

Review of Performance as a Native Title Service Provider: NTSCORP

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.

NTSCORP Limited (NTSCORP) 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 NTSCORP. It also includes NTSCORP'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 NTSCORP 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 NSW Government. A list of stakeholders consulted is included in Appendix C.

The same approach was used to analyse the performance of all NTRB-SPs that have been reviewed. NTSCORP 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 NTSCORP at a glance

NTSCORP is based in Sydney and provides services to all of New South Wales and the Australian Capital Territory.

NTSCORP Limited (NTSCORP) is a Native Title Service Provider that was established in 2002 after the NSW Aboriginal Land Council relinquished its status as a Native Title Representative Body in December 2001.

NTSCORP was originally established under the name 'NSW Native Title Services Ltd'. It has functioned under the title of 'NTSCORP Limited' since 2007 and this report uses NTSCORP.

NTSCORP's Representative Aboriginal/Torres Strait Islander Body (RATSIB) area's landmass covers approximately 803,000 square kilometres,² and includes water coverage it covered approximately 1,721,100 square kilometres. NTSCORP's RATSIB area accounts for the entirety of New South Wales (NSW) and the Australian Capital Territory (ACT).



The New South Wales Government operates a parallel land title system under the *Aboriginal Land Rights Act 1983* (NSW) (*ALRA*). Indigenous people can seek outcomes under either the state or federal system, or both.

NTSCORP only provides representation to clients looking to make a native title claim under the federal system (with claims under the state system largely represented by Local Aboriginal Land Councils). Because of this the figures presented here will accurately reflect the volume of NTSCORP's caseload, but not necessarily its complexity relative to that of other Native Title Representative Bodies/ Service Providers.

At the time of the Review, there were 26 active claim matters within the RATSIB area; 21 of which were registered and five of which had been identified for registration decision or reconsideration under s 190A. Of these, NTSCORP had 11 active claims on foot, all of which were registered.

At the time of the Review, there had been 15 claims for native title determined in the RATSIB area since the passage of the *Native Title Act 1993* (*NTA*), ten of which NTSCORP had represented or supported.^{3 4} Each of the ten determinations represented or supported by NTSCORP achieved a positive outcome, and eight of the ten determinations occurred after 30 June 2014. NTSCORP had not represented any of the three negative determinations in NSW.

NTSCORP provided support services to eight Registered Native Title Prescribed Bodies Corporate (PBCs) at the time of the Review. It also provided legal advice and support services to a long-tenured Aboriginal Corporation which manages significant assets as a result of a previous native title claim, and is expected to officially become a PBC in 2018 should their active native title claim be determined favourably.

NTSCORP received \$5,851,619 in operating grant revenue in the 2016/17 financial year, up from \$5,023,379 in 2015/16. The spike in grant funding in 2016/17 was largely due to an approved application for a midyear variation, which saw the NIAA provide NTSCORP with an additional \$447,777 in grants on top of their initial yearly sum. At the time of the Review, NTSCORP had offices based in Redfern with 25 staffing positions, 23 of which were filled. 25% of staff members were Indigenous.

² Different systems provide different values. This is based on ABS data.

³ These figures classify Yaegl #2 Part A and Part B, and Barkandji Traditional Owners #1 Part A and Part B as separate determinations, given their different determination dates and subject matters. Full details of the determinations achieved in the RATSIB area can be found in Appendix D.

⁴ NTSCORP assisted with the Githabul People claim; engaging the legal representatives Chalk & Fitzgerald to represent the claim group while they (then known as NSW Native Title Services Ltd) provided legal, research and community facilitation services throughout the claim. NTSCORP has not been the representative for any of the three negative determinations.

NTSCORP has a member-elected board which is largely representative. In the 2016/17 financial year the board consisted of nine member Directors and one non-member Director. Non-member Directors are intended to provide professional expertise and technical advice to assist with board decision making. They do not hold voting rights.

