

Senate Finance and Public Administration References Committee
ANSWERS TO QUESTIONS ON NOTICE
Inquiry into the Commonwealth funding of Indigenous Tasmanians
Attorney-General's portfolio

Department/Agency: Attorney-General's Department

Outcome 1 Program 1.6 Indigenous Legal and Native Title Assistance

Senator: Jacqui Lambie

Type of question: Verbal

Date set by the committee for the return of answer: 21 November 2016

Question

Mr Nott: My understanding is that the department selected McGrathNicol to conduct a range of audits and organisational health check type work. They, on behalf of the department, looked at all of the Indigenous services providers that we fund, and the TAC was one of those organisations.

Senator LAMBIE: Would I be able to receive a copy of that audit? Where can I get it from with recommendations, remarks or whatever is in there?

Answer

The McGrathNicol report *TAC report: Indigenous Legal Assistance Programme – financial assessment and health check 22 January 2015* is provided.



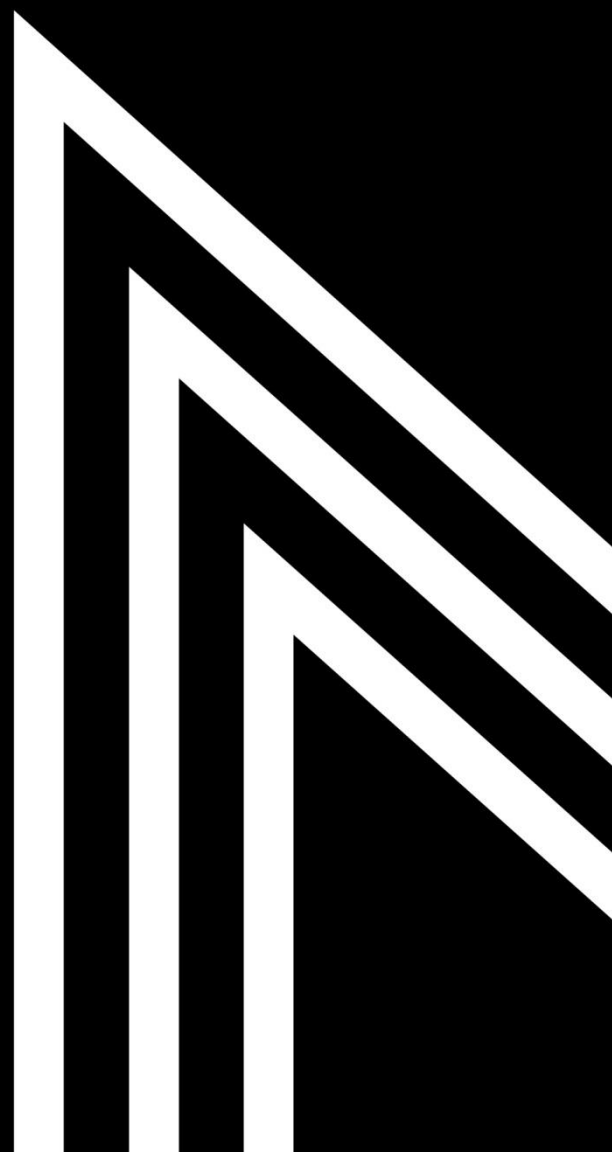
TAC Report

Indigenous Legal Assistance Programme – Financial Assessment and Health Check

22 January 2015



McGrathNicol



Contents

1	Executive Summary	2
2	Scope, approach and sources of information	8
3	Organisational profile	9
4	Compliance review – service delivery	11
5	Compliance review – expenditure	19
6	Compliance review – governance	32
7	Financial health check.....	34

Disclaimer

Restrictions on use

This report has been prepared for the Attorney-General's Department ("the Department") for the provision of financial assessments and health checks of the eight service providers under the Indigenous Legal Assistance Programme ("ILAP").

This report should not be disclosed, be reproduced in whole or in part or supplied to any other party, without our consent in writing. It may not otherwise be reproduced in whole or in part supplied, without our consent in writing.

The information contained in the report has been prepared on the basis of:

- meetings and discussions with representatives from the Department and the identified service provider;
- information provided by the Department and the identified service provider; and
- information obtained during our site visit to the identified service provider's offices.

We have carried out a review of service providers in the ILAP in accordance with the Official Order. McGrathNicol has not carried out an audit, nor have we verified any of the information given to us by the Department and the identified service provider, except where expressly stated. We have relied upon assurances from the identified service provider as to the accuracy of the information provided.

The scope of our work is different to that of an audit and it cannot be relied upon to provide the same level of assurance.

We highlight that our work, by necessity, has involved sampling transactions and selected reports rather than looking at all information that may exist. Accordingly, our findings and conclusions are based on the sample of information reviewed.

Limitations

In accordance with our firm's policy, we advise that neither the firm nor any member or employee of the firm undertakes responsibility arising in any way whatsoever to any person or organisation, other than the Department in respect of the information set out in this report, including any errors, omissions or negligence however caused.



1 Executive Summary

1.1 Background

The Indigenous Legal Assistance Programme ("ILAP") funds service providers in order to deliver legal assistance services for Indigenous Australians. ILAP is administered by the Attorney-General's Department ("the Department").

The objective of the programme is to provide culturally sensitive, responsive, accessible, equitable and effective legal assistance to Indigenous Australians, who for a wide range of reasons experience much higher rates of adverse interaction with the justice system than other Australians, so that they can fully exercise their legal rights as Australian Citizens.

Legal assistance services delivered to Indigenous Australians by ILAP service providers primarily include:

- Legal Advice Assistance – information, initial legal advice, minor assistance and referral.
- Duty Lawyer Assistance – basic legal help to people self-representing, including free legal advice. In special circumstances and subject to demand, duty lawyer assistance can include representation of people in court for adjournments and short procedural mentions. Duty lawyer assistance does not generally include representing people at contested hearings or trials.
- Legal Case Work – services and representation for criminal, civil and family law matters.

McGrathNicol understands that providers also deliver other related services including community legal education, early intervention and prevention initiatives and may seek funding for the conduct of expensive Indigenous case matters. The ILAP may also provide funding to providers for qualifying Indigenous Test Cases, and Programme Support and Development activities.

Eight providers are funded under the programme, one in each state, with two in the Northern Territory (North and South zones) and one in NSW/ACT.

The Department has engaged McGrathNicol for the provision of financial assessments and health checks of the eight Aboriginal and Torres Strait Legal Service providers ("providers") under ILAP, with a specific focus on financial management and governance. This report relates to the review of the Tasmanian Aboriginal Centre Inc. ("TAC").

1.2 Objectives (scope)

The scope of the engagement involved:

- assessing whether TAC has complied with terms and conditions of its Indigenous Legal Services Funding Agreement (2011-2015) ("Funding Agreement"), particularly expenditure of and accountability for Commonwealth funding and Commonwealth funded assets;
- assessing TAC's financial viability and health; and
- providing the Department with a unit cost analysis for the delivery of TAC's services.

The scope of the engagement included the period 1 July 2011 to 30 June 2014.

1.3 Approach

Our approach to undertaking the financial health check and compliance review of TAC involved undertaking a site visit to TAC's Hobart office and reviewing a range of documentation and information whilst on site. We also conducted a number of meetings and exchanged correspondence with key TAC staff responsible for managing the operations of the organisation for the period under review.

1.4 Findings and conclusions

The following table details our findings and recommendations in relation to TAC. It is noted that in conducting our review of TAC, we have also considered Beeton and Mansell's compliance, given that in accordance with a retainer agreement Beeton and Mansell is responsible for provide legal services for TAC..

Compliance review – Service delivery		
Scope item	Findings	Conclusion and possible organisational improvements
Compliance with clause 3 obligations in carrying out services	<ul style="list-style-type: none"> TAC does not employ lawyers, but engages Beeton and Mansell through a retainer agreement to provide legal services. In assessing TAC's compliance with obligations in carrying out services, we have also considered Beeton and Mansell's compliance. From our review we did not identify any matters of significant non-compliance in respect of TAC's compliance with its obligations under clause 3 of the Funding Agreement. However, we note that: <ul style="list-style-type: none"> TAC appear to have some difficulty keeping track of their reporting requirements under the Funding Agreement and other guidelines; and At the time of our review the TAC CEO did not appear to be aware of a number of obligations in the Funding Agreement that relate to the provision of information to the Department. The CEO subsequently reviewed the Funding Agreement in detail and discussed these reporting requirements with us to clarify her understanding of them. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> TAC should ensure that the reporting obligations to the Department are clearly recorded, with responsibility for providing these reports allocated to a TAC staff member. TAC should undertake a review the Funding Agreement (and the various delivery standards and guidelines) regularly so they are aware of their reporting requirements. TAC advised McGrathNicol that as at the date of our site visit, they are 100% up to date with their reporting obligations. The Department may wish to confirm that TAC is 100% up to date with their provision of information requirements, given that in the past they have missed reporting obligations.
Review of delivery of each of the B6.1 services and service compliance	<ul style="list-style-type: none"> TAC does not employ lawyers, but engages Beeton and Mansell through a retainer agreement to provide legal services. In assessing TAC's compliance with relevant guidelines, standards and requirements, we have also considered Beeton and Mansell's compliance. From our review, we did not identify any: <ul style="list-style-type: none"> areas where TAC was not providing the services as required in accordance with Schedule B6.1(a) of the Funding Agreement; or areas where TAC was not providing the services as required in accordance with Schedule B6.2 of the Funding Agreement. TAC appears to generally be in compliance with its obligations under Schedule B6.2 of the Funding Agreement. However, we note that: <ul style="list-style-type: none"> it is difficult for us to confirm that TAC is in compliance with the requirement to provide services to eligible clients. We consider that it would be beneficial for TAC to keep a file for all applicants rejected for not satisfying Aboriginality. We also consider that it would be beneficial for TAC to include in their policy that where a dispute arises, evidence with be sought from the Archives Office of Tasmania; Whilst TAC has satisfactory policies in place regarding the provision of legal services, they had to be printed to be provided to us, indicating that they are not really in day to day use; TAC does not appear to publish brochures, pamphlets or other materials that are provided to clients detailing complaints procedures; TAC's Fraud Control Policy has not been updated since 2008, and accordingly should be reviewed by TAC to confirm that it remains current; and TAC's disengagement plan (which is titled a "transition plan" by TAC) has not been updated by TAC since 2006, and accordingly should be reviewed by TAC to confirm that it remains current. 	<ul style="list-style-type: none"> TAC appears generally compliant with its obligations under Schedule B6 of the Funding Agreement. <p>Possible organisational improvements</p> <ul style="list-style-type: none"> TAC should take steps to ensure its policies and procedures are more accessible and available to employees on a day to day basis. TAC should put in place periodic training and other internal communications to ensure that employees remain aware of TAC's policies and procedures. TAC should maintain a file for all applications for legal representation that TAC rejects. TAC should prepare and publish brochures or similar materials that are provided to clients detailing complaints procedures. TAC should review its Fraud Control Policy, consider whether it remains relevant and update it where appropriate TAC should review its transition plan, consider whether it remains relevant and update it where appropriate.

