

Review of Performance as a Native Title Service Provider: South Australian Native Title Services

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 SANTS at a glance..... | 4 |
| 3 | Findings and recommendations by Terms of Reference..... | 5 |
| Appendix A | Terms of Reference..... | 16 |
| Appendix B | NTRB-SPs under review..... | 17 |
| Appendix C | Stakeholders consulted..... | 18 |
| Appendix D | Methodology..... | 19 |
| Appendix E | Glossary..... | 20 |

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.

South Australia Native Title Services (SANTS) 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 SANTS. It also includes SANTS'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 SANTS 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, SANTS Board Directors, the Federal Court, the National Native Title Tribunal (NNTT) and the South Australian Government. A list of stakeholders consulted is included in Appendix C.

SANTS 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 SANTS at a glance

South Australia Native Title Services (SANTS) is based in Adelaide and provides native title services in South Australia

SANTS is registered with the Australian Charities and Not-for-profit Commission as a public company limited by guarantee. It has been funded by the NIAA as the native title services provider for the Greater South Australian Representative Aboriginal/Torres Strait Islander Body (RATSIB) Area since its establishment on 1 July 2008. From 2000, the region had been serviced by the native title unit of the Aboriginal Legal Rights Movement Inc. (ALRM), however the decision was made in November 2006 to establish a new entity separate from the ALRM to deliver native title services.

SANTS RATSIB area, pictured right, covers all of South Australia, approximately 984,377 square kilometres.

At the time of the Review, there were 17 Prescribed Bodies Corporate (PBCs) within the RATSIB area, and SANTS supported 10 of these in 2017/18.

At the time of the Review there had been ten native title claims determined since 2015/16. SANTS represented three of those claims and facilitated, to varying degrees, outcomes in the others. 90% of determinations within the review period were by consent and 10% by litigation.

Much of South Australia is subject to a determination of native title or Aboriginal freehold. As a general dividing line, almost all land north of Port Augusta is included in this area, with most of the area south still with active claims or not subject to a claim. In total, there were 18 active claims within the SANTS RATSIB area. SANTS was listed as the representative on 14 of these claims, including two overlapping claims. It provided assistance to the remaining four claims.

SANTS received \$6,198,650 in native title funding in 2015/16, \$5,648,324 in 2016/17, and \$6,492,367 in 2017/18. Outside of core native title functions, SANTS generated income through providing community and enterprise development services to Aboriginal Corporations seeking assistance, including governance support, HR and finance support, and media/ publicity support. These services were managed through SANTS' Business Services and HR division. SANTS did not manage or have full or part ownership over any subsidiary entities.

SANTS has a skills-based board which consisted of nine Directors who were appointed by a Board Selection Committee. The membership of the Board must comprise a majority of Aboriginal persons and include a lawyer, an accountant, and a person with lengthy experience in public administration or a corporate manager or leader. The Chairperson of the Board must also be an Aboriginal person and is elected by the Board.

SANTS had four senior management staff; the CEO, the PLO, the Corporate and Community Development Manager and the Business Services and HR Manager. SANTS also engaged a CFO consultant for major financial matters. 43% of employees identified as Aboriginal and/or Torres Strait Islander, including the CEO.



3 Findings and recommendations by Terms of Reference

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

SANTS has a successful history of achieving native title outcomes for clients. Since July 2015, there have been ten native title claims determined in SANTS' RATSIB area, and 90% of these were consent determinations. SANTS has also led two high profile claims during the review period both of which have implications for the native title system - the Tjajuwara Unmuru consent determination (a compensation claim) and the Lake Torrens litigation determination. The quality of SANTS' legal and anthropological work has supported achievement of outcomes. SANTS has lodged seven claims during the review period and is the solicitor on record for 14 of the 18 active claims in its RATSIB area.

Some stakeholders have been frustrated by delays in the progression of claims, particularly those that were lodged in the Federal Court 20 years ago.

SANTS has taken a supportive approach to facilitating the funding of private lawyers when requests are received. This approach is respectful of client's preferences, though there is potential for SANTS' support for the funding of private lawyers to be more efficient.

While the total number of compensation claims nationally is relatively small, and in South Australia amounts to only three, SANTS has been proactive in pursuing compensation claims. SANTS also delivers future act services to clients under South Australia's alternative future act regime and has supported clients to receive benefits from ILUAs in the RATSIB area.

SANTS has facilitated successful native title determinations within the review period

Since July 2015, there have been ten native title claims resolved through determinations in SANTS' RATSIB area. Seven were within the review period of July 2015 – June 2018 while a further three were determined in December 2018. The ten includes seven consent determinations and one litigated determination. Figure 1 illustrates the areas of South Australia where native title exists.

