



## SUBMISSION BY THE NORTHERN LAND COUNCIL

### INQUIRY INTO COMMONWEALTH FINANCIAL STATEMENTS 2021–22

#### Introduction

The Northern Land Council (**NLC**) welcomes the opportunity to make this submission to the inquiry into Commonwealth Financial Statements 2021–22, based on Auditor-General Report No. 8 of 2022–23 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2022*.

#### Unresolved significant legislative breach

The NLC is pursuing a number of strategies to fulfil its statutory responsibilities to distribute payments received by the NLC in respect of Aboriginal land to, or for the benefit of, the traditional owners of the land, within six months after that amount is received (Report paras 2.93-2.95, 4.12.50-4.12.59).

Those strategies include:

- Consolidating benefits distribution workflow arrangements within a single functional structure, the Benefits Distribution Unit (**BDU**).
- Asking traditional owners to provide the NLC with:
  - distribution instructions for future land use agreement payments at the same time they provide the NLC with their consent to enter into the agreement; and
  - standing instructions in respect of existing land use agreements,to obviate the need for more frequent meetings to determine distribution requirements.
- Strengthening reporting arrangements to identify more accurately any amounts delayed, or which traditional owners ask the NLC to hold for longer than six months.

#### **Benefits Distribution Unit**

The BDU was established in late 2021 as a direct response to recommendations from a 2020 independent review of the NLC's royalty distribution processes and procedures. The NLC had commissioned the review to address earlier significant legislative breaches identified by the Australian National Audit Office (**ANAO**).

The BDU comprises four new staff trained for field consultations with traditional owners (a manager and three project officers) and staff reassigned from the NLC's Royalty Finance Unit and Anthropology Branch.

The BDU's priority tasks include:

- tracking the timing of receipts and payments (Report para 4.12.55);
- commissioning changes to the Royalty Trust Account software in order to identify, classify and analyse situations of delay in payment more accurately; and

- prioritising consultations with traditional owners for whom the NLC has been holding payments in respect of Aboriginal land for an extended period.

The BDU began consulting traditional owner groups on 16 September 2021, soon after recruitment of new staff. The BDU consults a traditional owner group comprehensively about all income from all sources payable to or for its benefit. A key priority for deciding which groups to meet earliest is the opportunity to distribute the largest total of funds held longer than six months.

In 2021-22, NLC consultations with traditional owners included 15 “money meetings” arranged only for this purpose. In the half year since (July-December 2022), there were 20 more of these. The BDU can arrange and pay for on-country consultations if this can result in distributing significant funds accumulated for longer than six months.

### ***Standing Instructions***

NLC officers in the Resources and Energy, Regional Development, Legal and Anthropology Branches have been directed to ask traditional owners for distribution instructions for future land use agreement payments at the same time they provide the NLC with their consent to enter into agreements under either section 19 or Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (Land Rights Act)*.

Members of the BDU have separately been meeting with traditional owner groups:

- To present them with a budget estimating future regular income from all land use agreements affecting their traditional lands; and
- To seek instructions on a standing payment arrangement for three years or more.

The above steps will ensure the NLC is positioned to distribute any payments it receives in respect of Aboriginal land to, or for the benefit of, the traditional owners of land subject to an agreement within the six-month statutory timeframe or other requested timeframe. For example, many groups request that they receive all annual payments due to them in December each year and thus shortly before Christmas.

Standing instructions remove the risk of delay in payment when a consultation cannot be arranged in time. The BDU has accumulated numerous sets of these standing payment arrangements and is developing a system for managing these, along with a method of evaluating the effect of these on accumulating balances.

### ***Strengthened Reporting***

By section 35(9) of the Land Rights Act, traditional owners to whom the NLC intends to make payments it receives in respect of Aboriginal land may request the NLC hold such payments for them on trust. The NLC frequently receives such requests from groups who wish to set aside all or part of their income for funeral, ceremonial or emergency purposes. Requests to hold funds are also received from groups who are in dispute and thus unable to reach agreement about the distribution of funds due to them.

