

Review of Performance as a Native Title Representative Body: North Queensland 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.

North Queensland Land Council (NQLC) was reviewed from September 2018 to April 2019 considering the previous three-year period (July 2015 to June 2018). **This document contains a summary of the Review's overarching findings and recommendations for NQLC. It also includes NQLC'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 NQLC 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, the NQLC's Board of Directors, the Federal Court, the National Native Title Tribunal (NNTT) and the QLD Government. A list of stakeholders consulted is included in Appendix C.

NQLC 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.

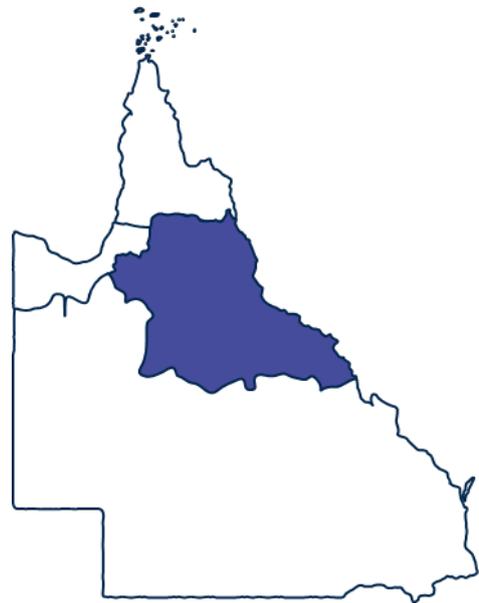
2 Profile of the NQLC at a glance

The North Queensland Land Council is based in Cairns and Townsville and provides services to the North Queensland region, from the Daintree in the north down to Sarina and inland to Croydon

The North Queensland Land Council (NQLC) is the recognised NTRB for the Northern Queensland representative region. The NQLC was incorporated on 28 March 1994 under the then *Aboriginal Councils and Associations Act 1976* and is now registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)*.

The NQLC's RATSIB area covers approximately 943,300 square kilometres of land and sea. Of this, approximately 411,164 square kilometres of the RATSIB area is land – as shown on the right. This accounts for around 44% of the state of Queensland.

At the time of the Review, there had been 59 determinations of native title within the North Queensland Region RATSIB area since the passage of the *Native Title Act 1993 (NTA)*, 15 of which occurred between 2015/16 and 2017/18. The NQLC was the solicitor on record for client groups in 13 of the determinations from 2015/16 to 2017/18.



There were 20 active claims in the NQLC RATSIB area awaiting a determination as of 30 June 2018 and the NQLC acted for 13 of these claims. The RATSIB area saw a significant increase in the number of non-claimant applications during the review period; 13 in total with 11 of these lodged within the review period. The NQLC did not represent any of these matters.

At the time of the Review, there were 27 Prescribed Bodies Corporate (PBCs) within the RATSIB area, and the NQLC supported 20 of these in 2017/18. The NQLC provides post-determination assistance such as governance support and representation in ILUA and future act matters to supported PBCs, but not to other Aboriginal Corporations in the RATSIB area. It does not own or operate any subsidiary entities.

The NQLC has received relatively consistent levels of funding over the review period (\$8,406,090 in 2015/16, \$8,953,748 in 2016/17 and \$8,536,800 in 2017/18). They have also received supplementary revenue from fee income (\$80,338 in 2015/16, \$139,890 in 2016/17 and \$93,091 in 2017/18) and interest income (\$24,627 in 2015/16, \$29,391 in 2016/17 and \$37,677 in 2017/18).

The Board for the organisation is member-based and elected on a 'ward' system – which is designed to ensure that there is representation across the RATSIB area covered by the NQLC. The Board had 12 members as of 30 June 2018, with each member serving a two-year term. Board elections occur at each year's annual general meeting.