3 Findings and recommendations by Terms of Reference

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

NTSCORP has contributed significantly to the achievement of positive native title outcomes for clients in the state of NSW throughout the Review period. The Review observed that NTSCORP were deliberate in their approach; effectively balancing the need to clear its backlog of long-tenured claims with the need to achieve 'quick wins' in the interest of building favourable common law precedent to assist with future claims. This is particularly significant in a State with a complex legal and political environment, as well as an intense history of colonisation where many experience challenges in proving connection to country.

Historically there have not been high volumes of future act notices and ILUAs in the NSW native title landscape. However, this stands to emerge as an increasingly significant area of work for NTSCORP in the future as more PBCs emerge and new claims are lodged over previously uncontested areas of the State. This means the total area for which NTSCORP's clients will receive a notice will be larger. The Review received some feedback that NTSCORP has not been able to attend to all future act matters within its purview, particularly those deemed to be of lower order priority.

NTSCORP has achieved successful determinations for its clients

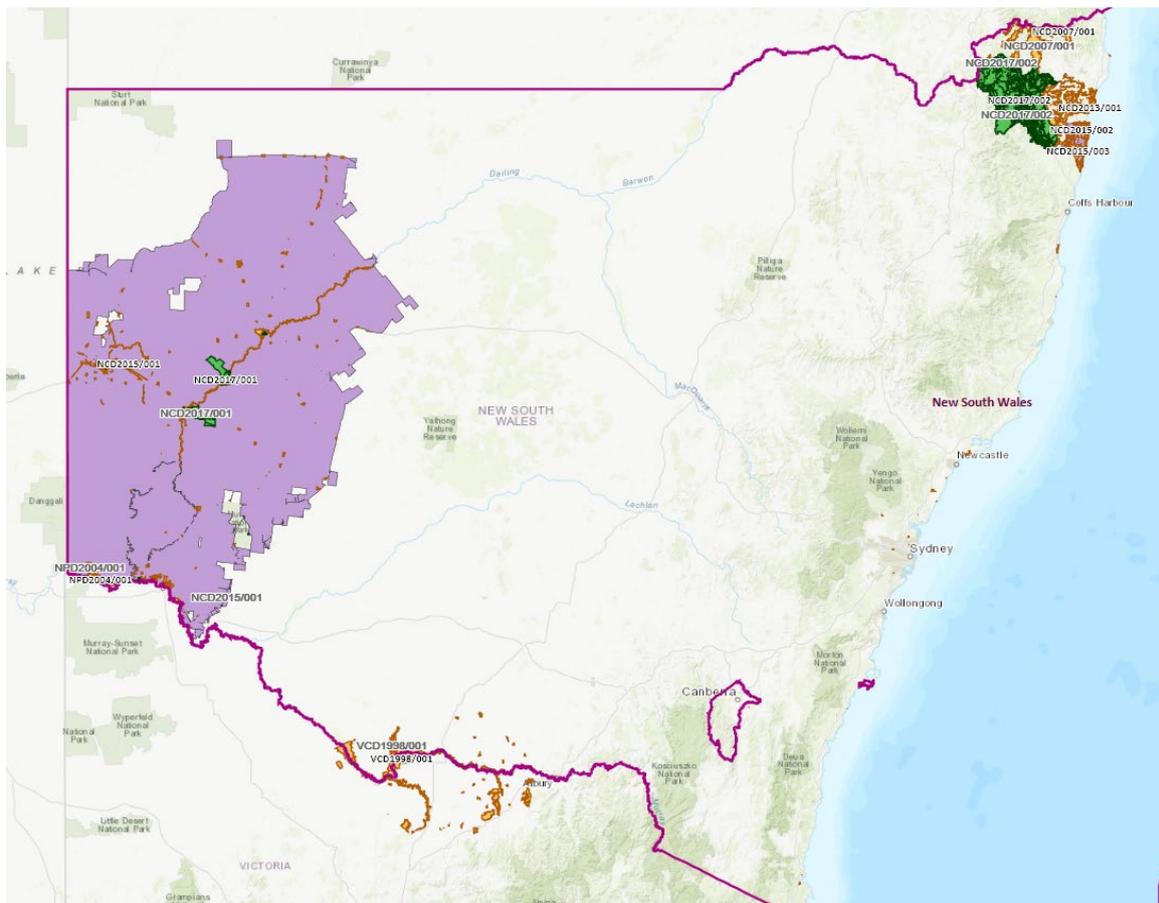
In three years, NTSCORP's efforts more than doubled the number of determinations in the State by representing all eight determinations in NSW since 1 July 2014, seeing some of Australia's oldest claims determined, as well as a number of claims determined in record time through consent determinations. NTSCORP has not advanced any claims in the Review period via contested litigation and there have only ever been two claims contested via litigation in NSW, both of which were unsuccessful.

