

Review of Performance as a Native Title Representative Body: Carpentaria Land Council Aboriginal Corporation

Summary Report

March 2021

Disclaimer:

Nous Group (**Nous**) has prepared this report for the benefit of the National Indigenous Australians Agency (the **Client**).

The report should not be used or relied upon for any purpose other than as an expression of the conclusions and recommendations of Nous to the Client as to the matters within the scope of the report. Nous and its officers and employees expressly disclaim any liability to any person other than the Client who relies or purports to rely on the report for any other purpose. Nous has prepared the report with care and diligence. The conclusions and recommendations given by Nous in the report are given in good faith and in the reasonable belief that they are correct and not misleading. The report has been prepared by Nous based on information provided by the Client and by other persons. Nous has relied on that information and has not independently verified or audited that information.

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.

Contents

1	About the Review.....	3
2	Profile of CLCAC at a glance.....	4
3	Findings and recommendations by Terms of Reference.....	5
Appendix A	Terms of Reference	19
Appendix B	NTRB-SPs under review.....	20
Appendix C	Stakeholders consulted	21
Appendix D	Methodology.....	22
Appendix E	Glossary.....	23

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.

Carpentaria Land Council Aboriginal Corporation (CLCAC) 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 CLCAC. It also includes CLCAC'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 all the Reviews to support a comparative and transparent assessment of CLCAC 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, CLCAC Board Directors, the Federal Court, the National Native Title Tribunal (NNTT) and the QLD Government. A list of stakeholders consulted is included in Appendix C.

CLCAC 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 description of the complete 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 CLCAC at a glance

The Carpentaria Land Council Aboriginal Corporation (CLCAC) is based in Burketown, Cairns and Normanton and provides services in the south of the gulf region

CLCAC was established in 1982 as a community-based organisation and incorporated under the *Aboriginal Councils and Associations Act* in April 1984. On 30 June 1994, CLCAC was recognised as the official Native Title Representative Body for the Carpentaria Gulf Representative Aboriginal/Torres Strait Islander Body (RATSIB) Area.

The Carpentaria Gulf RATSIB area, pictured right, covers 83,549 square kilometres (not including sea territory), accounting for approximately 5% of Queensland. This is one of the smallest RATSIB areas in Australia.

There were five active claims in the Carpentaria Gulf RATSIB area awaiting a determination as of 30 June 2018. CLCAC was not listed as the representative for any of these claims; however, this is because CLCAC briefs the legal work for its claims out to HWL Ebsworth Lawyers, P&E Law and Chalk & Behrendt Solicitors.

At the time of the Review, there were three Prescribed Bodies Corporate (PBCs) within the RATSIB area. CLCAC supported all three of these PBCs in 2017/18. More PBCs were expected to be established prior to the end of 2019.

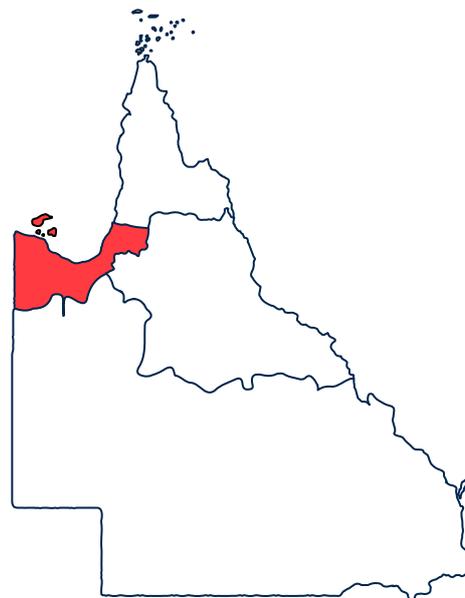
At the time of the Review, there had been 6 determinations of native title within the Carpentaria Gulf RATSIB area since the passage of the *Native Title Act 1993*, none of which occurred between 2015/16 and 2017/18.