At the time of the Review, the NQLC had four senior management positions: one CEO and three divisional heads. This included a head for each of Corporate Services, Legal (PLO), and Engagement and Development. Thirty-seven% of employees identified as Aboriginal and/or Torres Strait Islander. The NQLC had a head office in Cairns and another office in Townsville with one employee working remotely from Mackay.

3 Findings and recommendations by Terms of Reference

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

The NQLC has a history of achieving native title outcomes for its clients. Since incorporation, the NQLC has achieved 51 native title determinations for various claim groups. Within the three-year review period, the NQLC has performed strongly, supporting the achievement of 13 determinations of native title within its RATSIB area. This strong performance can be attributed to effective management of claims and experienced legal staff. The NQLC has a large ongoing claim load, with 13 claims currently active. These claims have progressed at different rates, with the NQLC's current claim profile having an average length of just under four years.

Anthropological research has supported positive native title outcomes for clients, despite some concerns raised with the Review about the internal anthropological capability and the quality of anthropological research more recently – particularly with regards to efficiency of research.

Feedback from clients that have achieved native title determinations has been positive. There are, however, opportunities to more consistently collect client feedback and improve the transparency of the complaints and internal review processes. Attribution factors have not significantly inhibited the NQLC's ability to achieve native title outcomes for clients.

The NQLC has been successful in delivering a very large number of native title outcomes for clients

The NQLC has performed well in achieving native title outcomes for clients since its establishment in 1994 achieving 51 positive determinations of native title for various native title claim groups.² Within the three-year period which is the focus of the Review (from 1 July 2015 to present), the NQLC has:

- filed 14 native title applications
- supported achievement of 13 determinations of native title for clients, all of which have been achieved through a consent determination³
- has not acted for any native title claims that resulted in settlement ILUAs, which provided for extinguishment of native title in exchange for non-native title benefits.

During this three-year period, the NQLC has not assisted with the authorisation and filing of any claims that failed the registration test. No client of the NQLC has been subject to a determination that 'native title does not exist' over the organisation's history within the RATSIB area. One claim, which the NQLC represented, was discontinued during the review period due to insufficient anthropological evidence.

² NQLC (2018) Annual Report 2017-18.

³ It should be noted that several of these determinations were parts of claims from single claim groups. This may inflate the total number reported relative to other NTRB-SPs.

Based on these figures the NQLC has had strong performance in achieving native title outcomes. Figure 1 illustrates the areas of the region where native title exists.

