

RESPONSE TO NOUS REVIEW RECOMMENDATIONS - YAMATJI MARLPA ABORIGINAL CORPORATION (YMAC)

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. (Rec 1)
Rec 1 Prioritise the development of a strategy and process for pursuing native title compensation applications.
Response Accepted. Action taken. YMAC is continuing to pursue and further develop a clear strategy and process to pursuing compensation claims as described in the <i>Native Title Act 1993</i> (Cth) (NTA) (i.e. s61(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. (Rec 2-3)
Rec 2 Clarify the policy and process for determining the priority given to claims once an application for assistance has been accepted.
Response Accepted in part – YMAC already pursues the recommended outcome. Action taken. Under section 203BA(4)(b) of the NTA, priority is to be given to the protection of the interests of Native Title Holders. To meet this requirement, in practice, once an application is accepted, a YMAC claim team is assigned and work commences. However, progress is often driven by factors outside of our control (e.g. timing of claim being accepted, dates set by the court, State policy/position on resolving claims at the time). Since the review, YMAC has developed a prioritisation policy and guidelines for how applications for assistance are to be assessed and managed. The draft policy is currently under consideration.
Rec 3 Ensure that all decisions about applications for assistance and assessment are clearly conveyed in an appropriate and timely manner to potential claimants.
Response Not accepted – YMAC already achieves the recommended outcome. This is already standard practice for YMAC. We pride ourselves on providing advice on outcomes within the advised timeframes. Evidence of this was provided to Nous as part of the review process. YMAC will be happy to review any evidence of failure to meet this requirement, but has received none whatsoever.
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. (Rec 4-6)
Rec 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.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

YMAC currently provides various communications via multiple channels in a timely manner. Evidence of these were provided to Nous as part of the review process. YMAC will be happy to review any evidence of failure to meet this requirement, but has received none whatsoever.

YMAC will always act to continuously improve our service provision. Specific examples of what else YMAC could be doing in regards to this recommendation are also welcome.

Rec 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.

Response

Not accepted – YMAC already achieves the recommended outcome.

This is already a fundamental part of our work – as is reflected by the reference to our existing policies cited in the report and this recommendation.

Further, as is also stated in the report, this recommendation is based on the views of a very limited number of respondents and is not representative of the majority of YMAC clients or potential clients.

Of course, YMAC will always act to continuously improve our service provision.

Rec 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.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

YMAC already has several mechanisms, activities and events in place that enhance our communications, relationships and receipt of genuine feedback from all Traditional Owner groups within both of our RATSIB areas. Evidence of these were provided to Nous as part of the review process.

YMAC will always act to continuously improve our service provision. Specific examples of what else YMAC could be doing in relation to this recommendation are welcome.

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. **(Rec 7-8)**

Rec 7 Review the impact of YMAC's cost saving approach to external legal representation to ensure it is not disadvantaging some claim groups.

Response

Not accepted.

As a consequence of YMAC's "rigorous approach" to our financial management (as stated by Nous in the report), there are necessary administrative steps that must be adhered to by service providers, including external consultants who may be engaged. This is part of YMAC's due diligence approach to such matters and enables us to best manage and report on our spending of public funds.

The legal representation for a claim is based on the needs of that particular claim, it is not simply driven by cost. As is stated in the report, YMAC does engage external consultants, including for legal representation, as needed. However, such expenditure must be reasonable and justified. YMAC has received no indication whatsoever that its existing approach is unacceptable to NIAA.

Further, YMAC strongly refutes that our existing cost-saving approach to external legal representation has disadvantaged any claim group. If there is any actual evidence to show the contrary, we request it be provided and will happily review it.

Rec 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.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

While YMAC is already subject to various audits, reporting requirements and other fiscal scrutiny – e.g. our financial statements are independently audited before reporting to NIAA, and are also made public on our website (in each annual report) as well as on ORIC – we agree that we will always act to continuously improve our service provision, including our financial transparency to mitigate any misperceptions relating to the application and use of funding.

Specific examples of what else YMAC could be doing in relation to this recommendation are welcome.

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. **(Rec 9-12)**

Rec 9 Better document the responsibilities of the Board to include hearing from and listening to members or clients in line with best practice governance.

Response

Accepted in part.

Action taken.

Due to the clear separation of duties, it would be highly inappropriate for the Board to speak directly with *clients*.

In relation to hearing from and listening to *members* though, while YMAC Directors (and Regional Committee Members) take pride in their existing approachability and openness to appropriate communication and engagement, they agree to always act to continuously improve YMAC's service provision. Therefore, in response to this recommendation, YMAC is in the process of seeking to amend the current "Confidentiality and Disclosure of Interest Agreement" (signed onto by all Regional Committee Members and Directors) to include a declaration to this effect.

Rec 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.

Response

Not accepted.

The related election processes are open to all eligible members at YMAC's respective Annual Regional Meetings (ARMs) – who attends and nominates at these meetings is not in YMAC's control – and those members who are willing to show up and put themselves forward for such positions should not be discouraged or excluded from doing so.

Further, YMAC has consulted the Office of the Registrar of Indigenous Corporations (ORIC) on this issue and it does not consider consecutive terms a problem. (This communication can be shared with NIAA, upon request.)

Rec 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.

Response

Not accepted.

This recommendation is inappropriate and contrary to other findings detailed in the report.