CLCAC received \$2,871,000 in native title funding from the NIAA in 2017/18. This was an increase from 2016/17 (\$2,572,000) and 2015/16 (\$2,221,000).² NIAA Native Title funding represents less than half of total CLCAC revenue, with CLCAC receiving funding from other Australian Government and Queensland Government agencies for non-native title related functions.

At the time of the Review, CLCAC did not operate or have full or part ownership over any subsidiary entities. Outside of their native title functions, CLCAC operated a large Ranger program (a Land and Environment Program) as part of their approach to land rights.

At the time of the Review, CLCAC had a representative board which consisted of nine directors, one member from each of the region's nine Traditional Owner groups. Board members serve a term of two years. Each Traditional Owner group also nominates one alternate member. The nine language groups in the region are Kurtijar, Gkuthaarn, Kukatj, Gangalidda, Kaiadilt, Lardil, Yangkaal, Waanyi and Garawa.

As of 2018, CLCAC had three executive management positions; CEO, Deputy CEO and PLO. The organisation has three offices – one in each Burketown, Cairns and Normanton.



² CLCAC Annual Reports 2015-16, 2016-17, 2017-18.

3 Findings and recommendations by Terms of Reference

The following sections of the report provide a summary of CLCAC'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.

CLCAC has a successful history of achieving native title outcomes for clients, supporting seven positive native title determinations within the RATSIB area. Over the three-year period which is the focus of the Review, no CLCAC clients have achieved native title determinations, but CLCAC has filed four claims. There are currently five active claims, with upcoming determinations expected. CLCAC reports that it expects all these claims to be finalised over the next two years. Native title represents one element of CLCAC's holistic approach to land rights, management and development.

CLCAC adopts a distinct model compared to many other NTRB-SPs. All claims related work is briefed out to external legal representation and expert anthropologists. For this reason, CLCAC has limited internal capacity in these areas, with CLCAC playing a more facilitative and independent role. This approach has proven effective in achieving native title outcomes for clients and is appropriate given the distinct region within which CLCAC operates. CLCAC clients have expressed satisfaction with the support they have received in obtaining native title.

CLCAC also delivers future act services to clients, through a combination of in-house support and external legal work. CLCAC has also supported clients to receive benefits from ILUAs in the RATSIB area.

CLCAC has been successful in delivering native title outcomes for many clients

CLCAC has performed well in achieving native title outcomes for clients since its establishment in 1982. In 1994, CLCAC was recognised under the *Native Title Act 1993* (Cth) as the representative Aboriginal/Torres Strait Islander body for the Gulf Region. Since then, CLCAC has assisted in seven positive determinations of native title.³

Within the three-year period from 1 July 2015 to 31 December 2018 (the focus of the Review) CLCAC has:

- Filed four native title applications
- Assisted with the registration of 11 ILUAs, which provided for extinguishment of native title in exchange for non-native title benefits.

Despite strong historical performance, over this three-year period for the Review, CLCAC has not achieved any native title determinations for its clients.

During the review period, CLCAC has not assisted with the authorisation and filing of any claims that failed the registration test. Since 1999, all applications supported by the CLCAC have passed the registration test.

³ CLCAC (2018) CLCAC Annual Report 2017-18.

