a more proactive approach towards communication and staff feedback, collaboration and input. Nearly all respondents to the

Review's staff survey said they found YMAC to be a good place to work and that the leadership was mostly collaborative. The Review experienced a highly controlled approach to staff and Director engagement with the Review team.

YMAC had a rigorous approach to its financial management with comprehensive financial policies in place. The detailed time sheeting system helped staff manage their multiple sources of revenue and various costs. Some external stakeholders noted that YMAC could improve its external financial administrative arrangements, reporting burdensome amounts of paperwork and lengthy timelines.

Staff reported that they had excellent opportunities for training and professional development, including cultural awareness training for all staff, 4WD and first aid training for remote area staff, legal and anthropological professional upskilling and an annual all staff conference where topics such as trauma-informed engagement were covered.

Staff turnover during the Review period was relatively low and the proportion of Aboriginal staff members to total staff (excluding rangers) was stable at approximately 15 per cent.

RECOMMENDATION

9

Better document the responsibilities of the Board to include hearing from and listening to members or clients in line with best practice governance.

RECOMMENDATION

10

Work with the members with a view to updating the YMAC Rule Book to be consistent with best practice. This should include the introduction of cumulative term limits or consecutive terms able to be served for Board and regional committee members, and the number of members from a single family who can stand for election.

RECOMMENDATION

11

Ensure that an external consultant agreed by the Board is on the recruitment panel for regional office positions where there could be a real or perceived conflict of interest by Traditional Owners in the community.

RECOMMENDATION

12

Review external financial administrative arrangements with a view to streamlining the experience of service providers.

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

YMAC provided services from its dedicated PBC support function to 24 of the 34 PBCs in its RATSIB areas. Of the PBCs supported by YMAC, 14 received basic support funding in at least one year of the Review period. Support covered the provision of the basic support services for which YMAC received NIAA funding, as well as provision of ad-hoc geospatial services, legal services and executive services. Many PBCs were relatively well-established and so basic support funding was no longer a necessity.

There was some confusion among PBCs about the role of YMAC in the allocation of basic support funding. Given the discretion provided by the NIAA for NTRB-SPs to allocate the funding as they saw fit, YMAC

expected PBCs to apply for this funding. There is room for greater clarity from YMAC about the rationale and process for allocation.

Feedback from PBCs about YMAC's services varied, with some PBCs commending it as responsive and professional while others felt it was too rigid. Overall PBCs were generally satisfied with YMAC's provision of service. Some PBCs felt that YMAC could improve its communication, particularly regarding when services and training were being offered. All PBCs supported by YMAC had some level of formal service agreement in place.

Some of the more established PBCs with looser relationships to YMAC questioned how YMAC could continue to support their evolving needs in the post-determination context. Some newer established PBCs wanted greater opportunities to build their own capability and reduce reliance on YMAC earlier in the process of establishment.

YMAC had a detailed return of cultural materials process and policy that was very advanced in comparison to other NTRB-SPs.

Overall, the PBCs in YMAC's RATSIB regions had good opportunities to become self-sufficient, more so in the Pilbara than in Geraldton. The high level of mining activity in the regions was a significant driver of this self-sufficiency.

RECOMMENDATION

13

Clarify the process for allocation of PBC basic support funding to PBCs, including the availability of funding, how the funding can be accessed and the rationale for decision-making.

RECOMMENDATION

14

Undertake a feedback process through an independent third party to better understand the range of needs for PBCs in the region.

RECOMMENDATION

15

Improve communication with PBCs through:

- Increasing the number of channels for communication, including digital channels and social media notification and support.
- Ensuring all PBCs in the RATSIB area are provided direct and regular updates regarding outstanding native title work and progress relating to their PBC.
- Prioritising informal communication where there has been recent turnover in senior PBC staff.

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

YMAC had a Strategic Plan with a strong focus on the post-determination environment, which is appropriate given that a large percentage of YMAC's RATSIB areas has already been determined.

Key strategic objectives in the Strategic Plan included growing revenue streams for the organisation, supporting Traditional Owner groups to strengthen capacity and maintaining sector leadership.

These post-determination objectives were supported by a number of commercial initiatives YMAC already had in place, including fee-for-service heritage work and consulting services, and a large share in the renewable energy company Pilbara Solar. The Review encountered a perception among some PBCs that

YMAC was competing with them for the often-lucrative provision of heritage-adjacent services and survey work for commercial enterprises. Rather than YMAC bolstering its own source of income, these stakeholders believed YMAC should better support PBCs to establish the systems and structures to take on these engagements. YMAC advised the Review that it was not possible for YMAC to compete with PBCs as YMAC could only provide heritage services in a determined area if it is requested to do so, such as through a service agreement between the PBC and YMAC.

The Review found that YMAC could more clearly communicate its revenue generating activities to help educate the community about the broader role that YMAC proposes to play if it is to survive as an organisation in the post-determination environment. In line with a recommendation of the previous Review, greater transparency may also assist in assuring stakeholders that native title interests remain a key driver of the organisation.

YMAC had plans in place to develop its work on native title compensation applications. The Review notes that for an NTRB with so much of its RATSIB area already determined, progress with developing compensation research and claims appeared to be slow.

An internal implementation plan associated with YMAC's Strategic Plan was in place through the Review period. The Review notes its comprehensive activities and suggests it would benefit from the inclusion of key performance indicators or measures of success.

YMAC published only a very high-level summary of its Strategic Plan on its webpage. The full Strategic Plan was only circulated within the organisation. It was unclear to the Review what level of input Traditional Owners in the YMAC RATSIB areas – beyond those on the Board – had into the Strategic Plan.

The Review encountered polarised views from Traditional Owners about YMAC's non-native title activities, such as facilitating Traditional Owners coming together on regional and state issues and its commercial activities such as the 50 per cent stake in Pilbara Solar. While there was clear support from some PBCs, some others who engaged with the Review felt it was an "overreach" of YMAC's role and were concerned that it might be distracting YMAC from its native title core business and PBC basic support activities. YMAC strongly refuted any suggestion that its other activities had any impact on its native title work and noted that its advocacy work was covered under its constitution and driven by Traditional Owners' expectations.

The Review notes that, given the challenge of managing the transition away from NIAA-funded claims work, more transparent communication would help educate the community about the broader role that YMAC proposes to play and alleviate concerns that it is de-prioritising native title related work.

RECOMMENDATION

16

More clearly communicate with stakeholders the role YMAC seeks to fulfil in the post-determination environment, while continuing to assure stakeholders that native title interests remain a key driver of the organisation.

RECOMMENDATION

17

Prioritise support to PBCs to assist them to develop the administrative systems and structures to be better placed to benefit from lucrative heritage-related work.

RECOMMENDATION

18

Develop key performance indicators to support management and monitoring of YMAC's Implementation Plan.

RECOMMENDATION

19

Publish YMAC's Strategic Plan 2021-2025 in full and be clear about the support of Traditional Owners in its development.

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 YMAC achieved positive native title outcomes for its clients. It represented the applicants in six successful claims, negotiated over 30 ILUAs, responded to thousands of FANs and filed three new claims.

YMAC was particularly successful in supporting its clients in some challenging cases, including resolving the Yamatji Nation claim and the longstanding Gnulli claim. It took a particularly unique approach to the former, conducting an information sharing expo to facilitate authorisation across a large claim group, an approach which was praised by both Traditional Owners and other external stakeholders.

Most of YMAC's work was conducted internally by its anthropology and legal teams with YMAC using external experts for specialised inputs. YMAC provided assistance to some privately represented groups, for example as part of the Yamatji Nation claim but did not brief out any whole matter during the Review period. YMAC advised that it only briefed out whole matters when there was a real conflict of interest.

YMAC pursued compensation matters as part of claim determination but did not progress any compensation applications as mentioned in section 61(1) of the NTA during the Review period.

Legal stakeholders were generally positive regarding YMAC's performance in achieving positive native title outcomes, describing YMAC as competent and professional although relationships were sometimes challenging. The limited number of Traditional Owners who engaged with the Review expressed either very positive or negative sentiments. The primary cause of Traditional Owner dissatisfaction was the perceived accuracy of claim group membership, which is a recurring theme in Traditional Owner feedback due to the nature of native title. Some stakeholders advised the Review that they had chosen not to have YMAC represent them in claims.

In recognition of the critical shortage of native title anthropologists, YMAC commenced an anthropology internship in connection with Curtin University, dedicated to generating more interest in working in anthropology for NTRB-SPs, particularly among First Nations candidates.

A few Traditional Owners and PBC members who spoke with the Review expressed a view that YMAC was not sufficiently proactive in pursuing native title opportunities in unclaimed areas. YMAC notes that it progressed research in unclaimed areas through consultations and fieldtrips during the Review period.

During the Review period, YMAC faced some impacts from external factors, many of which they were able to successfully mitigate, including the barriers to travel created by COVID-19. YMAC staff were actively involved in the public campaign about the introduction and repeal of the *Aboriginal Cultural Heritage Act (2021)* (WA), which impacted workloads. High mining activity and state government support through Closing the Gap priorities meant relatively rapid progression to a successful native title outcome when compared to other regions.

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

YMAC achieved positive outcomes for clients during the Review period

Despite the impact of COVID-19, YMAC continued to successfully achieve native title outcomes for clients, including the resolution of several long and challenging claims. During the Review period, YMAC:

- filed **three new applications** for native title
- achieved **six new native title determinations via consent** for five claim groups, all resulting in a judgement that native title existed in part of the claim area
- achieved **two revised native title determinations**
- had **no unsuccessful native title outcomes** with a judgement that native title did not exist.

The details of these determinations are outlined in Table 1.

Table 1 | Determinations achieved by YMAC during the Review period²

Determination	Date filed	Determination date	Judgement
Nanda People Part B, Malgana 2 and Malgana 3	19/06/2000	4/11/2019	Native title exists in parts of the determination area.
Gnulli, Gnulli #2 and Gnulli #3 - Yinggarda, Baiyungu and Thalanyji People	14/04/1997	17/12/2019	Native title exists in parts of the determination area.
Yamatji Nation	28/06/2019	7/02/2020	Native title exists in parts of the determination area.
Budina 2	3/09/2019	26/02/2021	Native title exists in parts of the determination area.
Wajarri Yamatji Part D	25/06/2018	29/07/2021	Native title exists in parts of the determination area.
Wajarri Yamatji Part E	1/08/2017	29/07/2021	Native title exists in parts of the determination area.
Kuruma Marthudunera Part B	09/04/2020	27/01/2021	Revised native title determination – native title exists in parts of the determination area.
Niyaparli and Niyaparli #3	14/04/2020	19/01/2021	Revised native title determination – native title exists in parts of the determination area.

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

Although the number of successful determinations achieved by YMAC during the Review period was lower than the years preceding, many of the resolved claims were either long-standing and/or among the most complex claims.

The resolution of the Yamatji Nation determination was a significant milestone

The Yamatji Nation determination³ was borne out of a new overarching claim that replaced four earlier claims with a significant geographic overlap. The Federal Court found that non-exclusive native title persisted in only a minority of the claim area, but in an Australian first, recognised an ILUA entered into with the state that provided a benefits package to the group to “empower the Traditional Owners”. This included \$442 million to be paid over 15 years, covering:

- \$325 million to be held in a joint trust for the first ten years, thereafter, transitioned to the sole management of the Yamatji Trustee
- \$70 million for economic development and property for the establishment of the Yamatji Southern Regional Corporation's headquarters
- the transfer of approximately 14,500 hectares of Crown land in freehold
- the transfer of approximately 134,000 hectares of Crown reserve land to the Bundi Yamatji Aboriginal Corporation
- the joint vesting and management of new and existing Conservation Park and National Park areas within the Yamatji Conservation Estate
- the transfer of commercial and industrial land valued at \$8.7 million
- the transfer of social housing properties
- 35 percent of the annual rental from mining tenure for ten years
- five percent of the lease income from land within the Oakajee Industrial Precinct
- recognition of native title over certain parcels of land
- projects for the protection of cultural heritage and water site restoration.⁴

Consequently, YMAC noted that this determination was more akin to an “alternative settlement” arrangement centred around an ILUA than a traditional determination, and to date,⁵ it is the only one of its kind in Australia.

The Yamatji Nation ILUA was subsequently recognised by name in *the Aboriginal Heritage Act 1972* (WA) as a form of “settlement ILUA” and the Yamatji Southern Regional Corporation (the PBC created as a result of the settlement) was acknowledged as a “native title party”.

The achievement of this resolution was described by the Federal Court as holding a “special significance”, due to the widespread physical dispossession of the people within the claim group. Despite the state’s original intention to offer only a non-native title outcome, through “open negotiation and the claimants’ ability to convey their strong relationship to Country”, Yamatji Nation Traditional Owners were able to achieve the final “progressive and innovative”⁶ resolution.

³ *Taylor on behalf of the Yamatji Nation Claim v State of Western Australia* [2020] FCA 42.

⁴ Agreements, Treaties and Negotiated Settlements database. 2020. Yamatji Nation Indigenous Land Use Agreement (ILUA). Accessed June 2024. https://database.atns.net.au/agreement_print.asp?EntityID=8100

⁵ Laura Meachim (2020), Yamatji Nation Claim resolved granting native title and funding deal in an Australian first. ABC Midwest and Wheatbelt. Accessed Nov 2023.

⁶ *Taylor on behalf of the Yamatji Nation Claim v State of Western Australia* [2020] FCA 42.

Through the negotiation, YMAC supported the Traditional Owner-led negotiation team in facilitating information sharing and authorisation across the claim groups involved, both directly and through financial assistance agreements that provided NIAA funding support for private lawyers representing Widi Mob and Mullewa Wadjari. In particular, YMAC's 2019 authorisation meeting used what they described as an "innovative and unique" approach of including an information expo (dubbed the "YSNRA Expo") on the first day of the meeting, leading to a successful authorisation.

The long-standing Gnulli claims were resolved during the Review period

The Gnulli, Gnulli #2 and Gnulli #3 claims were three native title claims made by the Gnulli claim group over a single area of land. The three claims were filed between April 1997 and May 2019, with a determination handed down in December of 2019.⁷

The claim group was comprised of three separate Indigenous language groups: the Yinggarda, Baiyungu and Thalanyji people. Several YMAC staff said that a high level of complexity and intensive consultation was required to complete research in a manner that would allow it to be accepted by the community. Once the research was completed, negotiations for a consent determination began, taking only two years to finalise. The successful determination was ultimately made at the beginning of the Review period. YMAC attributes its extensive anthropological work as having been a major factor in the breakthrough that led to this determination.

YMAC represented half of all active, unresolved claims in its RATSIB regions

As of 30 June 2022, there were 17 active claims within YMAC's RATSIB areas, six of which overlapped with a non-YMAC RATSIB area. Seven of these active claims were represented by YMAC. A list of active claims is in Table 2. Of the claims represented by a private solicitor, YMAC provided various types of other assistance (for example, research) for at least four cases.

The Pilbara and Geraldton regions host some of Western Australia's oldest active claims, six of which had been active for over 20 years. YMAC represented two of these very long-standing claims.

Table 2 | Active claims in YMAC regions as of 30 June 2022

Case name	Date filed	Region	Represented by
Mullewa Wadjari Community (WC1996/093)	19/08/1996	Geraldton	Private solicitor
Palyku (WC1999/016)	30/03/1999	Pilbara	Private solicitor
Nyamal #1 (WC1999/008)	7/05/1999	Pilbara	Private solicitor
Yugunga-Nya People (WC1999/046)	9/12/1999	Central Desert, Geraldton	Private solicitor
Nanda People (WC2000/013)	19/06/2000	Geraldton	YMAC
Jurruru #1 (Part B) (WC2000/008)	24/07/2000	Central Desert, Geraldton, Pilbara	YMAC
Wajarri Yamatji #1 (WC2004/010)	21/12/2004	Geraldton	YMAC
Jurruru #2 (WC2012/012)	22/11/2012	Central Desert, Geraldton	YMAC

⁷ Sarah Mozley (2019), Gnulli native title determined 22 years after first claim. National Indigenous Times. Accessed Nov 2023.

Case name	Date filed	Region	Represented by
Yinhawangka Gobawarra (WC2016/004)	17/10/2016	Central Desert, Geraldton, Pilbara	Private solicitor
Marlinyu Ghoorlie (WC2017/007)	22/12/2017	Geraldton, Goldfields, South West	Private solicitor
Wajarri Yamatji #3 (WC2018/001)	5/02/2018	Geraldton	YMAC
Palyku #2 (WC2018/022)	29/10/2018	Pilbara	Private solicitor
Wajarri Yamatji #7 (WC2018/026)	19/12/2018	Geraldton	YMAC
Nanda People #3 (WC2019/004)	29/03/2019	Geraldton	YMAC
Gingirana #4 (WC2020/003)	6/10/2020	Central Desert, Geraldton	Central Desert Native Title Services
Martu #3 (WC2021/004)	21/07/2021	Central Desert, Pilbara	Central Desert Native Title Services
Yugunga-Nya People #2 (WC2022/003)	30/05/2022	Central Desert, Geraldton	Private solicitor

Feedback on YMAC's legal service was generally positive

The Legal team at YMAC had about 18 team members who worked across a broad range of work in native title, from claims to FANs and PBC governance. PBC support and governance had the dedicated support of a separate team, with work only going to lawyers when necessary.

Legal stakeholders who interacted with YMAC commented that YMAC's legal work was competent and professional although relationships were sometimes challenging.

Some former or potential clients who spoke to the Review explained why they chose not to have YMAC represent them in claims:

- Some groups were dissatisfied with YMAC's research findings and believed they could receive a different outcome from another representative.
- Some PBCs that had worked with YMAC for prior claims expressed hesitation to work with them again, citing what they felt was complacency in assessing opportunities for new potential claims.

YMAC received support from PBCs and Aboriginal Corporations for its professionalism and dedication

The Review notes the advice from YMAC that the organisation received 14 letters from PBCs and Aboriginal corporations in support of its last NTRB re-recognition application in early 2023 (not long after the Review period).

...without the professionalism and dedication of the YMAC staff we would not have achieved the outcomes we have done thus far, especially since determination. I fully support and wish to continue to work with YMAC into the future as the Nanda community seeks to achieve the goals for self-determination for our community.

Nanda Aboriginal Corporation Stakeholder

Traditional Owners who engaged with the Review held both positive and negative views about YMAC's performance

The Review actively engaged Traditional Owners through surveys and interviews who had interacted with or received services from YMAC during the Review period. Opinions regarding YMAC's performance were mixed, with some of the Traditional Owners who engaged with the Review expressing either very positive or negative sentiments. Some Traditional Owners acknowledged that YMAC had strong regulatory, legal and process knowledge around native title and was capable of effectively managing the administrative and executive components of achieving positive determinations.

"I have a high regard for YMAC. They are continuing to coordinate Pilbara, Mid West, Gascoyne to come together in a way which will create opportunity for the area."

Pilbara Region Traditional Owner

Some Traditional Owners wanted YMAC to be more proactive in pursuing native title opportunities on their behalf

There was an expectation expressed to the Review by several groups that YMAC, given its expertise, should lead conversations around new claims and post-determination opportunities (economic and otherwise). A view held by some Traditional Owners was that YMAC could have been more proactive in pursuing native title opportunities for remaining unclaimed areas and in pursuing compensation claims. YMAC believed these perceptions were incorrect, pointing to numerous activities which they felt demonstrated their proactive stance to native title during the Review period. This included their work securing financial benefits for Traditional Owners as part of the Yamatji Nation Southern Regional Agreement (YNSRA) negotiations and almost 50 consultations/field trips YMAC held to progress research into unclaimed areas.

