

Review of Performance as a Native Title Service Provider: First Nations Legal and Research Services

Summary Report

March 2021

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This review covered the period from July 2014 to June 2017. Findings relate to this time period unless otherwise stated. Nous conducted the review between June 2017 and March 2018. 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.

First Nations Legal and Research Services (FNLRS) was reviewed from June 2017 to March 2018 in relation to the previous three-year period (July 2014 to June 2017). This document contains a summary of the Review's overarching findings and recommendations for FNLRS. It also includes FNLRS'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 FNLRS 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 and a survey with Traditional Owners, staff, the Federal Court, the National Native Title Tribunal (NNTT), Board Directors and the Victorian Government. A list of stakeholders consulted is included in Appendix C.

FNLRS was given the opportunity to review the full report in 2018 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 FNLRS at a glance

FNLRS is an organisation based in Melbourne that provides native title services to Victorian Traditional Owners

First Nations Legal and Research Services (FNLRS), established November 2017, is a Native Title Service Provider servicing Victoria. It was previously known as Native Title Services Victoria (NTSV) and functioned under that title since 2003. The Report uses FNLRS as the organisation name throughout all periods.

FNLRS' Representative Aboriginal/Torres Strait Islander Body (RATSIB) area, pictured right, covers approximately 227,416 square kilometres, accounting for all of Victoria.

The Victorian Government operates a parallel land title system under the *Traditional Owner Settlement Act 2010 (TOSA)*. Traditional Owners can seek outcomes under either state or federal system or both. This means that figures presented here do not easily account for all FNLRS activity.



At the time of the Review, four Victorian active claims were registered on the NNTT's register of native title claims, all of which were represented by FNLRS.

The Federal Court has made four determinations that native title exists in Victoria, at the time of the Review, leading to four Prescribed Bodies Corporate (PBCs) since the passage of the *Native Title Act 1993 (NTA)*. None of these determinations were in the scope of the Review's three year period. A further six claims were at different levels of research and claim group formation. While this would leave some small parts of Victoria without recognised native title, these are likely to be the last native title claims in Victoria. FNLRS supported each of these groups to conduct research or develop group coherence.

FNLRS (as NTSV) received a net \$4,306,041 in grant revenue in the 2016/17 financial year, up from \$4,193,396 of revenue from the Commonwealth Government in 2015/16. It received limited additional funding from the Victorian Government to enable the Natural Resource Management Collaborative, which functions to develop models for Traditional Owners' environment-based businesses. At time of Review, FNLRS' offices were based in North Melbourne. It had 33 staffing positions; 30 were filled in August 2017 with 27.8 FTE due to four part-time or casual employees. Five FNRLS staff (17%) were Indigenous.

FNLRS is a public company limited by guarantee and is registered with the Australian Charities and Not-for-profits Commission. It's sole member is the Federation of Victorian Traditional Owner Corporations (FVTOC), which has representation from most of FNLRS' clients. FVTOC also owns Federation Enterprises, which seeks to generate revenue for FVTOC, develop viable Traditional Owner organisations and support employment, social and cultural outcomes for Traditional Owners. FVTOC includes Traditional Owner corporations that neither have nor are actively pursuing native title.

At time of Review, FNLRS had a skills-based board, with Directors appointed by FVTOC, as its sole member. Its constitution required that Directors are Traditional Owners with an understanding of native title and corporate governance. Within FNLRS, the management team comprised: the CEO; the Director of Legal and Research; the Director of Corporate Services; and the Director of Policy and Traditional Owner Corporation Development.

This Review considers FNLRS' native title activities regardless of whether they lead to a Federal Court determination under the NTA or a settlement agreement under the TOSA on the basis that a TOSA settlement precludes further native title determinations for that claim group in that region, and that the benefits (and therefore outcomes of FNLRS' activity) conferred through the legislation are approximately parallel.

3 Findings and recommendations by Terms of Reference

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

FNLRS operates through both the Commonwealth NTA and the Victorian TOSA and while it has a history of achieving native title outcomes for clients, it has had no successful claims through either legislation within the Review period. It expects that the four active claims in progress will be successfully concluded in the near to medium term. While FNLRS appears to work effectively with the Victorian Government to create local conditions that favour negotiated settlements, there is a degree of paralysis about their respective dispute resolution responsibilities that may have impacted on the resolution of claims.

