

Review of Performance as a Native Title Service Provider: Cape York Land Council

Summary Report

March 2021

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This Review covered the period from July 2015 to June 2018. Findings relate to this time period unless otherwise stated. Nous conducted the Review between September 2018 and April 2019. This summary document was prepared in 2020 and includes responses to recommendations by the NTRB-SP in 2020.

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1 About the Review

The Department of the Prime Minister and Cabinet¹ commissioned this Review as part of a series of reviews to assess the efficiency and effectiveness of 14 Native Title Representative Bodies and Service Providers (NTRB-SPs) in carrying out their functions under the *Native Title Act 1993 (Cth)* (herein NTA). The complete Terms of Reference (TOR) provided for the Review are included in Appendix A. The 14 organisations reviewed are listed in Appendix B.

Cape York Land Council (CYLC) was reviewed from September 2018 to April 2019 in relation to the previous three-year period (July 2015 to June 2018). This document contains a summary of the Review's overarching findings and recommendations for CYLC. It also includes CYLC's responses to the recommendations made by the Review.

Findings and recommendations represent an assessment of performance at the time of the Review and have not been subsequently amended or updated.

In addition to the individual reports, Nous Group (Nous) has developed a de-identified comparative report which considers the performance of all the organisations across the TORs. The report presents a discussion of systemic issues within each TOR that arose in all or most of the organisations across all tranches of the Review and that are pertinent to the broader native title system.

Nous has used a consistent methodology for the Reviews to support a comparative and transparent assessment of CYLC and the other NTRB-SPs. The methodology used a mixed method approach including quantitative data on the progress of claims, future acts and Indigenous Land Use Agreements (ILUAs), performance against milestones, budgetary performance, staffing, and broader social and geographical factors that impact performance. The quantitative analytics was complemented by interviews with clients, potential clients, staff, CYLC's Board of Directors, the Federal Court, the National Native Title Tribunal (NNTT) and the Queensland Government. A list of stakeholders consulted is included in Appendix C.

CYLC was given the opportunity to review the full report in 2019 and has also provided written responses on actions they are taking in response to recommendations made by the Review, which are included in this summary document. A complete description of the methodology is included in Appendix D.

¹ Note in July 2019 the National Indigenous Australians Agency (NIAA) was established to lead Indigenous Affairs Policy for the Australian Government. NIAA has commissioned subsequent NTRB-SP Reviews.

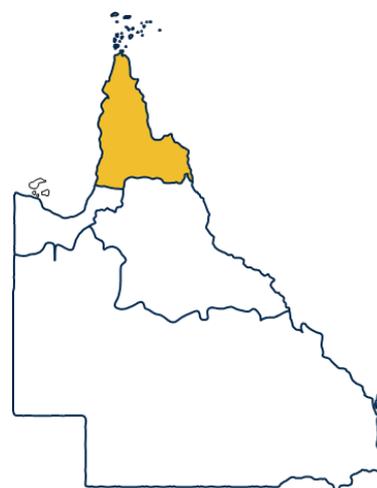
2 Profile of CYLC at a glance

CYLC is based in Cairns and provides native title services to groups in the Cape York Peninsula region

CYLC is a Native Title Service Provider funded under s203FE(1) of the *Native Title Act 1993 (NTA)* for the Cape York Representative Aboriginal/ Torres Strait Islander Body (RATSIB) Area in Queensland. Established in November of 1990, CYLC was officially recognised as the region's NTRB in 1993 and remained the recognised body at 30 June 2018.

CYLC's RATSIB area, pictured right, in far north Queensland, comprises 128,401 square kilometres (not including sea territory), accounting for approximately 7% of Queensland.²

At the time of the Review, there had been 17 determinations of native title within the Cape York RATSIB area since the passage of the *Native Title Act 1993 (NTA)*, three of which occurred between 2015/16 and 2017/18. CYLC was the solicitor on record for all three of these determinations.



There were seven active claims that fell partly or wholly in the Cape York RATSIB area as of 30 June 2018. CYLC acted as the representative for all three of the claims which fell wholly within the RATSIB area.

CYLC's Prescribed Body Corporate (PBC) support unit provides assistance to 13 PBCs in its RATSIB area.

According to annual reports, CYLC received grants from PM&C totalling \$5,978,100 in 2015/16, \$9,200,758 in 2016/17 and \$7,543,587 in 2017/18, and revenue from non-government sources totalling \$1,149,279 in 2015/16, \$990,937 in 2016/17 and \$970,006 in 2017/18.³ However, not all of these grants and revenue were for native title funding.

CYLC received varying levels of native title funding over the review period (\$5,978,100 in 2015/16, \$6,995,079 2016/17 and \$7,258,564 in 2017/18).⁴ They have also had adjusted gross income and other income from various sources (\$227,801 in 2015/16, \$154,784 in 2016/17 and \$350,272 in 2017/18).⁵

CYLC had a representative Board, with Board Directors representing each of the communities in the Cape. The Board was large and comprised 17 members. CYLC had one office, located in Cairns. Of CYLC's 99 employees, 78 (79%) identified as Aboriginal and/or Torres Strait Islander. 41 employees were funded through the NIAA for its native title functions, and the remaining 58 casual employees were funded through various other grants noted above.