Four of the ten claim groups were represented by private lawyers. The ratio of SANTS and privately represented claims is not representative of historical trends or the future outlook. SANTS has acted for the majority of claims that have been determined and currently acts for the majority of active native title claims. There is no indication of a recent trend for clients to be choosing to change representation from SANTS to a private law firm. The high proportion of privately represented claims that have been determined within the review period has primarily resulted from the appointment of a new Federal Court Judge and the Court's increasing emphasis on timely progression of legacy native title matters.

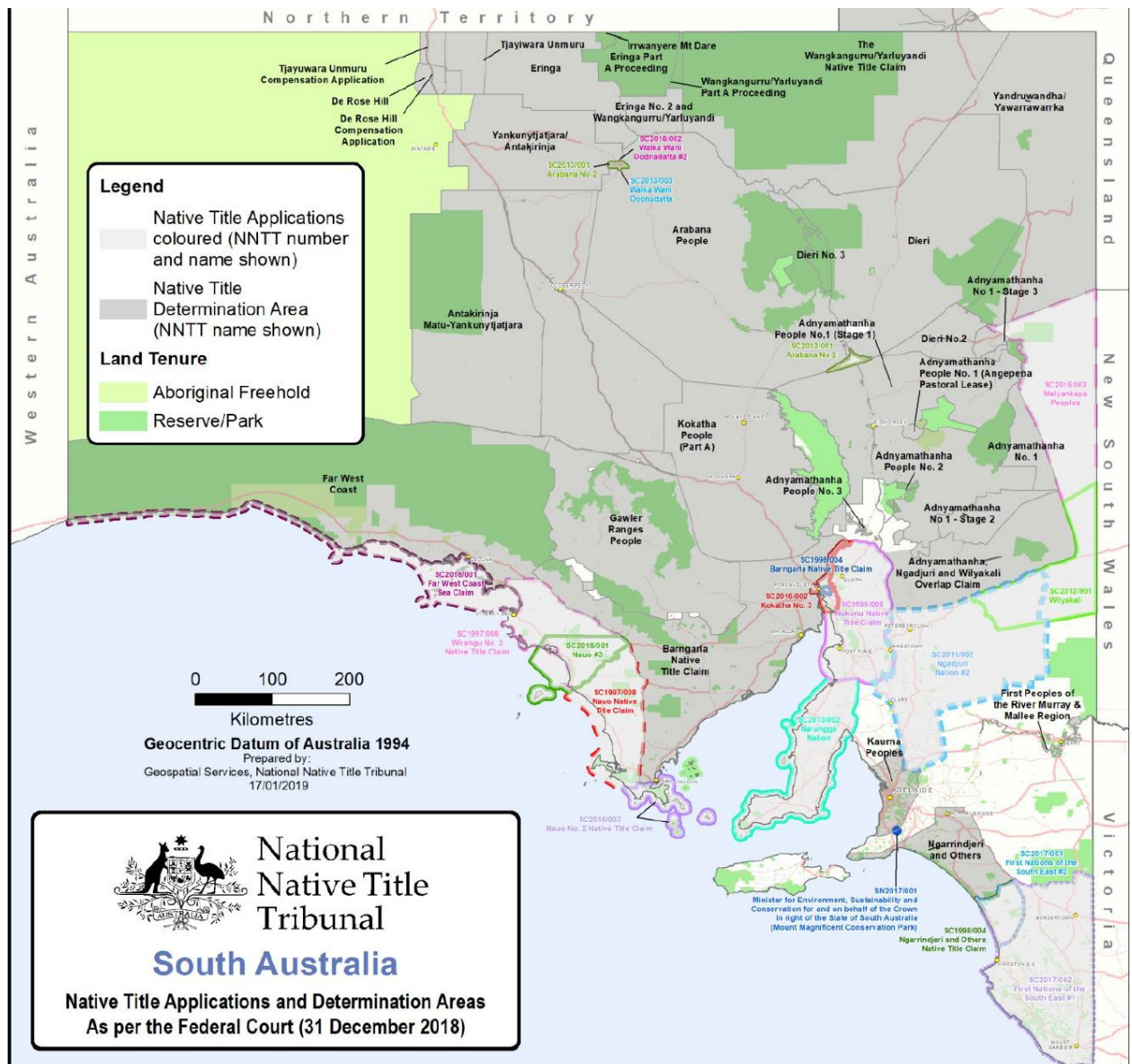
Seven claims were lodged during the review period within SANTS' RATSIB area. In total, there are 18 active claims within the SANTS RATSIB area. SANTS is listed as the representative on 14 of these claims, including

two overlapping claims.² It provides assistance to the remaining four claims through funding or facilitation support including logistics and strategic advice.