FNLRS demonstrates strong relationships with claimant groups, and has a well understood process for allocating resources across groups. FNLRS management of claims has occurred in a region with an intense history of colonisation, and challenges in proving connection to country. Future acts and ILUAs are not common in the Victorian native title landscape, and no significant issues arose regarding them.

FNLRS has achieved no new native title resolutions since 2013

FNLRS supports all of the major Traditional Owner groups in Victoria. FNLRS and its predecessor organisations have supported clients to four consent determinations. They occurred in 2005, 2007, 2010, and 2011. FNLRS has also supported two TOSA settlements in 2010 and 2013. It has not, however, achieved any successful determinations or settlements since 2013.

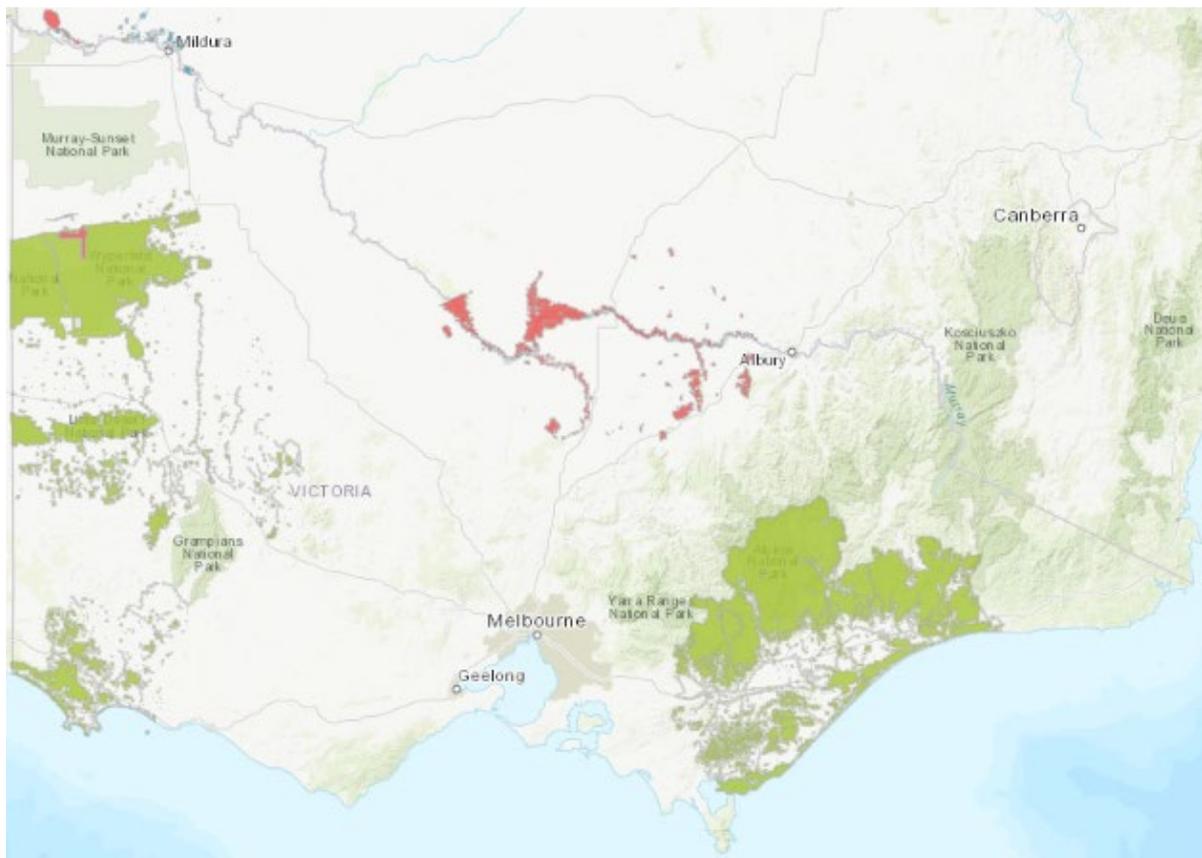
One claimant group, previously supported by FNLRS, had their claim struck out in the Federal Court in June 2015 following the failure to make sufficient progress under either the Commonwealth or the Victorian system and the withdrawal of FNLRS assistance.