CYLC is an Aboriginal Corporation incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth.) (CATSI Act)*. In addition to its NTA functions, CYLC provides cultural heritage mapping and protection, a centralised and secure repository for anthropological research and genealogies and backup copies of important documents for PBCs and resolving land administration and land tenure issues. CYLC also performs broader land council functions (e.g. responding to, implementing and advising on policy and legislation), participating in land management, and promoting home ownership and economic development on Aboriginal land.

² Calculated using Australian Bureau of Statistics data for the following SA2 regions – Cape York, Aurukun, Kowanyama-Pormpuraaw and Northern Peninsula.

³ CYLC Annual Reports 2015/16, 2016/17, 2017/18.

⁴ Native Title attributable funding.

⁵ Total revenue received from other sources has been advised by CYLC.

3 Findings and recommendations by Terms of Reference

The following sections of the report provide a summary of CYLC's performance against the Terms of Reference for the Review.

3.1 TOR 1.1 | Review and assess each organisation's efficiency and effectiveness in performing the functions of a native title representative body over the past 3 years (with the main focus on recent performance) including: native title claim outcomes achieved for clients.

CYLC has had three consent determinations of native title over the review period, each of which found that native title exists in the entire determination area. CYLC currently has three claims afoot. The reason for the relatively small number of native title determinations within the last three years has been CYLC's focus on progressing a consent determination for the Cape York United Number 1 Claim (the One Claim) which covers approximately 50% of its RATSIB area and 95% of the land that has not yet been subject to a determination.

The Review notes that the One Claim has the potential to yield very positive native title outcomes to clients. CYLC as the legal representative must continue to manage the risks associated with this large claim, including covering the possibility that litigation may be necessary. The association of the One Claim with the Pama Futures agenda and the distinction between the two needs to be clarified in CYLC communications.

During the review period CYLC has also had two active sea claims, neither of which were expected to pass the registration test due to known overlaps and are continuing to be managed as required by the Federal Court. Despite future act activity in CYLC's RATSIB area being predominantly related to marine permits, the CYLC, on advice from its Board, prioritised the Once Claim due to the strength of the anthropological reports, the immediate need to facilitate future negotiations on the lands and consideration of operational resources and priorities. CYLC has been active in concluding ILUAs over the review period. The internal review policy and processes for CYLC require some revision and could be better communicated.

Approximately 50% of CYLC's RATSIB area is determined

CYLC has a history of successful determinations and there have been 17 determinations of native title within the Cape York RATSIB area since the passage of the NTA.

Of the 17 claims that have been determined since the passage of the NTA, 16 were determined to have native title over the entire determination area and one was determined to have native title in parts of the determination area. This is a significantly positive native title outcome for Traditional Owners in the Cape York region.

Three determinations occurred between 2015/16 and 2017/18. All were consent determinations that found native title exists in the entire determination area. CYLC was the solicitor on record for all three determinations.

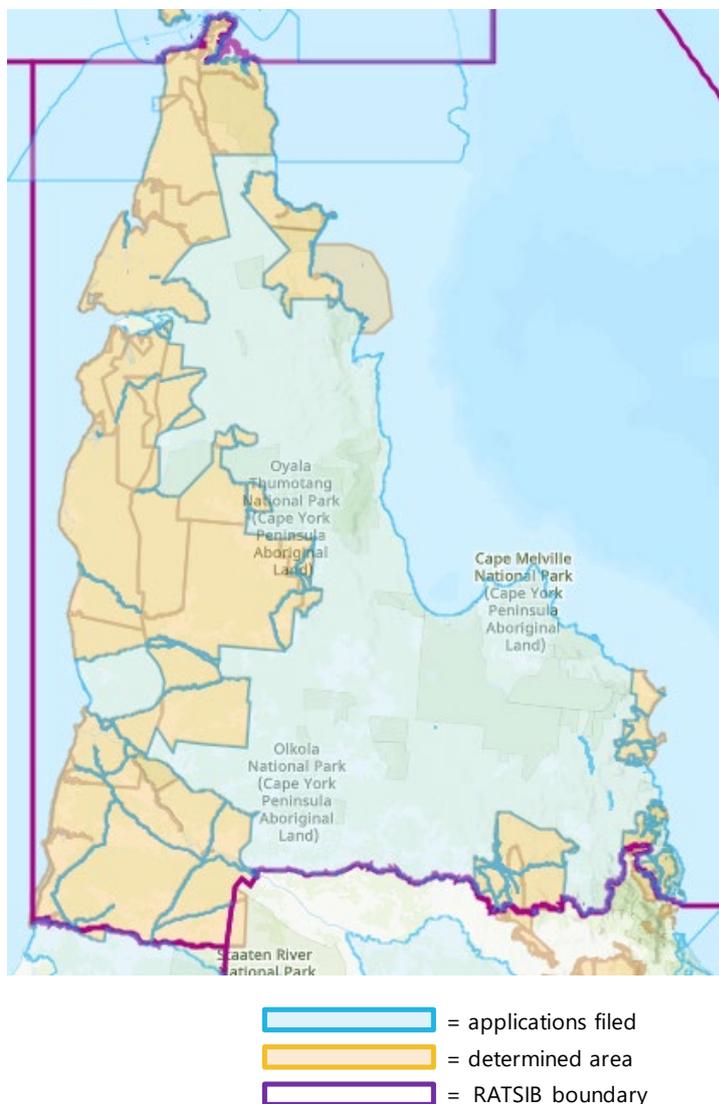
The number of determinations over the review period is relatively low. However, the Review notes the organisation's priority has been the Cape York United Number 1 Claim (the One Claim). This covers approximately 95% of the remaining land in CYLC's RATSIB area which has not yet been subject to a determination (approximately 50% of the RATSIB area). CYLC believes that this approach of having a single