Other Traditional Owners who spoke with the Review felt that YMAC's responsibility was to assist groups in pursuing native title claims in areas they themselves had identified as being traditional lands. In these cases, the Traditional Owners felt frustrated, believing YMAC did not take their views seriously and was not progressing to investigate these potential claim areas.

A perceived lack of transparency in the way YMAC handled and investigated claims likely contributed to both these concerns. Communication quality and frequency were raised by Traditional Owners who contacted the Review and are discussed further under TOR 3.

Some stakeholders were uncomfortable with YMAC choosing to act as a respondent on cases where it did not represent an applicant

There were some instances where YMAC itself acted as a respondent on cases. Some external legal stakeholders and Traditional Owners were uncomfortable with YMAC's role as party on its own behalf because they felt it was not properly communicated why their oversight on the case was necessary and it was not necessarily an efficient way of using its resources. YMAC staff, however, reported that serving as a respondent allowed them to better understand the context of the native title claim and the progression of the law. The Review notes that it is entirely a decision for the Federal Court as to whether a party is accepted as a respondent.

YMAC used innovative methods to conduct a number of large claim group meetings during the Review period

Two large claim group meetings were facilitated by YMAC during the Review period, as shown in Table 3.

Table 3 | Major YMAC claim group meetings⁸

Financial year (FY)	Meeting	Details
2019-20	YNSRA ILUA and Consent Determination Authorisation Meeting	One of the largest authorisation meetings in Western Australia native title history, with 751 attendees on day one and 812 attendees on day two.
2020-21	Wajarri Yamatji Authorisation Meeting	Conducted on an oval in a marquee with capacity for 500 people with social distancing to comply with COVID-19 regulations.

YMAC's annual reports described innovative methods for engaging Traditional Owners in these large meetings, and senior staff who spoke with the Review team highlighted these strategies as key achievements for the organisation. This included:

- An information expo for the YNSRA meeting which consisted of a series of rooms, where each room was dedicated to a specific aspect of the settlement package. Rooms featured visual displays and representatives of whom Traditional Owners could ask questions. This included a 3D representation of the ILUA area that had been developed by YMAC's geospatial team. The idea for the expo was developed by Traditional Owners on the Traditional Owner Negotiation Team.
- Providing information for the Wajarri Yamatji Authorisation meeting through the ArcGIS StoryMap application, allowing meeting attendees to view and interact with information relating to the claim on their own devices throughout the meeting.

Anthropological research

During the Review period, YMAC had a well-established in-house anthropological function

Stakeholders to the Review reported that YMAC had a "well-resourced" in-house anthropology unit within its research function during the Review period. The Research function originally operated under the PLO as a distinct team, but to heighten the perception of independence, was officially moved out from under the PLO during the Review period.

YMAC's 2022 Annual Report described the function of its anthropologists as follows:

...provide research, support and advice to the Legal unit for the progression of native title claims. The team also provides advice and support to PBCs post-determination, delivers training, provides logistic and administrative support for meetings, conducts ethnographic surveys and delivers various projects across YMAC.

YMAC relied on its in-house anthropologists to initiate research and evidence for all new claims through desktop review and internal engagement with claim groups. In some instances, previous research which had already been accepted by the State was used to speed up building an agreed-upon evidence base.

Lack of anthropologists prior to the Review period delayed the progress of several claims within the period

Prior to the Review period, YMAC had experienced limited access to expert anthropologists who were able to write connection reports. YMAC advised that these access issues occurred at several critical junctures and sometimes after significant resources had been spent in engaging consultants. This delayed the progression of research in several complex claims (such as the Gnulli claims) and consequently hindered negotiations. External anthropologists were engaged for both broad and targeted areas of research. YMAC

⁸ YMAC. Annual Reports 2019-20 and 2020-21.

engaged six anthropological consultants in FY2019-20, reducing to two in FY2020-21 and zero during FY2021-22.

External consultants were used to supply expert advice in complex native title matters. YMAC's in-house anthropology team usually initiated and managed work and continued to support the external consultants in these cases. YMAC also reported that where they had a conflict of interest such as where a claim overlapped shared Country they would wholly brief out matters, but there were no instances of this occurring during the Review period.

YMAC's in-house anthropological team also provided anthropological support to non-native title projects, including for regional ranger projects, Indigenous Protected Areas (IPAs) and other government programs. This was funded by non-native title sources.

The Review was not made aware of any First Nations anthropologists working at YMAC. However, the Review was informed that in recognition of the critical shortage of native title anthropology skills, YMAC had begun hosting an anthropology internship in connection with Curtin University, dedicated to generating more interest in working in anthropology for NTRB-SPs, particularly among First Nations candidates.

Some Traditional Owners who engaged with the Review raised concerns about the quality of research and anthropology underpinning claims

Concerns raised by a few Traditional Owners fell into two categories: firstly, apprehensions about anthropological work that aimed to strengthen an overall claim at the expense of accuracy. Secondly, concerns were raised about the execution of the anthropological work itself. The nature of their concerns included:

- that YMAC had set boundaries inaccurately
- some of the cultural heritage sites that they had shown or tried to show YMAC were not considered
- that entire areas had been erroneously consolidated into a single claim group
- that some families had been incorrectly excluded from connection reports and claims, with no room for recourse
- that some Traditional Owners had been ascribed to incorrect apical ancestors.

The Review was not tasked with investigating complaints made by Traditional Owners but they were reported as stakeholder perspectives. The Review also notes that similar concerns were the cause of significant Traditional Owner dissatisfaction and feedback across the native title system. Given research is the basis from which a claim is formed it is the area where there will be the greatest feedback, particularly where there are disputes amongst Traditional Owners about the accuracy of their stories. There may be opportunities to ensure that feedback mechanisms are in place and appropriate and to put more resources into communication channels. This will not resolve all issues but may generate improved transparency.

A particular source of concern for some Traditional Owners was their perception that claim groups were consolidated in order to give a stronger prospect of success for the claim. This was a source of dissatisfaction for some Traditional Owners who spoke to the Review as they felt they were included in claim membership arrangements that ultimately alienated them from their lands and created subsequent challenges for the operation of the resultant PBCs. Some Traditional Owners suggested that consolidating claims into a larger claim meant that the combined group was then treated as a monolith which led to evidence gathering or boundary setting being conducted less accurately than would have otherwise been

“...being recognised not under our own identity but under another identity is just absurd. We don’t belong to the [that group].”

Yamatji Region Traditional Owner

required. These Traditional Owners were unhappy with what they felt were unrelated family groups being added onto their claims. The Review recognises that this is a consistent issue raised by Traditional Owners across Australia and is not unique to YMAC.

Future Acts and ILUAs

YMAC received and responded to a significant number of Future Act matters

During the Review period, YMAC received over 2,000 FANs (see Table 4) and participated in 26 negotiations. YMAC attributed the high volume of Future Act activities in its RATSIB areas to Western Australia’s resource industry, notably inflating the number of Expedited Procedure applications (mining exploration and prospecting). Under the NTA, native title claim groups affected by a proposed Future Act can object to the expedited procedure within a designated notification period (four months for claimant group, three months for PBC) and direct YMAC to assist in further action.

During the Review period, YMAC received a substantial number of instructions to lodge an objection and brought 11 further enquiries to the National Native Title Tribunal to determine whether the expedited procedure applies.

Internally, Future Acts were handled by YMAC’s Legal and Future Acts team, which operated under its PLO.

Table 4 | Future Acts assisted by YMAC

Financial year	‘Right to negotiate’ negotiations	Expedited procedure FANs	Expedited procedure objections lodged (section 29)	Heritage agreement (tenements)	Total
2019-20	4	255	243	133	639
2020-21	6	402	372	147	929
2021-22	16	230	230	134	615

YMAC supported claimants to negotiate a large number of registered ILUAs during the Review period

YMAC supported 33 ILUAs during the Review period. As at 30 June 2022, they were assisting with seven active ILUA negotiations. Table 5 provides a summary of ILUA negotiations supported by YMAC in each year of the Review period.

Table 5 | YMAC ILUA negotiations⁹

Financial year	ILUAs
2019-20	12
2020-21	11

⁹ YMAC, 2023. Future Act Report.

Financial year	ILUAs
2021-22	10

The majority of ILUAs involved the use of land for pastoral purposes, including pastoral access. One ILUA with the state government involved consenting to a finding about the extinguishment of native title in exchange for the establishment of a “cultural protection area”.

YMAC was also heavily involved in the ILUA negotiations that arose from the Western Australian Government’s “Plan for Our Parks” initiative, which provided joint management of Western Australian parks and reserves between government (Western Australian Department of Biodiversity, Conservation and Attractions) and native title parties. It negotiated land use for parks as well as employment and service terms for Aboriginal ranger programs to manage many of those parks.

YMAC staff believed that the organisation had often gone above and beyond in assisting Traditional Owners to benefit from ILUAs. They noted in particular the Yamatji Nation claim group ILUA, for which YMAC hosted a physical authorisation meeting and “informational expo”, in response to an idea developed by members of the Yamatji Nation claim group.¹⁰ This consisted of several showcase rooms with visual displays, video representations, advisors and more, for the purpose of educating Traditional Owners on the terms of the ILUA and the package offered by the state government.¹¹ The event drew over 800 unique attendees during the two days and was positively received, including by the then-Minister for Aboriginal Affairs (WA) and the Chair of the Traditional Owner Negotiation Team.

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

YMAC represented 66 per cent of all native title determinations across its RATSIB areas during the Review period

During the Review period, YMAC represented eight claims that resulted in a determination (including two revised determinations) of native title, out of a total of 12 determinations in the RATSIB area (66 per cent). Native title was found to at least partially exist in all determinations where the applicants were supported by YMAC.

YMAC was not the representative for four determinations. All of these were represented by private lawyers. All of these determinations were findings that native title exists in parts of the determination area.

There were also three determinations that overlapped onto YMAC’s RATSIB area but were not within YMAC’s carriage. Two of these were represented by private lawyers and one by the Kimberly Land Council. Two determinations were findings that native title exists in parts of the determination area and one was a finding that native title does not exist.

YMAC supported three new claims for native title and 33 ILUAs during the Review period. Table 6 summarises YMAC’s native title and ILUA activity during the Review period. YMAC filed three new determination applications (one new, two revised) and negotiated 33 ILUAs.

¹⁰ YMAC, 2021. YMAC Annual Report 2020.

¹¹ Government of Western Australia, 2019, Comprehensive native title settlement over Geraldton and the Mid-West authorised by community. [WA.gov.au](https://www.wa.gov.au). Accessed Nov 2023.

Table 6 | Native title activity for YMAC during the Review period

Number of new determination applications filed	Number of determinations of native title	Number of ILUAs	Number of ILUAs resulting in extinguishment of native title or settlement
3	6	33	3

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

YMAC staff reported that in general, they briefed out¹² rarely, and only where there was conflict of interest and consent for YMAC to act was not received from the applicant party. This approach was outlined in YMAC’s policies. During the Review period, YMAC did not wholly brief out any matters, though they briefed out components of their determination work to Counsel.

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

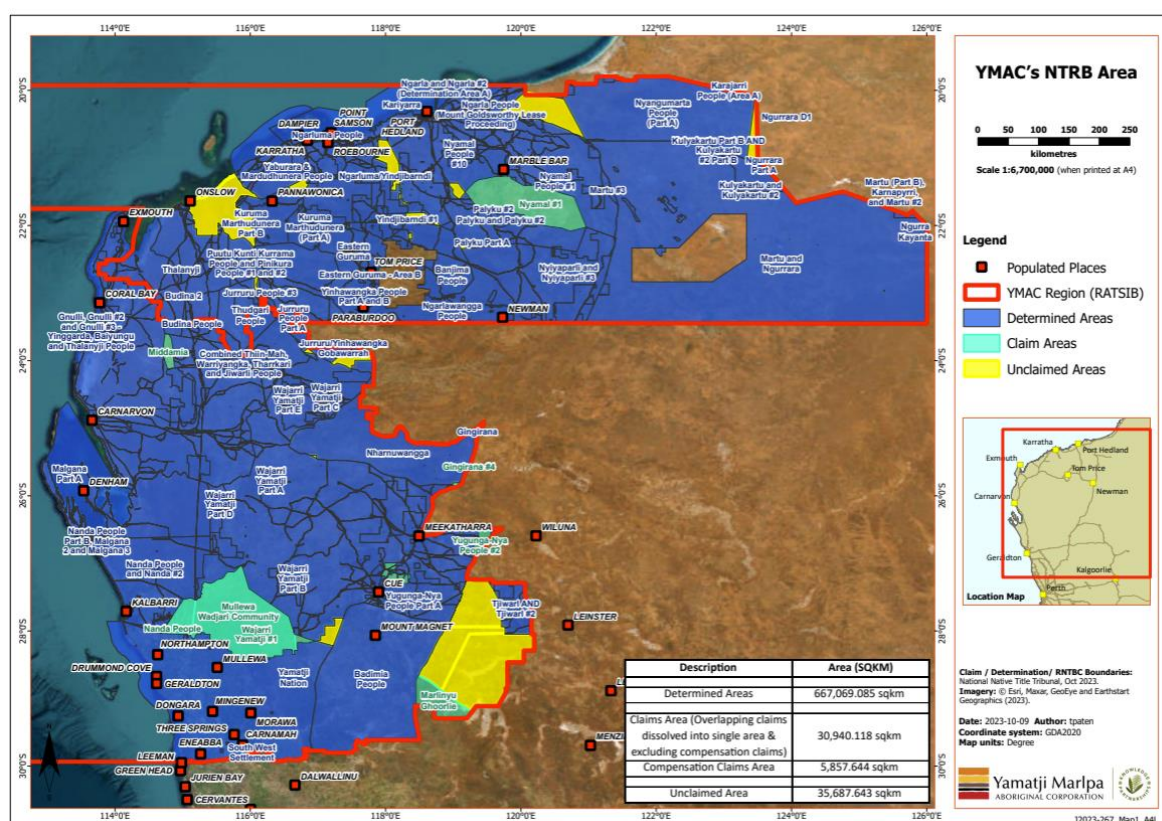
Almost all land in YMAC’s RATSIB area has already been claimed

The Pilbara and Geraldton areas cover about 750,000 square kilometers of land, of which approximately 700,000 square kilometres is claimable. Approximately 36,000 square kilometers of claimable land remains unclaimed, comprising five per cent of total claimable land area.

Figure 1 illustrates the areas where a native title determination has been made or is forthcoming, as well as areas of unclaimed land.

¹² Briefing out refers to when an NTRB-SP funds an external solicitor to represent a matter.

Figure 1 | Pilbara and Geraldton claimant application and determination areas¹³



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

YMAC's average time between filing an application to determination of native title was impacted by the resolution of two long-standing claims

During the Review period, the average time to determination was 8.54 years. This average was affected by the resolution of two claims which had been ongoing for over 19 years each. The remaining determinations were all reached in under four years, with the shortest taking less than a year to reach determination.

Table 7 | Age profile of determined claims during the Review period

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

Table 8 shows the breakdown of YMAC's remaining active claims by length of time since the claim was first lodged. The remaining active claims are all mid- or long-standing claims, with the average time open for these as of 30 June 2022 being 11.75 years.

¹³ YMAC, 2023. YMAC's RATSIB area.

Table 8 | Age of active claims as of 30 June 2022

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

A proposed guideline for claim resolution by the Federal Court suggests five years is desirable for claims lodged since 2011 and ten years for claims lodged before 2011.¹⁴ The average time to determination for all Western Australian claims resolved during the Review period was approximately 5.5 years.¹⁵ This means YMAC's average time to determination and the age of active claims significantly exceeded both the suggested benchmarks above and sector averages.

The timeframe for several long-standing claims was impacted by the presence of overlaps where mediation was unsuccessful and the claim had to proceed to litigation. Some external stakeholders working in the sector held the view that for one of these long claims, (the Geraldton cluster of claims that formed the Yamatji Nation matter) a more proactive approach to negotiation of overlaps on the part of YMAC prior to referral to mediation could have significantly shortened the timeframe. YMAC responded that it had worked in earnest with the State since 2004 to discuss alternative settlement options and that there was ample evidence of its proactive approach in handling the Geraldton claim cluster.

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

During the Review period, YMAC did not assist with the making of any compensation applications as mentioned in section 61(1) of the NTA. Very few compensation claims under this section of the NTA have been progressed by NTRB-SPs across Australia, though many have begun research into potential compensation claims. In line with this, there may be opportunity for YMAC to further progress economic analysis and tenure analysis to determine where compensation liability lies.

In relation to compensation matters, YMAC notes that it directly resolved three native title compensation matters and assisted in finalising two others as part of the Yamatji Nation ILUA. YMAC also advised that it received instructions during the Review period to progress additional compensation matters.

5.1.2 TOR 1: External factors

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

State government policy and legislation

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

During the Review period, the Western Australia Government's position was to achieve consent determinations for the state, with an increased willingness to progress agreement-making, a policy reflected in the Closing the Gap priorities and the Western Australia Implementation Plan.¹⁶ This stance

¹⁴ Justice Berna Collier, "Prioritisation of Native Title Cases in the Federal Court of Australia", Federal Court of Australia. Accessed November 2023.

¹⁵ National Native Title Tribunal, 2023. Native Title Applications, Registration Decisions and Determinations. Accessed November 2023.

¹⁶ Western Australia Government. 2021. Closing the Gap Western Australia Implementation Plan.

has evolved from the historically slow, adversarial and trial-focused approach taken by previous Western Australia Governments.

State legislation has had some impact on native title determinations

Within WA’s context, two pieces of state legislation were directly or adjacently related to YMAC’s native title activities, as outlined in Table 9.

Table 9 | Relevant state legislation

Legislation	Description	Impact
<i>Aboriginal Cultural Heritage Act 2021 (WA)</i>	There has been significant commentary on the Western Australia Government’s <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> . In response, the Western Australia Government decided to repeal the <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> (despite it only coming into effect on 1 July 2023) and revert to the previously repealed <i>Aboriginal Heritage Act 1972 (WA)</i> with some amendments.	Moderate – YMAC staff played an active role in the campaign to achieve the repeal of the <i>Aboriginal Cultural Heritage Act 2021 (WA)</i> , which involved additional workload using native title resources. YMAC advised that it coordinated the whole statewide co-design workshops during the Review period, which was a substantial piece of work, including coordinating several regional meetings and a large public gathering. These activities used native title resources.
<i>Mining Act 1978 (WA)</i>	The Western Australia Government asserts that the expedited procedure applies to all exploration tenement applications lodged under the <i>Mining Act 1978 (WA)</i> , such as Exploration and Prospecting Licenses.	Moderate – Western Australia Government policies around expedited procedure impose some pressures on YMAC due to the level of mining activity and volume of objections but did not substantially act as a barrier to achieving outcomes for native title parties.

Complexity of remaining claims

Most of the unresolved claims in YMAC’s RATSIB areas are complex

Areas with clear connection to a single claim group had been long determined before the Review period, and YMAC had already begun to move into its more complex claims. There was moderate to significant overlap across all these claims. YMAC operational reports indicated that many of the claims still active also consisted of separate language groups, which added complexity to negotiations.