The NLC’s earlier accounting software did not distinguish between funds which traditional owners requested the NLC to hold for them under section 35(9), and funds which the NLC had not otherwise been able to distribute within six months.

Prior to 2021, section 35(9) requests were often made at NLC on-country consultation meetings, but often not confirmed in writing, which sub-section 35(9) requires. During 2022,

the BDU has taken steps to identify all relevant written, formal and informal requests, and to begin more accurately to classify and to account for them.

As at 6 February 2023, traditional owner requests in writing to hold funds, in accordance with section 35(9), account for a total of \$8,357,631.47 of receipts to which the six-month payment requirement does not apply until a request is revoked.

The BDU is gradually processing these requests within the Royalty Trust Account system, and as at 6 February 2023 the system identifies a total of \$4,476,596.03 coded “H-12 s.35(9)”, by contract, individual receipt and requesting traditional owner group. The rest will be coded in time for 30 June 2023 annual reporting.

The BDU has identified many instances of informal requests from traditional owners not to distribute within six months of receipt, including:

- A request on 21 April 2021 during consultations with a traditional owners group that their receipts not be distributed until the end of a dispute resolution as to membership of their group. The request was approved by all senior members of that group at a large consultation on their country. Senior NLC staff, who are working on their dispute and who are familiar with this group, consider that to distribute money would seriously exacerbate their membership dispute. Because of this, on 6 February 2023 the NLC had accumulated \$881,970.94 for these traditional owners, including the \$655,075.18 which the NLC had sought to distribute on 21 April 2021.
- Standing instructions, which the traditional owners of a township in Arnhem land gave several years ago, and which they have refreshed annually since, that the NLC should hold certain funds for future investment purposes, and should accumulate their other annual income for up to 12 months, for payment just before Christmas. Necessarily this is a request to hold funds for more than six months, but it has not been made in writing under sub-section 35(9). On 6 February 2022 the NLC held \$3,360,632.90 under this informal arrangement.

The BDU has already formalised some of these informal requests, but requests accounting for \$4,945,588.69 remain informal as at 6 February 2023. The BDU will seek to confirm these in writing at review meetings with the traditional owners during 2023.

This makes a total of \$13,303,220.16 as at 6 February 2022, of formal sub-section 35(9), and other informal requests from traditional owners not to pay their money within six months. This is 33% of the \$40,122,295.92 in accumulated Aboriginal land receipts as at the same date.

### ***Effectiveness of the new strategies***

The NLC is closely monitoring and evaluating the changes it has made to its benefits distribution workflows to ensure they are achieving their purposes.

In this regard, at the close of the 2021-22 financial year:

- The NLC had distributed \$38.316 million in section 35(3) negotiated and section 35(4) rental land lease moneys (combined), an improvement on \$31.590 million for the previous year.

- Section 35(3) and (4) payments are of receipts pursuant to sections 15, 16, 19, 42, 43 and 44. All receipts which the NLC has been unable to distribute within the section 35 six months timeframe are receipts of these kinds.
- However, these kinds of receipts also increased, from a total of \$37.174 million in 2020-21 to \$44.521 million in 2021-22. This had an effect on total receipts held for more than six months.

In the six months from July-December 2022:

- The NLC distributed the following total amounts pursuant to sub-sections 35(3) and (4). All of this was income from lease, licence and negotiated resources agreements under sections 15,16,19,42,43 and 44.

Period	Total distributions ('000s)
1 July to 31 December 2020	\$17,958
1 July to 31 December 2021	\$21,178
1 July to 31 December 2022	\$22,302

The BDU began to deploy the strategies described above during the second half of 2021. The above figures give the NLC confidence that they are achieving their stated purpose.

### **2023 priority tasks**

This focus and effort will continue in 2023 in the following ways.

#### **Group apportionments**

An agreement area will often cover territory belonging to more than one traditional owner group. If all these groups give their informed consent under sub-section 23(3), the NLC is authorised to enter an agreement and it is unnecessary at that point to identify precisely which parts of the agreement area belong to each consenting group. Yet, when a rent-like receipt under the agreement must later be divided among groups, understanding each group's land share is important.