In 2017 NTSCORP achieved two new native title milestones; a consent determination granted native title rights and interests over an area of sea and a claim achieved the first determination using an ancillary agreement reached under s 36AA of the ALRA. NTSCORP also reports the first determination in NSW to recognise the right of native title holders to take and use resources for any purpose.

Overall, clients for NTSCORP consulted through the Review reported they were generally satisfied with the services they previously received in the case of determined claims, as well as the service they receive in the case of currently registered claims. The day of determination was particularly noted by several clients as a well organised day of meaningful celebration.

Despite the recent spate of determinations, some clients consulted during the Review were not supportive of NTSCORP having the approach of favouring "blanket" regional claims involving larger areas and bigger claim groups, as opposed to smaller clan-based claims.

Figure 1 | New South Wales NTA determinations⁵



As at March 2018, areas where native title exists [exclusive] in green, areas where native title exists [non-exclusive] in yellow, areas where native title does not exist in beige and areas where native title is extinguished in purple.

⁵ NNTT Data, visualised in the [NNTT website's map generator](#)

Recommendations for TOR 1.1

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

Recommendation 1

NTSCORP could examine its peer review process as part of its review of policies and procedures, and consider incorporating an independent peer review element for major anthropological reports.

NTSCORP response.

NTSCORP will engage an independent anthropologist to peer review inhouse anthropological reports in all circumstances where the Commonwealth funding body provides funding for this to occur.

Recommendation 2

NTSCORP should consider evaluating the way workload is managed for its anthropological team, and look for opportunities to upskill non-senior staff to a level where they can competently alleviate the Head Anthropologist's operational workload.

NTSCORP response.

NTSCORP has revised its approach to anthropological research and has successfully secured funding from the Commonwealth funding body to engage external senior consultant anthropologists to undertake 6 native title research projects. This strengthens NTSCORP's internal capacity and provides opportunities for non-senior research staff to work closely with both internal senior anthropologists and external senior consultants. Subject to continuing funding being made available, NTSCORP intends to continue this practice.

Recommendation 3

NTSCORP should continue to work with the State Government and seek greater levels of funding to ensure that Traditional Owners are adequately supported to participate in State initiated ILUA negotiations and future act matters.

NTSCORP response.

NTSCORP has always sought these opportunities and continues to do so in appropriate circumstances. NTSCORP has successfully secured funding from the NSW State Government, with the agreement of our clients, to support 6 ILUA negotiations with the NSW State Government since the time of the review. A contribution from the NSW State Government was also secured towards the costs associated with an on country consent determination.

Recommendation 4

NTSCORP should work with the Commonwealth to ensure there is a better match between the expectations of potential claimants and available resources.

NTSCORP response.

NTSCORP continues to strongly advocate with the Commonwealth to increase NTSCORP's level of funding to ensure that NTSCORP is better able to meet the expectations of potential native title claimants in NSW and the ACT. NTSCORP has successfully secured mid-year funding variations in each financial year since the review (as well as an additional one off variation) but this funding is not recurrent, which effects longer term planning and commitments to potential native title claimants. NTSCORP requires the Commonwealth to commit to a permanent increase to its base level funding in order to address this recommendation.

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.