claim may prove to be a very effective and efficient mechanism to settle native title over the vast majority of the remaining mainland areas of Cape York.

The One Claim has recently influenced the development of Pama Futures. Pama Futures is a reform agenda which has been led by CYLC and co-designed with people from across all of Cape York's communities. It is focused on reforms that can help Traditional Owners and native title holders to use and manage their land more effectively to generate wealth (including, but not limited to, economic wealth).

As at 30 June 2018, there were seven active claims wholly or partially in the Cape York RATSIB area.⁶ No further claims were lodged between 30 June 2018 and the end of the Review. CYLC acts as the representative for three of the seven claims. These active claims comprise one land-based claim and two sea claims. The three active claims are wholly in CYLC's RATSIB area. The four remaining active claims are only partly in CYLC's RATSIB area. These claims sit predominantly within the Torres Strait region or Carpentaria region, and are represented by private law firms.

Figure 1 | CYLC region NTA determinations⁷



⁶ Active claims are defined as claims listed with the application status of 'active' by the NNTT as of 21 November 2018.

⁷ NNTT map available online from < http://www.nntt.gov.au/Maps/QLD_Cape_York_NTDA_Schedule.pdf>. Correct as of 21 November 2018.

Recommendations for TOR 1.1

The Review made four recommendations for TOR 1.1 on native title outcomes achieved by clients. These are outlined below, as well as CYLC's response to these recommendations.

Recommendation 1

CYLC should have clearer communications about the separation (and the connection) between Pama Futures and the One Claim to assist in the transparency of CYLC messaging and clarify the native title processes.

CYLC response.

The comprehensive reform agenda being delivered in Cape York under Pama Futures was backed by the former Minister for Indigenous Affairs, Mr Nigel Scullion, and is also backed by his successor and Minister for Indigenous Australians, the Hon Ken Wyatt and the National Indigenous Australians Agency (formerly DPMC). By way of context, Mr Scullion recognised that Cape York had always led the way in big, complex reform and in 2017 urged the CYLC to broaden the land reform agenda to incorporate empowerment and economic development.

Mr Scullion described this reform as a model for the rest of Australia. It was understood that while these three components of the reform work complement each other, they are also distinct, and that the only people who can make decisions about Indigenous land are the Traditional Owners of the land themselves.

CYLCs communication tools (website, social media) reflect the Land Council's performance, but extend to the Pama Futures reform agenda and the suite of projects being delivered to support empowerment and economic development. CYLC provides clear written messaging, with CYU#1 newsletters only addressing claim matters. We will continue to focus on our messaging ensuring that community members are supported to be empowered land owners with the power in their hands to create opportunities for their future. CYLC values open, transparent messaging to the Aboriginal people of Cape York as it outlines the work being done to support their aspirations for land and sea management.

Recommendation 2

CYLC should develop a transparent risk assessment and mitigation plan and conduct periodic risk assessments of the One Claim to be communicated to claimants.

CYLC response.

CYLC engages competent and experienced senior counsel to provide ongoing guidance as to the conduct of the CYU#1 claim, including assessments as to the risks associated with its prosecution. We regularly engage with Traditional Owners in relation to the advice received from counsel and advice we intend to seek on particular matters. We have also developed additional steps to reduce risk.

The CYU#1 engagement team hold regular meetings with the Applicant to discuss progress of the claim. These meetings are conducted either in person or via telephone and now Video Conferencing facilities. CYLC hosts a fortnightly video conference platform where Traditional Owners can join (via Zoom) and hear regular updates. This has involved providing resources and training members of the Applicant on ipad and zoom where available.

During February 2020, comprehensive consultations were held at 27 meetings across the Cape York region with Traditional Owners.

Further comprehensive consultations were planned for March and April but COVID 19 restrictions were in place. CYLC has developed a detailed Traditional Owner Engagement Plan and consultation schedule for commencement in July 2020, COVID 19 restrictions pending.

In January 2020 we developed a detailed Traditional Owner Engagement Plan and we have recently developed a detailed consultation schedule which covers all communities in Cape York and will commence when travel restrictions are lifted.