Compliance review – Service delivery

Overall risk rating: **MEDIUM**

Compliance review – Expenditure		
Scope item	Findings	Conclusion and possible organisational improvements
Review of financial management processes	<ul style="list-style-type: none"> Overall, TAC's financial processes appear adequate and the processes are in place. During our site visit, the majority of documentation was able to be provided quickly in respect of the financial information requested. As a result, it appears that TAC is in compliance with clause 5.2 of the Funding Agreement in respect of its requirement to maintain financial records. TAC pools its administration costs and allocates these costs to programmes (including Legal Services). Whilst TAC advised us that the cost allocation is based on the proportion programme funding represents of total TAC funding, we found that in practice this is not the case, and some programmes are allocated no administration charges where the funding agreement does not allow this. This does not appear to be unreasonable. We identified the following amounts that have been allocated to Legal Services, that the Department may wish to consider whether represents allowable expenditure in accordance with the Funding Agreement: <ul style="list-style-type: none"> \$222,281 in respect of the potential over allocation of administrative costs, noting that TAC has advised that it is not able to allocate administration costs to all programmes due to restrictions in funding agreements; \$54,000 in respect of amounts allocated to Legal Services to establish Building Upgrade Fund; and \$73,000 in respect of amounts allocated to Legal Services to establish a redundancy reserve. It is noted that the above amounts are not cumulative, as part of the allocation for the Building Upgrade Fund and redundancy reserve are in the \$222,281 potential over allocation. TAC allocates the costs of motor vehicles based on average operating lease expenses across the fleet of vehicles, rather than in accordance with the actual lease agreements with the third party lessors. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> TAC should document its cost allocation methodology, and provide this to the Department. TAC should not enter into funding agreements that do not allow for the charging of administration costs, where it will result in additional administration costs being borne by other programmes. The Department should consider whether TAC's overall allocation approach results in an appropriate allocation of administration costs to Legal Services (which is funded using Department funds). The Department should consider whether the allocation of amounts to Legal Services to create reserves for the Building Upgrade Fund and the redundancy reserve is an appropriate use of Department funds. The Department may wish to consider whether it is appropriate for ILAP funding to be used by TAC to apply a notional internal motor vehicle operating lease charge rather than the actual cost of the lease as would ordinarily be expected.
Review of prohibited expenditure	<ul style="list-style-type: none"> We found that Department funds do not appear to have been used for prohibited expenditure over the review period. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> TAC should discuss with the Department whether they can obtain standing approval for the payment of certain Board travel expenses where they are reasonable and in accordance with the Funding Agreement and TAC's Policy and Procedure Manual.
Review of travel expenditure	<ul style="list-style-type: none"> TAC has in place policies and procedures for the processing of payments for travel expenses and could mostly demonstrate compliance with its policies and procedures and clauses 5.1 and 5.2 of the Funding Agreement in relation to the sample of travel expenses tested. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> TAC should ensure that adequate third-party supporting documentation is put on file to verify that travel expenses are for appropriate purposes and in accordance with clauses 5.1 and 5.2 of the Funding Agreement.

Compliance review – Expenditure		
Review of credit card expenditure	<ul style="list-style-type: none"> TAC does not operate a corporate credit card. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> Not applicable.
Review of procurement of professional services	<ul style="list-style-type: none"> TAC has advised the Department that it is unable to employ individual lawyers as it is not permitted by the Law Society of Tasmania. Accordingly, TAC has an ongoing retention arrangement with Beeton and Mansell for the delivery of legal services in accordance with the ILAP Funding Agreement. Costs paid by TAC on behalf of Beeton and Mansell appear to be reasonable. We found no evidence of Beeton and Mansell charging a profit margin on legal staff provided to TAC. The arrangement with Beeton and Mansell appears to be appropriate given the requirements of the Tasmanian legislation. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> The relationship with Beeton and Mansell appears to be a subcontractor arrangement. In accordance with Clause 27 of the Funding Agreement, TAC should seek the Department's consent for this arrangement. TAC should provide the Department with a copy of the retainer agreement with Beeton & Mansell, so that the Department can make an assessment of whether it is appropriate for it to provide consent for this subcontractor arrangement. TAC's failure to obtain consent from the Department appears to represent a breach of Clause 27 of the Funding Agreement. We note that the retainer agreement has been entered into between TAC and Michael Mansell in his former capacity as Beeton and Mansell Principal. Given that Mr Mansell is no longer the Beeton and Mansell Principal, it may be appropriate for the new Beeton and Mansell Principal (Mark Doyle) to formally provide his consent to the agreement.
Review of payments to Board members	<ul style="list-style-type: none"> TAC does not provide sitting fees to Board members TAC consequently appears to have been compliant with clause 8.2 of the Funding Agreement over the review period. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> No organisational improvements are suggested.
Review of asset management	<ul style="list-style-type: none"> TAC did not purchase any assets over \$50,000 in the 2012, 2013 and 2014 financial years with Department Funding and consequently, no Departmental approval was sought or required. TAC prepares asset registers and asset depreciation schedules which appear in order and the assets purchases (less than \$50,000). TAC was able to provide supporting documentation for the sampled asset transactions for the period under review. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> No organisational improvements are suggested.
Review of other transactions	<ul style="list-style-type: none"> Nothing came to attention which raised any additional concerns in respect of these balances that are not already addressed in this section of our report. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> No organisational improvements are suggested.
Overall risk rating: MEDIUM		

Findings and conclusions: Compliance review – Governance

Compliance review – Governance		
Scope item	Findings	Conclusion and possible organisational improvements
Review of conflict of interest procedures	<ul style="list-style-type: none"> TAC does not appear to maintain a conflict of interest register. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> TAC should maintain a conflict of interest register.
Review of Human Resource issues	<ul style="list-style-type: none"> From our review it appears that TAC follows the requirements set out in the Policy and Procedure Manual for staff recruitment and employee files were in good order. 	<p>Possible organisational improvements</p> <ul style="list-style-type: none"> No organisational improvements are suggested.
Overall risk rating: MEDIUM		

Findings and conclusions: Financial health check

Compliance review – Financial health check		
Scope item	Findings	Conclusion
Financial health check	<p>As at 30 June 2014:</p> <ul style="list-style-type: none"> TAC's cash reserves were \$7,556,336. TAC had total net assets of \$15,976,154, indicating a strong net asset position. TAC had total current assets of \$5,431,867 and a current ratio of 3.44 suggesting that it can meet its currently liabilities comfortably with its available current assets. TAC had no interest bearing debt. 	<ul style="list-style-type: none"> TAC experienced deteriorating EBITDA over the period from \$3,079,923 in FY12 to \$1,266,136 in FY14, but this is not considered to be a concern given its strong net asset position. Whilst TAC generated losses in FY13 and FY14 and losses are not sustainable longer term, TAC appears to have sufficient reserves to meet losses of this magnitude in the medium term. Accordingly, TAC appeared to be in a sound financial position as at 30 June 2014.
Overall risk rating: LOW		

2 Scope, approach and sources of information

2.1 Objective

The objective of the engagement was to undertake a review of TAC's compliance with the terms and conditions of its Indigenous Legal Services Funding Agreement (2011-2015) ("Funding Agreement"), and to undertake a financial health check of the organisation.

2.2 Scope

The scope of the engagement involved:

- assessing whether TAC has complied with terms and conditions of its Indigenous Legal Services Funding Agreement (2011-2015) ("Funding Agreement"), particularly expenditure of and accountability for Commonwealth funding and Commonwealth funded assets;
- assessing TAC's financial viability and health; and
- providing the Department with a unit cost analysis for the delivery of TAC's services.

The scope of the engagement included the period 1 July 2011 to 30 June 2014.

2.3 Approach

Our approach to undertaking the compliance review and financial health check of TAC involved:

- reviewing information provided by the Department;
- submitting an information request list to TAC of documentation considered relevant to the review;
- reviewing information provided by TAC;
- undertaking a site-visit to TAC's Hobart office between 3 to 7 November 2014;
- meetings and discussions with TAC staff during the site-visit;
- compliance testing of a range of transactions, services and processes and procedures for the period between 1 July 2011 and 30 June 2014; and
- correspondence with TAC staff in respect of the compliance review and financial health check.

2.4 Sources of information

Source of information for the compliance review and financial health check included:

- documentation provided by the Department;
- information and documentation provided by TAC prior to and during our site visit;
- meetings and discussions with TAC staff during our site visit; and
- information extracted from TAC financial and payroll IT systems during our site visit.

3 Organisational profile

3.1 Organisational structure

TAC commenced operations in the early 1970's and has been funded by the federal government since 1973. Across three different locations, TAC delivers many community programs including a health service, legal service, training programs and land management for the Indigenous community in Tasmania.¹

TAC's objects as stated in TAC's Constitution are:

- to promote and further the interests of the individual Aborigine, Aboriginal communities, the Aboriginal people of Australia and in particular the Aboriginal people of Tasmania whether by the provision of services, the conducting of public campaigns or otherwise;
- to acquire Land Rights for the Aboriginal people of Tasmania; and
- to maintain legal, health, educational and welfare services for the use and benefit of Aboriginal people.

Legal services are provided from offices in all three regions and encompass the following services:

- legal representation and advice;
- community legal education;
- law reform; and
- youth diversion.

TAC also provides field officers who are rostered on call for Aborigines detained by police after-hours, including weekends.

TAC receives grant funding from the Attorney-General's Department of \$2.08 million in the most recent financial year (2013-14).

3.2 Key staff

During the period under review, the following staff, were integral to TAC's operations and service delivery function:

- Heather Sculthorpe – CEO;
- Michael Mansell – Former Beeton & Mansell Principal;
- Mark Doyle – Beeton & Mansell Principal;
- Mary Evans – Former Beeton & Mansell Principal, and current Beeton and Mansell senior lawyer; and
- Chris Mansell – Finance Manager.

The TAC Board, and its composition, is detailed further in Section 3.3 below.

¹ <http://tacinc.com.au/>

3.3 Governance arrangements

Constitution

TAC's Constitution, as last amended, has been in place since September 2011. The Constitution identifies the organisation's goals, objectives and powers, and the arrangements and activities of other governance positions and bodies.

Policies and procedures

TAC has a number of Policy and Procedure documents, which covers a wide range of topics, including but not limited to the following:

- Confirmation of Aboriginality;
- Fraud Control;
- Risk Management;
- Prohibition on Financial Management;
- Service and Service delivery instructions;
- Staff appraisal guidelines;
- Staff roles & responsibilities; and
- Staff training & Development Policy.

Although we have reviewed compliance with policies and procedures contained in this document, we have not reviewed the content of this document as part of this review.

Board

The TAC State Committee is responsible for the control and management of the business and affairs of TAC. The powers, composition and responsibilities of the TAC Board are set out in detail in the TAC Constitution.

The constitution requires that the TAC State Committee is comprised of the President, State Secretary, Treasurer, and five elected committee members and a representative from each of the Branches of the Association. The current members of the State Committee are as follows:

- Dave Warrener – State President;
- Trudy Maluga – State Secretary;
- Rebecca Digney-Mansell – State Treasurer;
- Annette Peardon – Member;
- Jillian Mundy – Member;
- Dorothy Murray – Member;
- Doug Mansell – Member;
- Murray Everett – Member;
- Julie Cann – Burnie Branch Representative; and
- Clyde Mansell – Launceston Branch.

In accordance with the TAC Constitution, the Board shall meet monthly to arrange the affairs of TAC and to examine TAC's finances. At every such meeting, seven members shall form a quorum.

In accordance with the TAC Constitution, an Annual General Meeting ("AGM") must be held each year within three months of the end of the financial year.

4 Compliance review – service delivery

4.1 Compliance with Clause 3 obligations in carrying out services

Background

Under clause 3 of the Funding Agreement, TAC is required to carry out the Activity (delivery of the Indigenous Legal Assistance and Policy Reform Program), in accordance with the Funding Agreement.

In carrying out the Activity, TAC must meet all of the obligations set out at clause 3.2 of the Funding Agreement. These are set out in the table at 'Findings' below.