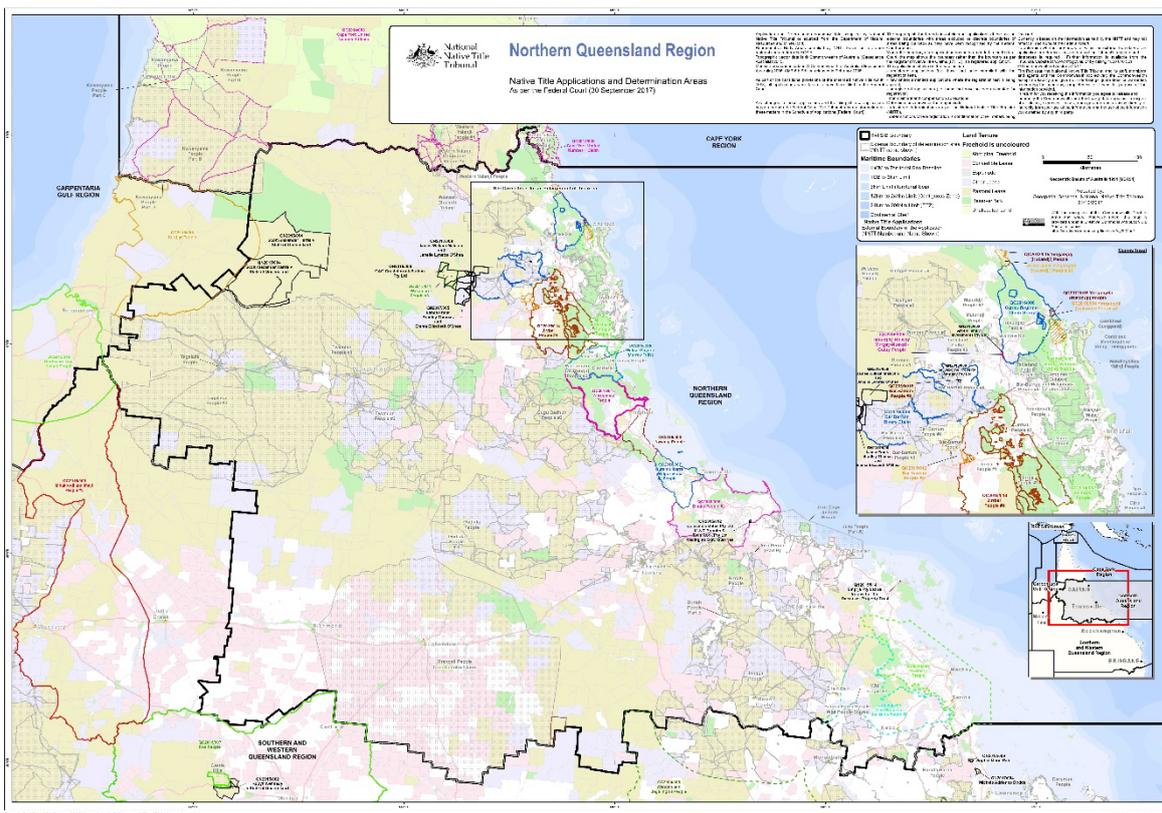
The North Queensland RATSIB area covers approximately 943,300 square kilometres, of which 411,164 square kilometres are land. Of this land region approximately:

- 40% of the region has been subject to a positive native title determination
- 1.5% of the region has been subject to a determination that native title does not exist (or native title extinguished)
- 14.5% of the region are areas subject to an active claim.

There is therefore around 44% of the RATSIB area that has not been determined and is not subject to a claim. Approximately 20% of this area (excluding sea country) is currently subject to research under 203 (BJ) of the NTA. This section of the NTA outlines that NTRB-SPs have a role in 'identifying persons who may hold native title in the area for which the body is the representative body'.

The NQLC has 13 claims that are currently active which are at various stages and progressing at different rates.⁴ The average length of claims is 3.2 years with most claims being progressed in under four years. One claim has been active for more than 12 years which has skewed the average claim length somewhat. Stakeholders have reported that prior to 2013, the Federal Court estimated the median time for claim resolution was 12 years and 11 months. Since 2013, the Federal Court expressed a claim resolution target of five years.

Figure 1 | North Queensland native title determinations⁵



⁴ National Native Title Tribunal Register. Accessed in December 2018.

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>. Note that since the production of this map, the Gingirana, Yilka and Ngurra Kayanta claims have been determined, and area 5 has been registered as the Manta Rirtinya claim.

Recommendations for TOR 1.1

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

Recommendation 1

The NQLC should consider implementing a formal mechanism to collect client feedback on native title outcomes and processes.

NQLC response.

Clients are regularly engaged during the claim/agreement process and numerous opportunities to provide feedback are available. The NQLC has also opened a Facebook page which is open to stakeholder comments and feedback. These are monitored and replied to as necessary. Clients can also phone or email with their concerns. The NQLC does not see the utility of a more 'formal' mechanism.

Recommendation 2

The NQLC should clarify the roles and responsibilities for internal and external anthropologists, including the process for engaging and managing external anthropologists to ensure high quality research outputs and reduced costs.

NQLC response.

NQLC has, in the past, predominantly contracted external anthropologists for all facets of connection and general anthropological reports. The Native Title Claims Unit is now implementing a system whereby internal senior anthropologists will conduct as much as the preliminary and on-country work as possible, under the guidance of external experts if required. On-country fieldwork, including claimant interviews, will be digitally recorded so as to provide a reference for the experts when they compile their reports.