Some YMAC staff noted that overlaps in claimed areas was a complicating factor in a majority of the remaining claims. YMAC had to conduct additional research to canvas these overlaps.

History of previous claims

The Review found no evidence that the history of previous claims was a significant source of challenge to YMAC’s performance during the Review period, despite some claimants reporting they had lost trust in YMAC as a result of outstanding grievances.

Complexity of land use and tenure

The remoteness of YMAC’s RATSIB areas supported native title determinations

The land in YMAC’s RATSIB areas is almost exclusively Crown land (either unallocated or under pastoral lease), which unlike freehold land, does not extinguish native title. As a result, in decisions to date, very little native title was determined to have been extinguished, with the majority of extinguishments or

findings of no native title occurring across coastal settlements. In most cases, the only extinguished title was over roads, public works and isolated individual lots.

A notable exception to the above is that in the Pilbara region, several National Parks and designated conservation areas are major non-claimable areas. Varying levels of physical dispossession in the region impacted the complexity of claims.

In Geraldton, the Traditional Owners comprising the Yamatji Nation claim group suffered severe physical displacement which amplified challenges in evidencing land connection.

The Pilbara region suffered relatively less displacement than the Geraldton region, meaning family groups had a stronger chance of demonstrating connection to land for the purpose of native title.

The prevalence of mining in the Pilbara region has driven economic opportunity at the increased risk of damage to cultural heritage

Mining is a significant economic driver in the region, with the vast majority of the Pilbara and approximately half of the Geraldton region covered in live or prospective mining tenements. Mining has brought economic opportunity to Traditional Owners (see TOR 6), but at the same time it has created distinct challenges.

The NTA provides that mining leases may operate concurrently with native title. The existence of native title does not prevent the valid continuation of mining activities, nor does a mining lease extinguish native title. However, mining companies have historically chosen to appeal decisions around native title rights to have their own rights recognised as part of the determination, increasing the legal complexity of native title matters.¹⁷

Mining has also sharply increased the risk of damage to cultural heritage sites, without sufficient legislative protection to make up for the frequency and scale of risk. During much of the Review period, a consent under section 18 of the *Aboriginal Heritage Act 1972* (WA) did not necessitate notification or renegotiation if new information regarding cultural heritage sites was discovered after initial negotiation and consent. The *Aboriginal Heritage Act 1972* (WA) also allowed for an “ignorance defence” in section 62, which operated flexibly in favour of non-Traditional Owner organisations, such as mining companies.

The destruction of Juukan Gorge and similar damage/destruction incidents during and since the Review period highlighted the limited legal controls available to Traditional Owner groups in Western Australia to protect sites where mining interests exist.

COVID-19

YMAC was able to mitigate the impacts of COVID-19 during the Review period

Western Australia as a whole was less affected by COVID-19 than much of the rest of Australia. However, YMAC staff reported several impacts that arose out of COVID-19 restrictions and disruptions. Prior to COVID-19, YMAC conducted on-Country trips to prepare for and hear evidence on use and occupation of Country.¹⁸ Travel restrictions from COVID-19 delayed the ability to gather evidence for these complex claims and so impacted resolution.

Notably, progress on several ILUAs was delayed. Limited capacity of the courts also meant that native title claims were prioritised over other work, leading to further delays. Many of YMAC’s professional staff were based in Perth, which made travel to remote parts of Western Australia challenging.

¹⁷ *Keith Narrier & Ors v State of Western Australia AND Edwin John Beaman & Ors v State of Western Australia* [2016] FCA 1519.

¹⁸ YMAC, 2023. Progress Against Operational Report 2019-20.

Despite this, the volume of successful determinations and ILUAs progressed through the COVID-19 period indicate that YMAC managed to mitigate COVID-19 impacts in many circumstances.

YMAC’s COVID-19 response was structured around a Response Plan and Safety Measures guidelines, both of which were frequently updated. These introduced new ways of working to help staff safely transition through the pandemic. Between March and April of 2020, YMAC transitioned all staff to remote working and conducting meetings virtually. YMAC also limited non-essential travel and group gatherings and made alterations to physical offices (such as installing hand sanitiser stations) as part of its response policy.

Staff noted that high levels of wellbeing support during the period ensured continued productivity despite the difficulties faced.

Amount of funding

Excluding PBC support and other variations, YMAC received a consistent \$9.7 million a year for its native title functions over the three years of the Review period, totalling approximately \$29.1 million. Table 10 shows the ratio of YMAC’s funding to other factors of interest.

YMAC’s funding to factor ratios were slightly higher than other NTRB-SPs, but still fell within a comparable overall range. It is unlikely that amount of funding played a major role in the success or challenges faced by YMAC relative to other NTRBs-SPs.

Table 10 | Total funding relative to factors of interest

Factor of interest (denominator)	Ratio
YMAC’s total land area: 750,000 square kilometres	\$38.8 per square kilometre
Number of active claims (6) and determinations (6) as at 30 June 2022: 12	\$2,425,000 per claim

5.1.3 TOR 1: Recommendations

RECOMMENDATION

1

Prioritise the development of a strategy and process for pursuing native title compensation applications.¹⁹

¹⁹ As mentioned in section 61(1) of the NTA.

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

A clear process for assessing applications for assistance was publicly and easily accessible via YMAC’s website. This took the form of a flowchart and included information on the timeframes applicants could expect. Limited guidance was provided regarding how requests for assistance were prioritised once accepted by YMAC.

YMAC also had a detailed internal written policy governing its assessment of applications for assistance. An application would usually be reviewed by the PLO and then a briefing prepared for the Board to make a decision at its next meeting.

YMAC staff who spoke with the Review were familiar with the assessment process. The policy appeared to be adhered to consistently.

YMAC has advised that its new Application for Assistance form outlines the process on how applicants can make applications for assistance including for native title compensation.

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

YMAC had a clear process for assessing applications for assistance

During the Review period, YMAC’s application for assistance process and form were published on its website. Each step of the application for assistance process was clearly laid out in a flowchart, including the timeframes for each step and when applicants could expect to receive a response.²⁰ This is summarised in Table 11.

Table 11 | Summary of YMAC Application for Assistance Process

Stage	Notification timeframe
Application is submitted and goes to CEO	Ten business days
Application is referred by CEO to PLO or YMAC Corporate Counsel	Five business days
Application is assessed by PLO or YMAC Corporate Counsel	Ten business days
Brief is prepared by PLO or YMAC Corporate Counsel for next available Board of Directors meeting	Applicant will be advised of timeframe (as the Board meets only once every three months)

²⁰ YMAC 2023. Application for Assistance Flowchart.

Stage	Notification timeframe
YMAC Board Review and outcome	Ten business days
Applicant has right of review if dissatisfied	-

YMAC also had a more detailed internal written policy governing its assessment of applications for assistance.²¹ The policy document outlined YMAC's roles and responsibilities under the NTA, its claims assessment policy, and process and criteria for decisions to grant assistance.

Under YMAC's application for assistance policy the CEO had delegated authority from the Board to approve urgent applications for assistance "in order to protect native title rights or otherwise to ensure Traditional Owners are not disadvantaged" and any non-financial applications for assistance "such as the provision of staff time and resources". The CEO is required to report all such decisions to the Board at its next scheduled meeting.

YMAC staff who spoke with the Review were familiar with the assessment process and reported that the policy was adhered to consistently. Senior staff reported that 32 applications for assistance were received during the Review period, with a small number requiring further information. YMAC did not advise the Review how many applications were refused.

The policy did not distinguish between native title claims and native title compensation applications. YMAC reported that its new Application for Assistance form outlines the process on how applicants can make applications for assistance including for native title compensation. YMAC has also developed internal policy criteria for assessing potential native title claims in its RATSIB area.

Detail provided by YMAC regarding internal prioritisation of claims was limited

YMAC reported that prioritisation decisions were made through the discretion of the Board of Directors and CEO, with the support of senior staff. While the Federal Court timelines tended to determine priority for claims work, the YMAC policy was not explicit about how it prioritised claims on hand once an application for assistance had been accepted.

The Review considered YMAC's prioritisation policy against criteria for equitable resourcing and defensible decisions, as applied to all NTRB-SPs by the Review.²² These are shown in Table 12 against the relevant policy document extract where available. Other prioritisation criteria used by other NTRB-SPs usually include claim complexity, whether a claim will set precedent for future claims, the proactive approach of the claim group, Federal Court timelines and resource availability.

Table 12 | YMAC prioritisation policies

Prioritisation policy criteria	Relevant YMAC document extract
Considerations such as Federal Court-imposed timelines and the service of section 29 notices that require the lodgements of claims within four months.	Not covered.
Clear description of the specific decision-makers for assessment and prioritisation decisions (for example, Board, Board sub-committee, CEO and/or Executive).	Section 7.1.4 of YMAC's Application for Assistance Procedure describes assessment decision-makers: "Where possible all decisions to grant assistance will be considered upon by the YMAC Board of Directors...the

²¹ YMAC. 2023. Application for Assistance Procedure.

²² Nous Group. 2023. Performance Review of NTRB Functions.

Prioritisation policy criteria	Relevant YMAC document extract
	CEO has delegated authority from the board to approve urgent applications for assistance.” Prioritisation decision-makers are not discussed.
Clear description of processes and decision-makers for the conduct of internal reviews of prioritisation decisions (when requested).	All steps and timeframes are covered in YMAC’s Internal Review Process Chart.
Clear description of the circumstances in which matters may be briefed out prior to decision-making.	Section 7.1.6 of YMAC’s Application for Assistance Procedure states that “in circumstances where YMAC is already acting for another claim group or corporation that claims or holds native title over the same or part of the same area... independent legal advice, rather than advice from the Principal Legal Officer should be sought...”

Client and potential client awareness of the process

YMAC shared its assessment, prioritisation and internal review processes with clients and members through its website

YMAC made its assessment and internal review processes publicly available on its website. This included:

- The Application for Assistance page of the YMAC website, which linked to the YMAC Application for Assistance Form and Application for Assistance Flowchart.
- The Application for Assistance flowchart published on the “Info Hub” page of the YMAC website provided a numbered outline of the assessment process at a high level and explained the right to request an internal review. There was also a flowchart illustrating YMAC’s Internal Review process on the same page.

Unlike other NTRB-SPs, YMAC did not provide any overview of, or guidance on, the number of applications received or declined to its members via Annual Reports or other regular publications such as newsletters.

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

Some Traditional Owners were not satisfied with the transparency and communication of the assessment and prioritisation process

The Review received feedback from some Traditional Owners who felt that the prioritisation process at YMAC was not well communicated to them and was not sufficiently transparent. They noted that on a few occasions when they had attempted to obtain more clarity, YMAC did not respond to contact made via the contact form. In other cases where contact was made, they reported that they were not provided with further details and were told to wait an indeterminate period of time for further information. The Review was not able to verify their concerns.

A further concern raised by some Traditional Owners, particularly from those who saw themselves as “smaller” or “minority” groups, was that YMAC chose to work closely with groups that had “stronger” claims. These stakeholders felt that YMAC did not attempt to engage them or treated them dismissively in a way that precluded further discussion if YMAC’s assessment was that their claim did not have sufficient foundation. The Review notes that the likelihood of success is a legitimate criteria in assessing requests for

assistance. However, without sufficient visibility of the prioritisation process, stakeholders are likely to form a perception of bias, manifesting as perceived favouritism of certain groups due to perceived close connections to YMAC. A focus on ensuring decisions are communicated well is an important mitigation against stakeholders forming unfounded perceptions.

5.2.2 TOR 2: External factors

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

Number of claims relative to NTRB-SP size and resourcing

YMAC had a small number of claims spread over a relatively large legal team

The Review found that this external factor had limited effect on YMAC's performance when compared to other NTRB-SPs across Australia of a similar scope and RATSIB area size. YMAC had eight active claims as at 30 June 2022 and about 18 team members in the YMAC legal team. Legal staff at YMAC worked across a broad range of work in native title, from claims to FANs and PBC governance. PBC support and governance had the dedicated support of a separate team, with legal work only going to lawyers when necessary. The team appeared to be well resourced for the number of claims (and other activity) compared to other NTRB-SPs.

5.2.3 TOR 2: Recommendations

RECOMMENDATION

2

Clarify the policy and process for determining the priority given to claims once an application for assistance has been accepted.

RECOMMENDATION

3

Ensure that all decisions about applications for assistance and assessment are clearly conveyed in an appropriate and timely manner to potential claimants.

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

Summary

The importance of respectful and transparent engagement was recognised throughout YMAC's corporate documents and on its website. Staff consistently pointed to their engagement with Traditional Owners as a highlight of their work and were vocal about the high quality of the cultural training they received at YMAC. This included cultural awareness training as part of induction for new staff, online modules, annual on-Country excursions and a cultural awareness component that was always part of the annual staff conference.

The Review noted a significant disconnect between the positive outlook of senior staff about YMAC's engagement and the sentiment of the feedback received from the small number of Traditional Owners and their representatives who engaged with the Review, particularly those in the regional areas. These stakeholders expressed dissatisfaction with the way YMAC communicated with them, reporting that communication was often slow, limited, last-minute or non-existent. There was a view that YMAC favoured groups that were quiet, passive and accepting of YMAC's direction, while groups that were vocal or raised questions with claim details or processes were cut-off from communications or labelled "troublemakers".

There was also a view from some Traditional Owners that they had witnessed or experienced actions from YMAC they felt were culturally inappropriate. The Review notes these concerns but does not believe they are representative of the broad majority of YMAC clients or potential clients.

The Review notes feedback from YMAC that after the Review period it introduced new feedback forms for use by staff for native title meetings and other events/forums coordinated by YMAC, and that the response overall had so far been positive.

YMAC recorded no complaints or requests for internal review during the Review period. The Review was advised by a small number of clients that they chose not to lodge a complaint as they did not believe it would result in meaningful change.

YMAC's policies for the management of cultural materials were well-considered and conscious of the need for security and safety. The Review heard from staff that YMAC took a very proactive approach to the collection and management of cultural materials. Noting that this is a very sensitive issue for claimants, the Review heard some concerns from Traditional Owners about how cultural materials were gathered and used by YMAC. The Review recognises this is a challenging issue that many NTRB-SPs are grappling with and that YMAC is generally regarded by other NTRB-SPs as a leader in the development of policies and procedures for the use of cultural materials.

5.3.1 TOR 3: Assessment of performance

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

Respectful and transparent engagement

Respectful engagement is highlighted as a value of YMAC

The general importance of respectful and transparent engagement was recognised on YMAC's website and throughout its corporate documents. "Respect and understanding – having regard for people's views and roles and treating all with dignity..." and "Integrity – we are true to our word and accountable for our actions" were listed as core values in YMAC's annual reports and its 2021-2025 Strategic Plan.

YMAC staff members consistently pointed to their engagement with Traditional Owners as a highlight of their work. They believed the organisation advocated a listening culture in its engagements with Traditional Owners. Staff were also vocal about the high quality of the cultural training they received at YMAC that helped them work on Country in a respectful and culturally appropriate way. Examples of respectful engagement highlighted by staff include:

- Meeting with Traditional Owners in smaller groups where possible to ensure everybody involved had a good understanding of the key issues of concern.
- Providing Traditional Owners with the opportunity to design the format of the YNSRA expo.
- Holding debriefing meetings following difficult decisions or outcomes.
- Liaising with the Australian Institute of Aboriginal and Torres Strait Islander Studies where relevant to ensure that new policies are informed by best practice.
- Organisational policies that stated that YMAC aimed to engage Traditional Owners in conversation and obtain their viewpoint on issues where relevant, for example, environmental statement policy.

Most external stakeholders who the Review spoke with found staff members at YMAC to be professional and courteous in their overall demeanour.

Some Traditional Owners thought YMAC's communication could be improved

The Review noted a significant disconnect between the positive outlook of senior staff about YMAC's engagement and the sentiment of the feedback received from the Traditional Owners who engaged with the Review, particularly in the regional areas.

YMAC advised that it used three key methods of communication to update claim groups on the progress of their claim:

1. Targeted claim updates in the form of newsletters.
2. Significant development updates in the form of legal letters.
3. Regular claim group and working group meetings.

Feedback from the Traditional Owners and their representatives who spoke with the Review conveyed dissatisfaction with the level of communication received from YMAC and the general manner in which communication was conducted. These stakeholders reported instances where they felt communication was slow, limited, last-minute, or even non-existent. Some of the issues raised included:

- No prior knowledge of major changes to a claim – such as the removal or addition of an apical or family group – until announced at large group meetings.
- Inaction and lack of acknowledgement or response following a complaint being made (noting however that no formal complaints were recorded on the YMAC complaint register for the Review period).
- Lack of circulation/provision of meeting minutes from major meetings, despite repeated requests.

- The length of time between communications – with some Traditional Owners reporting waiting weeks to receive a response to an enquiry.
- No single point of contact or case manager, resulting in an issue being passed from staff member to staff member and having to chase up on issues in their own time.
- Only occasional notices and newsletters received from YMAC without any direct engagement from YMAC staff members over a long period.

YMAC refuted these claims and reported that claim meeting notices always included the details of the decisions to be made, including proposed changes to apical ancestors. They reported that these notices were mailed to everybody on the mailing list and were also published in local newspaper advertisements on most occasions.

YMAC could pursue opportunities to engage more broadly with its members, especially in regional areas, to reconcile these differences in perspectives.

YMAC improved its feedback processes following meetings

YMAC reported that following the Review period, it had introduced new feedback forms (with the option to fill in confidentially) and associated guidelines (see YMAC Policies and Procedures) for use by staff for native title meetings and other events/forums it had coordinated. They reported that the information gained through this new feedback process was intended to assist YMAC identify where it was doing well in running meetings, where it could make improvements to how it runs meetings and areas where it could further support improved understanding, navigation and management of native title. YMAC reported that responses to these feedback forms had so far been very positive.²³

YMAC also had policies and guidelines in place for capturing feedback regarding its process of running meetings for Traditional Owners. YMAC reported that the feedback received via these forms so far had overall been very positive, with more than 90 per cent of returned surveys from 12 events over the Review period indicating that the respondents felt respected and 75 per cent of returned surveys indicating that the respondents had had the opportunity to express their views or ideas.²⁴

Some stakeholders felt YMAC tried to control the narrative

In the view of some Traditional Owners who spoke to the Review, the organisation appeared to favour groups that were quiet, passive and accepting of YMAC's direction. They reported that groups that had a deep knowledge of land and culture but were not familiar with the western processes and legalistic practices of the native title system received the best response from YMAC. Conversely, those who were vocal or raised questions about claim details or processes reported that they were cut-off from communications or labelled troublemakers when they attended meetings. Some noted that they felt they were being "steered" to do something they did not want to do.

While these perceptions were expressed by a minority of the claimants and potential claimants who engaged with YMAC across the Review period, they are reported here to allow the voices of all parties to be heard.

²³ YMAC. 2023. YMAC response to Nous review of YMAC Performance for the period 1 July 2019 to 30 June 2022.

²⁴ YMAC. 2023. YMAC response to Nous review of YMAC Performance for the period 1 July 2019 to 30 June 2022.