Recommendation 3

CYLC should revise its internal review policy in line with best practice of other NTRB-SPs. This includes:

- amending the process for internal review including the discretionary nature of the policy;
- clearly outlining all the steps available, including external review; and
- testing the updated policy with current clients to confirm it is easily understandable.

CYLC response.

CYLC has completed an internal review of its policies. CYLC has implemented new policies that are consistent with best practice across the sector. The Facilitation and Assistance Policy now forms part of an updated CYLC Policy Manual. The Facilitation and Assistance Policy outlines our role as an NTRB and the functions we perform under the Native Title Act. It outlines the considerations that will form part of the assessment process, the matters that the decision maker must take into account in deciding whether or not to grant assistance and the procedures to follow in the event of a request for a review of the decision. The process for internal and external reviews is now clearly articulated in the policy and the recommendation to amend the discretionary nature of the policy has been addressed. A flowchart outlining the process is available on our website.

Recommendation 4

CYLC should include clear information on internal review on the website, including the organisation's policy and the steps required to trigger an internal review process.

CYLC response.

The CYLC website is a source of information for community members, stakeholders and potential employees. CYLC maintains an up to date website that promotes our work, latest developments in Indigenous Affairs and guides stakeholders to the organisation's services.

The Native Title Section shares key information and provides points of contact for requests and feedback about our work. As part of ongoing review and efficiency this site has been expanded to include guidelines and flowcharts that clearly articulate the Application for Assistance and Internal Review Process.

3.2 TOR 1.2 | Review and assess each organisation's efficiency and effectiveness in performing the functions of a native title representative body over the past 3 years (with the main focus on recent performance) including: whether the organisation's assessment and prioritisation of applications are equitable, transparent and robust.

CYLC has a documented and inclusive policy for accepting and prioritising applications for assistance. During the review period, CYLC has prioritised getting areas of land determined that are currently undetermined, through the One Claim. CYLC declined its only request for assistance as it related to varying an existing determination. CYLC could improve the communication of its approach to accepting applications for assistance.

While people with native title interests in the region understand that CYLC is prioritising the One Claim, this approach has not been well received by all stakeholders. Some would prefer CYLC to prioritise their sea claims and others would prefer CYLC to consider individual applications for assistance over areas within the One Claim. Most, however, support the prioritisation of the One Claim.

Recommendations for TOR 1.2

The Review made one recommendation for TOR 1.2 on the organisation's assessment process. This is outlined below, as well as CYLC's response to this recommendation.

Recommendation 5

CYLC should clarify in its Policy Manual who makes the decision to grant assistance to claim groups.

CYLC response.

As noted at Recommendation 3, the Facilitation and Assistance Policy forms part of an updated CYLC Policy Manual. The policy clearly outlines the role of the decision maker, and the criteria that the decision maker must take into account in determining whether to grant assistance. It further details the process to review this decision. A guide to seeking assistance is available on the CYLC website.

3.3 TOR 1.3 | Review and assess each organisations' efficiency and effectiveness in performing the functions of a native title representative body over the past 3 years (with the main focus on recent performance) including: whether the organisation deals respectfully, equitably, transparently and in a culturally appropriate manner with clients, persons seeking assistance, and persons refused assistance.

Clients have mixed perceptions of respectful and culturally appropriate behaviour from CYLC. For the most part, clients believe staff are genuinely respectful but there are some opportunities for improvement. The Aboriginal staff from within the organisation have had mixed experiences in terms of culturally appropriate working conditions. Some are also concerned that CYLC does not have much of a presence in more remote parts of the RATSIB area after the field officers based at outposts were discontinued.

CYLC is seeking to improve the transparency of its processes and progress to its clients and has improved its website, provided more information online, and regularly updates its Facebook page. However, some stakeholders who engaged with the Review are concerned that CYLC's focus on Pama Futures distracts CYLC from progressing native title and creates confusion in the community. A clearer separation of the One Claim from Pama Futures in communications to stakeholders would increase the transparency of CYLC messaging.

Recommendations for TOR 1.3

The Review made three recommendations for TOR 1.3 on the organisation's approach to clients. These are outlined below, as well as CYLC's response to these recommendations.

Recommendation 6

CYLC should introduce measures across the employee lifecycle to ensure high levels of organisational cultural competence.

This should include:

- process for reflection and continuous development of current staff members
- consideration of succession planning for Indigenous staff members.

CYLC response.

Talent development is one of the Strategic goals for CYLCs future planning. As part of this commitment the Human Resources Coordinator has conducted an internal skills audit and development plans will be a key deliverable from this process in 2020.

Development plans will form the basis of bi-annual career planning and provide opportunities to further develop talent to ensure high levels of organisational engagement, commitment and succession planning. The Cape York Regional Organisational network (CYLC, CYP, Balkanu, CYI) offers development opportunities to our team via in house development programs and through the Jawun Indigenous Corporate partnerships program.