Procedures / testing undertaken

In order to review TAC's compliance with clause 3 of the Funding Agreement, we:

- reviewed procedures TAC has in place to ensure compliance with the clause 3 obligations;
- met with the TAC CEO and the senior lawyer based in Hobart, and discussed practically how TAC ensures compliance with the clause 3 obligations;
- where applicable, reviewed the TAC financial system for payments that may indicate the existence of events that should be notified to the Department in accordance with clause 3; and
- where applicable, reviewed documentation demonstrating that TAC has complied with the clause 3 obligations.

Findings

The table below sets out our findings in respect of TAC's compliance with its obligations under clause 3 of the Funding Agreement.

Results of compliance with obligations under clause 3 of the Funding Agreement

Clause 3 obligation	How does TAC ensure compliance	Findings
Deliver legal assistance services that are high quality, culturally sensitive, equitable and accessible.	<ul style="list-style-type: none">▪ All of the lawyers have been with Beeton and Mansell for a number of years, and have proven their ability to provide high quality and culturally sensitive legal assistance services.▪ All of the Field officers are Aboriginal, and therefore understand the cultural sensitivities.▪ All lawyers have attended cultural awareness sessions.▪ TAC survey 100 clients per year to obtain feedback on its delivery of culturally sensitive legal services.	<ul style="list-style-type: none">▪ No issues identified.▪ It is noted that TAC assert that their services are accessible by all Aboriginals who meet the eligibility criteria set out in the Service Delivery Directions. At section 4.2 below, we have set out recommendations regarding TAC's record keeping so that they can more readily demonstrate the basis for not providing services to persons applying for assistance.
Collaborate and cooperate with other Indigenous service providers.	<ul style="list-style-type: none">▪ TAC maintain a list of firms that they are able to brief out to in each location.▪ TAC make their own assessment of the competence of the firms.▪ TAC advised that there are not a lot of Indigenous service providers outside of TAC (as TAC provides Aboriginal health and other services in addition to legal services).▪ TAC participate in the legal aid jurisdictional forum.	<ul style="list-style-type: none">▪ No issues identified.
Comply with any codes of ethics, regulations or other industry standards relevant to the Activity.	<ul style="list-style-type: none">▪ Beeton and Mansell are bound by their professional obligations to the law society and to the court.	<ul style="list-style-type: none">▪ No issues identified.

Clause 3 obligation	How does TAC ensure compliance	Findings
Comply with all relevant laws and practices governing work with vulnerable persons.	<ul style="list-style-type: none"> The TAC governing committee has police checks undertaken as a requirement of the Department of Health and Ageing funding. 	<ul style="list-style-type: none"> No issues identified.
Comply with all relevant laws and in particular take all reasonable action to ensure that no fraud occurs.	<ul style="list-style-type: none"> TAC maintains a Fraud Control Policy. TAC had a fraud incident a few years ago, which led to them implementing a number of segregation of duties controls in respect of expenditure. 	<ul style="list-style-type: none"> No issues identified.
Pay all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement.	<ul style="list-style-type: none"> TAC pays all required taxes (such as GST), and pays for fees associated with the delivery of the legal services. 	<ul style="list-style-type: none"> No issues identified.
Notify the Department immediately if a conflict of interest arises, or could reasonably be perceived by others to have arisen, that may restrict TAC undertaking the activity in a fair and independent way.	<ul style="list-style-type: none"> TAC advised us that no such conflict has arisen. TAC maintains a relationships and conflict of interest register for senior staff and committee members. It is noted that the TAC CEO was not aware of this obligation. 	<ul style="list-style-type: none"> No issues identified.
Communicate with the Department, especially if there is an issue that may delay, stop or adversely affect the Activity and develop strategies to manage the consequences of the delay or disruption.	<ul style="list-style-type: none"> TAC advised that there has been no such issue. It is noted that the TAC CEO was not aware of this obligation. 	<ul style="list-style-type: none"> No issues identified.
Provide information the Department reasonably requires.	<ul style="list-style-type: none"> TAC advised us that they believe that they are 100% in compliance with the provision of information required by the Department. TAC advised that from time to time they may miss reporting obligations, but consider that this the result of the difficulty in keeping up to date with the numerous reporting obligations under the Funding Agreement, and not any deliberate failure to provide information. 	<ul style="list-style-type: none"> TAC appear to have some difficulty keeping track of their reporting requirements under the Funding Agreement and other guidelines. The Department may wish to confirm that TAC is 100% up to date with their provision of information requirements, given that in the past they have missed reporting obligations.
Notify the Department if there is a change, absence or vacancy in Chief Executive Officer, Principal Legal Officer or Chief Financial Officer positions, of longer than 2 months or which could impact TAC's ability to successfully deliver the Activity.	<ul style="list-style-type: none"> TAC advised that no such absence or vacancy has arisen over the period of our review. It is noted that the TAC CEO was not aware of this obligation. 	<ul style="list-style-type: none"> No issues identified.

Clause 3 obligation	How does TAC ensure compliance	Findings
Notify the Department of any pending or intended legal action taken by a third party against TAC in relation to the provision of the Activity.	<ul style="list-style-type: none"> TAC advised that there is no legal action pending or intended against TAC or Beeton and Mansell. It is noted that the TAC CEO was not aware of this obligation. 	<ul style="list-style-type: none"> No issues identified.
Inform the Department if TAC enters into a standing arrangement under which TAC is entitled to receive funding from Commonwealth or State and Territory governments related to the provision of the Activity.	<ul style="list-style-type: none"> TAC advised that no such funding has been received. 	<ul style="list-style-type: none"> No issues

Conclusion

From our review we did not identify any matters of significant non-compliance in respect of TAC's compliance with its obligations under clause 3 of the Funding Agreement. However, we note that:

- TAC appear to have some difficulty keeping track of their reporting requirements under the Funding Agreement and other guidelines; and
- At the time of our review the TAC CEO did not appear to be aware of a number of obligations in the Funding Agreement that relate to the provision of information to the Department. The CEO subsequently reviewed the Funding Agreement in detail and discussed these reporting requirements with us to clarify her understanding of them.

Possible organisational improvements

TAC should ensure that the reporting obligations to the Department are clearly recorded, with responsibility for providing these reports allocated to a TAC staff member.

TAC should undertake a review the Funding Agreement (and the various delivery standards and guidelines) regularly so they are aware of their reporting requirements.

4.2 Review of delivery of each of the B6.1 services and service compliance

Background

In accordance with Schedule B6.1(a) of the Funding Agreement, TAC is required to provide the following services:

- Information, initial legal advice, minor assistance and referral;
- Duty lawyer assistance;
- Legal casework services for criminal, civil and family law matters; and
- Legal assistance for the conduct of Expensive Indigenous Case matters.

In accordance with Schedule B6.2 of the Funding Agreement, TAC is required to provide the following non legal services under the Indigenous Legal Assistance Activity:

- Community legal education, early intervention and prevention initiatives; and
- Advocacy and law reform.

In accordance with Schedule B6.2 of the Funding Agreement, TAC must comply with the following in delivering the above services:

- Indigenous Legal Assistance and Policy Reform Program Guidelines;
- Service Delivery Directions;
- Service Standards;
- Reporting Requirement; and
- Data Protocol.

Procedures / testing undertaken

In order to review TAC's compliance with Schedule B6 of the Funding Agreement, we:

- reviewed the relevant guidelines, directions and standards;
- reviewed procedures TAC has in place to ensure compliance with the Schedule B6 obligations;
- met with the TAC CEO and Beeton and Mansell Senior Lawyer based in Hobart, and discussed practically how TAC (and Beeton and Mansell) ensure compliance with the Schedule B6 obligations;
- selected a number of obligations / requirements from each of the guidelines, directions and standards, and tested to confirm that these were being met; and
- where applicable, reviewed documentation demonstrating that TAC has complied with the Clause 3 obligations.

We have set out in the table below a brief overview of the relevant guidelines, standards and requirements:

Overview of relevant guidelines, standards and requirements

Requirement	Overview of document and relevance to this compliance review
The ILAP Programme Guidelines ("the guidelines")	<ul style="list-style-type: none"> ▪ Issued by the Department, and the current version became operational in July 2014. ▪ The guidelines state that service providers must meet the various performance and accountability requirements set out in the Funding Agreement including the Service Delivery Directions and the Reporting Requirements.
Compliance with Service Delivery Directions	<ul style="list-style-type: none"> ▪ Issued by the Department, with the latest version dated July 2014. ▪ A required to be complied with when providing the activity under the Indigenous Legal Assistance Sub-Programme of the ILAP. ▪ The Service Delivery Directions cover: <ul style="list-style-type: none"> – Provision of services; – Eligibility criteria; – Expensive Indigenous case funding; – Relationships with other service providers; – Means testing and client contributions; – Recovery of costs; – Conflicts of interest principles; – Performance standards; – Administrative requirements; – Complaints and decision review procedures; and – Reporting using ABS remoteness structure.
Compliance with Service Standards	<ul style="list-style-type: none"> ▪ Issued by AGD and effective from July 2011. ▪ Sets out that ILAP providers must comply with five specific service standards, as follows: <ul style="list-style-type: none"> – Standard for the delivery of the activity; – Standard for accessibility and cultural sensitivity; – Standard for co-operation and relationships with other legal assistance service providers; – Standard for organisational management; and – Standard for assessing client satisfaction and managing complaints.

Requirement	Overview of document and relevance to this compliance review
Compliance with Reporting Requirements	<ul style="list-style-type: none"> Issued by the Department, with the latest version dated July 2014. Outlines that the provider must provide the Department with copies of the following policies and plans at the commencement of the Funding Agreement: <ul style="list-style-type: none"> the organisation's constitution; a service plan; a fraud control plan; and a disengagement plan. Outlines that the provider must submit the following reports in accordance with the frequency set out in Item E of the Schedule to the Funding Agreement: <ul style="list-style-type: none"> an annual accrual budget; annual reports; a financial acquittal report; income and expenditure reports; service standards reports; other audits provided for under section 10 of the Funding Agreement; and data reports satisfying the requirements in the Data Protocol.
Compliance with Data Protocol	<ul style="list-style-type: none"> Issued by the Department, with the latest version dated July 2014. Sets out that providers must provide the Department with Data Reports strictly in accordance with this Data Protocol and the Funding Agreement. Requires the provision of: <ul style="list-style-type: none"> header files (including data such as number of lawyers and number of other staff); client files (setting out background information on the client, noting that a client ID is used to protect client identity); and matter files (setting out details concerning each matter such as start date, type of matter and outcome).

Findings – summary of TAC's performance against the required services

In the table below we have summarised TAC's (including their subcontractor Beeton and Mansell's) performance against each of the services it is required to perform in accordance with the Funding Agreement.

Assessment of performance against each of the required services

Required service	Summary of TAC's performance of the service
Information, initial legal advice, minor assistance and referral.	<ul style="list-style-type: none"> Field Officers are responsible for identifying legal issues and clients. They are based in each of the regions and have relationships with the community. Field officers work closely with the Beeton and Mansell lawyers to ensure that matters that are required to be dealt with by a lawyer are escalated. Field Officers conduct the majority of the information, initial legal advice, minor assistance and referral work.
Duty lawyer assistance.	<ul style="list-style-type: none"> TAC (through Beeton and Mansell) provide duty lawyer services where required. However, TAC advised that service numbers are not high as only a small number of matters they receive are able to be settled in a day.
Legal casework services for criminal, civil and family law matters.	<ul style="list-style-type: none"> The majority of the legal work performed by TAC (Beeton and Mansell) is legal casework. All lawyers work across all practice areas, noting that the senior lawyer in Hobart almost exclusively conducts criminal matters. TAC do civil work but do not tend to be involved in large civil matters. In recent years there has been a decline in the volume of criminal cases, with an increase in civil and family matters.
Legal assistance for the conduct of Expensive Indigenous Case matters.	<ul style="list-style-type: none"> TAC has not been provided with Expensive Legal Case funding over the review period. TAC advised that the majority of cases do not meet the \$20,000 threshold, even for murder cases.
Work on the Royal Commission into Institutional Responses to Child Sexual Abuse.	<ul style="list-style-type: none"> TAC has a facilitative role working alongside and supporting the activities of "know more", which is an initiative of the National Association for Community Legal Centres. One TAC employee (Ruth Langford) conducts the work for TAC.