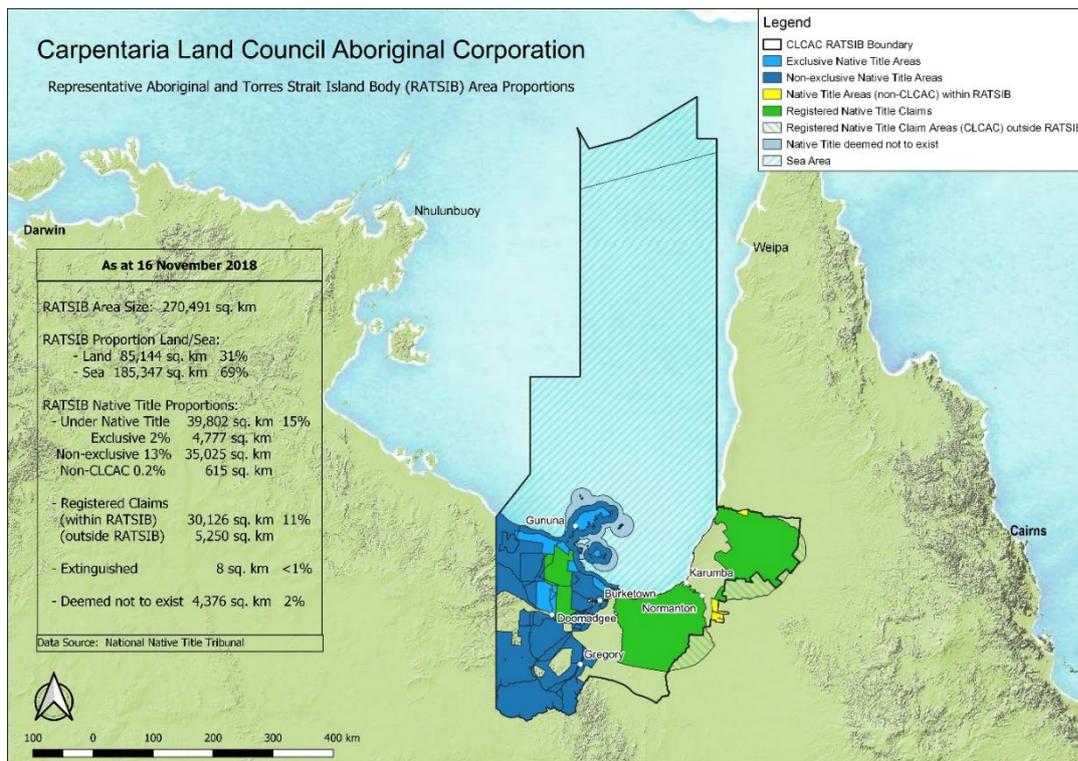
No CLCAC clients have been the subject to a negative determination during the course of the review period.⁴ No CLCAC client has been subject to a determination that 'native title does not exist' over the organisation's history with the RATSIB area.

CLCAC's strong history indicates good performance for native title outcomes, albeit with more limited recent achievements. The Review does not believe there is a performance concern related to no determinations occurring during this period. All claims that are currently 'active' were filed during the three-year review period. Likewise, several claims were determined in the twelve months prior to the review period. For this reason, the Review has assessed the CLCAC not achieving a determination during the three-year period is a result of the timing of applications and not a performance concern. Progress on the currently active claims appears to be strong.

Native title achievements over CLCAC's history included five consent determinations and two determinations with litigated outcomes. CLCAC senior stakeholders reported that the two instances of litigated outcomes were strategic – one being the first claim in the region and the second due to the location of the claim and a subsequent increased threshold for connection from the State. Stakeholders reported that achievement of these litigated determinations has supported achievement of consent determinations in the years that have followed.

Of the seven determinations supported by CLCAC, four resulted in a judgment that native title exists in the entire determination area, with the other three determination resulting in a judgement that native title existed in parts of the determination area.

Figure 1 | CLCAC region NTA determinations (with light blue representing where native title exists (exclusive) and dark blue (non-exclusive))⁵



⁴ NNTT Register; note this includes a determination that 'native title does not exist' or a claim has been dismissed or discontinued during the review period.

⁵ NNTT data, available online from

<http://www.arcgis.com/home/webmap/viewer.html?url=https://services2.arcgis.com/rzk7fNet0xoEp3cX/ArcGIS/rest/services/NNTT_Custodial_AGOL/FeatureServer/6&source=sd>.

Other CLCAC stakeholders, including staff, Board members and clients, point towards many of the key achievements and precedents that have been delivered by the organisation. These include:

- achievement of native title recognition for many TOs in their region, through seven successful determinations
- CLCAC supporting one of the shortest native title claims from authorisation to determination
- achievement of the first mining agreement nationally
- the largest determination outside a desert area.

Native title represents one element of CLCAC’s approach to land rights and management

CLCAC adopts a holistic approach to the achievement of land rights outcomes for clients. Consistently, internal and external stakeholders reported that the achievement of native title outcomes represented one part of a broader approach to the achievement of land rights, and the management and development of traditional lands in the RATSIB area.