The CYLC Workplace Agreement outlines the CYLC Policy for Indigenous Staff Development (Clause 6.2) and the program provides opportunities including financial assistance to participate in training, scholarships for tertiary and post-tertiary qualifications and additional study leave to attain academic qualifications.

CYLC is proud of the high number of staff who identify as Aboriginal and Torres Strait islander persons, as noted in the employee profile of this Summary Report.

Recommendation 7

CYLC should take steps to improve its approach towards community engagement to ensure that communication with Traditional Owner groups is transparent and inclusive.

CYLC response.

The CYLC has established a dedicated Community Relations and Dispute Resolution Unit (CRDRU) to support the engagement between the CYLC and Traditional Owners and to assist with the messaging of projects and activities such as The One United Claim. The CRDRU also provides regular advice to the CYLC management team on how to improve its engagement processes, particularly with regard to cultural sensitivities around sorry business.

All staff within the CRDRU are Indigenous and have direct connections with Traditional Owner groups across the Cape. Staff have been assigned responsibility for engaging with Traditional Owner groups from sub-regions to focus on the issues they identify through their respective Campfire conversations. The type of issues Traditional Owners raise through their Campfire conversation relate to matters of land, lore, country, culture and custom. Campfire conversations are a mode of Cape York Traditional Owner discourse outlined in the document Ignite.

Staff have attained accredited mediation qualifications in Transforming Conflict - Advanced Skills in Managing Interpersonal Conflict Mediation and have participated in a master class on Advanced Mediation Skills. These skills support Traditional Owners, helping groups unpack their concerns, listen to each other's issues and then empowering them to identify solutions.

Given the vastness of remote Cape York Peninsula and limited resource availability, the CRDRU has been utilising video conferencing as an alternative and innovative way of connecting and liaising with Traditional Owner groups across the region during the COVID-19 crisis.

Recommendation 8

CYLC should create simple messages that clarify and communicate the responsibilities of Balkanu Cape York Development Corporation and CYLC to assist potential clients to approach the correct organisation and to understand what they are entitled to from each.

CYLC response.

The CYLC collaborates and works in partnership with a number of its organisations, known as the Cape York Regional Organisations (CYROs) including Balkanu Cape York Development Corporation. We collaborate in the pursuit of establishing effective Traditional Owner entities capable of supporting the management and enabling the use of Cape York Aboriginal tenure and resource rights.

This work is complex given the variety of tenures established under State legislations and needs to be managed separately to the conversations and actions related to the determination of Native Title. The Cape York Land Council and Balkanu Cape York Development Corporation Pty Ltd ('Balkanu') work together to support Traditional Owners in negotiations with the State Government under the Cape York Peninsula Tenure Resolution Program ('the Program').

The Program returns ownership and management of identified lands on Cape York Peninsula to local Traditional Owners under the Aboriginal Land Act 1991 (Qld), while ensuring the protection of Cape York Peninsula's iconic natural areas and significant natural and cultural values. To date, CYLC and Balkanu have negotiated the return of approximately 3, 998, 793 hectares of land to Traditional Owners. Approximately 2, 478, 548 hectares of that total sits as Traditional Owner controlled or jointly managed Protected Areas (National Park (CYPAL) and Nature Refuges), with approximately 1, 520, 245 hectares being held as unfettered Aboriginal Freehold Land. CYLC and Balkanu are currently negotiating the future hand back of a further 456, 000 hectares (approximately) across two Cape York regions and continue to advocate for further properties to be included in the Program for return to Traditional Owners.

Balkanu provides meeting facilitation and negotiation support to Traditional Owners, with legal advice and representation provided by CYLC. This working relationship recognises more than three decades of corporate knowledge, experience and understanding of the milestones and challenges the Aboriginal people of Cape York have overcome.

3.4 TOR 2 | Review and assess each organisation's cost effectiveness in performing the functions of a native title representative body, including the key cost drivers for each organisation.

Over the review period, CYLC has actively explored opportunities to reduce its costs, particularly travel costs. A key cost driver for CYLC is consultant costs (anthropology and legal) and expenditure on external consultants has increased over the review period. This corresponds to the progression of the One Claim through the Federal Court and the absence of an internal anthropologist for four months. The Review notes that the remoteness of much of the RATSIB area has an impact on costs, with claim group meetings requiring significant travel expenses.

No recommendations were made for TOR 2.

3.5 TOR 3 | Review and assess each organisation's strategies for driving and tracking its achievement against key performance indicators in its funding agreement with the NIAA.

CYLC's senior management team monitors the achievement of performance against milestones in CYLC's funding agreement with the NIAA. CYLC also uses a range of internal strategies for driving and tracking performance, including weekly and monthly monitoring of KPIs.

No recommendations were made for TOR 3.

3.6 TOR 4 | Review and assess the extent to which each organisation's governance structures and organisational policies and practices support efficient and effective project delivery including: the breakdown of responsibilities between the organisation's Board, Chairperson, Chief Executive Officer and senior staff; its financial management; the standard to which it manages and resolves any conflicts of interest; the standard to which it manages and resolves any complaints.