The BDU is commissioning research to delineate group estate areas within territory covered by minerals exploration, pastoral land use and other agreements. This will enable each traditional owner group's share of accumulated rent-like receipts to be calculated, in order then to consult each group about distribution.

A particular challenge is the vast Arnhem Land Aboriginal Land Trust and Port Keats/Daly River Aboriginal Land Trust, both granted as Schedule 1 Aboriginal land without the estate area research which accompanied traditional land claims. The BDU is currently seeking to devise a strategy to understand group territory boundaries better and earlier, in order to overcome delays in distribution.

As a result of projects commissioned in 2022:

- The NLC recently received a report on the traditional estates of eleven groups who share land within the Alawa Aboriginal Land Trust (Cox River Station). This particular research will resolve a land succession issue, and the validity of adoptions by senior people who have passed away, which impede distribution. The BDU is currently planning "money meetings" with the Alawa ALT groups this year, to distribute

\$348,401.49 which has accumulated since the succession issue arose, and to seek standing instructions on how to distribute expected future annual receipts.

- The NLC recently received a draft report on land tenure within the large Daly River/Port Keats Aboriginal Land Trust. While some areas require further on-country research, the BDU expects to be in a position shortly to allocate receipts for the majority of this ALT's numerous traditional owner groups, with a view to planning "money meetings".

### **Automated Group Held Funds**

In 2022 the NLC authorised BDU to calculate shares of rent-like receipts to which two or more traditional owner groups are entitled, by reference to the percentage of each group's land within the agreement area. Currently this is done manually by Excel spreadsheet.

A procedure has been developed for each new receipt in respect of such agreements to be divided and coded to a holding account, as a nominal or interim distribution, in the name of each group, automatically in the Royalty Trust Account system. During 2023 this will be implemented and will involve:

- analysing current balances, calculating each group's share of these balances (by spreadsheet);
- setting up holding accounts in each group's name in the Royalty Trust Account accounting system;
- transferring the calculated shares to the group holding accounts as a nominal distribution; and
- setting up automatic banker's standing instructions within the accounting system for the automatic percentage apportionment and for transfer to the holding accounts, at the time of receipt.

The NLC will continue to strengthen its accounting and records systems so that the Royalty Trust Account accounting system, which records by reference to Aboriginal Land Trust and individual contracts, can also report by reference to:

- individual traditional owner group, and
- the total of all receipts, or shares of receipts, to which a group is entitled under all contracts.

Once implemented fully, it should be possible, nearly "at a glance", to know the total funds to which a group is entitled. This will make possible a suite of improved information to inform traditional owner decision-making, budgeting and planning.

### ***Unallocated funds (Report para 4.12.59)***

The NLC's application to the Northern Territory Supreme Court in respect of the unallocated funds was heard on 7 September 2022 and judgment was reserved. The NLC is unable to take any further steps in respect of this matter until judgment is delivered.

## **Payroll exceptions**

The NLC has reviewed its Field Engagement Procedure for the engagement of casual staff in response to the non-material payroll errors identified in the 2021-22 audit.

Those errors all related to Casual Cultural Advisors who were engaged in the field in accordance with the NLC's policies and procedures.

Field engagements are limited to ad hoc casual employees and do not require prior manager approval. A copy of this Field Engagement Procedure was provided to the ANAO. This provides guidelines to field officers on their responsibilities when signing up casual employees in the field. This form is only to be used for ad hoc casual employees engaged very short-term, and with no likelihood of ongoing engagement. This is considered a very low risk approach to ensure the NLC can run its operations and remunerate in a timely manner.

However, the ANAO interpreted the procedure such that the field officer can sign up the casual employees but cannot approve the "Request to engage casual employee" form. By 'signing up' for the purpose of the Procedure, we meant that the field officer can approve the commencement of casual employee.

The NLC has amended the Field Engagement Procedure in a way we consider will satisfy the ANAO and will provide this during the 2022-23 audit.