Culturally appropriate engagement

Staff appreciated the quality and importance of cultural awareness training delivered by YMAC

As described under TOR 1, YMAC staff had ample opportunities for training and development, including cultural awareness training. Staff reported that all new recruits undertook cultural awareness training as part of their induction. There were also online modules, annual on-Country excursions and a cultural awareness component that was always included on the program for the annual staff conference.

YMAC's website had a freely accessible public resource on cultural protocols for working in the Pilbara and Yamatji regions. The booklet covered many aspects of culturally appropriate conduct, sensitivities, how to conduct a meeting appropriately and respectfully, and was written with guidance from Traditional Owners in both regions served by YMAC.

Recruitment processes considered cultural awareness

The Review was advised that the cultural awareness of candidates was informally assessed during hiring processes for staff and during the performance review process. Staff reported that YMAC targeted experienced staff with extensive experience working with Indigenous and native title matters in its professional recruitment and local Indigenous people with strong local knowledge for its regional offices.

Not all interactions with Traditional Owners were seen as culturally sensitive

The Review was made aware of instances where stakeholders had witnessed or experienced actions by YMAC that they felt were culturally inappropriate. The number of Indigenous people on YMAC staff or the existence of a wholly Indigenous Board were not highlighted by these stakeholders as having any effect on their experiences.

The following broad themes have been drawn out of these encounters by the Review:

- Having a "white man's" way of communicating imposed upon cultural business. Examples cited included the way meetings were run, lack of opportunity for everybody to speak during meetings, and researchers using very direct and confrontational interviewing techniques when an Indigenous person's preference was speaking in a less direct manner.
- Not engaging with the appropriate people for the different regions. Examples cited included assuming that an East Pilbara Elder could speak for both East and West Pilbara and consistently holding regional meetings in the East Pilbara rather than the West Pilbara.
- Engaging with the younger generation of Indigenous people who have been exposed to western education and customs and are more familiar with YMAC's processes, rather than Elders who have greater traditional knowledge.

Complaints

YMAC's complaints process was accessible online

YMAC published its complaints processes on its webpage. It advised the different ways a client could lodge a complaint with YMAC, including by speaking with staff, email, in writing or through an online form. It also stated the timeframes in which a complainant could expect a response and outcome to the investigation.

The YMAC complaints register indicated that no formal complaints were received during the Review period.

Four correspondents wrote to the NIAA/the Minister for Indigenous Australians regarding YMAC's performance of its functions. Responses to two correspondents required general advice about the operation of native title legislation and/or native title programme arrangements and were prepared by the NIAA. One correspondent raised concerns primarily focused on the construction of a determined claim which YMAC had represented. YMAC staff subsequently met with the correspondent to discuss their issues in depth and the NIAA has received no further correspondence. One correspondent contended that YMAC took an inflexible approach to negotiating the terms of a PBC support agreement. The NIAA understands that this issue has since been resolved through discussions between YMAC and the relevant PBC and the NIAA has received no further correspondence.

The Review was advised by a small number of dissatisfied clients that they had deliberately chosen not to lodge a formal complaint. Reasons they cited included:

- Lack of response to phone calls, emails and other attempts to engage.
- Unsatisfactory responses to verbal and written complaints they had lodged in the past.
- Poor past experiences with YMAC made them feel like their complaints would not be listened to.

Some clients the Review spoke to reported that they had resorted to resolving their complaints through alternative pathways, rather than going directly to YMAC. This included privately engaging with their own lawyers or writing directly to the Minister for Indigenous Australians or the NIAA. Other clients chose not to pursue their grievance, stating that YMAC felt "intimidating" as an organisation and felt their concerns would be regarded as too insignificant to be addressed by YMAC.

Internal review

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

YMAC published its internal review processes on its webpage in the form of a flowchart which showed how an applicant could request an internal review, what YMAC would do upon its receipt and the timeframes the applicant could expect as they moved through the process. It also stated that an applicant could seek an external review if they were dissatisfied with the results of the internal review process.

YMAC provided to the Review its internal review register for the Review period. It recorded no requests for internal review during that time.

Use of cultural materials

YMAC's policies for the collection and use of cultural materials were well considered

Cultural materials are required from Traditional Owners to prepare and submit a claim but may also be important to a group as the records of their personal culture and history. Cultural materials may consist of physical items, cultural knowledge or genealogical documentation of an Indigenous family group.

YMAC's policies for the management of cultural materials were well-considered and conscious of the need for security and safety. YMAC's policy stated that it did not collect physical cultural materials for native title research. For remaining cultural information and documents, YMAC reported that they undertook the following:

- use of access-limited digital and physical storage, with appropriate categorisation and indexation
- appropriately secure storage for physical documents
- culturally sensitive storage and separation of materials where needed
- use of an access-limited genealogical database to manage family history information.

YMAC's policy also stated that it did not use information from claims for subsequent purposes without permission from the relevant individual or PBC.

YMAC also had a very detailed process and policy for the return of cultural materials. This was very advanced in comparison to other NTRB-SPs and is discussed under TOR 6. It also had some policies in relation to information management and governance which were applied to the organisation's data more broadly. This included guidelines on privacy of information, records disposal and management, cyber security, mobile devices, managing data breaches, remote access and recovery procedures for physical records.

Some Traditional Owners said that the process sometimes deviated from best practice

While the Review heard from staff that YMAC was consistent with its policies and took a very proactive approach to the management of cultural materials, there was no consensus on this issue from all Traditional Owners who spoke with the Review. Several Traditional Owners expressed concerns that YMAC had, on occasion, misplaced cultural materials or evidence provided for the purpose of their claim. These claims were unable to be verified.

Other concerns reported to the Review, but not verified, included:

- The consent process when cultural materials were provided – several Traditional Owners claimed they had provided cultural knowledge about land in a particular region to YMAC staff or consultants, believing that it would be used to support their native title claim, only to see it used as supporting evidence for the native title claim of another group over the same claim area.
- Lack of communication once cultural materials were provided.

The Review recognises this is a challenging issue that many NTRB-SPs are grappling with and that YMAC is generally regarded by other NTRB-SPs as a leader in the development of policies and procedures for the use of cultural materials.

5.3.2 TOR 3: External factors

No external factors have been identified for TOR 3.

5.3.3 TOR 3: Recommendations

RECOMMENDATION

4

Regularly review and assess YMAC's provision of proactive and timely communication with Traditional Owners, particularly for issues which may be culturally complex, challenging or sensitive.

RECOMMENDATION

5

Continuously improve the application of existing policies for respectful and culturally appropriate engagement with Traditional Owners to ensure that all parties have shared expectations on actions and outcomes in native title matters.

RECOMMENDATION

6

Strengthen the emphasis on maintaining relationships with all Traditional Owner groups within both of YMAC's RATSIB areas and develop the space for multilateral, genuine feedback and communication outside of formal avenues.

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

Salaries were consistently the highest expenditure for YMAC during the Review period. Other costs fluctuated from year to year, including those for legal and anthropological consultants, attributable meeting costs, travel and allowances.

Cost-saving actions were emphasised in policy documents and administrative activities. This included reducing travel costs where possible through improved coordination and careful consideration before engaging external consultants or service providers.

Some business practices suggested that there was still room for resource constraint, with some Traditional Owners and other external stakeholders drawing attention to perceived generous PBC support arrangements and activities that could have been delegated by the executive. YMAC noted that funding was also provided for some activities by external proponents, hence increased staffing capacity is available to fulfil these functions.

YMAC had a clear intention, through its cost recovery policy, to recover all costs in dealing with third parties on behalf of native title clients. In addition, YMAC was effective in expanding its revenue streams, through fee for service work for PBCs and heritage survey work. YMAC advised that this revenue stream allowed it to have greater flexibility in the activities it could fund, which included, for example, sitting fees for Board Directors.

The Review found an ongoing concern among some Traditional Owners about some of YMAC's financial practices, such as the amount YMAC spent on regional and Board meetings, sitting fees and other income for Board Directors. This concern included a call for a forensic audit to provide assurance that native title funding was not being spent on non-native title activities. YMAC advised that the amount spent on these cost categories was proportionally low and that their financial statements were independently audited before reporting to the NIAA.

YMAC used innovative methods to conduct a number of large claim group meetings (with more than 500 attendees per meeting) during the Review period, including through an expo format in one instance that involved different displays about the claim in different rooms and the use of an interactive phone application in another instance.

External consultants were used sparingly and generally only in specific circumstances. YMAC reported that external expert anthropologists, legal counsel and/or senior counsel were engaged to provide advice and representation in particular matters, or where urgent action was needed and resources were not available in-house. This included matters that were complex, untested or highly contentious. YMAC had established procedures for engaging external consultants which required justification for their engagement.

The vast size and remoteness of YMAC's RATSIB area, in addition to the large size of some claim groups, were factors that impacted YMAC's ability to deliver native title functions in a cost-effective manner.

5.4.1 TOR 4: Assessment of performance

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

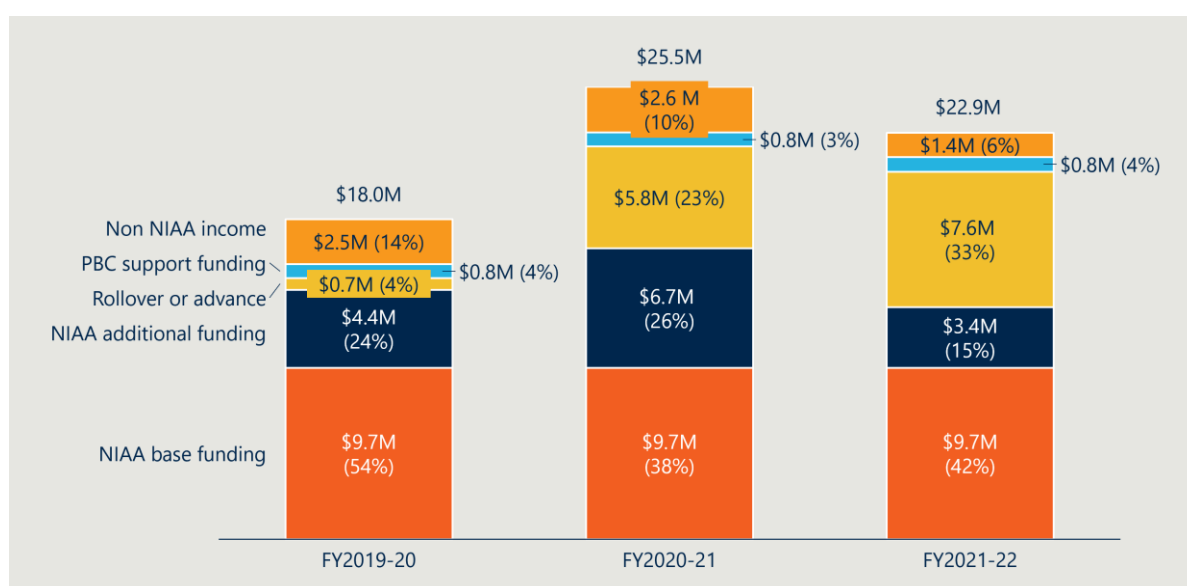
Expenditure on salaries (legal, anthropological, Board, CEO, human resources (HR), etc.), operations (travel, legal, offices, etc.) or other relevant items.

Native title funding for YMAC had significant variation over the Review period

As shown in Figure 2, while base operational funding remained consistent at \$9.6 million annually, YMAC received significant additional demand driven funding and variations, and in FY2021-22 it also received a large portion of its FY2022-23 operational funding as an advance payment.

YMAC received some income from other sources, including interest and cost recovery of services it provided.

Figure 2 | YMAC income, FY2019-20 to FY2021-22²⁵

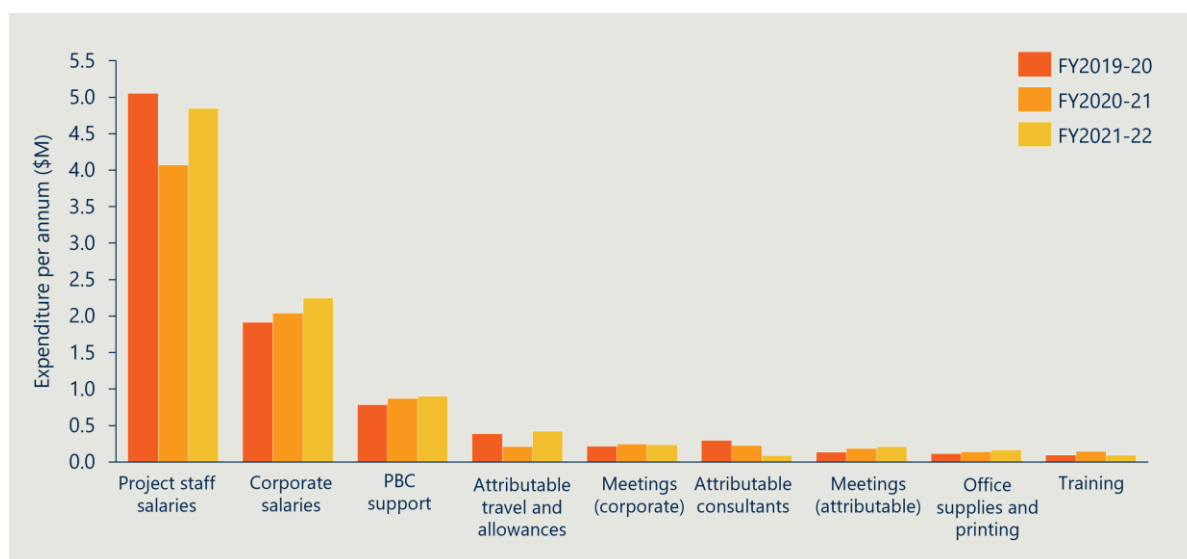


Salaries made up the largest expenditure item for YMAC

As shown in Figure 3, salaries consistently made up the greatest expenditure for YMAC during the Review period. Staff recognised that the level of staff salaries reflected the difficulty in recruiting and maintaining staff with professional native title expertise in the competitive market at the time. Like many other NTRB-SPs in Western Australia, YMAC also faced strong competition for skilled professionals from the resources sector.

²⁵ YMAC. Special Purpose Financial Statements for the year ended 30 June 2020 to 30 June 2022.

Figure 3 | Select YMAC expenditure, FY2019-20 to FY2021-22²⁶



The relative expenditure on individual line items, including salaries fluctuated across the Review period, in many instances due to the limiting effects of COVID-19 on certain travel and research engagements. For example, attributable costs for project consultants including legal and anthropological consultants decreased year on year.

Cost-saving actions, strategies and/or discussions

Cost-saving actions were emphasised in policy documents and administrative functions

Many of YMAC's policies had cost-saving actions written into them. For example:

- In YMAC's 2021-2025 Strategic Plan, strategic priority two is "Operate with discipline" which states that YMAC aims to streamline and define core business processes to improve service delivery, improve productivity within and across teams, and ensure financial stability.
- The Hire Vehicles Procedures state that staff should check with regional offices to see if a lift or regional vehicle is available before hiring a car and to also minimise the number of cars hired to minimise expenses.
- The Acquiring Goods and Services Policy includes checking whether service provider engagement is necessary. There is clear guidance on amounts for which to obtain quotes or go to tender and how to ensure value for money.
- YMAC's Procedure for Engagement of Consultants requires consideration of whether or not an external consultant is necessary before engagement.

Staff pointed to other strategies that YMAC had employed to reduce costs. Examples provided to the Review included:

- Reducing travel costs where possible through improved coordination – including arranging meetings at one location to be on the same day.
- Standardising processes and resourcing, so that bigger economies of scale can be achieved.
- Streamlining IT services to reduce manual work.

²⁶ YMAC. Special Purpose Financial Statements for the year ended 30 June 2020 to 30 June 2022.

- Using YMAC's regional offices for meetings and videoconferencing where possible.
- Budgeting for all events and meetings and having an event approval form for executive sign off for all large meetings.

One cost saving adopted by YMAC was the engagement of an external independent law firm specialising in assessing legal cost estimates as part of the Application for Assistance process where an external legal firm was involved. Staff estimated that this had created significant savings for each application. However, the Review also heard from some legal stakeholders that this practice was restricting the ability of some claim groups to obtain good legal representation, due to the rates being too low to engage experienced external native title lawyers. This issue would benefit from further review by YMAC.

Despite this focus on cost savings and efficiency, senior staff reported that cost was not a barrier to achieving YMAC's strategic goals. YMAC senior staff stressed to the Review that when they worked with clients or considered applications for assistance, they always took a facilitator's mindset and never considered budget or funding to be a limiting issue. YMAC staff were aware of opportunities for funding variations and avenues for additional funding that were available to clients who needed it.

Some business practices indicated there is more room for resource constraint

Both internal and external stakeholders reported activities and business practices that – in their view – suggested a less than efficient use of resources in certain parts of YMAC's business. This included:

- A generous staff allocation for PBC support.
- A senior executive, rather than PBC support team members, personally producing education resources and delivering training for PBCs and Aboriginal Corporation clients of YMAC.
- The practice of acting as a respondent on claims in the region where they were not representing any claimants or native title parties.

The Review also heard that prior to 2020 it was not uncommon for staff to fly to regional offices for short meetings (less than one hour), though stakeholders clarified that this practice had significantly decreased since the COVID-19 pandemic. In response, YMAC reported that staff members' time was always justified when attending meetings in regional offices, citing instances where specific technical expertise might have been required at a meeting and the importance of interaction for inclusivity across the organisation. YMAC noted that all costs to attend meetings required approval of senior managers in line with YMAC's Policy and Procedures.

YMAC took a strong approach to cost recovery and expanding its revenue streams

YMAC's Cost Recovery Policy outlines that YMAC intends to recover all costs in dealing with third parties on behalf of native title clients.

YMAC was effective in expanding its revenue streams through fee for service work for PBCs and heritage survey work. YMAC advised that this revenue stream allowed it to have greater flexibility in the activities it could fund, which included, for example, sitting fees for Board Directors.

Some Traditional Owners were uncomfortable with YMAC's expenditure on specific activities

Some Traditional Owners who spoke to the Review wanted greater clarity about YMAC's application of native title funds. There was a recurring perception that YMAC was spending its funding on non-native title related activities and that this was not appropriate. These concerns had led some of the Traditional Owners who spoke with the Review to report that they had no trust in YMAC's financial practices and wanted an independent forensic audit. This perception was not new and was highlighted in the previous Review (FY2015-16 to FY2017-18) of YMAC, with a recommendation for a financial review. Given the

extensive other activities undertaken by YMAC, such as the development of Pilbara Solar, the questions from these Traditional Owners need to be addressed. Their concern has continued to be that native title funding is being used to generate income that is not spent on native title related activities.

In addition, some activities were highlighted as an inappropriate use of resources, including:

- The cost for venue hire, accommodation and travel for YMAC staff and Board Directors to attend on-Country bush meetings or training events. Some Traditional Owners also referenced the high opportunity cost of having professional staff such as lawyers sit in on these events.
- The high sitting fees and additional benefits provided to the Board Directors – such as YMAC-owned vehicles for the chairpersons.

In response, YMAC advised that it was critical in their view that professional staff and leadership were available to respond to questions from the community at relevant events. This also ensured that YMAC staff were not perceived as “out of touch” with the needs of the communities YMAC represented. YMAC also noted that the benefits for Directors were not funded through native title funding.

