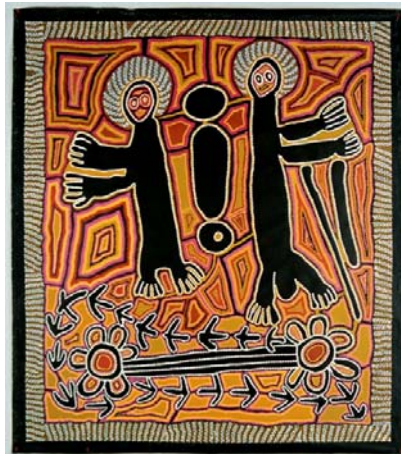




Australian Government

Department of Finance and Deregulation
Office of Evaluation and Audit (Indigenous Programs)

**PERFORMANCE AUDIT OF THE
NORTHERN TERRITORY
LAND COUNCILS**



JANUARY 2008

COVER IMAGE

Tingati Dreaming at Walukurtitje

2001

Linda Napaltjarri Syddick (1937 -)

acrylic on canvas

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ABBREVIATIONS

AAMC	Aboriginal Associations Management Centre; a section within the CLC administrative arm
AAPA	Aboriginal Areas Protection Authority
AASB	Australian Accounting Standards Board
ABA	Aboriginals Benefit Account
Aboriginal Land Commissioner	A person who is, or has been a judge, appointed by the Governor General to make decisions on matters relating to traditional ownership of land
Administrative Arm	Standard term within report to refer to the employed staff within the Land Council; used when necessary to separate the administrative and policy functions
AEC	Australian Electoral Commission
AIG	Aboriginal Investment Group; an external economic entity within the Northern Land Council region
ALC	Anindilyakwa Land Council
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>
ANAO	Australian National Audit Office
ATSI Act	<i>Aboriginal and Torres Strait Islander Act 2005</i>
Board	CAC Act term that translates to the Full Council when applied to the Land Councils
Board of Management	Generic term for the senior committee responsible for the day-to-day administration of the Land Council; ALC (Management Committee), CLC (Management Team), NLC (Senior Management Group), TLC (Management Committee)
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
Centrecorp	An external economic entity within the Central Land Council region facilitated and part-owned by the CLC
CEO	Chief Executive Officer
CLC	Central Land Council
Councillors	Appointed / elected members of the Land Councils
ELA	Exploration License Application
Executive Officer	Senior staff member of the Land Council
Executive sub-committees	Standard term within the report to refer to the sub-committee of the Full Council established and delegated to make policy decisions between Full Council meetings. For example, ALC (Executive Committee) and TLC (Management Committee)
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
Full Council	Standard term within the report to refer to the elected members of each Land Council; used when necessary to separate the policy and administrative functions
GEBIE	Groote Eylandt and Bickerton Island Enterprises - the Incorporated Aboriginal Association established by the Anindilyakwa Land Council

GEMCO	Groote Eylandt Mining Company
GIS	Geographic Information System
GSP	Great Southern Plantations – A listed company with forestry operations on the Tiwi Islands
KPI	Key Performance Indicator
Land claim	A claim by or on behalf of the traditional Aboriginal owners of the land arising out of their traditional ownership.
Larger Land Councils	Refers to the Central Land Council and Northern Land Council
LDC	Larrakia Development Corporation; an external economic entity for the Larrakia people (Darwin) within the Northern Land Council region
Mineral royalties	Royalties payable to the Australian or the Northern Territory Government in respect of the mining of minerals
NLC	Northern Land Council
Land Councils	Refers to the four Northern Territory Land Councils; Anindilyakwa, Central, Northern and Tiwi.
Pirntubula Pty Ltd	The trustee company for the Tiwi Islands Community Trust established by the TLC
Royalty Associations	Organisations established by Aboriginal people to receive distributions from mining royalty equivalents and other Land Use Agreement payments; predominantly Incorporated Aboriginal Associations
Sacred site	A site that is sacred to Aboriginal people or is otherwise of significance according to Aboriginal tradition.
Smaller Land Councils	Refers to the ALC and the TLC
The Office	The Office of Evaluation and Audit (Indigenous Programs)
TLC	Tiwi Land Council.
Traditional Aboriginal owner (or traditional owner)	A local descent group of Aboriginal people who: have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and are entitled by Aboriginal traditions to forage as of right over that land.