SANTS prosecuted two high profile cases with implications for the native title system during the review period.

Internal and external stakeholders believe that SANTS has made significant contributions to achieving native title outcomes. This includes playing a facilitative role for clients that SANTS has not formally represented but provided funds for private representation.

Figure 1 | SANTS region NTA determinations at 30 June 2018.³



² SANTS represents two parties (Wilyakali, Ngadjuri) that have claims overlapping with one another, as well as with Adnyamathanha Peoples (privately represented).

³ Does not include the Adnyamathanha No. 1 determination that native title exists in parts of the determination area, in the Flinders Ranges. NNTT data, available online from < http://www.nntt.gov.au/Maps/SA_NTTA_Schedule.pdf >.

Recommendations for TOR 1.1

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

Recommendation 1

SANTS should clarify its policy in relation to representing overlapping claims and the establishment of internal information barriers. SANTS should then communicate the policy to all external stakeholders.

SANTS response.

SANTS does represent overlapping claims and will continue to do so where appropriate. Where there is credible evidence from our research to support a claim SANTS will act on instructions from communities that wish to prosecute a claim. Importantly we note that it would be unlikely for an external representative to undertake similar research before filing a claim on behalf of their client.

It is worth noting that SANTS has a history of successfully prosecuting overlapping claims where both claims have achieved consent determinations.

Very occasionally SANTS will agree to represent both claimant groups. The consent of the client groups is received prior to doing this. SANTS has implemented rigorous information barriers such as chinese walls to ensure that information is kept confidential and to prevent exchanges or communication that could lead to conflicts of interest. SANTS will endeavour to advise our stakeholders of this via our facilitation and assistance policy.

Recommendation 2

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

SANTS response.

SANTS has updated and produced an Internal Review brochure and a Handling Complaints brochure. These documents clearly articulate our Internal Review and Complaints policies and procedures. Both brochures are available online at the SANTS website – www.nativetitlesa.org. Hard copy of the brochures are available to the public at the SANTS office located at Level 4, 345 King William Street, Adelaide.

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.

SANTS has established a robust process to assess and prioritise applications for assistance whereby it has actively prioritised claims in areas with less complex connection evidence first. The prioritisation process includes clear merit assessment criteria. It 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.

SANTS has a strong approach to working with its constituents. Most clients contacted by the Review were very positive about the respectful manner in which SANTS engages. Clients also provided positive feedback on the cultural appropriateness of SANTS' engagement. This is supported by high numbers of Indigenous staff within the organisation (43% of staff), including the current CEO. SANTS' processes are transparent to clients – with a reported openness on claims and operational policies, and an ability to communicate complex legal information in an accessible manner.

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.

SANTS actively monitors costs and implements cost-savings measures and has restructured to reduce staff numbers and keep staff salaries low following the withdrawal of state funding. SANTS has outsourced many of its corporate support functions, including strategic planning services, training, financial management, payroll, HR advice, IT, records management and cultural awareness and cleansing. This appears to be a cost-effective approach although SANTS needs to constantly monitor the optimal balance of internal vs external support functions.

SANTS also outsources various native title related work for consultant lawyers and anthropologists, with expenditure on consultants increasing significantly over the review period in response to increases in claims activity.

SANTS has relied extensively on requesting additional contested litigation funding from the NIAA, channelled by SANTS to private lawyers. There is room for SANTS to improve the cost effectiveness of this approach through guidelines and a preferred provider approach. Noting that SANTS intends to move more of its litigation work in-house, the Review considers that an adjustment to SANTS's operational funding level would allow SANTS to better plan for the future, hire more permanent staff and reduce the higher cost of outsourced work.

Recommendations for TOR 2

The Review made two recommendations for TOR 2 on the organisation's cost effectiveness. These are outlined below, as well as SANTS' response to these recommendations.

Recommendation 3

SANTS should develop a formalised guidance document / preferred providers approach to support people with native title interests to select providers where appropriate and continue to ensure these engagements are prudent and cost-effective.

SANTS response.

SANTS has had an increase in expenditure on consultant lawyers and anthropologists in recent years. This is a direct result of the desire of the Court to list an increasing number of matters for trial to speed up claim resolution in South Australia. For example, we now have 11 claims currently listed for trial over the next period. As noted, SANTS relies heavily on contested litigation funding to manage these matters and we have requested an increase in our operational funding level for the reasons outlined above. Whilst ultimately it is up to the Applicant group to appoint Counsel, instructing solicitors and experts for their matters SANTS does from time to time provide advice to Applicants as to who they should consider for those appointments. In receiving funding applications from Applicants (particularly for trials) SANTS via its Native Title Briefing Committee applies a rigorous assessment of the costs provided by the Applicant. SANTS has worked closely with NIAA on these matters to ensure that our assessment process is sound and transparent. SANTS will develop the recommendation of guidelines (noting we already have Assistance guidelines and a litigation funding template) incorporating preferred providers.