Given the extent of YMAC’s business arrangements, the Review believes it would be appropriate for YMAC to increase its level of transparency over the uses native title funding is put to and the other sources of funding it uses for non-native title activities. There is an opportunity for clearer communication of the various sources of funding and their application.

Appropriate processes for claim group meetings

As noted under TOR 1, YMAC held some innovative large claim group meetings during the Review period, as well as many smaller meetings, including community information, small group, working group, applicant, claim, negotiation, pre-authorisation, authorisation, PBC Board and general meetings as shown in Table 9.

Table 9 | Number of native title related meetings facilitated by YMAC

FY2019-20	FY2020-21	FY2021-22
62	180	230

The funding source for these meetings was not split out – some of these meetings were funded through the native title funding (full or partial), while other meetings were proponent funded.²⁷

YMAC’s Client Meeting Procedure provided staff with guidance

YMAC’s Client Meeting Procedure sets out its requirements for client meetings. This document includes details on how much written notice to provide in advance of meetings, which template to use when drafting the notice, and how meeting resolutions and action items should be recorded.

The document noted that YMAC would document meeting resolutions and action items and convey these in accordance with the group’s instructions, but that it was not YMAC policy to record or distribute meeting minutes.

Annual yearly expenditure per claimant group

During the Review period, YMAC engaged with 12 claim groups at varying stages of claim progression. A summary of annual yearly expenditure can be seen in Table 13.

²⁷ YMAC. Annual Reports 2019-20 to 2021-22.

Table 13 | Annual yearly expenditure on claimant groups ²⁸

	FY2019-20	FY2020-21	FY2021-22
Claimants (meetings)	\$132,450	\$186,744	\$212,138
Claimants (travel)	\$121,316	\$29,087	\$217,726
Total	\$253,766	\$215,831	\$429,864

The Review was not provided with an actual expenditure breakdown per group per year. However, a summary of average annual expenditure per claim group can be seen in Table 14.

Table 14 | Average yearly expenditure per claimant group

FY2019-20	FY2020-21	FY2021-22	Full period
\$21,147	\$17,986	\$35,822	\$74,955

The Review notes that true expenditure per individual group is likely to be higher, as not every claim group was engaged in each year of the Review period.

Travel assistance policies for claim group meetings

YMAC had a detailed travel assistance policy

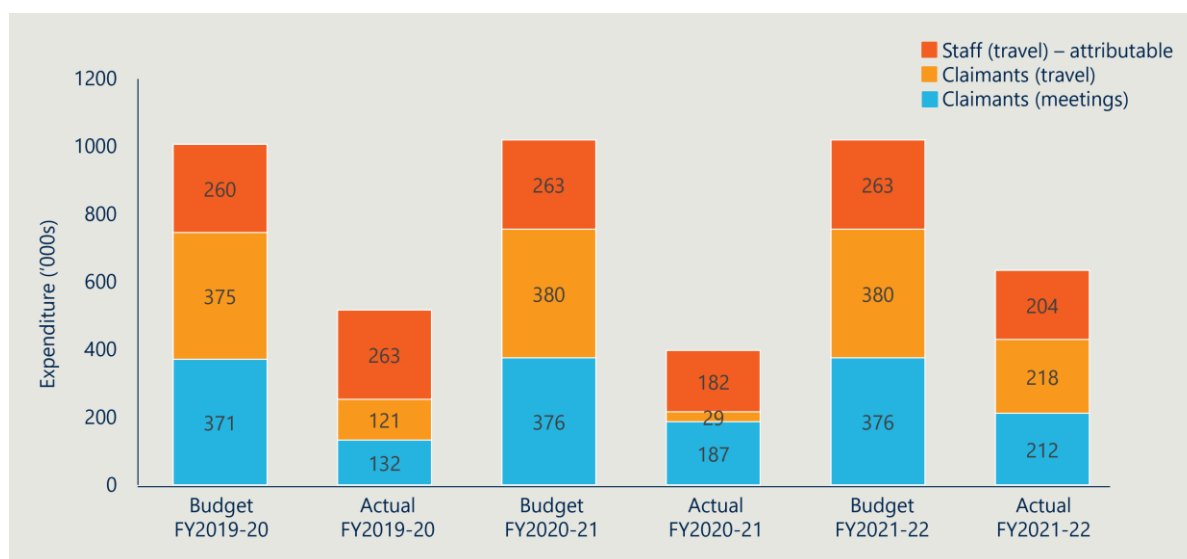
YMAC had a very detailed travel allowance policy that precisely described the level of financial support it offered to staff and Traditional Owners for native title business, including claim group meetings. This included guidelines regarding the type of meetings where an allowance is payable, allowances for claimant working groups, claimant community meetings, travel and accommodation payment caps, and who would be responsible for administering different aspects of the policy. The policy also provided guidance for Aboriginal staff members regarding what they needed to do if they attended meetings in their capacity as a Traditional Owner.

Claim group meetings and associated travel costs were impacted by COVID-19

Over the Review period, actual claim group meeting and associated travel costs for YMAC were consistently lower than budgeted across all years, due to the effects of the COVID-19 pandemic and public health lockdowns and travel restrictions.

²⁸ YMAC. Special Purpose Financial Statements for the year ended 30 June 2020 to 30 June 2022.

Figure 4 | YMAC claim group meeting expenditure²⁹



Appropriate rationale for use of external consultants

YMAC engaged external consultants to assist with work and provide advice

YMAC reported that external expert anthropologists, legal counsel and/or senior counsel were engaged to provide advice and representation in particular matters, or where urgent action was needed and resources were not available in-house. This included matters that were complex, untested or highly contentious. Based on conversations with YMAC senior staff members, there did not appear to be any hard and fast rules regarding when a matter would be supported by external consultants. Rather, each case was considered on its own circumstances. YMAC also engaged an independent, external law firm to estimate legal costs of matters as part of the application for assistance process.

Staff reported that where external consultants were engaged, particularly for their specialist expertise, some preliminary groundwork had usually been done by the YMAC team and YMAC team members would work to support the external consultant as needed. During the Review period, YMAC engaged external expert anthropologists and legal counsel to provide advice and representation for the YNSRA project as it involved complex native title research and litigation related issues.

Where there was a potential for conflict of interest (for example the need to represent different parties to a claim), YMAC would brief out the whole matter to an external lawyer. During the Review period, YMAC did not enter into any such brief out arrangements.

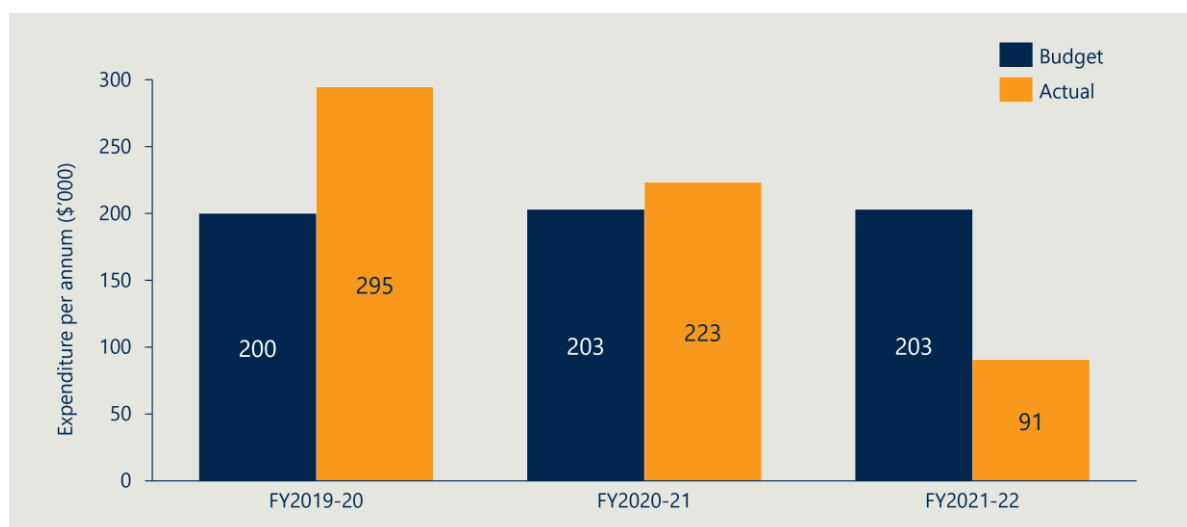
YMAC had a Procedure for Engagement of Consultants policy that provided step-by-step guidance regarding how to arrange and select a consultant, the level of authority required for sign-off and how to set up a new agreement.³⁰ This policy described a register of approved consultants with whom staff could engage. To work with consultants who were not listed in this register, staff had to obtain prior approval.

Over the Review period, budgeted consultant expenditure (attributable to native title work) was steady at about \$200,000 every year, which is a very low figure relative to YMAC's budget. However, actual expenditure varied from the budgeted amounts and decreased year on year, particularly in FY2021-22, as shown in Figure 5.

²⁹ YMAC. Special Purpose Financial Statements for the year ended 30 June 2020 to 30 June 2022.

³⁰ YMAC. Procedure for Engagement of Consultants. 2023.

Figure 5 | YMAC consultant expenditure (attributable to native title work)³¹



5.4.2 TOR 4: External factors

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

Size of RATSIB area

YMAC is responsible for two RATSIB areas that make up more than a quarter of Western Australia's land area

The Pilbara RATSIB area covers approximately 500,600 square kilometres, of which approximately 400,000 square kilometres is land. The Geraldton RATSIB area covers approximately 740,000 square kilometres, with approximately 350,000 square kilometres being land. In total, YMAC's service area spans approximately 1,240,000 square kilometres and 750,000 square kilometres of land.³² This makes up just under 30 per cent of Western Australia's total land area.³³

This is comparable to the RATSIB areas of other NTRB-SPs in Western Australia, where low population density in many claim areas impacted the cost of travel, vehicles and supply as well as the effectiveness of communication and recruitment.

Remoteness of RATSIB area

The Pilbara and Geraldton RATSIB areas are both classified as "very remote"

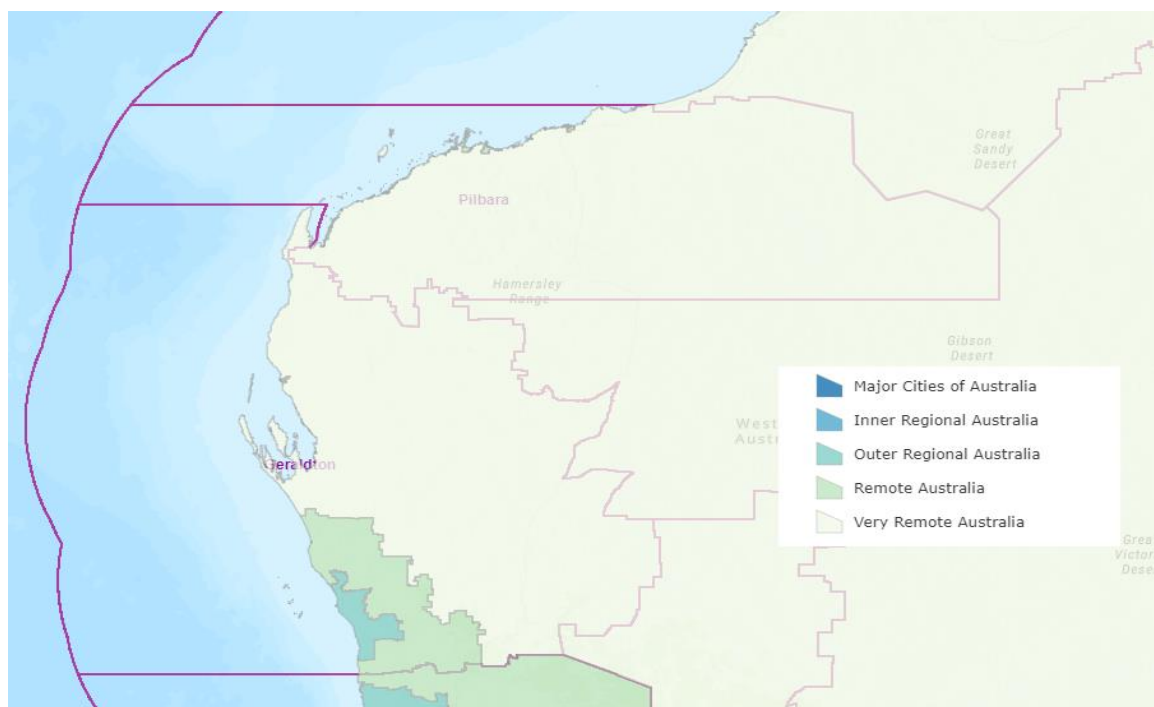
Under the Australian Bureau of Statistics remoteness classifications (ASGS 2016) the entirety of Pilbara and the majority of Geraldton are classified as very remote. Most of the city of greater Geraldton, an area by the coast spanning approximately 7,700 square kilometres is the least remote area of the RATSIB region and is classified as "outer regional Australia". Circling the Geraldton city area is approximately 40,000 square kilometres of land classified as "remote" (see Figure 6).

³¹ YMAC. Special Purpose Financial Statements for the year ended 30 June 2020 to 30 June 2022.

³² National Native Title Tribunal, Native Title Vision, <http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx> (Accessed 27 Oct 23).

³³ Geoscience Australia, Area of Australia – States and Territories, <https://www.ga.gov.au/scientific-topics/national-location-information/dimensions/area-of-australia-states-and-territories> (Accessed 23 Oct 23).

Figure 6 | Remoteness of YMAC's RATSIB areas³⁴



The remoteness of YMAC's RATSIB areas was raised by staff as a significant driver of costs for YMAC – notably for field costs (for example, travel, accommodation, food, first aid) which were higher than for organisations servicing less remote regions. Additionally, there was significant activity by the resources sector in both regions, which tended to increase expenses in general. YMAC maintains an office presence in metropolitan Perth and in both the RATSIB areas it services. The Review assesses that the remoteness of the region had a moderate impact on the ability of YMAC to achieve native title outcomes in a cost-effective manner.

Average number of people within a claim group

Estimated average size of claim groups served by YMAC created some additional complexity

The significant size of some groups (some over 900 people in size) meant that YMAC faced an additional burden when it came to both communication and administration costs. The mailing list data for each claim group had an average of 816 subscribers to each list. YMAC staff reported high levels of complexity in managing intra-group discussions and negotiations for some of the larger claim groups. However, it should be noted that a claim group's larger size often went hand in hand with it being a combination of smaller claim groups. Many challenges – and consequently, costs – in handling claims can be attributed to this combined structure.

Interpreters

Interpreter services had no effect on cost effectiveness for YMAC

YMAC did not have any policies regarding the engagement of interpreters beyond their standard procedure for engagement of consultants. There are no guidelines relating to when interpreters should be

³⁴ National Native Title Tribunal, Native Title Vision, <http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx> (Accessed 27 Oct 23).

used in YMAC’s Client Meeting Procedure or Rule Book. No interpreting services were billed in YMAC’s consultant expenditure reports.³⁵

5.4.3 TOR 4: Recommendations

RECOMMENDATION	7
Review the impact of YMAC’s cost saving approach to external legal representation to ensure it is not disadvantaging some claim groups.	
RECOMMENDATION	8
Given ongoing stakeholder concerns about the appropriate use of native title funding, devise ways to increase the level of transparency and provide clear communication about YMAC’s various sources of funding and their application.	

³⁵ YMAC. Consultant Expenditure Report 2019-20 to 2021-22. (Unpublished)

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

YMAC had clearly defined roles and responsibilities for its Board and CEO, and a clear separation between strategy and day-to-day operations. The Review noted that the duties of the Board were appropriate, although the documentation would benefit from the inclusion of a more specific reference to best practice principles in terms of hearing from and listening to members or clients.

Roles of the EMT were clearly articulated. The organisational structure of YMAC changed every year during the Review period, reflecting changed priorities such as the heritage area reporting to the CFO. YMAC staff reported that these changes improved the efficiency of the organisation and did not have a negative impact on their work.

The YMAC Board had 12 Directors with six elected from each of the Yamatji and Pilbara regional committees. The Yamatji regional committee was determined by popular vote among Yamatji members, while the Pilbara regional committee was determined by PBC nominations from within the Pilbara region. The Review spoke with a number of Traditional Owners and stakeholders who found the Board structure perplexing and rules surrounding election of Board Directors frustrating. Some PBC stakeholders felt that for fairness the Board should have PBC representation for both regions, though others felt that having Board Directors who were also PBC Board Directors created conflicts of interest for YMAC. The Review notes that this is an issue for YMAC members, who had previously decided against amending the existing YMAC Rule Book.

A further issue raised with the Review by some Traditional Owners was that there should be rules around family members serving on the Board together or for consecutive terms. There was a view that the YMAC Board was heavily weighted towards certain families and specific regions and that this took away the opportunity for other groups to have their voices heard. The Review found there is opportunity to consider how YMAC's governance might more effectively include other families who were keen to contribute to the Board.

Board Directors were subject to a maximum term of two years, however there were no limits on reappointment following expiry of this term. Several Directors had served continuously on the Board for some years, some for over 15 years. The Review notes that while there is a need for continuity in governance, there is also a need to balance this with encouraging renewal as well as providing opportunities for the development of other leaders. The Review notes that many PBC Rule Books impose a time limit on Directors' terms. While experience brings with it many advantages, there is a balance to strike with providing opportunity for new perspectives and voices.

Length of tenure is also relevant to the position of the CEO, with the incumbent having served in their position since 1996. This created a perception among some Traditional Owners that the CEO had disproportionate influence over the Board and YMAC's strategic direction.

YMAC had appropriate conflict of interest policies in place at the Board level, as well as for staff. These appeared to be adhered to, for example by Board Directors absenting themselves from meetings where a conflict arose. Some Traditional Owners who spoke with the Review expressed concerns that there was favouritism of certain family groups of individuals employed by YMAC or affiliated with the Board. The Review makes no judgment about the validity of the allegations made by these Traditional Owners but notes that their existence suggests there is an ongoing opportunity to improve both the communication and the enforcement of staff and Board conflict of interest policies. This would support greater monitoring and managing of any conflicts that arise and improve adherence to policies in practice. The addition of an external person on the recruitment panel for some positions would also help mitigate the risk of such perceptions.

During the Review period YMAC's Mission Statement broadened out beyond working with Yamatji and Pilbara Aboriginal people, and specific references to native title outcomes were removed from the Mission Statement and from the core principles. YMAC advised the Review that the Mission Statement is deliberately intended as a specific reference to native title outcomes in a way that is culturally appropriate and that the first priority of the Strategic Plan clearly addresses native title outcomes.

Staff reported that the culture of the organisation had improved during the Review period, particularly with the introduction of the role of People and Culture Specialist. They noted a more proactive approach towards communication and staff feedback, collaboration and input. Nearly all respondents to the Review's staff survey said they found YMAC to be a good place to work and that the leadership was mostly collaborative. The Review experienced a highly controlled approach to staff and Director engagement with the Review team.

YMAC had a rigorous approach to its financial management with comprehensive financial policies in place. The detailed time sheeting system helped staff manage their multiple sources of revenue and various costs. Some external stakeholders noted that YMAC could improve its external financial administrative arrangements, reporting burdensome amounts of paperwork and lengthy timelines.