NTSCORP's assessment and prioritisation of applications follows a clear internal process. Overall, evidence provided to the Review indicated that NTSCORP allocates resources fairly, according to a consistent process to determine which matters have the best chance of success.

However this process is not understood well by clients, or staff outside of the executive leadership team. As a result, many clients interviewed throughout the Review did not understand the process, and cited a lack of transparency around the allocation of funds as a major flaw in NTSCORP's service.

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.

Throughout the Review, stakeholders across the board noted that NTSCORP's greatest strength was the quality of the relationships it builds with clients. Although the Review heard evidence of some minor communication issues, largely relating to overuse of jargon, the evidence overwhelmingly indicated that NTSCORP staff display a very high level of cultural competence and respect when dealing with clients and broader stakeholders across the native title landscape.

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 NTSCORP's response to this recommendation.

Recommendation 5

In the interest of increasing transparency, NTSCORP should consider developing simple, succinct information for clients which explains the assessment and prioritisation process and how funding is allocated between claims and PBCs.

NTSCORP response.

NTSCORP is currently in the process of completing a full review of its policies and procedures, including developing a revised Facilitation and Assistance Policy, application form and fact sheet. These revisions will reflect the changed prioritisation process arising from the Federal Court's case management of native title matters and provide simple, succinct information for clients to explain the assessment and prioritisation process.

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.

NTSCORP has so far managed to adhere to its budget responsibly whilst increasing expenditure and despite a complex operating environment. There was evidence of strategies in place to support efficient and effective allocation of resources; the most significant of which was to minimise spending on consultants in favour of recruiting and developing internal staff to reduce labour costs and retain corporate knowledge. Where the Review did identify possibilities to achieve cost savings was in reducing the cost of claim group meetings, which NTSCORP staff have expressed will be a focus on the organisation's upcoming internal review of policies and procedures. The incidence of senior staff attending to tasks below their pay grade is also indicative of room for greater cost-effectiveness.

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.

NTSCORP adopts a clear and consistent approach to tracking its performance using a robust, activity-based dashboard to map the expected cost of individual milestones. These are monitored through the organisation's operational plan. In the past two financial years, NTSCORP requested an extension to submit four mandatory financial reports to the NIAA after the original submission date. When submitted, all reports complied with the requirements of NTSCORP's funding agreement.

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.

NTSCORP presents as an organisation with a flat governance structure and a 'collective effort' culture that places all types of staff on equal footing. This structure promotes success by achieving team synergies and adhering consistently to 'tried and tested' ways of working to run lean and achieve maximum value with limited resources. While this has benefits such as low leadership turnover, strong team synergy and tight financial management, it has also created challenges. The most significant of these is that executive leaders are too involved in operational work, creating a sub-optimal use of resources and detracting from NTSCORP's ability to think and plan strategically.

There were also questions surrounding the degree to which NTSCORP's policies and procedures are applied in a 'best practice' manner. The review found that although NTSCORP's senior management had an understanding of and consistently applied policies and procedures, the content of these documents was not effectively conveyed to other staff members or broader stakeholder groups, creating a risk of misunderstanding or operational inconsistencies.

Recommendations for TOR 4

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

Recommendation 6

NTSCORP could conduct an internal reassessment of roles and responsibilities for all teams and key positions, to ensure that all staff are operating at the appropriate level and resources are being utilised efficiently.

NTSCORP response.

NTSCORP conducted an internal reassessment of roles and responsibilities for all teams and key positions following the review. NTSCORP subsequently undertook a restructure of the company, including disbanding the Strategic Development Unit, with future acts becoming the responsibility of the Legal Unit and notifications being moved to the Research Unit, with support from Legal Staff.

To support the increased responsibilities and staffing in the Legal Unit, the position of Deputy Principal Solicitor was created. The position of Deputy Chief Financial Officer has also been created.

NTSCORP has also revised its approach to anthropological research and has adopted its model to draw on the expertise of a number of external anthropological consultants to conduct research for new native title matters.

NTSCORP requires the Commonwealth to commit to a permanent increase to its base level funding in order to further support changes which will enable all staff to operate at an appropriate level.