Internal anthropologists will be provided with the necessary upskilling to undertake their enhanced roles.

This new approach will provide increased capacity and knowledge within the organisation as well as personal development for the internal anthropologists. The net costs effect is anticipated to be a significant saving for the organisation.

Recommendation 3

The NQLC should review its internal review policy and processes to ensure they are appropriate, fair and well communicated, including clarification of the use of an independent reviewer. This should include providing clear information on the website outlining the steps a client or person refused assistance must take to trigger an internal review process.

NQLC response.

The NQLC has a formal Internal Review Procedure which is considered appropriate and fair. That Procedure is in the process of being added to the NQLC's 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.

The NQLC has an informal internal process for assessing and prioritising different potential claims – with consideration of a range of factors – primarily the strength of the claim, existing court dates and available funding. The Policy Manual provides guidance on factors used to assess an application for assistance, however, there appears to be some conflation of whether to provide assistance and the relative priority of that assistance. Many staff are unaware of the prioritisation process that is used and how that interacts with the operational planning and budget process. There is an opportunity to review the current prioritisation approach to ensure it remains fit for purpose.

Decisions made about the prioritisation of claims do not appear to be formally recorded and information on the factors that inform this do not appear to be readily available to clients (and potential clients) online through the website or through other documentation. Staff report that these factors are likely to be communicated directly to clients following a request for assistance. Client awareness of the factors for prioritisation was generally low.

Recommendations for TOR 1.2

The Review made two recommendations for TOR 1.2 on the organisation's assessment process. These are outlined below, as well as NQLC's response to these recommendations.

Recommendation 4

The NQLC should review its assessment, prioritisation and resourcing decision-making process to ensure it is clear, easy to understand, and facilitates consistent high-quality decisions. This should include the factors considered in the initial decision to provide assistance (or not), considerations related to prioritisation of different claims/matters and the interaction of these factors with resourcing decisions. The organisation should also document key decisions to improve the transparency in the decision-making process.

NQLC response.

Under development in light of budget constraints.

Recommendation 5

The NQLC needs to more clearly communicate its prioritisation process and factors internally and externally to ensure stakeholders have a clear understanding of why claims are being progressed (and prioritised). For staff, this should make the interaction between the prioritisation process and the budget process clear. For clients, this should outline, at a high-level, the key decision-making factors.

NQLC response.

Ongoing.

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.

Stakeholders report that the NQLC generally engages respectfully and professionally with clients, however there were instances reported by clients and staff where this was not the case. This included stakeholder concerns that their views were not being appropriately acknowledged. There were also reported instances where meetings were not conducted in an appropriate manner, however the NQLC appears to have strong processes in place, including providing access for clients of audio recordings of meetings.

There are mixed views from staff and clients on the broader cultural competence of staff within the organisation. There is an opportunity to consider how cultural competency considerations can be embedded across the entire employee lifecycle – including through tailored formal training. Aboriginal Project Officers play a particularly important role in supporting culturally appropriate engagement, however previous internal policies appear to have hindered their ability to play this role.

Recommendations for TOR 1.3

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

Recommendation 6

The NQLC should introduce measures across the employee lifecycle to ensure high levels of organisational cultural competence. This should include:

- consideration of cultural competence in recruitment decisions
- formal tailored cultural competence training for new starters
- process for reflection and continuous development of current staff members
- active consideration of succession planning for Indigenous staff members.

NQLC response.

Ongoing.

Recommendation 7

Re-consider most appropriate and efficient role for Project Officers in supporting culturally appropriate engagement through ongoing direct connection with the communities they work with.

NQLC response.

Due to budget constraints the number of Project Officers has been reduced and staff duties reprioritised. NQLC staff are at all times encouraged and supported to engage with clients in a culturally appropriate manner.

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.