At the time of the Review, FNLRS still had four active native title claims before the Federal Court.

The Review notes that there were no successful determinations during the Review period from July 2014 to June 2017. However, FNLRS did make significant progress on a number of Victorian claims in this time. Since 2013, FNLRS has registered three claims and commenced TOSA negotiations on a further two claims. At the time of the Review, 66% of Victoria was covered by registered claims, determinations, or settlements. 87% of Victoria was covered by FNLRS' clients, including at the pre-claim stage.² FNLRS stakeholders indicated at the time that many of these claims should be resolved in the short to medium term.

² NTSV, *Annual Report 2016-17*, p. 16.

Figure 1 | Victorian NTA determinations (areas where native title exists in part of the area in green, areas where native title does not exist in red)³



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 FNLRS' response to these recommendations.

³ NNTT data, available 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

Recommendation 1

FNLRS needs to re-consider its position to use the TOSA as a default approach to claims and actively reflect on how it can use both the NTA and the TOSA to achieve the best possible native title outcomes for their clients.

FNLRS response.

It has always been First Nations' position to seek to achieve native title outcomes using both the Native Title Act and Traditional Owner Settlement Act processes as appropriate in accordance with the evidence, the State's willingness to negotiate and instructions. Subsequent to the Review, and in relation to the two current native title claims in Victoria, the State has agreed to consider joint outcomes under both the Native Title Act and Traditional Owner Settlement Act for groups subject to satisfaction of the necessary evidentiary burdens.

First Nations recognises that settlements negotiated under the Traditional Owner Settlement Act are significantly more beneficial to Traditional Owners than bare native title settlements and accordingly advise Traditional Owners to pursue such settlements where appropriate. However, First Nations also recognises that recognition of native title is also very important to Traditional Owners and that the imposed discipline of an actively case managed native title claim can lead to swifter outcomes.

The First Principles Review process conducted jointly by Traditional Owners and the State is an important mechanism for ensuring outcomes under the Traditional Owner Settlement Act are continually improved in Victoria in line with developments in native title jurisprudence.

Recommendation 2

FNLRS could consider the role of peer review of research to address concerns of partisanship and research quality.

FNLRS response.

First Nations is constantly mindful of the importance of independent high quality research to ensure the integrity of the native title system and validity of native title settlements. In light of the increasing complexity and conflicted nature of the remaining native title claims, First Nations has adopted a range of measures to ensure the quality and independence of its research including engaging skilled in-house and consultant researchers and conducting peer reviews and conferences of experts as required.

Recommendation 3

FNLRS could further empower Victorian Traditional Owners to realise their aspirations and operate in a more contestable environment through developing and implementing a clear approach for the return of materials following determinations of native title or native title settlements.

FNLRS response.

First Nations has established a Return of Materials Working Group and developed a return of research materials policy. It is First Nations firm view that where possible research materials should be transferred or returned to Traditional Owner individuals, groups and representative corporations in accordance with relevant legal and ethical obligations and restrictions and importantly in accordance with the cultural protocols and capacities of each Traditional Owner group. To date First Nations has met with three Traditional Owner groups or their representative corporations to discuss and design a return of materials pilot process that meets the particular needs of each group.

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.

FNLRS' assessment and prioritisation of applications follows a clear internal process that claimants understand well. It allocates resources to those groups that have the best chance of a successful claim. This can mean that groups with poor leadership and a lack of cohesion do not receive resources. Clients, including those whose requests for assistance had not been met in the first year of their request, believed that the prioritisation process was fair.

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 FNLRS' response to these recommendations.

Recommendation 4

FNLRS has scope to move into a stronger dispute resolution and mediation role for non-cohesive Traditional Owner groups and Traditional Owner groups with unclear boundaries. This could accelerate the transition to a post-determination environment. A more active prosecution of this role may expedite the resolution of native title matters.