Staff reported that they had excellent opportunities for training and professional development, including cultural awareness training for all staff, 4WD and first aid training for remote area staff, legal and anthropological professional upskilling and an annual all staff conference where topics such as trauma-informed engagement were covered.

Staff turnover during the Review period was relatively low and the proportion of Aboriginal staff members to total staff (excluding rangers) was stable at approximately 15 per cent.

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

YMAC had clearly defined roles and responsibilities for its Board and CEO

The roles and responsibilities for YMAC's Board, Chairpersons and CEO were outlined in key corporate documentation, including the YMAC Rule Book, its Board and Committee – Management and Governance policies and the corporate governance section of each annual report.

The respective responsibilities of the CEO and Board Directors, as per the YMAC Rule Book, are summarised in Table 15. Additionally, in all YMAC's annual reports published during the Review period, YMAC stated that "the overall strategic and policy direction for YMAC is determined by its Board of Directors...the Board is accountable to the corporation's members and ultimately responsible for the performance of YMAC's statutory functions." The annual reports also stated that "Strategy and policy directions are implemented through the day-to-day work of YMAC's staff, under the direction of the CEO... Regular reporting by YMAC's CEO and the Executive Management Team to the Board...ensures YMAC's strategic direction is maintained – and that risks are identified and managed appropriately."

Table 15 | Roles and responsibilities of Board and CEO³⁶

Board responsibilities	CEO responsibilities
- The business of the Corporation is to be managed by or under the direction of the Directors. - The Directors may exercise all the powers of the Corporation except any that the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) (the CATSI Act) or the Corporation's constitution requires the Corporation to exercise in general meeting. - In exercising its powers and functions, the Directors may consult any person or body, including the Regional Committees that the Directors consider, on recommendation of the CEO, to have expertise in the matter under consideration. Additional responsibilities of the Board Chairpersons: - Preside at Director's meetings in accordance with the meeting rules. - Liaise with the CEO on matters affecting the organisation and performance of the Corporation. - Provide leadership and guidance to the other Directors.	- Responsibility for the day to day running of YMAC including: (i) staff recruitment and management (ii) financial administration and (iii) internal practices, policies and procedures. - Advise the Directors in relation to the functions of the Corporation under the CATSI Act and other written law. - Ensure that advice and information is available to the Directors so that informed decisions can be made. - Help implement Directors' decisions. - Liaise with the Chairperson on the Corporation's affairs and the performance of the Corporation's functions. - Perform any other functions specified or delegated by or imposed by the CATSI Act or any other written law as a function to be performed by the CEO.

YMAC advised that the Board provided the CEO with a priority list of issues to address at each annual CEO performance review and the Board was provided with independent consultant support to adequately assess CEO performance on an annual basis.

The Review noted that the documentation in relation to the duties of the Board could be enhanced by inclusion of a reference to best practice principles in terms of hearing from and listening to members or clients.³⁷ The addition of such a responsibility would be in line with the YMAC organisational chart, which has its voting members at the very top, above the Board and CEO. Articulation of such a responsibility might also help to ameliorate a perception shared with the Review by some Traditional Owners that the Board did not try to engage with their community and that they did not feel represented by the Board. Formalising governance mechanisms and responsibilities that more strongly embed an organisational approach to understanding client needs and aspirations within a native title context would provide an opportunity to strengthen relationships with clients and build greater community trust. In response, YMAC advised that surveys were conducted and collective results were presented to the Board. YMAC also reported that its Board was in regular contact with communities to discuss issues, with members provided with the opportunity to attend forums that were held at regular intervals.

There was a clear separation between the roles of YMAC staff and Board

YMAC had specific policies relating to separation of the roles of the Board and staff, as set out in YMAC's Code of Conduct – Board and Members:

- Members do not ... attempt improperly to influence other office holders or staff of the YMAC in the performance of their duties, obligations or functions.*

³⁶ YMAC. YMAC Rule Book. 2021. Accessed November 2023.

<https://register.oric.gov.au/Document.aspx?documentID=811700&concernID=102001>

³⁷ Australian Institute of Company Directors. Principle 8: Stakeholder engagement. Accessed November 2023.

<https://www.aicd.com.au/corporate-governance-sectors/not-for-profit/principles/stakeholder-engagement.html>

- *Members will not discuss corporation business with individual members of staff and shall not enter the individual offices of corporation staff members without prior invitation.*³⁸

YMAC senior staff reported that aside from their updates to the Board at regular Board meetings, they had little professional interaction with Board members and that their direction and reporting responsibilities were with the CEO. Board meetings were held at the YMAC offices, so staff had opportunities to meet informally with Directors over morning teas. Additionally, the Board Chairs also attended the dinner at the close of each staff conference.

The roles of YMAC's senior staff were clearly defined

YMAC's day to day operations were led by its EMT. Role descriptions for EMT staff members were demonstrated through the organisational chart and YMAC's annual reports which were available publicly. Role descriptions are summarised in Table 16 for the EMT team in place at the end of the Review period.

Table 16 | Responsibilities of the EMT

Executive position	Summary
Chief Executive Officer	Oversees the EMT and all operations of the organisation. Works with the Board to deliver on their strategic goals for YMAC.
Chief Financial Officer	Oversees corporate and financial functions of YMAC, except HR and communications, and ensures that YMAC meets statutory reporting requirements. Also acquired responsibility for PBC support.
Principal Legal Officer	Oversees native title lawyers employed by YMAC to provide legal advice and representation to YMAC's client claimant groups, FAN responses, PBC governance support and legal advice relating to return of materials. Also responsible for the geospatial and land services team, whose specialist work supports the NTRB functions of the legal team.
Research, Country and Culture Services Manager	Oversees trained anthropologists who work with Traditional Owners to provide research, support and advice to the Legal unit for the progression of native title claims. The team also provides advice and support to PBCs post-determination, delivers training, provides logistic and administrative support for meetings, and conducts ethnographic surveys. Also has responsibility for the Heritage team, and Land and Sea Management.
Yamatji Regional Manager	Regional managers are responsible for managing regional offices and overseeing staff for their regions.
Pilbara Regional Manager	

YMAC's organisational structure changed every year of the Review period

While the roles of the EMT remained clearly articulated, their portfolios changed from year to year as shown in Table 17. The portfolios of the regional managers were the only ones that did not change during the Review period.

The changes related in part to the separation or alignment of the Research and Heritage roles, with Heritage services reporting for a time to the CFO due to its significant role in generating income. The anthropology and research team then reported to the PLO. A Director of Projects role was created during

³⁸ YMAC. 2023. Code of Conduct – Board and Members.

the Review period (although subsequently disbanded after the Review period) to take leadership of Heritage services, and PBC and Executive Office Services.

Senior staff consistently advised the Review that the changes improved working efficiency and delivery of services and did not cause any issues or interruption to their work. They also noted that separating research out from the PLO increased the team's independence and credibility. The Review notes that the organisational placement of research and of PBC support varies across the NTRB-SPs.

The Review also notes the change in thinking about how some organisational functions are seen within YMAC's priorities, particularly in terms of the potential of the Heritage function to raise funding. The Review notes YMAC's leading role in the campaign for repeal of the *Aboriginal Cultural Heritage Act 2021* (WA), as discussed under TOR 1. A subsequent move, after the Review period, to include PBC services under the CFO's responsibilities is another indication of changed focus.

Table 17 | EMT and reporting portfolios, FY2019-20 to FY2022-23³⁹

EMT member	Direct reports		
	FY2019-20	FY2020-21	FY2021-22
Chief Executive Officer	- All EMT - People and Culture - Business Support - Communications	- All EMT - People and Culture - Communications	- All EMT - People and Culture - Communications
Chief Financial Officer	Finance and corporate services	- Finance - ICT and Information Management - Business support	- Finance - Business, Information technology support
Principal Legal Officer	- Legal and Future Acts - Research - Geospatial - Information Management	- Legal and Future Acts - Research - Geospatial	- Legal and Future Acts - Research - Geospatial - Land Services
Director of Projects	- Heritage - PBC and Executive Office Services - Land and Sea Management - Land Services - Aboriginal Ranger Programs	- Heritage - PBC and Executive Office Services - Land and Sea Management - Land Services - Aboriginal Ranger Programs	- Heritage - PBC and Executive Office Services - Land and Sea Management (incorporating Aboriginal Ranger Programs)
Research, Country and Culture Services Manager	-	-	-

³⁹ Red units were removed from the given EMT portfolio in the next financial year. Green units were additions to the given EMT portfolio in the financial year.

EMT member	Direct reports		
	FY2019-20	FY2020-21	FY2021-22
Regional Manager – Yamatji Region	Yamatji regional office	Yamatji regional office	Yamatji regional office
Regional Manager – Pilbara region	Pilbara regional office	Pilbara regional office	Pilbara regional office

Board integrity and capability

YMAC Board Directors were elected from its regional committees

YMAC had two regional committees – one for the Pilbara region and one for the Yamatji region, with each regional committee providing six Directors to the 12-member YMAC Board. The Chair and deputy Chair of each regional committee had automatic places as Co-Chairs and Deputy Co-Chairs on the YMAC Board, with a further four Directors drawn from each regional committee.

Each regional committee elected its members in its own way. According to the YMAC Rule Book, the Yamatji Regional Committee was comprised of nine to 15 members elected by the membership's popular vote. The Pilbara Regional Committee was comprised of nine to 11 members, who were nominated representatives of their PBCs from within the Pilbara region. This is outlined in Table 18.

Table 18 | YMAC Board and membership⁴⁰

YMAC Board	
Comprised of 12 Directors, including two Board Co-Chairs	
Pilbara Regional Committee	Yamatji Regional Committee
Comprised nine to 11 members, including six Director representatives to the Board. The Chairperson and Deputy Chairperson of the regional committee held positions on the YMAC Board.	Comprised nine to 15 members, including six Director representatives to the Board. The Chairperson and Deputy Chairperson of the regional committee held positions on the YMAC Board.
Regional committee members were elected at annual regional meetings. The regional committee members were elected representatives from PBCs in the Pilbara region.	Regional committee members were elected at annual regional meetings. The regional committee members were elected representatives by popular vote of Yamatji members.

Not all Traditional Owners were happy with the governance structure

The Review spoke with a number of Traditional Owners and stakeholders who found the Board structure perplexing and rules surrounding election of Board Directors frustrating. Some PBC stakeholders felt that for fairness the Board should have PBC representation for both regions, though others felt that having Board Directors who were also PBC Board Directors created conflicts of interest for YMAC. The Review notes that this was at one time considered by YMAC members, but that members ultimately decided upon the existing YMAC Rule Book.

⁴⁰ YMAC. YMAC Rule Book. 2021. Accessed November 2023.
<https://register.oric.gov.au/Document.aspx?documentID=811700&concernID=102001>

All Traditional Owners the Review spoke to regarding corporate governance felt that there should be rules around family members serving on the Board together or for consecutive terms. They stated that this took away the opportunity for other groups to have their voices heard and created perceived, if not genuine, conflicts of interest. There was a view that the YMAC Board was heavily weighted towards certain families and specific regions. The Review notes that the YMAC Rule Book contained no rules about family groups on the Board.

In response, YMAC asserted that the YMAC Rule Book is not lacking in any way and the fact there are relatives on the Board of YMAC is a product of the nature of the organisation. YMAC's view is that the primary concern is to avoid conflicts of interest, which is dealt with by the Rule Book⁴¹. YMAC's position on its Rule Book and governance structure was that it was ultimately a decision for Traditional Owners (who were voting members of YMAC). YMAC noted that the Rule Book had been resolved by Traditional Owners to their wishes, relevant to their respective region, and that it was an open process for anyone eligible to be involved.

The Review remains of the view that there is opportunity to consider how the organisation's governance might more effectively include other families who are keen to contribute to the Board.

The tenure of some Directors was longer than what is considered best practice

Board Directors were subject to a maximum term of two years, however there were no limits on reappointment following expiry of this term. Several Directors had served continuously on the Board for some years, some for over 15 years. While YMAC is incorporated under the CATSI Act, the Review considers that the principles of good governance promulgated by the Australian Institute of Company Directors are nevertheless relevant for YMAC to consider in relation to the tenure of Directors. These principles suggest that the tenure of Directors be limited to encourage renewal.⁴²

The Review notes that while there is a need for continuity in governance, there is also a need to balance this with encouraging renewal as well as providing opportunities for the development of other leaders. Particularly where tenure has extended beyond ten years, the appointment of Directors should be reviewed to assess the balance between continuity and renewal and to gauge whether the overall balance continues to be in the best interests of the organisation's performance.⁴³ While experience brings with it many advantages, there is a balance to strike with providing opportunity for new perspectives and voices.

In response, YMAC noted that its members have defined the process for appointment of Directors and that the organisation's Rule Book is a matter for its members, not for YMAC to deal with as an organisation that can act separately to the wishes of its members on such matters. The Review notes that best practice dictates that Rule Books should be reviewed regularly and that many PBC Rule Books do limit the consecutive terms of Directors.⁴⁴

YMAC's CEO had also served in his position for more than 20 years. While the knowledge and experience that comes with long tenure can be of great value to an organisation, there are also downsides articulated in the literature about CEO tenure⁴⁵. Some Traditional Owners were concerned that the entrenched role of the CEO had led to disproportionate influence over the Board and YMAC's strategic direction. The long tenure of the Board and senior leadership had led some of the Traditional Owners who spoke with the

⁴¹ Rules 10.1(iii) and 11.4 concerning duty of disclosure of material personal interests.

⁴² Australian Institute of Company Directors. Principle 3: Board composition. 2019. Accessed November 2023.

<https://www.aicd.com.au/corporate-governance-sectors/not-for-profit/principles/board-composition.html>

⁴³ Australian Institute of Company Directors. 2022. How to get CEO succession planning right. Accessed April 2024.

<https://www.aicd.com.au/leadership/qualities-of-a-good-leader/challenge/how-to-get-ceo-succession-planning-right.html>

⁴⁴ ORIC. 2019. Registering. Accessed June 2024. <https://www.oric.gov.au/publications/yearbook-section/registering-0#:~:text=ORIC%20recommends%20that%20corporations%20regularly.for%20their%20corporation's%20changing%20circumstances.>

⁴⁵ See, for example, Colak & Liljeblom. 2022. Easy cleanups or forbearing improvements: The effect of CEO tenure on successor's performance. Journal of Financial Stability. 63. <https://doi.org/10.1016/j.jfs.2022.101072>

Review to no longer attend general and regional meetings because there had been so little change to governance structures in the past that they did not feel they would be heard or have input into decisions.

In response, YMAC advised that experience and corporate knowledge are important, particularly in the native title sector and in the Western Australian employment market where there is a lack of experienced professionals in this space as the vast majority accept jobs in the mining sector.

Furthermore, YMAC was concerned that taking action may be in contravention of the *Fair Work Act 2009* and place YMAC at risk of an unfair dismissal case if it was to end the employment of loyal, experienced, competent staff because of length of service. Providing staff are meeting the requirements of their position, are competent, working within the code of conduct, and policies and procedures, YMAC saw no reason to review their tenure and risk losing corporate knowledge.

The Review was not made aware of any structured strategies for succession planning – a key tenet to business continuity – despite the longevity of the Board and CEO. Staff reported that presently, acting arrangements rotated around the EMT when the CEO was on leave. A more structured approach might include, for example, identifying Indigenous candidates for leadership roles who are invited to Board meetings and/or provided coaching and mentorship by existing leaders. A systematic approach like this has been applied by other Aboriginal organisations and NTRB-SPs. In response, YMAC noted that EMT members were provided with executive management training such as the Australian Institute of Company Directors' course. YMAC also noted that it had mechanisms in place to ensure continuity of information transfer and consequently reduce risk associated with the departure of staff.

Given the concerns from some members of the community and the need to balance continuity and renewal, the Review considers that YMAC should further investigate having limits on the number of times a Director can be reappointed and review tenure for senior executive staff.

Conflicts of interest

YMAC had policies and procedures in place for managing Board and staff conflicts of interest

Section 11.4 of the YMAC Rule Book stated that Board Directors must disclose any material personal interests they had to the Board. This was reflected in YMAC's Disclosure of Interest policy. Additionally, YMAC's Code of Conduct for Board and Committee Members also required that:

- *There is no conflict of interest whether actual, direct, indirect or perceived between the personal interests of members and the impartial exercise of their duties and obligations as members.*
- *Members do not use their position or confidential information that comes into their possession in the course of serving on the Board/Regional Committee to their personal advantage, to the advantage of family members or their native title claim group.*
- *Where a conflict of interest or disclosure arises in YMAC's performing of its obligations under the Native Title Funding Agreement that YMAC will advise the department immediately of that fact and the full details of the conflict arising.*

YMAC senior staff reported that these policies were adhered to and that Board members would step out if they had direct involvement with any claims or business discussed during meetings.

Legal staff also reported that where they were representing one claim group and the matters of an opposing group with a claim over the same area arose in a meeting, they would excuse themselves until those matters had been resolved. This was consistent with the independence expected of them as described in the duties and responsibilities of lawyers and supervising lawyers in YMAC's Native Title Claim Group Procedure.

Additionally, staff reported that the appointment of a corporate counsel, who could act for YMAC’s interests separately to legal team members acting for individual groups, also helped to manage any arising issues.

There is ongoing room to improve management of conflicts of interest, especially for YMAC staff

The Review was provided with YMAC’s policies relating to conflicts of interest for all employees, with additional further guidelines for legal staff. The policies identified the types of conflicts that may arise in an Indigenous organisation where Indigenous employees and Board members can be both clients to the organisation (as native title claimants, Traditional Owners and/or PBC members or Board members) as well as working for the organisation. These policies also included what is expected of employees to manage conflict of interest. The Review noted that these policies appeared comprehensive and appropriate.

Despite these comprehensive policies, some Traditional Owners who spoke to the Review expressed concerns that there was favouritism of certain family groups of individuals employed by YMAC or affiliated with the Board. These Traditional Owners alleged that the employment of Indigenous staff in YMAC’s regional offices was heavily biased towards certain family groups and these families were also seen to get preferential treatment in terms of determination timeframe, land size and success. The Review heard on a number of occasions these families referred to as “the purple circle” of YMAC. Some stakeholders also provided examples of instances in which particular Board Directors were perceived to use their positions to influence the actions taken by YMAC on particular claims or legal cases.

In response, YMAC rejected any suggestion that staff were appointing family members to positions. YMAC pointed to its conflict of interest policies and advised that it managed any perceived or actual conflicts of interest through the processes it had in place. “YMAC takes into consideration cultural, community and family connections when allocating work to avoid any perception of preferential treatment.”

The Review makes no judgment about the validity of the allegations made by these Traditional Owners but notes that their existence suggests there is an ongoing opportunity to improve both the communication and the enforcement of staff and Board policies. A clearer articulation of the issues would support greater monitoring and managing of any conflict that arises and improve adherence to policies in practice. The addition of an external person on the recruitment panel for some positions would also help mitigate the risk of such perceptions.

Culture and values

YMAC’s Mission was broadened during the Review period

YMAC published its vision, mission and values at the start of every annual report. Table 19 includes excerpts taken directly from YMAC’s annual reports and outlines the changes between 2020 and 2022.