Required service	Summary of TAC's performance of the service
Community legal education, early intervention and prevention initiatives.	<ul style="list-style-type: none"> The legal education, early intervention and prevention initiatives are primarily conducted by the legal field officers and legal researchers.
Advocacy and law reform.	<ul style="list-style-type: none"> TAC advised that following recent amendments to the Funding Agreement, they are no longer permitted to conduct advocacy and law reform. Prior to this, it was a focus of TAC, with advocacy primarily conducted by the non lawyer staff members.

Findings – Compliance with guidelines, standards and requirements

We have set out in the table below our findings in respect of TAC's (including subcontractor Beeton and Mansell's) compliance against the relevant guidelines, standards and requirements in conducting the required services.

It is noted that Beeton and Mansell lawyers are made aware of the guidelines, standards and requirements through regular meetings with the TAC CEO. Beeton and Mansell retain copies of the relevant documents.

It is also through these regular meetings, and reporting of data, that TAC monitor Beeton and Mansell's compliance with guidelines, standards and requirements.

Results of compliance against relevant guidelines, standards and requirements in conducting the required services

Requirement	McGrathNicol observations and comments
Compliance with the ILAP Programme Guidelines (and preceding Programme Guidelines as appropriate.	<ul style="list-style-type: none"> From our testing we have not identified any areas of significant non-compliance with the ILAP Programme Guidelines.
Compliance with Service Delivery Directions.	<ul style="list-style-type: none"> From our testing we have not identified any areas of significant non-compliance with the Service Delivery Directions. However, it is difficult for us to confirm that TAC is in compliance with the requirement to provide services to eligible clients. We note that: <ul style="list-style-type: none"> The Department has received complaints from persons seeking legal aid as an Aboriginal, who have had their Aboriginality rejected by TAC. TAC has a policy document that sets out their approach to confirming an applicant's aboriginality. TAC advised us that they provide services to all Aboriginals, and any rejections on the grounds of Aboriginality are the result of frivolous claims. TAC advised us that in 2013-14 only six applicants were rejected. TAC provided us with examples of some of the claims where they were rejected on the grounds of Aboriginality. For the examples provided us it appears that the applicant provided insufficient evidence to support their Aboriginality. There is also evidence of TAC seeking confirmation of ancestry from the Archives Office of Tasmania. However, TAC does not keep a file of applications rejected, so we were unable to select an independent sample of persons considered ineligible as a result of not satisfying Aboriginality. We consider that it would be beneficial for TAC to keep a file for all applicants rejected for not satisfying Aboriginality. We also consider that it would be beneficial for TAC to include in their policy that where a dispute arises, evidence will be sought from the Archives Office of Tasmania.

Requirement	McGrathNicol observations and comments
Compliance with Service Standards.	<ul style="list-style-type: none"> ▪ The key requirements of the Service Standards are set out in the TAC Policy and Procedure Manual. ▪ From our testing TAC appears to be generally in compliance with the Service Standards. However, we note that: <ul style="list-style-type: none"> – Whilst TAC has satisfactory policies in place regarding the provision of legal services, they had to be printed to be provided to us, indicating that they are not in day to day use; and – TAC does not appear to publish brochures, pamphlets or other materials that are provided to clients detailing complaints procedures.
Compliance with Reporting Requirements.	<ul style="list-style-type: none"> ▪ From our testing we have not identified any areas of significant non-compliance with the Compliance and Reporting Requirements. ▪ From our testing we note that: <ul style="list-style-type: none"> – TAC's Fraud Control Policy has not been updated since 2008, and accordingly should be reviewed by TAC to confirm that it remains current; – TAC's disengagement plan (which is titled a "transition plan" by TAC) has not been updated by TAC since 2006, and accordingly should be reviewed by TAC to confirm that it remains current. ▪ Our testing is based on review of a sample of reports the Department and TAC have provided us. We have not attempted to confirm that TAC has met all of its reporting requirements over the period reviewed.
Compliance with Data Protocol.	<ul style="list-style-type: none"> ▪ From our testing we have not identified any areas of significant non-compliance with the Data Protocol.

Conclusion

As discussed further at Section 5.5 below, the relationship with Beeton and Mansell appears to be a subcontractor arrangement. TAC does not employ lawyers, but engages Beeton and Mansell through a retainer agreement to provide legal services. In assessing TAC's compliance with relevant guidelines, standards and requirements, we have also considered Beeton and Mansell's compliance.

From our review, we did not identify any:

- areas where TAC was not providing the services as required in accordance with Schedule B6.1(a) of the Funding Agreement; or
- areas where TAC was not providing the services as required in accordance with Schedule B6.2 of the Funding Agreement.

TAC appears to generally be in compliance with its obligations under Schedule B6.2 of the Funding Agreement. However, we note that:

- it is difficult for us to confirm that TAC is in compliance with the requirement to provide services to eligible clients. We consider that it would be beneficial for TAC to keep a file for all applicants rejected for not satisfying aboriginality. We also consider that it would be beneficial for TAC to include in their policy that where a dispute arises, evidence will be sought from the Archives Office of Tasmania;
- Whilst TAC has satisfactory policies in place regarding the provision of legal services, they had to be printed to be provided to us, indicating that they are not really in day to day use;
- TAC should maintain a file for all applications for legal representation that TAC rejects;
- TAC does not appear to publish brochures, pamphlets or other materials that are provided to clients detailing complaints procedures;
- TAC's Fraud Control Policy has not been updated since 2008, and accordingly should be reviewed by TAC to confirm that it remains current; and
- TAC's disengagement plan (which is titled a "transition plan" by TAC) has not been updated by TAC since 2006, and accordingly should be reviewed by TAC to confirm that it remains current.

5 Compliance review – expenditure

5.1 Review of financial management processes

Background

Organisations which receive Commonwealth funding should have policies and procedures that are sufficiently comprehensive to provide a control framework that reduces the risk of the misuse of Commonwealth funds and that are consistent with the principles of transparency and accountability.

Further, in accordance with clauses 5.1 and 5.2 of the TAC Funding Agreement, organisations are required to keep accurate records and accounts (including receipts, proof of purchase and invoices), to show how the organisation spend Department funding and carry out the activity (for which funding is provided). Further, these records and accounts must be maintained for at least five years after the activity period.

Procedures / testing undertaking

In order to determine whether TAC has met the above, we:

- discussed with TAC staff the organisation's financial management practices;
- reviewed TAC's Policy and Procedure Manual;
- accessed and reviewed TAC's financial management system;
- reviewed a range of financial transactions undertaken by TAC; and
- reviewed financial reporting provided by TAC.

Findings

Financial reporting

- Please refer to Section 4 of this report for our assessment of TAC's compliance with its financial reporting obligations required under its Funding Agreement and Section 6.3 for our assessment of the organisation's financial reporting to the TAC State Committee and the State Committee's oversight of financial affairs.

Financial management systems

Our findings with respect to our review of TAC's financial management systems are provided below:

- For the 2012 to 2014 financial years, TAC used the following financial management systems:
 - *XO* as its core accounting system. Prior to the 2011 financial year, TAC used MYOB. *XO* is a MYOB product with more advanced functions and greater ability to be tailored, and is considered by TAC to be a better accounting system for their purposes.
- In *XO*, transactions are coded to income, expenditure, asset, liability and equity account codes. TAC has set up specific account codes for the "Legal Service". As a result, TAC is able to generate a report for the Legal Service, that shows all of the expenditure of the Department grant, and any other funding attributed to the Legal Service. This report is able to be reconciled to TAC's audited financial statements.
- TAC receives significant funding from other Australian Government Departments; including:
 - The Department of Health; and
 - The Department of Prime Minister and Cabinet.
- In the 2014 financial year, the Department's funding of \$2,084,688 represented 13.8% of TAC's total income (grant plus other income) of \$15,155,121.

Allocation of administration costs

The table below sets out the administration costs allocated to Legal Services (and therefore the Department's funding) for each of the three years reviewed.

For the purposes of conducting the allocation of administration costs, TAC separates these into the following two categories:

- Administration costs that are operating expenses; and
- Administration costs that are salary expenses.

Allocation of administration costs to Legal Services

Year	Administration operating expenses allocated (\$) A	Administration salaries allocated (\$) B	Total administration costs allocated (\$) C = A + B
2011/12	151,487	306,524	458,011
2012/13	146,736	318,148	464,884
2013/14	153,827	355,450	509,277
Total	452,050	980,122	1,432,172

The table below sets out total administration costs actually charged by TAC to legal services as a percentage of the Department's funding.

Administration costs allocated as a percentage of the Department's funding

Year	Total administration costs allocated to Legal Services (\$) C	Total administration costs (\$) D	Administration costs allocated to Legal Services as a percentage of total administration costs (\$) = C / D
2011/12	458,011	2,601,991	17.6%
2012/13	464,884	2,550,576	18.2%
2013/14	509,277	2,755,220	18.4%
Total	1,432,172	7,907,787	18.1%

TAC advised McGrathNicol that it allocates administration costs to Legal Services (and other programs) based on the percentage the funding for the program represents of total TAC revenue.

Department revenue as a percentage of total revenue

Year	Department funding (\$) D	TAC grant revenue (\$) E	Department funding as a percentage of total revenue (\$) = D / E
2011/12	1,908,380	13,247,533	14.4%
2012/13	1,943,023	12,505,297	15.5%
2013/14	2,084,688	13,119,437	15.9%

Year	Department funding (\$) D	TAC grant revenue (\$) E	Department funding as a percentage of total revenue (\$) = D / E
Total	5,936,091	38,872,267	15.3%

Accordingly, it appears that TAC are allocating administration costs to Legal Services at a significantly higher percentage (18.1%) than the Department's funding represents of TAC's total grant funding (15.3%). The result is a potential over allocation of administration costs to Legal Services over the three years reviewed of \$222,281 calculated as:

Calculation of potential over allocation to Legal Services

	\$
The actual allocation to Legal Services at 18.1% of grant funding	1,432,172
The allocation to Legal Services based on 15.3% of grant funding	1,209,891
Difference	222,281

We raised this with TAC, and they advised that the key reason that the allocation to Legal Services is not in proportion is that for some sources of funding, TAC is not allowed to allocate administration costs. Examples of this are:

- Land Management IPA funding provided by the Department of Prime Minister and Cabinet is allocated administration costs at a maximum of 15%;
- There are a number of funding agreements (such as Department of Health ESB National Forum) that do not allow for the allocation of overhead salaries;
- Funding of approximately \$1 million over the past three years provided by Skills Tasmania was not allocated an administration charge;
- No administration charge was applied to "Working on Country" funding provided by the Department of Prime Minister and Cabinet of approximately \$710,000 provided in 2013/14; and
- TAC also advised that program funding that is likely to be one off is not allocated administration expenses.

The explanation provided by TAC appears reasonable, however, the Department may wish to consider whether it is appropriate for TAC to allocate administration costs in the manner outlined above.

Administration operating expenses

We have also conducted analysis of the composition of the administration operating expenses.