FNLRS response.

First Nations actively promotes and employs its dispute resolution function with Traditional Owner groups in accordance with its Operational Plan and resourcing/capacity constraints. First Nations also participates in the State Government's Right People for Country program and supports groups who make use of the program's dispute resolution services. It is important to note that First Nations only exercises its dispute resolution function with the consent of the parties to the dispute and in accordance with its legal, ethical and professional obligations.

Recommendation 5

There is an opportunity for FNLRS and Victorian Government to develop a system that clarifies the process for making a decision on long running disputes.

FNLRS response.

Following a review of the Threshold (evidence) stage of the Traditional Owner Settlement Act commissioned by the Victorian Government in 2017 a case management process was introduced. This provided for mediation of disputes by an independent case manager or mediator. Given both of the current active Traditional Owner Settlement Act claims are also being progressed as native title claims in the Federal Court no opportunity to fully test this new process has eventuated beyond an initial pilot. Nonetheless First Nations recognises that the new case management process does not include an arbitral function thereby there is risk that long running disputes will not ultimately be resolved by this process. First Nations continues to engage closely with the Victorian Government about potential improvements to Traditional Owner Settlement Act processes.

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.

Evidence collected indicates that FNLRS engages respectfully with clients. It has strong relationships with stakeholders, and a governance structure that empowers Indigenous ownership of the organisation. Many staff have been with the organisation long term, and have built strong relationships with client groups. This is further strengthened by regionally based staff teams who develop a sophisticated understanding of local communities.

Recommendations for TOR 1.3

The Review made one recommendation for TOR 1.3 on the organisation's approach to clients. This is outlined below, as well as FNLRS' response to this recommendation.

Recommendation 6

FNLRS could facilitate broader and more efficient Traditional Owner understanding through making its policies more obvious on its website.

FNLRS response.

First Nations policies are readily available to the general public, including Traditional Owners on its website. However, in the second half of 2020 First Nations will be conducting a review of its website and communications strategies and will consider strategies to further facilitate broader and more efficient Traditional Owner understanding of native title settlements, the role of First Nations and our policies and procedures.

First Nations is working with the State government to develop easy to understand guides to formal recognition processes in Victoria, including recognition under the Native Title Act and the Traditional Owner Settlement Act. These guides will be available on First Nations website and social media platforms and distributed through existing mailing databases and networks.

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.

FNLRS manages its budget responsibly, and has strategies in place to support efficient and effective allocation of resources and administration practices to consistently monitor spending and identify cost savings. FNLRS takes a very sparing approach to the use of external consultants, preferring to prioritise recruiting and developing internal staff. While this minimises consultant expenditure, the Review identified some instances where the use of external expertise might strengthen value for money and could be considered on a case by case basis.

FNLRS invests effort in some non-statutory functions, such as policy development with the Victorian Government and provides some free legal assistance to PBC clients. It receives funding from the Victorian Government to assist PBCs with economic development, which contributes to its activity in this space. While the absence of native title determinations during the review period suggests that funding has not driven tangible outputs in this period, the Review observes that FNLRS does provide value for money in moving Victoria towards a sustainable post-determination environment while making considerable progress in achieving native title outcomes.

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.

FNLRS adopts a clear and consistent approach to tracking its performance. Recent work has developed a performance dashboard which considers and compares FNLRS performance against a range of measures and indicators relating to their internal performance. This provides clear information on FNLRS performance and supports FNLRS' operational planning and monitoring. This also allows accurate billing for commercial purposes. While not the primary driver for the design of the tracking system it also provides data needed for reporting to the NIAA. Reporting to the NIAA is timely and appropriate.

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 governance structure at FNLRS reflects a high degree of ownership and control by Indigenous groups. This appears to be based on mutual respect between Board Directors and staff. The Board and senior staff each have clear responsibilities. The Board sets strategic directions, has high standards of probity and expertise, and carries out its tasks responsibly. FNLRS staff apply its appropriate policies on matters including financial management, complaint management and prioritisation. Some minor questions arose about the communication of policies and their flexible application.

Recommendations for TOR 4

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

Recommendation 7

FNLRS has the opportunity to make sure that all staff have a stronger understanding of how its approach to prioritisation of claims applies to specific claims.