CLCAC’s approach to land rights, management and development can be presented on a continuum, as outlined in Figure below.

Figure 2 | CLCAC’s approach to land rights, management and development



Stakeholders widely understood and communicated to the Review that while native title is a critical role for CLCAC it only constitutes one part of a more holistic approach to land rights. These stakeholders include CLCAC staff at executive and operational levels, CLCAC Board Directors and many external stakeholders and clients.

While not an explicit focus of the Review, this conception of the role of the CLCAC is important to how they operate and the support they provide to their clients across the native title process.

Recommendations for TOR 1.1

The Review made one recommendation for TOR 1.1 on native title outcomes achieved by clients. This is outlined below, as well as CLCAC’s’ response to this recommendation.

Recommendation 1

CLCAC should ensure that its Internal Review and complaints policy is publicly available in online and hard copy format.

CLCAC response.

CLCAC has a Complaints Handling policy as part of CLCAC’s internal Policies and Procedures manual, however the policy is currently not in a format suitable to uploading to CLCAC’s website. The policy is currently under review and is being reformatted to become a document suitable for publication on CLCAC’s website as an attached document. This is anticipated to be completed within the next 3-6 months.

A review and restructure of CLCAC’s website is planned to commence in the next 12-18 months subject to availability of funds and internal staffing resources. It is anticipated a section dedicated to providing feedback, including compliments and complaints will be included on the new restructured website.

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.

CLCAC has an internally agreed, long-term approach to the prioritisation of native title claims which is driven by its Board. All Board members were able to clearly articulate the strategic approach that was used and the reasons the prioritisation approach has been adopted over CLCAC's history. In line with other NTRB-SPs, priority has primarily been given to the strongest claims and those most likely to achieve a positive native title outcome.

In addition, external factors such as the need to lodge a claim in response to industry activity has also influenced which claim is prioritised in some instances. This prioritisation process is communicated to clients when they make a request for assistance and client awareness and satisfaction with the prioritisation process was generally strong.

No recommendations were made for TOR 1.2.

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.

CLCAC has a strong approach to working with the community, characterised by an "on the ground" presence and transparent approach. CLCAC adopts a range of consultative mechanisms to ensure ongoing and respectful engagement with the communities in the region. Clients were positive on the manner CLCAC engages and communicated they do so in a respectful manner. Clients also provided positive feedback on the cultural appropriateness of CLCAC's engagement with them. Staff working with community members typically had previous experience working within the region or in other remote areas of Australia and informal and formal cultural awareness practices supported ongoing consideration of the cultural nuances of the region. This is supported by high numbers of Indigenous staff within the organisation and the availability of community elders (such as Board members) to provide community specific guidance. CLCAC's processes are transparent to clients – with a reported openness on claims and operational policies.

No recommendations were made for TOR 1.3.

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.

CLCAC has put in place several policies to reduce costs associated with travel and the hosting of claim group meetings, including aligning multiple meetings and adopting cost-effective travel options. This includes a policy that supports travel for clients and potential clients to ensure equitable opportunity to engage in the native title system. Native title claim group meetings appear to be well managed and efficiently delivered.

CLCAC's approach to native title is defined by its use of external legal and anthropological consultants. While this results in higher fees, the Review considers the approach to be more cost-effective given the particular nature and challenges of the RATSIB area. Analysis of comparative funding ratios does not indicate that CLCAC's operations are less efficient than other NTRB-SPs. The PLO works with the Board to proactively manage external consultants to minimise risks and ensure value. The PLO has previously been an external consultant, but it is now an in-house role.

Several attribution factors have an impact on CLCAC's ability to achieve native title outcomes in a cost-effective manner – most notably the high levels of remoteness of the RATSIB area.

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.

CLCAC has embedded the NIAA's reporting requirements in its own internal practices. CLCAC actively monitors progress of claims against the NIAA's milestone reporting. The milestones are integrated into the management of external lawyers and anthropologists to ensure accountability and alignment with agreed organisational progress. This approach has superseded previous approaches for monitoring native title progress.