The most significant items of administration operating expenses are as follows (with approximate percentages based on 2013/14):

- Heating and power (10%);
- Telephone and postal (21%);
- IT support (12%);
- Insurance (6%);
- Rates (6%);
- Office (11%); and
- Repairs and Maintenance (26%).

Generally, the expenses detailed above are supported by invoices, and it appears reasonable that they are pooled as administration costs to be allocated. We also found from our review that these balances did not contain prohibited transactions (such as the payment of sitting fees, legal fees to settle employee disputes or overseas travel).

However, we note that the Repair and Maintenance balance includes the following amounts that have been allowed for as a "Building Upgrade Fund".

- \$10,000 in 2013/14;
- \$86,500 in 2012/13; and
- \$214,000 in 2011/12.

Although our review has not focussed on periods prior to the year end 30 June 2012, we note that the following amounts were also included for the Building Upgrade Fund in prior years:

- \$310,000 in 2010/11; and
- \$145,000 in 2009/10.

The effect of this is that the Department may be subsidising TAC's Building Upgrade Fund, as a percentage of the above amounts are allocated to the Department. Over the five years to 30 June 2014, a total of \$765,500 has been included in administration expenses for the Building Upgrade Fund.

TAC advised us that they believe they generate sufficient interest income from their own funds to enable them to meet the amount allocated to the Building Upgrade Fund.

TAC generated interest income on non-Department funds of \$464,359 over the five year period. Accordingly, the amount allocated to the Building Fund in excess of interest income is \$301,141. Of this amount 18.1% is allocated to Legal Services. Accordingly, Legal Services has contributed approximately \$54,000 to the Building Upgrade Fund over the past five financial years.

The Department may wish to consider whether it is appropriate for Department funding to be used by TAC to apply to a Building Upgrade Fund.

Motor vehicle costs

TAC allocates the costs of motor vehicles based on average operating lease expenses across the fleet of vehicles, rather than in accordance with the actual lease agreements with the third party lessors. TAC management claim that this approach has been adopted because it simplifies that administration of leases from an accounting perspective.

We have reviewed the calculations prepared by TAC and observed circumstances whereby the actual costs of the operating leases is both higher and lower than the costs being charged to Legal Services. The process adopted by TAC is unusual and is susceptible to the risk of cost shifting, however, no over-charging of lease costs was identified through our review of motor vehicles provided to Legal Services.

The Department may wish to consider whether it is appropriate for ILAP funding to be used by TAC to apply a notional internal motor vehicle operating lease charge rather than the actual cost of the lease as would ordinarily be expected.

Administration salary expenses

TAC advised McGrathNicol that this includes the following positions:

- The CEO (noting that from 1 July 2014 a proportion of the CEO salary will be directly allocated to Legal Services);
- The Finance team;
- Human resources staff; and
- Administrative staff.

Administration salary expenses include superannuation and workers compensation costs. The administration salaries pool also includes allowances for "redundancy reserves". TAC advised that over the past number of years they have sought to build up reserves to allow for redundancy costs to be met in the event TAC lost their funding and are forced to shut down.

TAC advised that they believe it was previously a requirement of the Department funding that TAC hold sufficient reserves to meet potential redundancy costs. To evidence this, TAC provided us with a copy of a "Certificate of Compliance", where they were required to attest that they had "sufficient resources to discharge all debts at the end of the current financial year". We do not read this as a requirement for TAC to hold sufficient reserves to meet redundancy costs.

The redundancy reserves appear to be in excess of the normal requirement under accounting standards for employers to provide for employee long service leave, annual leave and sick leave.

Over the period reviewed, the following amounts have been allocated to redundancy reserves:

- \$60,000 in 2013/14;
- \$0 in 2012/13; and
- \$133,549 in 2011/12.

Although our review has not focussed on periods prior to the year end 30 June 2012, we note that the following amounts were included for redundancy reserves in prior years:

- \$210,000 in 2010/11; and
- \$0 in 2009/10.

The effect of this is that the Department is subsidising TAC's setting aside of reserves for redundancy, as a percentage of the above amounts are allocated to the Department. Over the 5 years to 30 June 2014, a total of \$403,549 has been included in administration expenses for the redundancy reserve. Of this amount, 18.1% is allocated to Legal Services. Accordingly, Legal Services has contributed approximately \$73,000 to the redundancy reserve over the past five financial years.

The Department may wish to consider whether it is appropriate for ILAP funding to be used by TAC to apply to a redundancy reserve.

Administration of funds

Our findings in respect of TAC's approach to its administration of funds are provided below:

- For the period reviewed, TAC maintained bank accounts as follows:
 - an operating account with the Commonwealth Bank; and
 - various short term deposit accounts, which are used to earn a higher interest rate on funds that are surplus to immediate operating requirements.
- A separate bank account is not maintained for Department funding. The impact of a joint account is that Department funding cannot be immediately identified from other revenue sources. However, this is not considered to be a significant concern as all income and expenditure items are coded to a TAC "Branch" when entered into the accounting system. For example, code 7 designates Legal Services, and code 1 designates Administration. As a result, TAC is able to identify the cash held by each branch.
- We note that TAC does not maintain a separate solicitor trust account.
- TAC use the Commonwealth Bank's Diamond system for their on-line banking. TAC advised us that a key advantage of using Diamond is that it is able to readily allocate interest to various funding sources. Accordingly, TAC is able to separately identify interest earned on Legal Services funds. This interest is applied to the Legal Services Budget.

Bank reconciliations

- TAC undertakes monthly bank account reconciliations of its cash position. Bank reconciliations were sighted and no issues were identified.

Processing of supplier invoices

Our findings in respect of the processing of supplier invoices are provided below:

- TAC's process for the approval of general supplier invoices appears reasonable. Key steps include:

- Requests for purchases are to be made to an authorising officer and approval of the purchase order is to be signed by the authorising officer.
- There is segregation between the person responsible for authorising the auditor and the person in the Finance team responsible for setting up the payment in the finance system.
- Invoices and purchase orders are matched at the time of payment and paid accordingly.
- Payments are made either via cheque or Electronic Funds Transfer (“EFT”). Two signatories are required for cheque payments and EFT payments. There is segregation of duties between the person setting up the payment in the finance system and the persons authorising payment.
- TAC has five authorised cheque signatories. As two of the signatories are sisters (Heather Sculthorpe (CEO) and June Sculthorpe (TAC’s Policy Officer), they never sign together.
- Each supplier payment has a payment requisition form which has a number of fields for completion to ensure compliance with the policy and procedures manual for supplier payments.

Conclusion on financial management processes

Overall, TAC’s financial processes appear adequate and the processes are in place.

During our site visit, the majority of documentation was able to be provided quickly in respect of the financial information requested. As a result, it appears that TAC is in compliance with clause 5.2 of the Funding Agreement in respect of its requirement to maintain financial records.

TAC pools its administration costs and allocates these costs to programmes (including Legal Services). Whilst TAC advised us that the cost allocation is based on the proportion programme funding represents of total TAC funding, we found that in practice this is not the case, and some programmes are allocated no administration charges where the funding agreement does not allow this. This does not appear to be unreasonable.

We identified the following amounts that have been allocated to Legal Services, that the Department may wish to consider whether represents allowable expenditure in accordance with the Funding Agreement:

- \$222,281 in respect of the potential over allocation of administrative costs, noting that TAC has advised that it is not able to allocate administration costs to all programmes due to restrictions in funding agreements;
- \$54,000 in respect of amounts allocated to Legal Services to establish Building Upgrade Fund; and
- \$73,000 in respect of amounts allocated to Legal Services to establish a redundancy reserve.

It is noted that the above amounts are not cumulative, as part of the allocation for the Building Upgrade Fund and redundancy reserve are in the \$222,281 potential over allocation.

TAC allocates the costs of motor vehicles based on average operating lease expenses across the fleet of vehicles, rather than in accordance with the actual lease agreements with the third party lessors. The effect of these transactions is that TAC effectively subleases motor vehicles to Legal Services.

Possible organisational improvements

- TAC should document its cost allocation methodology, and provide this to the Department. TAC should not enter into funding agreements that do not allow for the charging of administration costs, where it will result in additional administration costs being borne by other programmes.
- The Department should consider whether TAC’s overall allocation approach results in an appropriate allocation of administration costs to Legal Services (which is funded using Department funds).
- The Department should consider whether the allocation of amounts to Legal Services to create reserves for the Building Upgrade Fund and the redundancy reserve is an appropriate use of Department funds.
- The Department may wish to consider whether it is appropriate for ILAP funding to be used by TAC to apply a notional internal motor vehicle operating lease charge rather than the actual cost of the lease as would ordinarily be expected. If the Department is satisfy that TAC’s approach is commercially reasonable, TAC should provide periodic reporting to the Department to confirm the arrangements remain fair and appropriate.

5.2 Review of prohibited expenditure

Background

Under clause 8 of the Funding Agreement, certain expenditure is specifically prohibited, including:

- making loans or gifts;
- payment of sitting fees to Directors or organisation members;
- for overseas travel;
- to relieve cash flow problems in other activities; and
- to settle or agree to consent orders in relation to, or otherwise resolve, any proceeding or application for reinstatement and/or wrongful dismissal by a current or former employee (without prior Departmental approval)

Under clause 8 of the Funding Agreement, ILAP funds cannot be used for the following purposes unless prior written consent was provided by the Department:

- to pay commissions, success bonuses or similar benefits to Directors, staff, members or consultants as payment for work undertaken;
- to reimburse Directors for their reasonable travel and accommodation expenses; and
- as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest.

Procedures / testing undertaken

In order to review TAC's compliance with clause 8 of the Funding Agreement, we searched TAC's accounting system for the period from 1 July 2011 to 30 June 2014 to identify any prohibited transactions, and identified whether any Department funding has been used on expenditure prohibited by clause 8 of the Funding Agreement.

Findings

Our findings are set out in the table below:

Results of prohibited expenditure testing

Category of expenditure	Testing	Results
Confirm that Department funds have not been used to make a loan.	We searched for "loan" in the TAC transaction listing for the 2012 to 2014 financial years. We also discussed loans with TAC senior management.	We identified no loan transactions for the 2012 to 2014 financial years. We were advised by TAC management that no Department funds have been used to make a loan to any parties, including staff.
Confirm that Department funds have not been used to pay for gifts.	We searched for "gift" in the TAC transaction listings for the 2012 to 2014 financial years. We also discussed with TAC senior management whether Department funds have not been used to pay for gifts.	We identified no gifts for the 2012 to 2014 financial years and TAC senior management confirmed that TAC has not used Department funds to pay for gifts.
Confirm that Department funds have not been used to pay for sitting fees.	We searched for "sitting fee" and "fee" in the TAC transaction listings for the 2012 to 2014 financial years. We also discussed with TAC senior management whether sitting fees are paid by TAC its board (state committee).	We found no record of Department funds being used to pay sitting fees to Board members. Senior management also confirmed that sitting fees are not paid by TAC to State Committee members.