Table 19 | YMAC’s vision, mission, values and aims⁴⁶

Principle	Annual Report 2020	Annual Report 2022
Vision	“Country” is our mother, our provider and keeper of our cultural belongings. Culture and Country go together. You can’t have one without the other.	The core of YMAC is Country. Country is our mother, our provider and keeper of our cultural belongings. Culture and Country go together. You can’t have one without the other. Through connection to Country, Aboriginal people pursue and achieve economic, social

⁴⁶ YMAC. Annual Reports 2019-20 and 2021-22.

Principle	Annual Report 2020	Annual Report 2022
		and cultural goals and aspirations with strength and confidence.
Mission	To work with Yamatji and Pilbara Aboriginal people to pursue: • recognition and acceptance of Yamatji and Pilbara culture and Country • a strong future for Yamatji and Pilbara people and Country.	For current and future generations, we work with and for Australian Aboriginal people to protect rights and manage Country and opportunities.
Values	• Respect • Professionalism • Integrity • Collaboration	• Collaboration • Professionalism • Integrity • Respect and understanding
Aims	• Ensure an enduring heritage and culture. • Resolve native title claims. • Seek outcomes that provide a strong legacy for Yamatji and Pilbara people.	-

In the latest (2022) iteration, YMAC's vision remained on the bond between Country and culture, although its mission statement broadened out beyond working with Yamatji and Pilbara Aboriginal people, with these references no longer present since the 2021 Annual Report. Specific references to native title outcomes in the core principles have also no longer appeared since then.

YMAC advised the Review that it was clear from YMAC's name, its reporting, on its website, in other publications and correspondence that the organisation was the NTRB for (and, hence, focused its activities on) its representative regions, citing the priorities and objectives in their Strategic Plan as just one example of their native title focus. They informed the Review that the Mission Statement was deliberately intended as a specific reference to native title outcomes in a way that was culturally appropriate and that the first priority of the Strategic Plan clearly addressed native title outcomes. While the Mission Statement does not contain specific reference to the regions, YMAC observed that all its activities and services were planned and directed towards Yamatji and Pilbara Aboriginal people within its representative areas and in line with YMAC's objects. This is discussed further under TOR 7.

YMAC's core principles were reinforced at their annual staff conference and celebrated at the "values" dinner at the conclusion of the conference. In addition to professional and cultural development training relevant to all staff, the conference was an annual event for YMAC to update colleagues on topics relevant to the whole organisation's strategy and operations.

Staff indicated that the culture at YMAC had improved during the Review period

Several staff who spoke with the Review reported that they had noticed an improvement in the organisational culture during the Review period, particularly with the introduction of the People and Culture Specialist's role. They reported that prior to 2020, engagement with the HR team had been relatively limited and was often related to work health and safety or administrative issues. Since then, there had been a more proactive approach to communication and asking for staff feedback, collaboration and input.

YMAC staff also pointed to the opportunities for continual learning and ongoing training, such as through the annual staff conference as something they particularly appreciated about working for YMAC. Additionally, the staff conference was also highlighted as a chance for connection across the entire organisation and a time for interaction with colleagues they did not usually work with.

Nearly all respondents to the Review's staff survey said they found YMAC to be a good place to work and that the leadership was mostly collaborative. YMAC senior staff also advised that they circulated an annual internal staff survey, which included the opportunity for staff to include free-text feedback. Although the Review was not made aware of the number of respondents, a sample of results provided by YMAC to the Review indicated that between 2021 and 2022, more than 80 per cent of respondents to its internal survey agreed that "I am proud to work for YMAC". The percentage of respondents who agreed that "I would recommend YMAC as a great place to work" increased from 58 per cent in 2021 to almost 90 per cent in 2022. Almost 90 per cent of respondents to the internal survey in 2022 said they saw themselves "still working at YMAC in two years."⁴⁷

The Review notes that interaction with YMAC staff during the Review was closely controlled by YMAC leadership and that the Review was only provided with the opportunity to speak with a select group of mostly senior staff. This meant it was difficult for the Review to validate some of the data about workplace culture provided by YMAC.

Financial management

YMAC had a rigorous approach to tracking and managing its finances

YMAC produced unqualified audited financial statements for each of the three financial years of the Review period. Additionally, YMAC had a series of financial policies which clearly defined its financial delegations, approach to cost recovery, processes for managing accounts payable/receivable, as well as staff and claimant re-imbursement procedures. These comprehensive documents are readily available to all YMAC employees via the intranet.

Senior staff also reported that YMAC had a detailed time sheeting system which helped them manage their multiple sources of revenue and various costs. As some positions in YMAC were funded through blended funding streams, the time a staff member dedicated to certain tasks in their week would reflect that funding mix. For example, if half of a research team member's role was funded through native title funding from NIAA, then they would only spend half of their week on native title related tasks. Conversely, if YMAC held a meeting which covered several issues, the meeting would be charged back to the different issues covered. For example, if a mining exploration issue was on the agenda, the time spent on that item as a proportion of the total cost of the meeting could be billed accordingly to the third party.

Some stakeholders reported challenging experiences with YMAC's financial administration

Reports from peers working professionally in the native title space suggested that YMAC's financial administration was unnecessarily burdensome with long delays for approval. At a minimum their frustrations suggest that better communication of the administrative processes and expected timelines for completion would enhance YMAC's services. Examples reported to the Review included:

- Burdensome amounts of paperwork required by claimant groups to apply for funding if they chose to use external legal assistance for claims.
- The administrative difficulty as an independent PBC to obtain the support funding they believed they were entitled to from the NIAA through YMAC.

⁴⁷ YMAC. YMAC Staff Survey Excerpts 2019-2023.

- Long wait times between each stage of approval in comparison to other NTRB-SPs – from application to funding being approved, to invoices being paid after they were rendered.

YMAC refutes these reports noting that it had rigorous policies and procedures in place to protect and respect the public funding entrusted to it. The Review notes that while it is appropriate that YMAC applies due diligence, it would be useful for YMAC to follow up this feedback with a view to streamlining or simplifying processes where feasible, so that they are more efficient for all involved.

Training and professional development

YMAC had clear training and professional development policies

YMAC provided to the Review all its People and Development policies, which included detailed guidelines relating to performance, payroll, private employment, training and professional development.

According to YMAC's performance policy, all staff should have had an annual review plan that covered their core expectations, goals, action items and key performance indicators. Additionally, the policy stated that formal quarterly check-ins with managers were expected and were coordinated organisation-wide by the People and Development unit.

Mandatory training was clearly listed in the YMAC Training and Development Policy. The training included cultural awareness training for all staff, 4WD and first aid training for staff who worked in remote locations and training required for legal and anthropological staff to maintain registration. The policy also included circumstances in which YMAC would fund non-compulsory staff development, including conferences or study, and the performance and tenure criteria which staff had to meet in order to qualify. Staff generally had to demonstrate a benefit for YMAC and share what was learned upon their return.

YMAC staff had many opportunities for training and professional development

Staff who spoke with the Review all expressed satisfaction with their opportunities for training and development at YMAC. Examples staff provided included:

- Online training modules covering onboarding, compliance, health and wellbeing, and extensive additional content for those at the managerial level on how to lead teams and be effective in the manager role.
- The annual YMAC staff conference, which incorporated training workshops delivered by external experts to all staff. Highlights of conferences held over the Review period included sessions on Aboriginal business development, compensation claims, cultural competency and de-escalation. A session on intergenerational trauma was mentioned by a number of staff as having been particularly useful and practical for their work in native title.
- Grants provided by the Attorney General's Department to the research team to strengthen skills of anthropologists, with other YMAC staff invited to join learning sessions where content was relevant.
- A review of the legal team conducted by an external legal consultant identified opportunities for the whole unit to stretch, develop and work more efficiently together as a team.

YMAC staff noted that they had the opportunity to identify training needs through the staff engagement survey and in individual performance reviews. It was also noted that budget was allocated every year to an organisation-wide "training pool" for staff professional development.

Most respondents to the Review's staff survey indicated that they were extremely or very satisfied with the cultural awareness and skills-based training they received.

YMAC had informal pathways in place for career development, including for Indigenous staff

Many informal pathways for career progression appeared to exist across the organisation, with a number of long tenured staff members who had progressed from entry or graduate level positions at YMAC to their current management and leadership roles. A few Indigenous staff members, including one regional manager, also shared this narrative. Despite these informal pathways, there were no formal pathways for career progression and no formal promotion policy during the Review period (although YMAC reported that this was subsequently in development).

The majority of YMAC's Indigenous staff were not employed in native title functions but were employed on a casual basis as rangers. Two Indigenous regional managers were members of YMAC's EMT. Senior staff reported that YMAC was generally very supportive of professional development and training for Indigenous staff members and tried to accommodate this where possible.

Level of staff turnover

YMAC had low levels of staff turnover during the Review period

As shown in Table 20, YMAC had low levels of staff turnover during the Review period of about 15 per cent per annum, which is similar to the average turnover for the public service and not-for-profit sector.⁴⁸ Total staff numbers overall increased year on year, particularly in FY2021-22, where total staff numbers (excluding rangers) increased by almost 50 persons. During the Review period Aboriginal staff members as a proportion of total staff (excluding rangers) was stable at approximately 15 per cent.

Table 20 | Staff statistics⁴⁹

Financial year	Total staff	Aboriginal staff	Turnover	Total staff excluding rangers	Aboriginal staff excluding rangers
2019-20	124	39.5%	20%	90	16.7%
2020-21	148	45.9%	12.1%	93	14%
2021-22	190	37.4%	15.8%	142	16.2%

5.5.2 TOR 5: External factors

No external factors were identified for TOR 5.

5.5.3 TOR 5: Recommendations

RECOMMENDATION

9

Better document the responsibilities of the Board to include hearing from and listening to members or clients in line with best practice governance.

⁴⁸ AHRI. Quarterly Australian Work Outlook. 2023. Accessed 15 March 2024.

⁴⁹ YMAC. Annual Reports 2019-20 to 2021-22.

RECOMMENDATION**10**

Work with the members with a view to updating the YMAC Rule Book to be consistent with best practice. This should include the introduction of cumulative term limits or consecutive terms able to be served for Board and regional committee members, and the number of members from a single family who can stand for election.

RECOMMENDATION**11**

Ensure that an external consultant agreed by the Board is on the recruitment panel for regional office positions where there could be a real or perceived conflict of interest by Traditional Owners in the community.

RECOMMENDATION**12**

Review external financial administrative arrangements with a view to streamlining the experience of service providers.

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

Summary

YMAC provided services from its dedicated PBC support function to 24 of the 34 PBCs in its RATSIB areas. Of the PBCs supported by YMAC, 14 received basic support funding in at least one year of the Review period. Support covered the provision of the basic support services for which YMAC received NIAA funding, as well as provision of ad-hoc geospatial services, legal services and executive services. Many PBCs were relatively well-established and so basic support funding was no longer a necessity.

There was some confusion among PBCs about the role of YMAC in the allocation of basic support funding. Given the discretion provided by the NIAA for NTRB-SPs to allocate the funding as they saw fit, YMAC expected PBCs to apply for this funding. There is room for greater clarity from YMAC about the rationale and process for allocation.

Feedback from PBCs about YMAC's services varied, with some PBCs commending it as responsive and professional while others felt it was too rigid. Overall PBCs were generally satisfied with YMAC's provision of service. Some PBCs felt that YMAC could improve its communication, particularly regarding when services and training were being offered. All PBCs supported by YMAC had some level of formal service agreement in place.

Some of the more established PBCs with looser relationships to YMAC questioned how YMAC could continue to support their evolving needs in the post-determination context. Some newer established PBCs wanted greater opportunities to build their own capability and reduce reliance on YMAC earlier in the process of establishment.

YMAC had a detailed return of cultural materials process and policy that was very advanced in comparison to other NTRB-SPs.

Overall, the PBCs in YMAC's RATSIB regions had good opportunities to become self-sufficient, more so in the Pilbara than in Geraldton. The high level of mining activity in the regions was a significant driver of this self-sufficiency.

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

YMAC provided a varying level of services to the PBCs across the RATSIB regions

There were 34 PBCs in YMAC's RATSIB areas at the end of the Review period. YMAC provided some kind of support to a total of 24 PBCs out of the 34. Some PBCs whose native title covered areas that overlapped the Central Desert/Kimberley region had chosen to be supported by Central Desert Native Title Services/Kimberley Land Council rather than YMAC. Others, such as Jamukurnu Yapalikurnu Aboriginal Corporation (which overlaps into Central Desert Native Title Services) had a service contract with YMAC.

Of these PBCs, 14 received at least one year of basic support funding through YMAC. A summary of numbers of PBCs supported by YMAC can be found in Table 21.

Table 21 | Number of PBCs supported through basic support funding by YMAC during each year of the Review period

FY2020-21	FY2019-20	FY2021-22
11	13	11

Activities YMAC performed or funded as part of its basic support service included:

- Compliance with the CATSI Act and reporting to the Office of the Registrar of Indigenous Corporations (ORIC), including rule book creation and revision.
- Administration, secretarial and accounting support.
- Provision of equipment such as laptops, printers, desk, chairs, phones and stationery.
- Management of Board meetings and annual general meetings.
- Staff and consultant salaries.

YMAC provided other kinds of fee-for-service support to PBCs, including:

- executive office support
- legal support
- business and training support
- advocacy support
- geospatial and other research support.

In addition, YMAC also provided continued support to PBCs for handling revised native title decisions, new claims, Future Acts and ILUAs. PBCs were supported through YMAC's dedicated PBC and Executive Office Services team which appeared well staffed (seven staff members) in relation to the number of PBCs supported by YMAC.

YMAC provided the Review with multiple statements from PBCs it supported, which were written in 2023, just after the Review period, for YMAC's re-recognition as an NTRB. These letters of support commended YMAC for the progress it had helped them make towards self-sufficiency. This included financial, legal, heritage, and HR advice and service provision. YMAC noted, for example, that it had recently assisted Nyangumarta Warrarn Aboriginal Corporation to employ its first fulltime member of staff and purchase its own office, representing significant steps towards managing its own business moving forward.⁵⁰

YMAC also received a funding variation to support YMAC to stand up the Meenangu Wajarri Aboriginal Corporation (which was not yet a PBC under the NTA) in time to allow it to participate in ILUA negotiations associated with the Square Kilometre Array project.

YMAC maintained communication with all PBCs in its RATSIB areas

YMAC informed the Review that it provided the following avenues of communication for all PBCs in its area:

- PBC Monthly E-news to PBC ORIC contacts and key PBC staff to update them on YMAC work related to their business, funding opportunities and legislative reform.

⁵⁰ NWAC letter of support, to YMACs re-recognition, 19 Jan 2023.

- Website content, including posts on statutory responsibilities, forums, events of interest and updates on government policy affecting PBCs.
- LinkedIn posts.
- PBC-specific forums for all PBC members, including a biannual joint PBC forum hosted with the National Native Title Council and the NIAA.

Some PBCs did not use YMAC's services

YMAC reported that it maintained contact with the remaining ten PBCs in its regions to whom it did not provide services, communicating opportunities for training etc. that YMAC hosted. Representatives of some PBCs not supported by YMAC noted to the Review that YMAC had not actively sought to build a relationship with them as individuals. This meant they did not use YMAC's services beyond basic FAN services. They also mentioned that where communication was provided, for example, for forums and training opportunities, it was often at short notice (from several weeks to a month ahead) making it difficult for them to participate even if they were interested and challenging to plan annual activities internally.

Some PBCs, particularly ones which defined themselves as "self-sufficient", questioned the continued relevance of YMAC to their activities. Although several acknowledged YMAC's role in helping them obtain native title, they felt that as sustainable PBCs, YMAC had little further to offer them. They described some of the "social-oriented" meetings hosted by YMAC as having little relevance to their work within the PBC and they had limited options for remote/virtual participation. While this may suggest the maturity of these PBCs, it may also be an opportunity for YMAC to further consider its offerings to more mature PBCs.

Some PBCs reported a lack of clarity about the funding or service provision available to them

The arrangements for PBC basic support funding put in place by the NIAA across the Review period allowed discretion for NTRB-SPs in how they allocated the basic support funding they received to individual PBCs. YMAC's approach, reported to the Review, was that in practice it expected that PBCs would apply proactively to YMAC to receive their basic funding. The Review finds this expectation an unusual approach amongst NTRB-SPs. YMAC advised that it adopted this approach to ensure that the PBCs receiving funding were compliant and had the appropriate corporate governance in place to manage the funding they received. This had led to some confusion and a lack of clarity among the PBCs who spoke to the Review about what individual PBCs were "entitled" to receive. These PBCs believed that YMAC's level of transparency and communication was insufficient and commented that YMAC's "opaqueness" made it difficult to work with and plan around.

The concerns raised by these PBCs included that it was challenging to obtain funding from YMAC and they were not provided with a reasonable explanation as to why their funding amount differed from other PBCs. Some felt that the amount of funding they received was not clearly communicated to them and wanted YMAC to clarify and to account for the difference between the money the PBC received and the money they perceived YMAC received in funding. While the Review encountered similar concerns across many other NTRB-SPs, there is nevertheless an opportunity for YMAC to better communicate the rationale for the decisions it makes about the allocation of PBC funding and supports.

Some PBCs commended the quality of administrative support provided by YMAC

Some PBCs the Review spoke to described YMAC staff as "quick", "responsive" and "professional" in terms of executive support, mapping support and financial assistance. No issues were raised by them with the quality of this work. They had particular praise for the conduct and engagement of certain staff members.

The majority of PBCs who spoke with the Review found YMAC staff to be engaged and responsive. Several felt that overall YMAC appeared knowledgeable regarding the law and process surrounding native title.

Some PBCs suggested that they would feel more comfortable if YMAC used more Indigenous facilitators and was more rapid in sharing materials post-engagement.

Some PBCs felt YMAC exercised too much control over their business

YMAC reported that it gave PBCs the opportunity to determine the level of closeness in their relationship with the organisation. However, some PBCs who engaged with the Review said that a close relationship with YMAC often meant YMAC assumed a high level of control over the PBC's business. They reported that when they attempted to engage with their own PBC, they were only able to communicate with YMAC staff, which eroded their confidence in their PBC's ability to advocate for their interests. They suggested that this approach did not allow enough room for PBC growth. In response, YMAC clarified that, at times, it functioned as the corporate office to the PBC (under a service agreement with the PBC) in cases where PBCs were not in a financial position to employ their own employees to engage with members.

Some PBCs advised the Review that they wanted to be in charge of their own funding envelopes without having to access it via YMAC. This was not the NIAA's policy during the Review period.

Some PBCs also perceived YMAC as inflexible and dismissive of their desires for change once an initial direction had been set. This close and "controlling" approach to handling PBCs had emotional repercussions for certain individuals interviewed during the Review. They noted that this had cultural implications for them, particularly when they believed non-Indigenous staff were dictating what was best for them. They also felt that YMAC did not adequately communicate the reasons behind its decisions and was difficult to reach for explanations. As a result, these Traditional Owners reported that they felt disconnected from their own opportunities. In response, YMAC noted that in line with PBC Rule Books it was PBC Boards, and not YMAC staff, who provided the direction for the PBC. YMAC also reiterated that it believes it was very effective at providing support and communication to PBCs.

Percentage of PBCs/RNTBCs supported by the NTRB-SP who have had intervention from ORIC or other regulator

YMAC reported that none of the PBCs/RNTBCs it supported had undergone an intervention by ORIC or any other regulator during the Review period.