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.

The Board and Executive team appear to operate very effectively together. CLCAC's structure spreads senior responsibility across three executive positions – the CEO, PLO and the Corporate Services Manager - which appears optimal for the size of the organisation. Senior staff take on operational responsibilities and are highly involved in all levels of decision making across the organisation. There are opportunities to reconsider and plan for a more efficient and sustainable allocation of strategic and operational activities and decision-making within CLCAC. To support this, it is necessary that CLCAC continues to build the capability of non-senior staff members to enable operational and administrative decision-making to occur at the appropriate levels and increase the capacity of senior staff to consistently focus on more strategic work.

CLCAC has a representative Board model which provides effective governance leadership to the organisation. Stakeholders reported that corporate governance arrangements were sound and Board performance was strong and culturally considered. Board Directors are well respected in their communities.

Staff report a strong organisational culture and a commitment to a grass-roots approach to native title and economic development, although there are differences across CLCAC's offices. CLCAC has sound practices and policies with regards to financial management, conflicts of interest and complaints. CLCAC has a sound approach to performance and professional development, however there are further opportunities to support ongoing training and professional development for non-Ranger staff members.

Recommendations for TOR 4

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

Recommendation 2

CLCAC should revisit their key organisational documents, including the Policy and Procedures Manual, to more clearly communicate the distinction between the role played by the Board and by senior staff within the organisation. This should clearly articulate that strategic responsibilities for the organisation sit with the Board and operational responsibilities sit with the CEO and other senior staff.

CLCAC response.

CLCAC management acknowledge that a review of CLCAC's key organisational documents is overdue, however Management's ability to attend to this previously has been impacted by a lack of resources to engage suitably qualified staff to fulfil key roles that would take pressure off the CEO and Deputy CEO, who are currently heavily involved in the day to day operations of the organisation. CLCAC was successful in securing funding for a Senior

Finance Officer at the mid-year funding round, however recruitment to this position was significantly delayed due to COVID-19. The successful applicant commenced with CLCAC on 13 July 2020.

It is anticipated this position will take considerable pressure off the Deputy CEO and allow her to concentrate more of her time assisting the CEO with the review of existing key documents, including the Policies and Procedures Manual, as well as finalisation and development of new Organisational documents, including various Emergency Response Plans, Fraud Risk and Business Resumption Plans.

Recommendation 3

CLCAC should clarify delegations and roles and responsibilities across key functions to ensure the CEO is not overly involved in operational decisions that do not require executive input. Advisory and strategic functions should continue to be undertaken by the CEO. Other operational and administrative functions could be undertaken by administrative staff with appropriate supervision. Additional administrative or operational resources may be required to support this change.

CLCAC response.

CLCAC acknowledges that the CEO and Deputy CEO are heavily involved in daily operational decisions. Due to CLCAC not having sufficient funding resources to engage suitably qualified and experienced personnel to fill important Senior and Middle Management roles, that were lost either due to cessation of funding (Land & Sea Manager, Economic Development Support Officer) and the Native Title Services Manager being appointed to the position of CEO, operational staff have been reporting directly to the CEO and Deputy CEO.

The CEO is a key long-term staff member located on-country, with significant corporate, cultural and local knowledge, and in the absence of another suitable alternative, the need to continue on-ground logistical support by the CEO has been required. The appointment of an Administration and Project Support Officer in the region in July 2018 is starting to alleviate some of this additional workload, however time must be given for development of this staff member before they have the capacity to take on full responsibility for this role in the region.

Since completion of the NTRB/SP review further delegations have been given to the Regional Ranger Coordinator, which has taken some pressure off the CEO and Deputy CEO in respect to approval of expenditure for day to day Land & Environment operations. Additionally, in the last two years CLCAC has heavily invested in further training for Senior Rangers, including Certificate IV in Leadership and Management. Whilst training is ongoing and building the capacity of the Senior Rangers will take some time it is anticipated this training will provide the Senior Rangers with the skills and capacity to take on more senior leadership positions within the organisation.