Category of expenditure	Testing	Results
Confirm that Department funds have not been used to relieve cash flow issues in other areas.	We discussed TAC's cash management procedures, including the processes for allocating expenditure to funding sources (such as the Department).	Department funds do not appear to have been used to relieve cash flow issues in other areas and TAC has significant cash reserves which supports this conclusion. Please refer to Section 5.1 for further commentary regarding cash reserves held in connection with staff redundancies and building repairs and maintenance.
Confirm that Department funds have not been used to settle any amount in relation to employee disputes without the prior approval of the Department.	We searched for "settlement", "dismissal", and "payout" in the TAC transaction listings for the 2012 to 2014 financial years. We also enquired with senior management whether Department funds have been used to settle any amount in relation to employee disputes.	We found no record of Department funds being used for settlements or other payments in relation to employee disputes and TAC management advised that no such payments have been made.
Confirm that Department funds have not been used to reimburse Directors for their reasonable travel and accommodation expenses, without prior approval from the Department.	We reviewed a sample of travel payments to Board members (refer to section 5.6 for further discussion).	TAC provides travel costs to Board members (the State Committee). From our review of travel payments to Board members (refer to Section 5.6 for further discussion) we found no record of TAC seeking prior approval for travel payments.
Confirm that Department funds have not been used to pay commissions, success bonuses or similar benefits, without prior approval from the Department.	We searched for "bonus" and "commission" in the TAC transaction listings for the 2012 to 2014 financial years. We also enquired with senior management whether Department funds have not been used to pay commissions, success bonuses or similar benefits.	We found no record of any payments of commissions or bonuses to directors, staff, members or consultants and TAC senior management advised that no such payments have been made.
Determine whether any TAC assets or intellectual property has been used as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest.	We discussed with TAC management the existence of any loans. We conducted a search of the Personal Properties Securities Register to identify whether there are any charges registered over TAC assets. We reviewed TAC's audited financial statements to identify whether there are any loans taken out by TAC.	TAC management advised no loans have been obtained by TAC over the review period. Also, no TAC assets appear to have been used to secure a loan, credit, payment or other interest. We reviewed the TAC audited financial statements and found no loan accounts. The largest liability account is creditors. We have reviewed the creditors' schedules supporting the creditors balance in the audited financial statements, and found no loans and found no registered security interests in TAC.

Conclusion

We found that Department funds do not appear to have been used for prohibited expenditure over the review period.

Possible organisational improvements

TAC should discuss with the Department whether they can obtain standing approval for the payment of certain Board travel expenses where they are reasonable and in accordance with the Funding Agreement and TAC's Policy and Procedure Manual.

5.3 Review of travel expenditure

Background

Under clause 5.1 of the Funding Agreement, TAC must keep accurate records and accounts (including receipts, proof of purchase and invoices), to show how it spent Commonwealth funding and carried out its services. In addition, clause 8.2 states that TAC must not use Commonwealth funding for any overseas travel without prior written approval.

Procedures / testing undertaken

We reviewed a sample of travel expenditure and travel allowances undertaken by TAC staff and TAC Board members across the period from 1 July 2011 to 30 June 2014.

Findings

The results of our testing are provided in the table below:

Results of travel expense testing

Criteria	No.	%
All supporting documentation sighted / no issues identified	11	85%
Only partial supporting documentation sighted / provided	2	15%
No supporting documentation available / provided	Nil	Nil%
Total	13	100%

The results of our travel expense testing identified the following:

- There were 144 individual travel expenses over the period and the average cost of individual travel expenses was \$185; mostly comprising of meal reimbursement for staff, mileage claims and domestic travel and accommodation. No single travel expense was greater than \$2,000 over the period.
- The majority of travel is in connection with court appearances and some law conferences attended by Beeton & Mansell staff. Travel is not a significant expense in the context of TAC's business.
- Based on the sample of transactions tested, no overseas travel appears to have been undertaken that was funded by the Department.
- TAC was able to provide detailed supporting documentation for most travel expenses, including internal emails, purchase orders, and invoices from services providers. For two transactions tested, invoices and other supporting documentation was provided but it was unclear from the documentation what the purpose of the travel was, and whether it was for business purposes. For example, on one occasion there was reference to a Law Reform Conference in Canberra but no documentation was provided to verify the exact details of the conference.

Conclusion on compliance with the Funding Agreement

TAC has in place policies and procedures for the processing of payments for travel expenses and could mostly demonstrate compliance with its policies and procedures and clauses 5.1 and 5.2 of the Funding Agreement in relation to the sample of travel expenses tested.

Possible organisational improvements

TAC should ensure that adequate third-party supporting documentation is put on file to verify that travel expenses are for appropriate purposes and in accordance with clauses 5.1 and 5.2 of the Funding Agreement.

5.4 Review of credit card expenditure

Background

Under clause 5.1 of the Funding Agreement, TAC must keep accurate records and accounts (including receipts, proof of purchase and invoices), to show how it spent Commonwealth funding and carried out its services.

Procedures / testing undertaken

We have made enquires with management and reviewed *XO* and we have found no evidence that TAC had a corporate credit card over the review period.

Findings

No testing undertaken.

Conclusion on compliance with the Funding Agreement

No breach of clauses 5.1 and 5.2 of the Funding Agreement in respect of credit cards.

Possible organisational improvements (if applicable)

No applicable.

5.5 Review of the procurement of professional services

Background

In accordance with the TAC Policy and Procedure Manual, Section 11.1.2.4 requires that the Department's procurement guidelines must be met for expenditure over \$5,000.

Procedures / testing undertaken

In order to determine whether TAC has met its obligations under the Department's procurement guidelines, we reviewed TAC's procurement procedures, and tested material professional services procurements undertaken across the period from 1 July 2011 to 30 June 2014 to verify that the organisation complied with its procurement procedures.

Findings

The majority of TAC's contracts are procured for the benefit of the entire organisation and all its programs. As outlined in Section 5.1 above, Legal Services and Department Funding pays a proportion of these expenses through an administration charge.

Management have advised that TAC has no current standing contracts greater than \$5,000 per year that are entirely attributable to TAC Legal Services.

Arrangement with Beeton and Mansell

TAC has advised the Department that it is unable to employ individual lawyers as it is not permitted by the Law Society of Tasmania. Accordingly, TAC has an ongoing retention arrangement with Beeton and Mansell for the delivery of legal services in accordance with the ILAP Funding Agreement.

A retainer agreement between TAC and Beeton & Mansell was entered into in 2001.

In accordance with Clause 27.1 of the Funding Agreement, TAC is not permitted to enter into the subcontractor arrangement. TAC management advised that they do not consider the relationship with Beeton and Mansell to be a subcontractor relationship. However, as TAC and Beeton and Mansell are separate legal entities, we consider that this arrangement does constitute a subcontractor arrangement.

TAC meets the operating costs of Beeton & Mansell. We reviewed these costs and identified that they substantially consist of salary and salary related costs. We found that the salary costs do not appear to be unreasonable in comparison to salary costs paid by other ILAP providers for legal staff. We also did not identify and payments to Beeton and Mansell that could be considered to include a profit margin. TAC does not make any payments direct to Beeton and Mansell.

The arrangement with Beeton and Mansell states the following:

- Except with the approval of the TAC, Beeton & Mansell shall not undertake any work other than in accordance with referrals or requirements of the TAC; and
- Beeton and Mansell shall not be entitled to derive any fees or profit from the firm.

The agreement Beeton and Mansell appears to be appropriate given the requirements of the Tasmanian legislation. However, we note that the agreement has been entered into between TAC and Michael Mansell in his capacity as former Beeton and Mansell Principal. Given that Mr Mansell is no longer the Beeton and Mansell Principal, it may be appropriate for the new Beeton and Mansell Principal (Mark Doyle) to formally provide his consent to the agreement.

Conclusion on compliance with the Funding Agreement

TAC has detailed policy and procedures in relation to the procurement of material services contracts.

The arrangement with Beeton and Mansell appears to be appropriate given the requirements of the Law Society of Tasmania.

TAC's failure to obtain consent from the Department appears to represent a breach of Clause 27 of the Funding Agreement.

Possible organisational improvements (if applicable)

The retainer of Beeton and Mansell appears to be a subcontractor arrangement, and accordingly TAC should seek the Department's consent for this arrangement as required by Clause 27.1 of the Funding Agreement.

TAC should provide the Department with a copy of the retainer agreement with Beeton & Mansell, so that the Department can make an assessment of whether it is appropriate for it to provide consent for this subcontractor arrangement.

5.6 Review of payments to staff and Board members

5.6.1 Payment of staff salaries

Background

Salary costs comprised approximately 76% of TAC's legal services budget in 2013/14. This includes:

- Salaries for legal staff (who are employed by Beeton & Mansell);
- Salaries for legal support staff; and
- Salaries for administrative staff, for which an allocation is made to Legal Services (refer Section 5.1 for further discussion).

The focus of our testing in this section is on salaries for legal staff and legal support staff.

Procedures / testing undertaken

As part of our testing of the payment of staff salaries, we:

- reviewed records to confirm if each of the sampled employees had a letter of engagement;
- reviewed employment and payroll records for eight TAC employees (out of the total of 14 employees in Legal Services) to identify whether salary payments are in accordance with letters of engagement and award rates; and
- reviewed whether remuneration levels are in line with awards and duties.

Findings

All staff are employed and remunerated under the TAC Enterprise Agreement.

Eight TAC employees (out of the total of 14 employees in Legal Services) were sampled and the results of our salary testing identified the following:

- Employee files were available and reviewed for 100% of the employees selected for testing.
- Letters confirming employment with TAC were sighted for 100% of the employees selected for testing.

- Current position descriptions were sighted for 100% of the employees selected for testing.
- The most recent salary payments were consistent with their positions and contracts for all of the eight of employees selected for testing.

Conclusion on compliance with the TAC Policy and Procedure Manual

All staff are employed and remunerated under the TAC Enterprise Agreement.

Employee files were sighted for employees tested and recent salary payments appear consistent with their agreed salaries and contracts.

5.6.2 Payments to State Committee Members

Background

In accordance with clause 8.2 of the Funding Agreement, TAC must not use Commonwealth funding to pay sitting fees to State Committee Members of the TAC.

Procedures / testing undertaken

In order to review TAC's compliance with clause 8.2 of its Funding Agreement, we reviewed payments made to Board members, timing of Board meetings and travel records by search the general ledger and making enquiries with management.

Findings

Based on our review of the general ledger and our enquiries with management, no sitting fees were paid by TAC with Commonwealth funding to State Committee Members. Furthermore, our searches of the TAC's general ledger did not identify any other payments which would constitute a breach of the Funding Agreement.

Conclusion on compliance with the Funding Agreement

TAC appears to have been compliant with clause 8.2 of the Funding Agreement over the review period.

Possible organisational improvements (if applicable)

No possible organisational improvement identified.

5.7 Review of asset management

Background

In accordance with clause 13 of the Funding Agreement (which only applies if assets are purchased with Commonwealth funding):

- assets are only to be used in relation to delivering funded activities;
- the Department's prior written approval must be sought for the purchase of assets valued at greater than \$50,000;
- the provider must maintain ownership of the funded assets; and
- an asset register must be implemented and maintained for the duration of the funding agreement period.

Under clause 5.1 of the Funding Agreement, TAC must keep accurate records and accounts (including receipts, proof of purchase and invoices), to show how it spent Commonwealth funding and carried out its services.

Procedures / testing undertaken

In order to review TAC's compliance with clause 13 of the Funding Agreement, we reviewed a random sample of assets acquired and disposed of between 1 July 2011 and 30 June 2014.

Findings

Assets over \$50,000

TAC did not purchase any assets over \$50,000 in the 2012, 2013 and 2014 financial years using Department Funding.

Asset Register

Key assets (i.e. plant and equipment and library assets) are included on TAC's asset depreciation schedule.

Over the 2012, 2013 and 2014 financial years, TAC purchased \$146,292.67 in assets, primarily library assets.

TAC provided its asset depreciation schedule for the 2012, 2013 and 2014 financial years. Assets listed in asset register had a written down value of \$227,265.62 as at 2014 financial year end and we note the assets broadly fell under the categories of library, office equipment and power generation.