CYLC's representative Board sets the strategic vision for the organisation and is supported by CYLC's executive to implement the vision for a united Cape York.

The breakdown of responsibilities between CYLC's Board and CYLC's executive is clearly defined. The breakdown of individual roles amongst senior managers is less well defined. Under the current organisational structure, the roles of the CEO, Deputy CEO and the Finance Manager overlap to form a non-traditional governance model. A business case for a restructure of CYLC's governance model is expected in 2019.

CYLC also has a non-traditional approach to financial management where the CEO has responsibilities that would usually be performed by a CFO, with a finance manager undertaking the day to day management of the finances. This structure appears to leverage the capabilities and qualifications of current staff given the CEO is a CPA. The Review notes that this structure has been in place since well before the review period and has not been the subject of any unfavourable audits or reviews. However the relevant risks should continue to be monitored and managed. Some stakeholders have raised concerns to the Review about the CEO having a conflict of interest due to his ownership of a financial services business that provides services to some of CYLC's clients in Cape York. CYLC has outlined it is aware of such concerns and that there is no conflict in relation to native title matters and the issues is managed with transparency.

CYLC staff generally find CYLC a positive place to work, with training and professional development offered to staff. Complaints against the organisation have largely originated from groups that do not agree with the One Claim.

Recommendations for TOR 4

The Review made two recommendations for TOR 4 on support provided by organisational governance structures, policies and practices. These are outlined below, as well as CYLC's response to these recommendations.

Recommendation 9

CYLC should consider opportunities to strengthen its governance model through increasing the skill sets of the Board Directors. This could include further training for current Board Directors, implementing minimum skill requirements for all new Directors and potentially utilising independent professional Board Directors.

CYLC response.

The Cape York Land Council consists of 17 community members representative of the communities within the region. The Directors amplify the voices of clans and families within the sub region and are chosen by the community for their knowledge and experience in matters affecting land management including cultural knowledge, governance and economic development.

Our strategic planning model includes a commitment to a strengthened governance model that will support sub regional empowerment and focus on the learning and development of the board of directors through continued collaboration within our network and across the native title sector. CYLC utilises the knowledge and experience of Directors to support our community engagement operations and will continue to build these opportunities for continued development.

Recommendation 10

CYLC should review its current approach towards performance assessment and professional development to ensure consistency of performance reviews and targeted professional development opportunities are identified for all employees.

CYLC response.

CYLC's commitment to talent development, coupled with improved internal processes for performance review, monitoring and professional development will ensure it continues the growth of our team and our work, and will attract future talent to support the visions of Cape York Traditional Owners. The network within the Cape York Regional organisations provides opportunities for growth across projects and exposure across the sector.

3.7 TOR 5 | Review and assess each organisation's strategies for and progress in developing self-sufficient PBCs, so PBCs have appropriate capacity and capability to manage their own responsibilities and aspirations.

CYLC's PBC support unit provides assistance to 13 PBCs, with the self-sufficiency of PBCs varying greatly across the Cape York region. Many are small and have limited funding or capacity to build self-sufficiency. Feedback from PBCs who engaged with the Review suggested that CYLC support is not always appropriately tailored to the diverse requirements of PBCs and that some are not satisfied with the support they have received through CYLC.

Recommendations for TOR 5

The Review made one recommendation for TOR 5 on PBC development strategies. This is outlined below, as well as CYLC's response to this recommendation.

Recommendation 11

CYLC should consider opportunities and mechanisms that would tailor PBC support to assist all PBCs to develop the appropriate capacity and capability to manage their own responsibilities and aspirations.

CYLC response.

In 2009, the CYLC established the first Prescribed Body Corporate (PBC) Support Unit in Australia to provide support and assistance to PBCs so that native title claimants and holders have legally compliant and capable organisations to represent their interests and achieve benefits from native title. The CYLC continues to challenge the ideals of what PBC support looks like.

With NIAA assistance, the CYLC will offer selected PBC staff placement opportunities at the CYLC through the 'Lana Program'. The Lana Program will work closely with PBCs to identify emerging Traditional Owner and PBC leadership, putting them through an accredited on-the-job training program and expose them to the suite of services and different types of assistance available to support PBCs through the CYLC network.

The traditional role of Native Title Representative Bodies (NTRBs) is changing. The key challenge facing all NTRBs, as we move towards a post-determination era, is how to continue to provide essential native title assistance to Traditional Owner groups as well as supporting the growing number of requests for developing business opportunities.

A focus on Service Agreements between the CYLC and PBCs will reflect the diversity for the types of support Cape PBCs request but also a reporting or 'checking in' point through which we can collectively monitor progress. Our aim has always been to enable PBCs to become self-sufficient so that they are better able to secure effective and sustainable social and economic outcomes for First Nations people.

3.8 TOR 6 | Review and assess the adequacy of each organisation's strategic planning for a post determination environment.

The speed with which CYLC's region progresses towards a post determination environment depends primarily on the outcome of the One Claim. If successfully determined by consent, the post determination world, built on the Pama Futures vision, will rapidly become reality for CYLC.