Recommendation 7

NTSCORP should consider developing a long-term strategic plan, to be refreshed every 3 years.

NTSCORP response.

NTSCORP is currently implementing this recommendation and is in the process of developing a new strategic plan.

Recommendation 8

NTSCORP could consider a review of its constitution and the membership of the Nominations Committee to enhance its governance capability.

NTSCORP response.

As part of the review of the policies and procedures, NTSCORP is also currently undertaking a review of its Constitution, the nomination process and the Charters of the Board Committees.

Recommendation 9

NTSCORP should consider developing a well-defined individual performance management approach as part of the 2018 policy and procedure review, and regularly monitor staff hours to ensure employee wellbeing.

NTSCORP response.

NTSCORP is developing performance management planning as part of the policy and procedure review. Staff hours, including unpaid overtime, continues to be monitored by Managers and the CEO on a monthly basis. Funding variations obtained from the funding agency have enabled NTSCORP to employ 4 non-recurrent staff, which has assisted in reducing unpaid overtime (which can be utilised as TOIL) and improving employee wellbeing.

Recommendation 10

Following the internal refresh of policies and procedures that is going ahead in 2018, NTSCORP should develop an internal training session on policies and procedures, to be run yearly as a means of ensuring awareness among all staff of up to date requirements.

NTSCORP response.

Training on internal policies and procedures is undertaken on induction and with staff at Operational Planning Meetings held twice a year.

Recommendation 11

NTSCORP should consider the development of a formal complaints policy as part of its proposed update of all policies and procedures in 2018.

NTSCORP response.

A formal complaints policy has been developed as part of the policies and procedures review.

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.

NTSCORP currently manages a group of PBCs which are mostly in their infancy, based in areas of low socio-economic status, and not yet self-sufficient. NTSCORP's support services are currently more reactive than would be ideal to set up PBCs for long term success, with no formal sustainable PBC strategy currently in place and no dedicated PBC support unit established within the organisation. Overall, while clients would like more contact between NTSCORP and their individual PBCs, the majority were satisfied with the quality of services being provided, and acknowledged that insufficient resources were creating the service deficit.

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 displaying rigour in planning and performance measurement at an operational level, NTSCORP does not have a post-determination environment plan and has no immediate intention to develop one. Due to NTSCORP's resource constraints and extensive claims backlog, planning for the post-determination environment is not prioritised.

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 NTSCORP's response to this recommendation.

Recommendation 12

NTSCORP should continue to assess its priorities for resource allocation, and take advantage of any opportunity to move resources into supporting PBCs and planning for the post-determination environment.

NTSCORP response.

NTSCORP continues to advocate with the Commonwealth funding body for a permanent increase to NTSCORP's base level funding which would enable NTSCORP to establish a formal PBC Support Unit and to develop a post-determination environment plan. This is a recognised need for NTSCORP and current limited resourcing requires continual balancing in an environment in which there is a strong need for post determination assistance, as well as current and future native title applications and compensation applications which are still to be filed in NSW and the ACT.

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 | | |
| | NTSCORP Limited | | |
| | 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 50 stakeholders in relation to NTSCORP's performance. This was directly through interviews, as well as a qualitative survey conducted as part of the Review.

Stakeholder groups included:

- People who have native title interests in the area:
 - who have been, or are being, represented by NTSCORP
 - managed clients
 - potential clients
 - persons refused assistance
- the Federal Court of Australia
- the National Native Title Tribunal
- representatives of NSW State Government
- representatives of NSW Aboriginal Land Council
- NTSCORP 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 Land Rights Act 1983 (NSW) (ALRA)</i> | New South Wales legislation that provides an alternative system for granting land rights to Aboriginal and Torres Strait Islander people in New South Wales. |
| 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. |
| Local Aboriginal Land Council (LALC) | Organisations that hold land under the <i>Aboriginal Land Rights Act 1983</i> (NSW) |
| 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: |

| Term | Meaning |
|---|---|
| | <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> |
| 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. |