Recommendation 4

SANTS should clarify and promote the value SANTS itself can offer in delivering services. This would likely require an increase in operational funding for SANTS from the NIAA, allowing SANTS to better plan for the future, hire more permanent staff and reduce the more expensive outsourced work.

SANTS response.

SANTS does have publicly available material setting out and promoting our services to our constituents. Our CEO communicates regularly with those with native title interests to promote our services. SANTS will continue to clarify and promote our services to claimants and PBCs. SANTS also uses its internal media platform to promote the value SANTS can offer in delivering services. Information about SANTS service offerings can be found on our website www.nativetitlesa.org and can be seen promoted in the Aboriginal Way newspaper and online through our Facebook page at www.facebook.com/sanativetitleservices. As noted we are restricted with our current capacity in terms of increasing the level of services we can provide.

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.

SANTS has embedded the NIAA's reporting requirements in its own internal practices and monitors progress of claims against the NIAA's milestone reporting. SANTS' approach to driving and tracking achievement has been sound.

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.

SANTS has a skills-based Board that comprises a majority of Aboriginal and Torres Strait Islander Directors. The Board and the Executive team appear to operate effectively together.

Stakeholders report a strong organisational culture that has improved significantly following the 2016 restructure of the organisation. The organisation has relatively few complaints from its constituents and its complaints management processes are clear and accessible.

SANTS is generally a well-run organisation and policies and procedures, such as for conflict of interest and financial management, are consistently implemented. The organisation's approach to performance and professional development is continuously improving. There are opportunities for SANTS to improve the quality of training offered to staff.

Recommendations for TOR 4

The Review made one recommendation for TOR 4 on support provided by organisational governance structures, policies and practices. This is outlined below, as well as SANTS' response to this recommendation.

Recommendation 5

Considering the significant investment in training, SANTS should respond to staff feedback and improve relevance, quality and value of training.

SANTS response.

Staff are given opportunities to complete training which is relevant to their job. Staff have the opportunity to identify personal training needs as part of the SANTS PELS process and meet with their relevant managers or team leader to discuss their performance including identifying training needs. SANTS also identifies training opportunities that are native title specific and broadcast these to all staff so they can choose about accessing that training.

SANTS also facilitates a staff workshop each year that addresses mandatory compliance training such as Workplace Health & Safety, Code of Conduct, Fraud Awareness, Risk Management, Strategic Planning, and other policies and matters as required. Training is included as part of the HR Plan and budget development for each financial year. Importantly, staff feedback is obtained and considered after every training event, so an evaluation can be made as to the relevance, quality and value of that training.

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.

SANTS has well established PBC support services and is supporting eight of the 17 PBCs in South Australia with corporate governance administration support, financial management, business and economic development advice, heritage protection and legal advice. The array of services is aimed at supporting PBCs to become established and operational.

PBCs that have used SANTS' services are generally satisfied with the support they have received. SANTS works with PBCs to assess performance and capability and has worked closely with PBCs to map clear strategic and operational pathways to self-sufficiency. The goal of self-sufficiency is impeded by a lack of natural resources or other opportunities for industry in the region, the absence of staff within PBCs (and funding to engage them) and the varied socio-economic profile of PBC environments.

No recommendations were made for TOR 5.

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

SANTS is well progressed towards a post-determination environment. The Board undertook a 'deep dive' on the future of the organisation in June 2015 and the 2016 restructure supported the organisation to transition to a structure the Board identified would align to a near post-determination environment.

While the organisation has now progressed further towards post determination, SANTS has found it challenging to prioritise planning for an entirely post determination environment. There is no single clear vision of what services SANTS will deliver and how it will be structured to support this. SANTS has outlined this is an imminent priority on its Board's agenda, and the Board will follow a similar approach to its previous 2015 planning session.

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 | 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 SANTS' 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 SANTS (including members of PBCs)
- potential clients in SANTS' RATSIB area / people who have engaged private legal representation to register a claim in SANTS' RATSIB area
- the Federal Court of Australia
- the National Native Title Tribunal
- representatives of SA State Government
- private law firms who have represented native title clients in South Australia
- SANTS external consultants
- SANTS Board Directors, and
- SANTS staff.

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 <i>NTA</i>). |
| <i>Native Title Act 1993 (Cth) (NTA)</i> | The <i>Native Title Act 1993 (Cth)</i> 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 (Cth)</i> , 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 <i>NTA</i> . |
| 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. |