Conclusion on compliance with the Funding Agreement

TAC did not purchased any assets over \$50,000 in the 2012, 2013 and 2014 financial years with Department Funding and consequently no, Departmental approval was sought or required.

TAC prepares asset registers and asset depreciation schedules which appear in order and the asset purchases (less than \$50,000), were primarily for books, case law and other publications for the library. TAC was able to provide supporting documentation for the sampled asset transactions for the period under review.

Possible organisational improvements (if applicable)

No organisational improvements are suggested.

5.8 Review of other transactions

Background

As part of our review, we also reviewed a range of other transactions for the financial years ended 30 June 2012, 2013 and 2014. These transactions included a mix of the following:

- high value transactions;
- meeting expenses;
- conference expenses;
- refunds;
- insurance claims; and
- expensive case costs.

Conclusion in respect of other transactions

Nothing came to attention which raised any additional concerns in respect of these balances that are not already addressed in our report.

6 Compliance review – governance

6.1 Review of conflict of interest procedures

Background

In accordance with our scope, we reviewed the procedures that TAC has in place for identifying conflicts of interest.

In this section of the report, we have assessed TAC's procedures for identifying conflicts of interest relating to State Committee members and staff members. In respect of TAC's identification of whether it has a conflict of interest in respect of a client, we have addressed this at Section 4 of this report, in the context of the requirements of the Service Delivery Directions.

In accordance with clause 3.2 (h) of the Funding Agreement, TAC must notify the Department immediately if a conflict of interest arises, or could reasonably be perceived by other to have arisen, that may restrict TAC from undertaking the activity in a fair and independent way.

Procedures / testing undertaken

In order to review TAC's conflict of interest disclosure procedures, we:

- Reviewed TAC's Conflict of Interest Policy;
- Reviewed the available State Committee meeting minutes over the period; and
- Discussed conflict of interest procedures with the TAC CEO and the Finance Manager.

Findings

TAC has policies and procedures in place to prescribe the treatment and disclosure procedures for conflicts of interest. The policies and procedures do not specifically prescribe the requirement to notify the Department if a conflict of interest does arise.

During our review, we requested a copy of the conflict of interest register but it was not provided. Without the benefit of a conflict of interest register, we cannot determine whether or not TAC was treating and disclosing conflicts of interest appropriately during the review period.

Conclusion

TAC should retain and make available a conflict of interest register and have a standing agenda item in State Committee meetings that addresses conflicts of interest.

6.2 Review of Human Resources issues

Background

As the staff listing shows there are a number of surnames in common with Committee members and senior staff members, we sought to confirm that appropriate recruitment procedures are in place.

The TAC Policy and Procedure Manual includes a comprehensive policy on recruitment that requires:

- development of a position description and selection criteria;
- the advertisement of positions;
- applicants for positions to submit applications and CVs; and
- interviews (by a panel of three) for short listed applicants.

Procedures / testing undertaken

There were only three recruitments into Legal Services over the review period. For each of these three recruitments, we reviewed the employee file to identify evidence of compliance with the procedures set out in the Policy and Procedure Manual.

Findings

From our review of the recruitment processes, we found:

- Two of the staff members recruited were head hunted. Accordingly, there positions were not advertised. However, they were interviewed, and there are letters on file confirming their appointment and employment terms (including position description). A "direct recruitment" process is allowed by the Policies and Procedure Manual where a person has a particular qualification. Accordingly, the process followed and the documentation retained appears reasonable.
- For the remaining employee recruitment reviewed:
 - there is evidence of a duty statement and selection criteria for the position;
 - there is record of the position being advertised;
 - there is record of an application for the position being submitted; and
 - there is record of an interview by a selection panel.

Conclusion

From our review it appears that TAC follows the requirements set out in the Policy and Procedure Manual for staff recruitment.

Possible organisational improvements

No suggested improvements.

7 Financial health check

7.1 Financial performance

The following table highlights the financial performance of TAC for the years ended 30 June 2012, 2013 and 2014.

Financial performance (Statement of comprehensive income)	12 months to 30 June 2014	12 months to 30 June 2013	12 months to 30 June 2012	Comments
Total Revenue	\$15,155,121	\$14,719,177	\$14,788,606	TAC's total revenue increased over the period reviewed. TAC receives revenue from a number of sources including the Department of Health and the Department of Prime Minister and Cabinet. In FY14, Department funding represented only 13.8% of TAC's total revenue.
Less: Total Expenses	\$15,577,966	\$15,261,678	\$13,176,352	TAC's total expenses increased significantly in FY13 primarily due to an increase of \$1.8 million in depreciation expense.
Operating Profits	\$(422,845)	\$(542,501)	\$1,612,254	TAC did not generate an operating profit over the period reviewed except for the financial year ended 30 June 2012.
Less: Interest expense	\$nil	\$nil	\$nil	It appears TAC did not have any interest bearing debts over the period reviewed. Accordingly, TAC incurred no interest expense over the period.
Unexpended Grant Adjustments gain / (loss)	\$21,000	\$(260,425)	\$nil	
Net profit before tax	\$(401,845)	\$(802,926)	\$1,612,254	TAC's net profit before tax decreased sharply from a surplus of \$1.6 million on 30 June 2012 to a deficit of \$0.8 million on 30 June 2013. However, the deficit in the year ended 30 June 2014 has improved to \$0.4 million. Whilst losses are not sustainable longer term, TAC appears to have sufficient resources to absorb losses of this magnitude in the short to medium term.
Income tax benefit / (expense)	\$nil	\$nil	\$nil	N/A
Net profit / (loss)	\$(401,845)	\$(802,926)	\$1,612,254	Refer comments for net profit before tax above.

7.2 Financial position

The following table highlights the financial position of TAC as at 30 June 2014, 30 June 2013 and 30 June 2012.

Financial position (Statement of financial position)	12 months to 30 June 2014	12 months to 30 June 2013	12 months to 30 June 2012	Comments
Cash and Cash Equivalents	\$7,556,336	\$8,160,848	\$6,722,459	TAC held strong cash reserves over the period reviewed.
Current assets	\$7,661,441	\$8,281,137	\$6,821,409	TAC's current assets improved from the period ended 30 June 2012 to the period ended 30 June 2014. Current assets are substantially comprised of cash and cash equivalents.
Intangibles	\$nil	\$nil	\$nil	N/A
Non-current assets	\$11,306,192	\$10,841,841	\$13,006,407	TAC's non-current assets consisted of property, plant and equipment. TAC's non-current assets decreased from the period ended 30 June 2012 to the period ended 30 June 2014. The decline in FY13 appears to be due to an increased depreciation expense.
Total assets	\$18,967,633	\$19,122,978	\$19,827,816	TAC's total assets decreased slightly over the period reviewed.

Financial position (Statement of financial position)	12 months to 30 June 2014	12 months to 30 June 2013	12 months to 30 June 2012	Comments
Current liabilities	\$2,229,574	\$2,022,337	\$2,047,959	TAC's current liabilities increased by 8.9% over the period reviewed. TAC's current liabilities as at 30 June 2014 comprised grants in advance of \$403,651.
Non-current liabilities	\$761,905	\$722,642	\$598,932	TAC's non-current liabilities consisted of provisions for staff leave.
Total liabilities	\$2,991,479	\$2,744,979	\$2,646,891	TAC's total liabilities have increased by 13.02% over the period reviewed.
Accumulated funds	\$15,976,154	\$16,377,999	\$17,180,925	TAC's accumulated funds have decreased over the period of review. These movements are a result of the net profits / losses derived over the period.

7.3 Cash flow

The following table highlights the cash flow of TAC for the years ended 30 June 2014, 30 June 2013 and 30 June 2012.

Cash flow (Statement of cash flows)	12 months to 30 June 2014	12 months to 30 June 2013	12 months to 30 June 2012	Comments
EBITDA	\$1,266,136	\$1,839,632	\$3,079,923	TAC's EBITDA deteriorated over the period reviewed.
Proceeds from the sale of Property, Plant and Equipment	\$nil	\$nil	\$nil	N/A
Purchase of Property, Plant and Equipment	\$1,870,648	\$401,243	\$1,869,133	TAC invested significantly in property, plant and equipment in the FY12 and FY14 years.
Cash flow	\$(614,512)	\$1,438,389	\$1,210,790	TAC's cash flow deteriorated over the period reviewed, due to the investment in property, plant and equipment.

7.4 Ratio analysis

The following table details the results of the ratio and financial analysis conducted for TAC from its financial information for the years ended 30 June 2014, 30 June 2013 and 30 June 2012. Comments on these results have been provided where appropriate to highlight key issues.

Ratio / financial indicator	30 June 2014	30 June 2013	30 June 2012	Comments
Solvency ratios				
1. Current ratio	3.44	3.90	3.33	A current ratio of greater than one is considered to be satisfactory and indicates that TAC had the ability to meet its current liabilities with its current assets as at 30 June 2014. TAC's current ratio remained greater than one over the period reviewed.
2. Quick ratio	3.39	4.04	3.28	TAC's quick ratio was greater than one over the periods reviewed. A quick ratio of greater than one indicates that TAC could meet its short term financial obligations as and when they fell due.
Profitability ratios				
3. Interest Cover	N/A	N/A	N/A	TAC had no interest bearing debt over the period reviewed and consequently it also had no interest expense. Accordingly, the


Ratio / financial indicator	30 June 2014	30 June 2013	30 June 2012	Comments
				interest coverage ratio is not applicable to TAC.
4. Net Profit margin	(2.65%)	(5.45%)	(10.90%)	Net profit margin measures net profit / (loss) against total revenue. TAC's net profit margin improved in FY14, but TAC still derived a loss in this year. TAC appears to have sufficient reserves to meet losses in the short to medium term.
5. Return on Total Assets	(2.11%)	(4.12%)	8.64%	Return on total assets measures net profit / (loss) against total assets. TAC's return on total assets deteriorated in FY14. TAC's profit over the period appears to have been significantly impacted by the depreciation expense which has been quite variable, whilst other revenues and costs have been reasonably consistent. As a not-for-profit entity, it is expected that TAC would not generate substantial returns on its assets.
Financing ratios				
6. Debt to Equity ratio	18.72%	16.76%	15.41%	Debt to equity ratio is total liabilities compared to net assets. TAC's debt to equity ratio highlights that TAC is significantly funded by equity and in a strong financial position.
7. Tangible Net Assets	\$15,976,154	\$16,377,999	\$17,180,925	Tangible net assets is calculated as total tangible assets less total liabilities. It appears TAC had no intangible assets over the period reviewed. Consequently, TAC's tangible net assets was equal to TAC's net assets. TAC had a strong net asset position over the period reviewed.
8. AGD Funding as a % of Total Revenue	13.76%	14.61%	14.04%	The funding received by TAC from the Department remained broadly consistent over the review period.
Audit opinion				
9. Audit opinion	Unqualified	Unqualified	Unqualified	The auditors of TAC issued an unqualified opinion for all three years of the review period. The auditors were of the opinion that the financial statements for these periods represented a true and fair view of the financial activities based on proper books and records.

7.5 2015 Financial Year to date

- We reviewed the unaudited management accounts for the 2015 financial year.
- There does not appear to be anything which indicates that TAC's financial position has materially changed since 30 June 2014.