Consideration of further delegations to less Senior Staff is also tied to a review of CLCAC's Policies and Procedures Manual.

Recommendation 4

Additional training for Board members on legal and anthropological work would support sound decision making and further development of Board members.

CLCAC response.

Board members are provided guidance on these matters through their respective anthropologists and Legal Representatives as part of the consultation for their native title claims. CLCAC believe the bigger priority for the Board is refresher training in Governance and Business Management training with a Commercial focus in readiness for finalisation of CLCAC's transition to a Post Determination Service delivery model.

Through its assistance of PBC's, CLCAC has been able to identify suitable trainers to deliver face to face training to the Boards and it's anticipated that some CLCAC Board Directors will have an opportunity to attend this training due to their appointment as Directors on the Board of their respective PBC. CLCAC's ability to engage trainers to deliver this training in a face to face setting to PBC's and CLCAC Board Directors is dependent on securing funds and the easing of travel restrictions to the region due to the ongoing COVID-19 Pandemic.

Recommendation 5

Continue to support active engagement across offices, including providing exposure of corporate staff to operational considerations through 'on Country meetings'.

CLCAC response.

Operating with a limited budget, opportunity for active face to face engagement across offices, in particular corporate staff attendance at on-country meetings and events facilitated by CLCAC is often limited. It must also be acknowledged that the Corporate Services Unit operates with a very small team and is required to provide substantial corporate assistance to two busy regional offices, with heavy operational workloads. Staff leave and work priorities and commitments are therefore operational factors also required to be considered when looking for opportunities for attendance by Corporate staff at regional or on-country meetings.

In late September, early October 2019 CLCAC held a week-long All-of-staff camp and workshop on Gangalidda country at Gunamulla, on the coast near the NT border. The workshop brought together all CLCAC and Wellesley Islands Ranger staff from four offices, including Cairns and Mornington Island with a focus on team building. The workshop also coincided with the Gangalidda and Garawa Rangers annual turtle monitoring program and Cairns-based Corporate staff were given real insight in to the distances travelled by Regional Staff in carrying out their duties and the conditions under which they are often required to work, giving them an appreciation and understanding of the work carried out in the region.

CLCAC continues to look for opportunities to expose Corporate Staff to on-country experiences, however this remains dependent on available funds and staff availability to travel.

Recommendation 6

CLCAC should update and simplify the Policies and Procedures Manual to ensure ongoing best practice within the organisation.

CLCAC response.

Due to limited internal resources and heavy workloads this task has been on CLCAC Management's to do list for some time, however, is in train and is now anticipated to be completed within the next 12 months.

Recommendation 7

CLCAC could seek broader professional development opportunities for Corporate (management and non-management) and native title staff members (in line with recent developments in the Land and Sea Rangers program).

CLCAC response.

The CEO and Deputy CEO have been considering suitable options for further training and development and some further training by the Deputy CEO has occurred within the last 12 months, however opportunity to take time away from the day to day responsibilities remains an obstacle. In addition, training is often best delivered in a face to face environment and COVID-19 restrictions have had an impact in the last 4 months.

Discussions with Corporate and Native Title Staff in relation to training have been ongoing and staff have been offered training, however CLCAC management has found little take up of training offered. In the last 12 months however, CLCAC has supported some training and development for the HR & OHS Compliance Officer, the Corporate Projects Support Officer, PBC Support Services Officers and the Project Support and Administration Officer.

CLCAC remains committed to staff development and is continuing to work with staff to develop individual training matrices and plans, that will incorporate CLCAC's training priorities as well as the employee's own training and development aspirations that also align with their current work at CLCAC as well as develop them to be able to take advantage of opportunities for advancement within CLCAC as they arise in the Future. Currently however, CLCAC is under-resourced within the Corporate Services Unit and, with only one HR officer,

responsible for all HR, Payroll, Training and WHS Compliance within the organisation, the unit is struggling to meet the demands of this busy portfolio.

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.