CYLC has not developed a strategic plan that articulates a vision for its own future as an organisation in a post determination world, and instead relies on the recently co-designed Pama Futures agenda for its current direction and vision. Pama Futures, in association with the One Claim, aims to help to ensure that people can use their land more effectively to build wealth. CYLC will play a key strategic and enabling role in Pama Futures and intends to undertake organisational reform to ensure it can deliver on this broader reform agenda. Within this vision, CYLC aspires to create a central 'PBC hub' to support PBCs to learn from each other and use CYLC's resources where required.

Recommendations for TOR 6

The Review made one recommendation for TOR 6 on the organisation's strategic planning. This is outlined below, as well as CYLC's response to this recommendation.

Recommendation 12

CYLC should ensure that future strategic planning activities clarify how CYLC will structure itself to provide ongoing leadership in a post determination environment.

CYLC response.

CYLC will complete its 5 Year Strategic Plan in 2020. The plan has grown out of co-design and community forums held over the past two years as part of the Pama Futures engagement. It encompasses our vision, key drivers and how continued monitoring and evaluation will ensure the focus remains on community driven opportunities. CYLC's internal operational restructure has extended its scope of services to support every aspect of the Land Rights journey, including post determination with a key commitment to capability development of PBCs.

The campfire governance program develops facilitation and engagement skills at clan/family group levels. The Lana (PBC Capability Support program) delivers an innovative learning program to develop trainees for PBCs in the sub region. Lana is delivered with 'wrap around' support including mentoring, milestone rewards program and career pathway opportunities. Both programs aim to strengthen all voices and build local empowered PBCs. The strategic plan outlines CYLC's commitment to developing networks, communication and professional support services that will empower PBCs and Indigenous Land Holding bodies to manage their traditional lands and plan for future opportunities.

Appendix A Terms of Reference

1. Review and assess each organisations' efficiency and effectiveness in performing the functions of a native title representative body over the past 3 years (with the main focus on recent performance) including:
 - Native title claim outcomes achieved for clients.
 - Whether the organisation's assessment and prioritisation of applications are equitable, transparent and robust.
 - Whether the organisation deals respectfully, equitably, transparently and in a culturally appropriate manner with clients, persons seeking assistance, and persons refused assistance.
2. Review and assess each organisation's cost effectiveness in performing the functions of a native title representative body, including the key cost drivers for each organisation.
3. Review and assess each organisation's strategies for driving and tracking its achievement against key performance indicators in its funding agreement with the NIAA.
4. Review and assess the extent to which each organisation's governance structures and organisational policies and practices support efficient and effective project delivery including:
 - The breakdown of responsibilities between the organisation's Board, Chairperson, Chief Executive Officer and senior staff.
 - Its financial management.
 - The standard to which it manages and resolves any conflicts of interest.
 - The standard to which it manages and resolves any complaints.
5. Review and assess each organisation's strategies for and progress in developing self-sufficient Prescribed Bodies Corporate (PBCs), so PBCs have appropriate capacity and capability to manage their own responsibilities and aspirations.
6. Review and assess the adequacy of each organisation's strategic planning for a post determination environment.
7. Examine and report on other relevant issues as identified by the NIAA or in the course of the review, which may be specific to particular organisations.
8. Develop a meaningful set of benchmarks to assess individual and comparative efficiency and effectiveness of organisations.
9. Provide written draft and final reports to the NIAA on the work undertaken for each review and the review findings, making recommendations on what changes, if any, each organisation could make to improve its efficiency and effectiveness. There will be an overarching comparative report and five individual reports.

Appendix B NTRB-SPs under review

A total of 14 Native Title Representative Bodies and Service Providers (NTRB-SPs) were reviewed in three tranches using the same methodology and approach. For each Review tranche, a three-year period was in scope for the Review – as presented in Table 1. The efficiency and effectiveness of each NTRB-SP was assessed and a performance report was prepared for each.

Table 1 | NTRB-SPs review tranches

Tranche	NTRB-SP	Scope of Review	Timing Review conducted
Tranche 1 (2017)	Central Desert Native Title Services	July 2014 – June 2017	June 2017 – March 2018
	First Nations Legal and Research Services		
	Goldfields Land and Sea Council		
	Native Title Services Corporation		
	Queensland South Native Title Services		
Tranche 2 (2018)	Cape York Land Council	July 2015 – June 2018	September 2018 – April 2019
	Carpentaria Land Council Aboriginal Corporation		
	Kimberly Land Council		
	North Queensland Land Council		
	South Australia Native Title Services		
Yamatji Marlpa Aboriginal Corporation			
Tranche 3 (2020)	Central Land Council	July 2016 – June 2019	January 2020 – July 2020
	Northern Land Council	July 2016 – June 2019	October 2020 – March 2021
	Torres Strait Regional Authority		

Appendix C Stakeholders consulted

The Review consulted with over 45 stakeholders in relation to CYLC's performance. This was directly through interviews, as well as a qualitative survey conducted as part of the Review.