SUMMARY AND RECOMMENDATIONS

Executive Summary

Background

1. The Office of Evaluation and Audit (Indigenous Programs) (the Office) was requested by the former Parliamentary Secretary to the Minister for Finance and Administration on 23 November 2006 to audit the four Northern Territory Land Councils (Land Councils) established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).
2. Subsequent to recent amendments to the ALRA and the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act) the former Minister for Families, Community Services and Indigenous Affairs asked the Parliamentary Secretary to request the Office to audit the operations of the Land Councils in preparation of a move to “performance-based funding”.
3. The four Land Councils [Northern Land Council (NLC), Central Land Council (CLC), Tiwi Land Council (TLC) and Anindilyakwa Land Council (ALC)] were established under the ALRA. They are Statutory Authorities incorporated under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Their main function is to represent the traditional owners of the land within the Land Council’s area and to protect and advance their interests. The Aboriginals Benefit Account (ABA) is primarily funded by a special appropriation and this funding is equal to royalty payments received by the Australian and Northern Territory Government from mining projects on Aboriginal land. Amounts are debited from the ABA and payments made to the Land Councils under section 64 of the ALRA.
4. The ABA makes payments:
 - to Land Councils for meeting their administrative expenses
 - to Land Councils to distribute to incorporated Aboriginal Associations communities or groups affected by mining operations
 - as the responsible Minister directs, for the benefit of Northern Territory (NT) Aboriginal persons, for acquisition of leases and making of loans.
5. In 2005-06 the ABA distributed \$45.0 million to the Land Councils for administration [section 64(1) and 64(8)¹] and distribution [section 64(3)]. The breakdown was as follows:

2005-06 ABA distributions to Land Councils

Land Council	Funding provided for		
	Administration	Distribution	Total
NLC	\$14.4m	\$5.5m	\$19.9m
CLC	\$9.5m	\$2.4m	\$11.9m
ALC	\$0.9m	\$11.0m	\$11.9m
TLC	\$1.3m	-	\$1.3m
Total	\$26.1m	\$18.9m	\$45.0m

Source: Aboriginals Benefit Account Annual Report 2005-06

6. The Land Councils also receive funding from other sources, such as Special Purpose Grants and raise revenue from the provision of goods and services and interest on deposits.

¹ Only the CLC and ALC received s64(8) funding in 2005-06

Audit Objective

7. The objective of the audit was to assess the efficiency, effectiveness and economy of the management and administration of the Land Councils, including mechanisms for measuring the achievement of outcomes and benchmarking of performance.

Audit Scope and Focus

8. The audit sought to examine the:

- performance of Land Councils
- corporate governance of Land Councils
- key systems, processes and decision making mechanisms employed by Land Councils in their administration.

9. In addition, the audit sought to identify best practice across all Land Councils in the areas of resource allocation, decision making and overall operations in order to provide benchmarks for performance.

Key Findings

10. The findings of this report are based on audit field work conducted with each of the Land Councils between February and March 2007. Circumstances and findings relating to some Land Councils have changed since then.

Performance of Land Councils

11. The Office found a lack of coherent, useful data to support accurate analysis and comparison of Land Council performance. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) introduced a new performance framework (the Outcome/Outputs Framework) in 2006 which had not been in use long enough for the Office to assess its effectiveness; however the Office found an absence of Key Performance Indicators (KPIs) for the Outcome/Outputs Framework. The Office also found that the priorities and work of the Land Councils is changing from focusing on land claim activities to land use activities.

Corporate Governance of Land Councils

12. Corporate governance was considered to be in a generally good state. The larger Land Councils demonstrated more robust corporate governance systems, with their corporate governance training material for Councillors considered best practice amongst Land Councils. However, neither the NLC nor the CLC ensured they owned the intellectual property for the training material. That said, the Office identified a number of improvements in corporate governance across the Land Councils that could be initiated. Notably, the Office found a lack of transparency surrounding Land Councils' dealings with external commercial entities they established to promote economic development, including Councillor appointments and positions within these entities. Identification of traditional owners by smaller Land Councils could also be improved through developing accurate and up to date traditional owner registers.

Administration of Land Councils

13. The Office found that efficient and effective administration of the Land Councils has been inhibited by the budgetary process. The deficit funding approach undertaken by FaHCSIA for ABA funding is not an optimal approach. It provides an incentive for Land Councils to maintain the status quo, even as their priorities are changing, due to a fear of losing existing funding. The Office also found that Land Councils should attempt to recover all costs associated with negotiating, managing and monitoring Land Use Agreements (LUAs) from parties seeking agreements instead of absorbing such costs.

Identification of better practices within Land Councils

14. In undertaking this audit, the Office identified a number of practices by Land Councils which were effective and worthy of consideration by other Land Councils. In particular, the following practices were noted:

- The development of the governance training and induction materials for Full Council members by the NLC and the CLC. The materials are clear, concise and tailored to the needs of the Aboriginal Councillors.
- The creation of the Aboriginal Associations Management Centre (AAMC) by the CLC supporting Aboriginal Associations on a fee for service basis.
- The implementation of a Managers' Training Program by the TLC aimed at identifying and developing Aboriginal people to take over leadership positions within the Land Council.

Conclusion

15. In most cases, the Land Councils are fulfilling their legislated functions under the ALRA and actively consult and engage with Aboriginal constituents. Recommendations have been provided in the report to remedy the few exceptions noted during the audit.