One of the key areas of focus for CLCAC is to build PBC capability and self-sufficiency through its support activities. This focus aligns with the CLCAC's transition plan for 2022, noting that the challenges associated with the remoteness of the region will make self-sufficiency difficult. CLCAC currently provides support to two of the three PBCs in the region through two PBC Support Officers and also some minimal support services to the third PBC. This includes a range of administrative and operational support. Feedback from stakeholders was predominately positive, with stakeholders emphasising that they benefited from the intensive and tailored approach to supporting their PBCs.

Recommendations for TOR 5

The Review made two recommendations for TOR 5 on PBC development strategies. These are outlined below, as well as CLCAC's response to these recommendations.

Recommendation 8

CLCAC should monitor the most appropriate role of the PBC support functions to ensure that they add clear value beyond operational functions that could be carried out internally.

CLCAC response.

This recommendation is linked to the outcome of Recommendation 9. Please refer to recommendation 9 accordingly for discussion on this point.

Recommendation 9

CLCAC should consider implementing a Service Agreement to clearly articulate the types and levels of support CLCAC will provide to PBCs.

CLCAC response.

CLCAC considers that a Service Agreement, or Memorandum of Understanding (MoU), between each PBC and CLCAC setting out the responsibilities, tasks and compliance requirements that each party will assume in the operation and administration of the PBC is a useful tool to assist each PBC to transition from a state of dependence to one of independence. A document recording such an Agreement could detail all the tasks or requirements which each party will be responsible for over an agreed period in order that the PBC fulfils the governance and compliance requirements as well as leverage native title rights for the benefit of the native title holders.

The Agreement or MoU would focus on the tasks or requirements that the PBC is capable of undertaking (or undertaking with minimal assistance) initially, in addition to tasks or requirements which would require more structured mentoring and instruction, with the expectation that over time the PBC will take on an ever-increasing stewardship of itself.

Built into such an Agreement or MoU would be a review function in respect of each agreed period. Besides providing a basis for a variation to the Agreement whereby the PBC takes on more tasks and responsibilities over time, this would also provide a concise tool for monitoring the effectiveness of CLCAC's assistance in delivering value to the PBC (Criterion 8). CLCAC recognises that such an Agreement will need the support and understanding of the members of each PBC. To this end, a consultation process will need to be conducted with those members and their Boards.

Work has started on a draft document in the form of an MoU. This will be completed in draft form to take to the PBCs seeking support for the MoU and input from the respective Boards of Directors.

CLCAC anticipated having agreements in place by now, however due to the ongoing COVID-19 Pandemic and changed funding arrangements having an impact on staff travel to and from the region, we now anticipate such Agreements are unlikely to be in place before April 2021.

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

CLCAC is well progressed towards a post-determination environment with a strong strategic approach developed and formalised through its Transition Plan. The Plan sets out a framework and timeframe to build capacity of all PBCs and considers a restructure of its governance model to better suit the post-determination environment.

The work to define the post-determination service delivery model for CLCAC will assist in ensuring CLCAC will be able to continue to operate without the same level of funding from the Commonwealth for its NTA functions. The upcoming strategic planning cycle for CLCAC will provide a valuable opportunity to consider monitoring of the Transition Plan and the opportunity to consider requisite strategic planning capability.

No recommendations were made for TOR 6.

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		
	Torres Strait Regional Authority		

Appendix C Stakeholders consulted

The Review consulted with over 30 stakeholders in relation to CLCAC'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 CLCAC (including members of PBCs)
- CLCAC Board Directors
- CLCAC staff
- CLCAC contractors, including:
 - barristers
 - anthropologists
- the Federal Court of Australia
- the National Native Title Tribunal
- representatives of QLD State Government.

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 which 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.
GGNTAC	The Gangalidda & Garawa Native Title Aboriginal Corporation, which is a PBC and is a member of CLCAC.
GRAC	The Gulf Regional Aboriginal Corporation (GRAC), which is a PBC and is a member of CLCAC.
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)	An independent statutory body established under s 107 of the NTA to assist people in resolving native title issues by: <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

Term	Meaning
	<ul style="list-style-type: none"> 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>
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.