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

Overall, the PBCs that received the most support from YMAC during the Review period were less mature and less self-sufficient than those that received a lower level or no support. Many older or more mature PBCs in the region had "graduated" from YMAC, having become self-sufficient enough to no longer require extensive support or basic funding.

YMAC had a robust framework for progressing PBCs towards self-sufficiency – evidenced in part by the number of PBCs able to sustain themselves after graduating from YMAC's support services.

YMAC's approach to establishing PBCs involved a three-phase process that largely covered first, legal and regulatory requirements; second, identity as an organisation; and third, staffing and strategy. YMAC also outlined three types of Executive Office/Administration Services they provided on an ongoing basis to PBCs: Administration and Compliance, Financial Management and Project Coordination.

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

YMAC had robust policies for the return of cultural materials to PBCs and performed this activity consistently over the Review period

During the Review period, YMAC was active in its return of cultural materials to PBCs, noting each instance of return in an operational progress report. The Review was not made aware of any issues from PBCs concerning YMAC's handling of the return of cultural materials.

Many of YMAC's policies and procedures for the return of cultural materials were made publicly available in the form of fact sheets and presentations. YMAC had four policies that dealt with the return of cultural materials:

1. Heritage Return of Materials Policy
2. Return of Land and Sea Management Material Policy
3. Return and Management of PBC EO Materials Policy
4. Return of Native Title Material Policy.

The Return of Native Title Materials policy outlined three models for the return of materials:

1. Model A involved YMAC working with the community to discuss and handle materials, including hosting workshops for this purpose.
2. Model B involved YMAC returning some materials and providing guidance to PBCs on how to handle the materials post-return.
3. Model C where materials were fully returned to the PBC with YMAC providing no additional support or guidance.

YMAC noted that their preferred mode of return was Model A.

YMAC hosted presentations and workshops to improve PBCs' understanding of YMAC's process of facilitating these returns. YMAC's annual reports indicated that the workshops it supported or facilitated tended to be well received by Traditional Owners. Some stakeholders were keen to see this level of engagement and information sharing expanded to social media platforms as well.

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

Over the Review period, all 14 PBCs receiving basic support from YMAC had formal service agreements in place. This involved the signing of a full-service agreement between YMAC and the PBCs which lasted two years, after which a PBC could choose to renew or renegotiate the agreement. PBCs receiving other types of support were also party to formal service agreements. At minimum this was a cost disclosure for legal services.

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

Most PBCs had no concerns but some criticised YMAC's approach as too rigid

Most PBCs the Review spoke with had no concerns about the negotiation of their service agreements. However, several PBCs that had a "loose" relationship with YMAC reported that they perceived YMAC as bureaucratic in its approach to providing and handling service agreements. They noted a lack of accessible

channels for seeking clarification and resolution. They reported that when seeking more clarity or revised agreements they could feel intimidated by both YMAC's rigid conduct and the absence of clear information or avenues for obtaining recourse. While the Review is unable to assess the accuracy of these concerns, there may nevertheless be some opportunities for YMAC to improve its accessibility and communication in these instances.

5.6.2 TOR 6: External factors

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

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

While there is some variability, the regions provide opportunities for PBCs to become self sufficient

Land in the Pilbara and Geraldton regions is resource-rich and there are opportunities for PBCs to become self-sufficient. However, economic opportunity was very dependent on the attractiveness of the area to resource companies. The location of mines dictated the level of financial resources a group had access to. This meant that wealth was not evenly distributed across the regions. PBCs were of varying maturity: some PBCs in the region were very mature, some were just starting out after just receiving their determinations. The high volume of Future Act activity in the region did not translate evenly to economic opportunity for individual PBCs.

The organisational success of PBCs did not always reflect the socio-economic condition of their communities. YMAC's RATSIB areas are socio-economically diverse, however the Pilbara region is broadly more economically well-off than the Geraldton region. This was reflected by the region's Index of Relative Socio-economic Advantage and Disadvantage (IRSAD) scores. The regions faced a broad spectrum of social disadvantage: the Pilbara RATSIB area had IRSAD scores ranging from three (moderately disadvantaged) to five (most advantaged). The Geraldton area ranged from a IRSAD score of three (moderately disadvantaged) to one (most disadvantaged).⁵¹

About 40 per cent of the adult population in the regions finished Year 12 high school. Approximately ten per cent of the population has a bachelor's degree or higher. Unemployment rates in the region were standard, ranging from three to five per cent. The percentage of Indigenous residents engaged in education, employment or training was on par with the Australia-wide average of about 40 per cent, however, significantly lower than the overall populace.⁵² This was supported by anecdotal evidence from PBCs. Overall, the uneven wealth distribution across the regions serviced by YMAC had some impact on the extent to which self-sufficiency was achievable for some PBCs.

5.6.3 TOR 6: Recommendations

RECOMMENDATION

13

Clarify the process for allocation of PBC basic support funding to PBCs, including the availability of funding, how the funding can be accessed and the rationale for decision-making.

⁵¹ Australian Bureau of Statistics, 2023. IRSAD Interactive Map.

⁵² Australian Bureau of Statistics, 2021. Data by region.

RECOMMENDATION

14

Undertake a feedback process through an independent third party to better understand the range of needs for PBCs in the region.

RECOMMENDATION

15

Improve communication with PBCs through:

- Increasing the number of channels for communication, including digital channels and social media notification and support.
- Ensuring all PBCs in the RATSIB area are provided direct and regular updates regarding outstanding native title work and progress relating to their PBC.
- Prioritising informal communication where there has been recent turnover in senior PBC staff.

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

Summary

YMAC had a Strategic Plan with a strong focus on the post-determination environment, which is appropriate given that a large percentage of YMAC's RATSIB areas has already been determined.

Key strategic objectives in the Strategic Plan included growing revenue streams for the organisation, supporting Traditional Owner groups to strengthen capacity and maintaining sector leadership.

These post-determination objectives were supported by a number of commercial initiatives YMAC already had in place, including fee-for-service heritage work and consulting services, and a large share in the renewable energy company Pilbara Solar. The Review encountered a perception among some PBCs that YMAC was competing with them for the often-lucrative provision of heritage-adjacent services and survey work for commercial enterprises. Rather than YMAC bolstering its own source of income, these stakeholders believed YMAC should better support PBCs to establish the systems and structures to take on these engagements. YMAC advised the Review that it was not possible for YMAC to compete with PBCs as YMAC could only provide heritage services in a determined area if it is requested to do so, such as through a service agreement between the PBC and YMAC.

The Review found that YMAC could more clearly communicate its revenue generating activities to help educate the community about the broader role that YMAC proposes to play if it is to survive as an organisation in the post-determination environment. In line with a recommendation of the previous Review, greater transparency may also assist in assuring stakeholders that native title interests remain a key driver of the organisation.

YMAC had plans in place to develop its work on native title compensation applications. The Review notes that for an NTRB with so much of its RATSIB area already determined, progress with developing compensation research and claims appeared to be slow.

An internal implementation plan associated with YMAC's Strategic Plan was in place through the Review period. The Review notes its comprehensive activities and suggests it would benefit from the inclusion of key performance indicators or measures of success.

YMAC published only a very high-level summary of its Strategic Plan on its webpage. The full Strategic Plan was only circulated within the organisation. It was unclear to the Review what level of input Traditional Owners in the YMAC RATSIB areas – beyond those on the Board – had into the Strategic Plan.

The Review encountered polarised views from Traditional Owners about YMAC's non-native title activities, such as facilitating Traditional Owners coming together on regional and state issues and its commercial activities such as the 50 per cent stake in Pilbara Solar. While there was clear support from some PBCs, some others who engaged with the Review felt it was an "overreach" of YMAC's role and were concerned that it might be distracting YMAC from its native title core business and PBC basic support activities. YMAC strongly refuted any suggestion that its other activities had any impact on its native title work and noted that its advocacy work was covered under its constitution and driven by Traditional Owners' expectations.

The Review notes that, given the challenge of managing the transition away from NIAA-funded claims work, more transparent communication would help educate the community about the broader role that YMAC proposes to play and alleviate concerns that it is de-prioritising native title related work.

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

YMAC's strategic plan had a strong focus on the post-determination environment

YMAC's Strategic Plan 2021-2025 had a strong focus on the post-determination environment. In their opening remarks to the document, the Board Chairs recognised this, stating that:

We are entering a new era as an organisation, where the development and delivery of professional services for Prescribed Bodies Corporate (PBCs) and Aboriginal corporations is becoming increasingly important. This plan is designed to ensure YMAC remains relevant to members and clients...some groups may have other native title goals, such as compensation and alternative settlements. Many will negotiate land use agreements. Others will explore new economic ventures.

The YMAC Strategic Plan 2021-2025 described four key themes, the last of which was to "Champion change/design resilience." This was particularly pertinent to the post-determination environment and the strategic objectives supporting this broader goal included to:

- diversify and grow revenue streams for the organisation
- support Traditional Owner groups to identify new income streams and strengthen their capacity
- maintain sector leadership.

YMAC is already a stakeholder in a number of commercial initiatives that will support its survival in a post-determination world

Consistent with its Strategic Plan theme to champion change/design resilience, YMAC had already invested in a number of commercial activities intended to supplement its income from native title work. This included:

- fee for service corporate governance support for PBCs
- fee for service heritage survey work
- a 50 per cent share in renewable energy company Pilbara Solar
- Ngurra Barna, corporate and consulting services offered by YMAC to support Traditional Owners with opportunities for community and business development and the implementation of commercial agreements.

This level of development reflected the extent of the area already determined in its RATSIB areas. As noted earlier under TOR 5, during the Review period YMAC broadened its organisational mission beyond native title in the Yamatji and Pilbara. This revision reflects a repositioning to include post-determination activities alongside native title activities. Many YMAC staff already work in the post-determination space, providing a range of services to PBCs.

While the Review found that YMAC often discussed its alternate revenue generating activities in its annual reports published over the Review period, this was generally done at a very high level and could be more clearly communicated. Additionally, more transparent communication would help educate the community about the broader role that YMAC proposes to play if it is to survive as an organisation in the post-determination environment.

There is a balance needed in the transition to a post-determination environment, to ensure that native title functions are not overwhelmed or de-prioritised as claims reduce. Compensation claims remain as a potential ongoing stream of work. This is in line with a recommendation of the previous review that encouraged YMAC to consider strategies to increase the transparency of its activities to assure stakeholders that native title interests remain a key driver of the organisation.

There is a perception among some PBCs that YMAC's commercial services are in competition with PBCs

Some Traditional Owners were concerned that YMAC was competing with PBCs through the provision of fee-for-service heritage services and survey work. They saw this as preventing PBCs from accessing a major income source. Anecdotally, they reported that from prior experience, a resource company could pay about \$200,000 for a two-week survey. Fees for service go to YMAC and create an important income stream from facilitating heritage work (reflected organisationally through the Review period by the move of heritage services to report to the CFO). Rather than YMAC bolstering its own source of income, these stakeholders believed YMAC should better support PBCs to establish the systems and structures to take on these engagements. The need for this support was reinforced by advice that mining companies generally find it easier to work with an NTRB or well established PBC, as a new or small PBC can be problematic in that it has minimal resources and staff who are learning the processes and may not be as responsive. YMAC had strong administrative structures and contract templates in place.

YMAC advised the Review that it was not possible for YMAC to compete with PBCs as YMAC can only provide heritage services by request in a determined area, such as through a service agreement between the PBC and YMAC.

More work on compensation applications was part of YMAC's Strategic Plan

While YMAC undertook compensation work in the course of actioning a native title claim, YMAC did not represent any clients for compensation applications during the Review period. Its Strategic Plan 2021-2025 identified this as a novel legal area that it wanted to develop further in the future. A number of actions relating to educating staff and members about compensation and beginning to offer support for compensation claims were described in the internal implementation plan under the key theme of "Obtain and manage rights" from YMAC's Strategic Plan 2021-2025. The Review notes that for an NTRB with so much of its RATSIB area already determined, progress with developing compensation research and claims appeared slow. The Review notes that compensation applications under section 61(1) of the NTA is an emerging area of native title law and very few claims have been settled to date.

A comprehensive implementation strategy for the post-determination environment has been developed

YMAC shared with the Review an internal implementation plan associated with its Strategic Plan, which listed out key actions to help advance each strategic objective, associated timing, responsible executive and supporting teams, and whether the action would be funded through the NIAA or through activity generated income funding.

Some of these actions included investigation of new arms of the business and ways to grow existing paid services to diversify and grow revenue streams. It also included actions YMAC could take to do the same for PBCs and Aboriginal corporations, such as increasing ranger and conservation programs. The implementation plan would benefit from the inclusion of key performance indicators or measures of success.

The full Strategic Plan is only available within YMAC

YMAC had two versions of its Strategic Plan – a one-page summary version published on its website and available to the public and a detailed 20-page version only for internal circulation. The introduction to the internal strategic plan described it as:

An internal planning tool... developed through consultation with YMAC's Board of Directors and staff over eighteen months... Further and ongoing consultation with Regional Committees, members and clients will be undertaken to inform its implementation.

Consultation with YMAC members (Traditional Owners) was mentioned as being planned in the 2020 Annual Report, but no updates were provided in the 2021 or 2022 Annual Reports. YMAC's 2023 Annual Report (published outside of the Review period) mentioned that the Core Stakeholder Engagement Consultation (CSEC) project helped assist the implementation of the Strategic Plan 2021-2025 but there were limited details about who this included. On its webpage,⁵³ YMAC stated that there were two regional community roundtables hosted in November 2022 and February 2023, and a PBC CEO roundtable hosted in March 2024 as part of the CSEC.

YMAC responded that the following activities were undertaken to encourage Traditional Owner participation in the CSEC during the Review period:

- Open calls for interested participants posted on YMAC's website (both on the homepage and dedicated webpage for the Strategic Plan).
- Contact details of a specific staff member on the Strategic Plan webpage to whom the public could direct their feedback and questions.
- Writing directly to all YMAC members (inviting them to participate).
- Writing directly to all PBCs within YMAC's RATSIB areas (inviting them to complete an online survey).
- Advertising in Mulga Mail.
- Sending reminders to PBCs in YMAC's eNews.
- Emailing YMAC staff (advising them of the project and asking them to share the information with members and clients).
- Updating the Board of Directors.

There is an opportunity for greater community clarity around the role YMAC will play in the post-determination environment

The Review encountered some polarised views about YMAC's role in facilitating Traditional Owners coming together on regional and state issues. YMAC advised that many PBC representatives were supportive of YMAC's role as facilitator in non-native title regional issues⁵⁴, as outlined in some of the 14 letters of support from PBCs and Aboriginal Corporations supporting YMAC's re-recognition as an NTRB. For example, in a letter of support to YMACs re-recognition, Nanda Aboriginal Corporation noted that "In the future it is the intention of Nanda community to be operating and dealing with their own affairs, but we need support of YMAC to get to that point".⁵⁵

Other Traditional Owners who spoke with the Review saw YMAC's involvement with non-native title matters as "an overreach of their role" and an attempt to continue to make themselves relevant when they no longer had a role to play for the communities in the region. One PBC executive in the Pilbara region described YMAC as "struggling for identity and something to do".

These Traditional Owners claimed that YMAC's investment in Pilbara Solar and advocacy work was prioritised above unfinished claims work, which many Traditional Owners expected should have been completed by now. They also did not understand why YMAC was getting involved in agendas beyond what they saw as YMAC's native title charter.

⁵³ YMAC. Strategic Plan 2021-2025. Accessed July 2024. <https://www.ymac.org.au/about-us/strategic-plan-2021-2025/>

⁵⁴ For example, Jamukurnu Yapalikurnu Aboriginal Corporation letter of support to YMACs re-recognition, 11 Jan 2023, provided by YMAC.

⁵⁵ Nanda Aboriginal Corporation letter of support to YMACs re-recognition, 16 Dec 2022, provided by YMAC.

YMAC strongly refuted these claims, noting that native title work is prioritised in accordance with its strategic, business and operational plans. YMAC confirmed that YMAC lawyers and anthropologists have no involvement with Pilbara Solar. YMAC reported:

YMAC's constitution allows us to undertake advocacy work across a range of areas – directly related to native title or otherwise – in furtherance of YMAC's charitable purposes, subject to funding, which may come from a variety of sources. YMAC's advocacy work is driven by Traditional Owners' expectations. For example, PBC forums, expedited procedure, NOPSEMA consultation process, diversification leases and our Core Stakeholder Engagement Consultation.

Given that expansion into revenue generating non-native title activities is a pathway to the survival of the organisation in a post-determination environment, there is an opportunity for YMAC to engage in greater dialogue with Traditional Owners regarding the subsequent roles that YMAC will play in the community and what the changing nature of that will look like in the near future.

5.7.2 TOR 7: External factors

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

Progress towards a post-determination environment

A large part of YMAC's RATSIB areas has already been determined

More than 87 per cent of the land regions within YMAC's RATSIB areas had already been determined.

5.7.3 TOR 7: Recommendations

RECOMMENDATION

16

More clearly communicate with stakeholders the role YMAC seeks to fulfil in the post-determination environment, while continuing to assure stakeholders that native title interests remain a key driver of the organisation.

RECOMMENDATION

17

Prioritise support to PBCs to assist them to develop the administrative systems and structures to be better placed to benefit from lucrative heritage-related work.

RECOMMENDATION

18

Develop key performance indicators to support management and monitoring of YMAC's Implementation Plan.

RECOMMENDATION

19

Publish YMAC's Strategic Plan 2021-2025 in full and be clear about the support of Traditional Owners in its development.

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 YMAC'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 wished to be involved with the Review. Surveys were distributed on behalf of the Review by YMAC 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 weeks commencing 2 and 9 October 2023, and 6 and 13 December 2023. All consultations were conducted in confidence and with the full consent of participants.

Those consulted included:

- over 20 Traditional Owners including:
 - clients who had been represented by YMAC (including members of PBCs)
 - potential clients in YMAC's RATSIB area.
- the Federal Court of Australia
- the NIAA
- representatives of the Western Australian Government
- current YMAC staff
- YMAC Board Directors
- members of the native title industry who have worked or engaged with YMAC.

Appendix C Documents reviewed

Category	Description
Annual reports	YMAC Annual Report 2019/20 YMAC Annual Report 2020/21 YMAC Annual Report 2021/22
Policies	YMAC People and Development policies YMAC Work Health and Safety policies YMAC Information Technology policies YMAC Board and regional committee – management and governance policies YMAC public relations and media policies YMAC native title claimant holding groups policies YMAC finance policies
Operational and performance documents	YMAC Operational Plan and Progress Report July 2021 – June 2022 YMAC Operational Plan and Progress Report July 2020 – June 2021 YMAC Operational Plan and Progress Report July 2019 – June 2020
Financial documents	YMAC special purpose financial statements for the year ended 30 June 2020 YMAC special purpose financial statements for the year ended 30 June 2022
COVID-19 planning documents	YMAC COVID-19 safety measures YMAC COVID-19 response plan
Other	YMAC Strategic Plan 2021-2025 YMAC Constitution YMAC consolidated Rule Book YMAC response to Nous Review YMAC organisational chart YMAC Cultural advice guide YMAC code of conduct

Appendix D Glossary

Throughout this document, the following terms have the meaning prescribed in Table 22.

Table 22 | 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 23.

Table 23 | NTRB functions under the NTA

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



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PRINCIPALS

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