Stakeholder groups included:

- clients who have been represented by CYLC (including members of PBCs)
- potential clients in CYLC's RATSIB area / people who have engaged private legal representation to register a claim in CYLC's RATSIB area
- persons who have been refused assistance by CYLC
- the Federal Court of Australia
- the National Native Title Tribunal
- representatives of Queensland State Government
- CYLC contractors, including:
 - barristers
 - anthropologists
- CYLC Board Directors, and
- CYLC staff (including staff that no longer work for CYLC).

Appendix D Methodology

Nous designed a detailed methodology to assess NTRB-SP performance against the TORs. The method combines qualitative and quantitative performance to account for the unique context within with each NTRB-SP operates. Given the complexity of measuring performance across different NTRB-SPs, the approach involved six steps to ensure that assessment provided a fair and complete picture of current performance for each NTRB-SP:

1. Develop performance and attribution indicators for each TOR
2. Collect data through desktop research and consultations
3. Assess efficiency and effectiveness against each TOR
4. Develop individual NTRB-SP Performance Assessment Reports
5. Review NTRB-SP feedback on Performance Assessment Report
6. Create NTRB-SP Comparative Performance Report

Qualitative and quantitative performance indicators and attribution factors were developed to assess each TOR. Attribution factors refer to factors outside the control of the NTRB-SP (external factors) that have a significant impact on the efficiency or effectiveness of their native title operations. Quantitative indicators were integrated into the qualitative examination of performance to ensure the correct inferences were drawn from quantitative metrics. The quantitative performance indicators and attribution factors were selected from a draft list of more than 120 performance and attribution indicators on the basis that they provide good coverage of quantitative indicators for each TOR category. The qualitative performance indicators and attribution factors guided the qualitative data collection.

While some qualitative indicators that were selected are capable of being quantified, they cannot be quantified in a meaningful way for comparative performance purposes. For example, while Indigenous land use agreements can be an effective tool in delivering native title outcomes there are circumstances in which they may not be the best tool.

Complaints received by the NIAA and/or each NTRB-SP formed one part of the material considered in the Review where it concerned: NTRB-SP activity since 2014, the efficiency and effectiveness with which the NTRB-SP has conducted its business, or the transparency and respectfulness of the relationships the NTRB-SP maintained with its clients, potential clients or persons refused assistance. Both the relevant elements of the complaint, and the way in which the NTRB-SP responded were considered.

The data and information underpinning the assessment of each NTRB-SPs' performance was sourced through five channels; desktop research, preliminary discussions with the NTRB-SPs, two rounds of stakeholder interviews and a qualitative survey. These provided an opportunity for stakeholders to contribute to the development process at different points; with the intention being to generate buy-in and encourage the development of indicators which were applicable and meaningful across the contexts of different NTRB-SPs.

The output from the process included individual NTRB-SP Performance Assessment Reports ('Assessment Reports') along with a separate NTRB-SP Comparative Performance Report ('Comparative Report'). The Assessment Reports provided a standardised framework to understand the context and performance of each NTRB-SP; the Comparative Report brings together the findings of each Assessment Report by TOR and discusses the key drivers of performance.

Appendix E Glossary

Throughout this document, the following terms have the meaning prescribed in Table 2.

Table 2 | 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 an NTRB-SP (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 (Cth) (the CATSI Act)</i>	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 or High Court of Australia. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).
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 ILUA 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 NTRB-SPs.
National Native Title Tribunal (NNTT)	<p>An independent statutory body established under s 107 of the NTA to assist people in resolving native title issues by:</p> <ul style="list-style-type: none"> • 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 • helping people to negotiate ILUAs <p>The NNTT maintains three registers relating to native title applications, determinations and ILUAs. It also maintains databases regarding future act matters and geospatial tools.</p>

Term	Meaning
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 (s 223 NTA).
<i>Native Title Act 1993 (Cth) (NTA)</i>	The <i>Native Title Act 1993</i> (Cth) established the procedure for making native title claims, and is the primary piece of Commonwealth 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> .
Native Title Service Provider (NTSP)	Organisations funded by the Australian Government to perform all or some of the same functions as NTRBs in areas where NTRBs have not been recognised.
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.
Post-determination	At a claim level, refers to the period following a determination that native title exists. At an NTRB-SP life cycle level, refers to the period following the resolution of all active claims within a RATSIB 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 represent them and 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. This means that the application becomes a registered claim and is able to exercise the procedural rights stipulated in the future act provisions of the NTA.
Representative Aboriginal/ Torres Strait Islander Body area (RATSIB area)	The area in which an NTRB-SP performs its functions.
Terms of Reference (TOR)	Refers to the Terms of Reference provided by the NIAA which govern the scope of the project. These can be found in Appendix A.
Traditional Owners (TOs)	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 3.

Table 3 | NTRB functions under the Act

Reference	Function	Detail
s203BB	Facilitation and assistance	NTRB-SPs provide assistance to those that hold or may hold native title 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 that may hold native title 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 native title claimants can seek a review of decisions and actions they have made, and promote access to this process for claimants.
s203BJ	Other functions conferred by the Act 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.