FNLRS response.

All First Nations staff are aware of how claims are prioritised, the application of the Guidelines for Assistance to Native Title Groups and, where appropriate, contribute to the development of the Operational Plan.

Recommendation 8

There may be an opportunity to plan for the skills needed to work with the more challenging groups of claimants and implement mediation or other training to lawyers and researchers.

FNLRS response.

First Nations operational staff have access to mediation training by request through our Employee Professional Development Program. Several staff have previously taken up opportunities to undertake mediation training with Cyngler Consulting. In addition, the Bouverie Centre has been engaged to facilitate trauma informed practice training for all First Nations staff throughout July and August 2020.

Recommendation 9

FNLRS may be able to get better outcomes from its staff through developing its performance management and development approaches.

FNLRS response.

First Nations has a well-developed Employee Professional Development Program and performance management framework that guides each staff member's performance and professional development throughout the year. Professional development opportunities for all staff are actively considered on an on-going basis. Further to this,

professional development and support for managers and supervisors to ensure they are able to maximise performance management and development outcomes for staff will be undertaken throughout 2020-2021.

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.

FNLRS has taken a highly pro-active approach to creating economic conditions that will be favourable to PBCs following determination and has attracted Victorian Government funding to assist in this. It has engaged with the Victorian and Commonwealth governments to develop thinking and policy options to support Indigenous businesses. It has also worked with every PBC in Victoria to provide advice and legal support on governance and business issues in order to create a viable basis for PBCs' future functioning. There was some feedback that PBCs would appreciate further support, but understand that FNLRS has to operate within its budget limitations.

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.

Despite difficulty with lack of cohesion in claim groups and the Victorian Government's process for accepting claims, FNLRS is progressing well towards a post-determination environment. Given current progress with active claims and the remaining claims in the pipeline the Review believes it is reasonable to suppose that determinations will be complete by 2022. FVTOC, the sole owner of FNLRS, has recognised this and has developed a new corporate group structure that emphasises the need to develop economic enterprise to support the aspirations of Traditional Owners in Victoria. This will assist in ensuring that FNLRS will be able to continue operating without the funding provided by the Commonwealth for its NTA functions.

These developments are informed and supported by strong monitoring and 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		
	First Nations Legal and Research Services		
	Goldfields Land and Sea Council	July 2014 – June 2017	June 2017 – March 2018
	Native Title Services Corporation		
	Queensland South Native Title Services		
Tranche 2 (2018)	Cape York Land Council		
	Carpentaria Land Council Aboriginal Corporation		
	Kimberly Land Council	July 2015 – June 2018	September 2018 – April 2019
	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	July 2016 – June 2019	October 2020 – March 2021

Appendix C Stakeholders consulted

The Review consulted with over 40 stakeholders in relation to FNLRS' performance. This was directly through interviews, as well as a qualitative survey conducted as part of the Review.

Stakeholder groups included:

- people with native title interests in the area:
 - with native title recognised through the Federal Court
 - with Aboriginal title recognised through the Victorian Government
 - with claims progressing towards resolution.
- the Federal Court of Australia
- the National Native Title Tribunal
- representatives of Victorian Government
- FNLRS Board Directors
- FVTOC Board Directors
- FNLRS 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
<i>Aboriginal Heritage Act 2006</i>	The <i>Aboriginal Heritage Act 2006</i> provides a framework for local Aboriginal groups to act as Registered Aboriginal Parties to protect Aboriginal heritage Victoria.
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)	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 • helping people to negotiate ILUAs

Term	Meaning
	The NNTT maintains three registers relating to native title applications, determinations and ILUAs. It also maintains databases regarding future act matters and geospatial tools.
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</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 <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.
<i>Traditional Owner Settlement Act 2010 (TOSA)</i>	The <i>Traditional Owner Settlement Act 2010</i> is a piece of Victorian legislation that provides an alternative mechanism for resolving native title claims under Victorian, rather than Commonwealth, law. It seeks to provide a simpler process and more complete settlements than are possible under the <i>NTA</i> .
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 *Act*, 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.