The NQLC has explored opportunities to reduce its costs. This includes through changes to office facilities by renovating and upgrading its office space in Cairns instead of leasing additional office space and closing its Mackay office. Additionally, other policies are in place to try to reduce operational expenditure.

The organisation's policy on providing travel assistance balances considerations of cost-effectiveness with the importance of supporting equitable participation in important meetings such as authorisation and native title determination meetings. Native title meetings are generally productive and support effective use of time and resources.

Consultant costs (anthropology and legal) are a key cost driver for the organisation. Despite representing a significant cost, the relative balance between internal and external resources appears effective and appropriate. While policies for engaging consultants do consider the cost-effectiveness, delays resulting from poor quality anthropological research have resulted in additional costs for the organisation.

Some attribution factors have had an impact on the NQLC's ability to achieve native title outcomes in a cost-effective way – including the remoteness of the area, cohesion of Indigenous groups, state-based legislation and levels of non-claimant applications.

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.

In line with NIAA requirements, the NQLC reports on progress against agreed milestones and milestone reports are delivered on time to the NIAA. The milestones do not inform internal prioritisation processes or other processes related to native title as the NQLC does not find the milestones valuable in tracking internal performance.

The NQLC uses a range of more informal approaches to monitoring organisational performance. This includes monitoring progress on claims towards a determination, client feedback and satisfaction of clients (although neither of these latter two are measured formally). There is room for NQLC to consider alternate approaches to assessing organisational performance.

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 breakdown of responsibilities is clearly defined and feedback to the Review generally demonstrated that the Board Directors has a broad understanding of 'separation of powers' protocols. The NQLC has a representative Board in place, with Directors elected through a ward voting system. The Review considers that there may be benefits in adopting elements of a professional Board structure.

The existing organisational structure provides clarity of roles and responsibilities and a recent restructure has streamlined engagement with clients in the post determination environment. There continue to be organisational challenges with communication across the offices, turnover of existing staff and issues concerning cultural safety of Aboriginal staff. Previous poor culture in the NQLC appears to have been largely addressed in recent years with the commencement of a new CEO, although some challenges remain.

Financial management appears sound, with unqualified audit reports every year. Better mechanisms to track resource use would be beneficial into the future. The consistent underspends against budget suggest the need for more regular and proactive review of activity against budget. There are opportunities for improvement in the publication of complaints processes and in the delivery of training. NQLC's administration would benefit from a more formal set of policies being in place across a range of organisational matters.

Recommendations for TOR 4

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

Recommendation 8

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

NQLC response.

Each year the Board participates in governance training conducted by Shane Carroll and Associates.

In March 2019, the Board attended a two-day restructure and governance workshop conducted by Wayne Bergman of KRED Enterprises.

In November 2019, the Board attended a two-day board structure workshop conducted by Shane Carroll and Associates.

Recommendation 9

The NQLC should take active steps to improve its organisational communication practices – particularly across the Cairns and Townsville offices. This may include the re-instatement of whole of organisation staff meetings and more regular communication of organisational performance.

NQLC response.

The NQLC holds regular monthly all-staff meetings.

The NQLC holds regular monthly planning meetings involving senior management and operational staff.

In addition, the various NQLC organisational units hold regular team meetings.

Recommendation 10

The NQLC should explore alternate ways or a more appropriate mechanism to track resource use on claims, to more accurately determine performance and efficiency of individual claims.

NQLC response.

The NQLC produces monthly management reports tracking expenditure of activities against approved budget, and financial expenditure to budget acquittal reports with variance analyses.

Recommendation 11

The NQLC should include its complaints policy on its website in a location and format that is accessible. This should include internal review mechanisms and the process for external review.

NQLC response.

The NQLC's Complaints Policy is in the process of being added to the NQLC's website.

Recommendation 12

The NQLC should review its existing policies and procedures across key elements of the organisation to ensure that appropriate formal policies are in place, and that they are clearly understood by staff (and clients as appropriate) and are consistently implemented across the organisation.