7.6 Conclusion – financial health check




Financial health check conclusion

Risk rating	Key findings
Low 	<p>As at 30 June 2014:</p> <ul style="list-style-type: none"> ▪ TAC's cash reserves were \$7,556,336. ▪ TAC had total net assets of \$15,976,154, indicating a strong net asset position. ▪ TAC had total current assets of \$5,431,867 and a current ratio of 3.44 suggesting that it can meet its currently liabilities comfortably with its available current assets. ▪ TAC had no interest bearing debt. <p>TAC experienced deteriorating EBITDA over the period from \$3,079,923 in FY12 to \$1,266,136 in FY14, but this is not considered to be a concern given its strong net asset position. Whilst TAC generated losses in FY13 and FY14 and losses are not sustainable longer term, TAC appears to have sufficient reserves to meet losses of this magnitude in the medium term.</p>

APPENDIX A: Risk ratings

The risk rating guide applicable to the compliance review financial health check are set out in the table below:

Risk ratings

Risk rating	Compliance review	Financial health check
Low 	The organisation appears to present a low risk of breaching the various obligations of its funding agreement.	The organisation appears to have a strong financial position.
Medium 	The organisation appears to present a medium risk of breaching the various obligations of its funding agreement.	The organisation appears to have a reasonable financial position.
High 	The organisation appears to present a high risk of breaching the various obligations of its funding agreement.	The organisation appears to have a weak or higher risk financial position.

APPENDIX B: Summary of potential organisational improvements and recommendations

The following table provides a summary of the suggested organisational improvements and general recommendations as a result of our review of TAC:

Summary of suggested organisational improvements and general recommendations

Compliance review – Service delivery		
Scope item	Finding	Suggested potential improvement and recommendations
Compliance with clause 3 obligations in carrying out services	<ul style="list-style-type: none"> From our review we did not identify any matters of significant non-compliance in respect of TAC's compliance with its obligations under clause 3 of the Funding Agreement. However, there is scope for TAC to improve its processes and reporting to the Department. 	<ul style="list-style-type: none"> TAC should ensure that the reporting obligations to the Department are clearly recorded, with responsibility for providing these reports allocated to a TAC staff member. TAC should undertake a review the Funding Agreement (and the various delivery standards and guidelines) regularly so they are aware of their reporting requirements. TAC should take steps to ensure its policies and procedures are more accessible and available to employees on a day to day basis. TAC should put in place periodic training and other internal communications to ensure that employees remain aware of TAC's policies and procedures. TAC should maintain a file for all applications for legal representation that TAC rejects. TAC should prepare and publish brochures or similar materials that are provided to clients detailing complaints procedures. TAC should review its Fraud Control Policy, consider whether it remains relevant and update it where appropriate TAC should review its transition plan, consider whether it remains relevant and update it where appropriate.
Conflict of interests	<ul style="list-style-type: none"> TAC does not maintain a conflict of interest register. 	<ul style="list-style-type: none"> TAC should maintain and make available a conflict of interest register to support its policies and procedures.

Compliance review – Expenditure

Scope item	Finding	Suggested potential improvement and recommendations
Review of financial management processes	<ul style="list-style-type: none"> TAC pools its administration costs and allocates these costs to programmes (including Legal Services). Whilst TAC advised us that the cost allocation is based on the proportion programme funding represents of total TAC funding, we found that in practice this is not the case, and some programmes are allocated no administration charges where the funding agreement does not allow this. This does not appear to be unreasonable. We identified the following amounts that have been allocated to Legal Services, that the Department may wish to consider whether represents allowable expenditure in accordance with the Funding Agreement: <ul style="list-style-type: none"> \$222,281 in respect of the potential over allocation of administrative costs, noting that TAC has advised that it is not able to allocate administration costs to all programmes due to restrictions in funding agreements; \$54,000 in respect of amounts allocated to Legal Services to establish Building Upgrade Fund; and \$73,000 in respect of amounts allocated to Legal Services to establish a redundancy reserve. It is noted that the above amounts are not cumulative, as part of the allocation for the Building Upgrade Fund and redundancy reserve are in the \$222,281 potential over allocation. TAC allocates the costs of motor vehicles based on average operating lease expenses across the fleet of vehicles, rather than in accordance with the actual lease agreements with the third party lessors. 	<ul style="list-style-type: none"> TAC should document its cost allocation methodology, and provide this to the Department. TAC should not enter into funding agreements that do not allow for the charging of administration costs, where it will result in additional administration costs being borne by other programmes. The Department should consider whether TAC's overall allocation approach results in an appropriate allocation of administration costs to Legal Services (which is funded using Department funds). The Department should consider whether the allocation of amounts to Legal Services to create reserves for the Building Upgrade Fund and the redundancy reserve is an appropriate use of Department funds. The Department may wish to consider whether it is appropriate for ILAP funding to be used by TAC to apply a notional internal motor vehicle operating lease charge rather than the actual cost of the lease as would ordinarily be expected.
Review of travel expenditure	<ul style="list-style-type: none"> TAC has in place policies and procedures for the processing of payments for travel expenses and could mostly demonstrate compliance with its policies and procedures and clauses 5.1 and 5.2 of the Funding Agreement in relation to the sample of travel expenses tested. 	<ul style="list-style-type: none"> TAC should ensure that adequate third-party supporting documentation is put on file to verify that travel expenses are for appropriate purposes and in accordance with clauses 5.1 and 5.2 of the Funding Agreement.

Compliance review – Expenditure

Review of procurement of professional services	<ul style="list-style-type: none"> TAC has advised the Department that it is unable to employ individual lawyers as it is not permitted by the Law Society of Tasmania. Accordingly, TAC has an ongoing retention arrangement with Beeton and Mansell for the delivery of legal services in accordance with the ILAP Funding Agreement. 	<ul style="list-style-type: none"> The relationship with Beeton and Mansell appears to be a subcontractor arrangement. In accordance with Clause 27 of the Funding Agreement, TAC should seek the Department's consent for this arrangement. TAC should provide the Department with a copy of the retainer agreement with Beeton & Mansell, so that the Department can make an assessment of whether it is appropriate for it to provide consent for this subcontractor arrangement. We note that the retainer agreement has been entered into between TAC and Michael Mansell in his former capacity as Beeton and Mansell Principal. Given that Mr Mansell is no longer the Beeton and Mansell Principal, it may be appropriate for the new Beeton and Mansell Principal (Mark Doyle) to formally provide his consent to the agreement.
--	--	--

Senator: Jacqui Lambie

Type of question: Questions on notice

Date set by the committee for the return of answer: 21 November 2016

Question

1. For the last 20 years – on a year by year basis and broken down into its different funding components - please lists and describe all commonwealth funding that has been delivered to:
 - A. Every Tasmanian state government department
 - B. Every community group, including for profit and not for profit organisations

Answer

Obtaining the level of detail requested would involve an unreasonable diversion of resources.

Question

2. Please explain why the Commonwealth recognises approximately 26 000 Tasmanians who are of the Aboriginal race – while the Tasmanian Government only recognises approximately up to 6 000 Tasmanians who are of Aboriginal race?

Answer:

The Attorney-General's Department is advised that the Department of the Prime Minister and Cabinet will respond to question two.

Question:

3. For the last 20 years - please detail the total cost of federal tribunals whose purpose, in part - was to visit Tasmania and make decisions and rulings on which Tasmanian residents were of Aboriginal race?

Answer:

The Attorney-General's Department has portfolio responsibility for the Administrative Appeals Tribunal (AAT).

The department requested the AAT to provide a response. In the time available, the department has confined its response to the AAT. The response provided by the AAT is as follows:

The AAT has identified from the annual reports for the last 20 years the AAT's total expenses for each year. The figures include depreciation. A yearly breakdown is provided below:

Fin year ending	Total expenses
2016	\$133,895,000
2015	\$37,726,000
2014	\$38,688,000
2013	\$37,803,000
2012	\$36,624,000
2011	\$36,265,000
2010	\$35,205,000
2009	\$33,302,000
2008	\$33,468,000
2007	\$32,276,000
2006	\$30,702,000
2005	\$29,639,000
2004	\$28,154,000
2003	\$26,284,000
2002	\$26,493,000
2001	\$26,959,000
2000	\$27,231,000
1999	\$27,021,000
1998	\$25,633,000
1997	\$24,879,000
20 year total:	\$728,247,000

Question

4. For the last 20 years - please list the total number of findings made by federal tribunals on the question of which Tasmanian residents were of Aboriginal race?

Answer

The department requested the AAT to provide a response. In the time available, the department has confined its response to the AAT. The response provided by the AAT is as follows:

The AAT conducts independent merits review of administrative decisions made under Commonwealth legislation. An application can be made to the AAT for a review of a decision if a law states that we can review the decision. The AAT has been able to identify the following applications that are relevant to the Senator's questions.

In 2002, the AAT received 136 applications for review of decisions made by the Independent Indigenous Advisory Committee under the *Aboriginal and Torres Strait Commission (Regional Council Election Rules) 1990*. The issue in each of the applications was whether the applicant was an indigenous person eligible to vote in an election for the Tasmanian Regional Council. Section 101 of the *Aboriginal and Torres Strait Islander Commission Act 1989* provided that a person could only vote in a regional council election if that person was an Aboriginal person or a Torres Strait Islander.

The 136 applications for review were finalised in the following ways:

- one application was withdrawn
- three applications were dismissed on the basis that the AAT did not have jurisdiction to review the decision
- in two applications, the Tribunal set aside the decision under review in accordance with terms of agreement reached by the parties under section 42C of the *Administrative Appeals Tribunal Act 1975*
- 130 applications were heard and decided by the Tribunal.

Question

5. For the last 20 years - please break down that number into those who were found to be of Aboriginal race – and those who were not considered not to be of Aboriginal race?

Answer

The department requested the AAT to provide a response. In the time available, the department has confined its response to the AAT. The response provided by the AAT is as follows:

Of the 130 applications that were heard and decided by the Tribunal, the Tribunal set aside the decision under review and found that the applicant was a person of the Aboriginal race of Australia in 129 of the applications. In one application, the decision of the Independent Indigenous Advisory Committee was affirmed. The Tribunal's decisions and reasons for decision are set out in *Patmore and Others and Independent Indigenous Advisory Committee* [2002] AATA 962.

Question

6. Was the federal government ever aware of the fact that Tasmanian residents who had participated in federal tribunals and who had been found to be of Aboriginal race – were subsequently not recognised as being of Aboriginal race by the State government – and/or TAC?

Answer

Obtaining the level of detail requested would involve an unreasonable diversion of resources.

Question

7. When did the federal government become aware of the above fact?

Answer

Obtaining the level of detail requested would involve an unreasonable diversion of resources.

Question

8. What action has the federal government taken to ensure that Tasmanian residents - who were found to be of Aboriginal race by federal tribunals – and who were subsequently denied their identity and basic democratic rights i.e. voting for indigenous board/body elections, by State government authorities – were not discriminated against, or had their human rights removed?

Answer

Obtaining the level of detail requested would involve an unreasonable diversion of resources.

Question

9. How many complaints have been made to the Human Rights Commission by Tasmanian residents who allege that they had their Human Rights taken or damaged or were discriminated against - by rulings made by Tasmanian state government departments who made decisions denying those people's indigenous heritage or Aboriginality?

Answer

The Attorney-General's Department has portfolio responsibility for the Australian Human Rights Commission (the Commission).

The department requested the Commission to provide a response. The response provided by the Commission is as follows:

Under section 11(1)(f) of the *Australian Human Rights Commission Act 1986*, the Commission can only inquire into alleged breaches of human rights by Commonwealth government departments. However, the Commission can investigate and attempt to conciliate complaints of unlawful discrimination on the basis of race and descent under the *Racial Discrimination Act 1975* (RDA).

As a timeframe has not been specified, the timeframe which has been assumed is twenty years. In the period 1 January 1996 to 17 November 2016, the Commission has received two complaints alleging discrimination under the RDA in relation to a Tasmanian state government department's assessment of the complainant's claim that they are of Aboriginal descent.