Firstly, it is inconsistent with the separation of powers and YMAC's assigned roles and responsibilities, as well as our program funding agreement: YMAC's Board should not and does not make recruitment decisions.

It also unfairly targets and places increased scrutiny on Aboriginal applicants wishing to work at YMAC, as Nous is only targeting Aboriginal people in this recommendation (when read in context of the broader report).

Further, any staff related to a candidate would be conflicted out of being involved in a recruitment process; YMAC's P&D unit are involved in all such processes to ensure there are no such conflicts. Nous even notes within the report: "YMAC had appropriate conflict of interest policies in place at the Board level, as well as for staff."

Rec 12 Review external financial administrative arrangements with a view to streamlining the experience of service providers.

Response

Not accepted.

As a consequence of YMAC's "rigorous approach" to our financial management (as stated by Nous in the report), there are necessary administrative steps that must be adhered to by service providers, including external consultants who may be engaged. This is part of YMAC's due diligence approach to such matters and enables us to best manage and report on our spending of public funds. We have received no feedback whatsoever from NIAA that YMAC's existing approach is unacceptable.

TOR 6 Extent to which each organisation is adequately supporting Prescribed Body Corporates towards self-sufficiency. **(Rec 13-15)**

Rec 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.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

YMAC already advises all PBCs annually about this process. Evidence of this, including examples of relevant notices, was provided to Nous as part of the review process.

YMAC agrees that we will always act to continuously improve our service provision. Accordingly, specific examples of what else YMAC could be doing in relation to this recommendation are welcome.

Rec 14 Undertake a feedback process through an independent third party to better understand the range of needs for PBCs in the region.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

This recommendation appears to require duplication of existing efforts by YMAC and others; evidence of which was provided to Nous as part of the review process. For example: YMAC's PBC CEO Roundtables and broader Core Stakeholder Engagement Consultation (CSEC) project; YMAC's annual Native Title Forums (NTFs); NNTC's biennial PBC Regional Forum; and AIATSIS' national PBC Survey.

Further, since the review, YMAC is in the process of engaging an external consultant for the development of our *2026-2030 Strategic Plan*, which will involve them seeking input from PBCs (as well as our members and other key stakeholders).

Again, YMAC agrees that we will always act to continuously improve our service provision, including always seeking to better understand the evolving needs of PBCs in both of our regions.

Rec 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.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

This recommendation is repetitious of #6.

While YMAC agrees that we will always act to continuously improve our service provision, we already have several mechanisms, activities and events in place that enhance our communications, relationships and receipt of genuine feedback from all PBCs within both of our RATSIB areas. Evidence of these were provided to Nous as part of the review process.

Specific examples of what else YMAC could be doing in relation to this recommendation are welcome.

TOR 7 Extent to which each organisation has developed its planning for a post-determination environment. **(Rec 16-19)**

Rec 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.

Response

Accepted in part – YMAC already pursues the recommended outcome.
Action taken.

As an NTRB, YMAC has roles and functions it is *required* to fulfil post-determination. We reject any misleading suggestion that YMAC merely *seeks* to fulfil such roles.

However, as YMAC agrees that we will always act to continuously improve our service provision, we are already undertaking activities to better promote what we can and cannot do post-determination. For example, there are existing resources/publications available on our website and YMAC has made specific presentations (e.g. at our NTFs). We are also currently reviewing and updating other resources in conjunction with AIATSIS.

Specific examples of what else YMAC could be doing regarding this recommendation are welcome.

Rec 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.

Response

Not accepted – YMAC already achieves the recommended outcome.

YMAC finds this recommendation from Nous inappropriate and contrary to other findings detailed in the report.

Firstly, when read in context of the broader report, it is based on the misperception that YMAC competes with PBCs for heritage-related work. As was emphasised regularly to Nous during the review, under the NTA, YMAC can only provide such services at the request of a PBC.

Secondly, YMAC already supports the PBCs it works with to build their capacity in ways that they have identified and prioritised. However, ‘need versus cost’ (and resourcing options) can often prohibit a PBC from directly employing people to undertake this work, and therefore they elect for YMAC to undertake the work.

Finally, YMAC questions the inclusion of “lucrative” here as there are clear disparities between PBCs; this is misleading and plays into the misperception about heritage generated income. It also implies that heritage related work is centred on making money, where the true priority is to protect cultural heritage.

Rec 18 Develop key performance indicators to support management and monitoring of YMAC’s Implementation Plan.

Response

Accepted in part.

Action taken.

YMAC already reports regularly to NIAA on our performance against our Implementation Plan and funding provided.

However, as part of our efforts to always continuously improve our service provision, YMAC will consider assigning key performance indicators and/or measurements of success in the development of our *2026-2030 Strategic Plan* and related supporting plans. The external consultant engaged to undertake this work will be directed to explore the inclusion of these.

Rec 19 Publish YMAC's Strategic Plan 2021-2025 in full and be clear about the support of Traditional Owners in its development.

Response

Accepted in part.

Action taken.

The associated information available on YMAC's website is consistent with what similar organisations provide publicly and consistent with the need to ensure internal working documents and sensitive information are not made public.

However, as part of our efforts to always continuously improve our service provision, YMAC will endeavour to publish a more detailed *2026-2030 Strategic Plan*, which will include information on its development.