NQLC response.

The NQLC's Policies and Procedures were comprehensively reviewed by the Board and management in 2016. It's proposed that they will be reviewed again in 2021 (5 years). The Policies & Procedures are included in Induction Packages for new staff and are readily available to all staff on the NQLC's data management system.

Recommendation 13

The NQLC should review its current approach to the performance assessment and development process to ensure consistent implementation for all staff and meaningful reflection on development opportunities for all staff members.

NQLC response.

In addition to Probationary Reviews, formal performance reviews are conducted on an annual basis (along with an informal mid-year review). These, which include performance improvement plans and/or performance development plans are sent to the CEO for review and sign-off. Performance reviews for the preceding financial year must be completed and signed off no later than 31 August each year.

It is considered the responsibility of the individual staff member to proactively search for training opportunities and seek approval for training and development, over and above professional CPD requirements.

A training register is maintained.

Recommendation 14

The NQLC should more clearly define training pathways and opportunities available for staff to undertake industry relevant training programs.

NQLC response.

As per above response, it is considered the responsibility of the individual staff member to proactively search for training opportunities and seek approval for training and development, over and above professional CPD requirements. Team supervisors also monitor staff training requirements and propose/request individual and/or group training sessions for their team members.

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.

The NQLC provides varying levels of support to a comparatively high number of PBCs in the RATSIB area. Based on increasing service demand, the NQLC has directed more resources to supporting PBCs and has also altered its structure with the integration of two units to support improved capacity and capability development of PBC services.

Maturity and stability differ significantly across PBCs. For this reason, the NQLC recognises different levels of autonomy for some PBCs in relation to PBC support funding.

Feedback from PBCs who engaged with the Review suggested that NQLC support is not appropriately tailored to the diverse requirements of PBCs and that many PBCs are not satisfied with the support they have received through the NQLC.

While self-sufficiency of PBCs has been a strong focus for the NQLC, including through the development of specific tools, self-sufficiency is not seen as viable for many PBCs in the region.

Recommendations for TOR 5

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

Recommendation 15

The NQLC should consider opportunities to better support clients' transition from a claim matter to the establishment of a PBC.

NQLC response.

The Engagement and Development Support Team comprises the PBC Support Unit and the Future Act Mining and Exploration (FAME) Unit both of which liaise closely with the claim lawyers as the claim nears determination and the establishment of a PBC is required. Whilst the circumstances of each claim group will determine the uniqueness of the delivery of support services, generally the FAME Unit advises on legal considerations (eg Rule Book, compliance with various legislation etc) and the PBC Support Unit assists with office and administrative establishment and access to PBC Support Funding program as administered by the relevant federal government department/agency.

Assessment and delivery of further governance and financial management support services such as policies and procedures, strategic planning, financial advisory services is done on a case by case basis.

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

The NQLC's strategic planning for post-determination is relatively under-developed at this stage with uncertainty on the role that the organisation would play in a post-determination environment.

The NQLC still has an active case load, with forecasts that ongoing claims work (excluding compensation work) may take ten to 15 years to resolve. However, the high proportion of claims that have been determined and resulting numbers of PBCs means that the Review would expect the NQLC to be more developed in this area.

The Board has indicated that the NQLC may play a broader role in a post-determination environment, with recent work undertaken to more clearly define the role that the NQLC could play in supporting 'economic development' in the region. The NQLC should ensure resources are directed to future strategic planning activity and that this actively considers the NQLC's role in a post-determination environment.

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 NQLC's response to this recommendation.

Recommendation 16

The NQLC should ensure that future strategic planning activities should actively consider the role (or a set of potential roles) that the NQLC will play in a post-determination environment.

NQLC response.

The NQLC Board is currently restructuring itself and the organisation in order to play a stronger role in the post-determination environment. Once the new structure is in place (expected end 2020) a comprehensive strategic planning review will be undertaken.

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

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.
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.