16. Whilst the Office could not make a definitive comparison on the performance of Land Councils, there is significant opportunity for improving the efficiency, effectiveness and economy of the Land Councils. The Office believes the key to improving Land Council performance lies in undertaking the following actions:

- Improving the Outcome/Outputs Reporting Framework by including KPIs and providing achievable and measurable outcomes.
- Implement a statement of expectation or intent that identifies and aligns the key priorities of the responsible Minister and Land Councils.
- Move from a deficit funding approach to the recommended two-pool funding approach.
- Encourage Land Councils to recover costs associated with negotiating, managing and monitoring LUAs.
- Providing some incentive to Land Councils to accurately cost and proactively seek to charge fee for service activities.

17. The Office is of the view that the ability of the Land Councils to effectively measure and enhance performance will significantly improve by utilising the recent changes to performance reporting processes by FaHCSIA and the additional recommendations provided in this report.

Families, Housing, Community Services and Indigenous Affairs Department Response

FaHCSIA welcomes the audit report into the operations of the Northern Territory Land Councils and is generally supportive of the recommendations. FaHCSIA also notes that the Land Councils are broadly in agreement with the recommendations contained in their respective Discussion Papers.

The report observes that the role of the Land Councils is evolving with an increasing emphasis being placed on land use activities. FaHCSIA will seek the support of the Minister to redevelop the Outcome/Outputs Framework and review the Budget Estimates process to better reflect this changing focus. This will further enhance the recent changes to the Aboriginal Land Rights (Northern Territory) Act 1976 ('the Act') which provide for Land Council administrative costs to be considered on the basis of performance and need.

FaHCSIA is supportive of the need to foster cross-sector cooperation in an effort to gain efficiencies across those areas identified in the report, including reporting, training, policy & procedures and system development. FaHCSIA will seek to work closely with the Land Councils to develop a uniform response where appropriate projects have been identified.

While FaHCSIA will continue to encourage the Land Councils to maximise self-generated income, the provision of incentives for the Land Councils to charge fees for services through the partial retention of recoveries requires further consideration of the legislative and administrative framework, including discussions with affected stakeholders. Allowing for the partial retention of recoveries would be inconsistent with current provisions of the Act which require the Land Councils to expend their monies in accordance with the Estimates approved by the Minister.

Legal advice suggests that FaHCSIA is not empowered to impose administrative requirements on Land Councils as envisaged in a number of the report recommendations. Legislation would be necessary to implement the relevant recommendations which will require consideration by government.

Recommendations

Recommendation 1

FaHCSIA should in consultation with the Land Councils redevelop the Outcome/ Outputs Reporting Framework. Specifically, the redevelopment should include

- introducing Key Performance Indicators (KPIs) for the output groups (a sample of possible KPIs that could be incorporated into the Framework have been provided in **Appendix 2**)
- introducing a specific, measurable and achievable outcome with clear articulation of how the range of outputs prescribed will result in that outcome being achieved
- measuring traditional owner satisfaction.

Recommendation 2

FaHCSIA should require the Land Councils to extend their performance management frameworks to improve the capacity to measure the effectiveness of Land Councils elected and administrative arms.

Specifically, FaHCSIA should require the Land Councils to:

- provide a formal process by which Councillors can raise performance issues at Full Council meetings. This may require a set time being allocated and a culturally sensitive approach being adopted
- provide a formal process to invite and manage feedback from other external stakeholders (including mining companies and other organisations engaged with Aboriginal people on land use activities). This process should be developed collectively by the Land Councils.

Recommendation 3

FaHCSIA should expedite the development of the Statements of Expectations and Intent between the Land Councils and the responsible Minister. These Statements should set clear frameworks of accountability between the Land Councils and the Minister, prioritise Land Councils' core work activities and be released publicly.

Recommendation 4

FaHCSIA should require the smaller Land Councils to identify and document the delegated functions, roles and responsibilities of their executive sub-committees (i.e. respectively, the Executive Committee and Management Committee). In addition, position descriptions detailing the role of executive sub-committee members should be developed and endorsed by the Full Council of the Land Council.

Recommendation 5

FaHCSIA should require the smaller Land Councils to develop appropriate governance training and induction materials for their Councillors that take account of language and literacy skills. Consideration should be given to adopting a collaborative approach and leveraging the existing work undertaken by the larger Land Councils in this area.

Recommendation 6

FaHCSIA should expedite the passing of a Ministerial Determination regarding the composition of Registers of Interest to allow Land Councils to implement a process consistent with the Minister's requirements.

Recommendation 7

FaHCSIA should require the Land Councils to clearly state and make publicly available, the linkages between the relations and operations of the Land Council and those of the external commercial entities operating within its region. The linkages which should be identified include:

- Councillors and staff who hold positions (paid or otherwise) with the commercial entity
- the shares or interests held by the Land Council in the commercial entity (such as voting rights and automatic board appointments)
- the programs, projects and activities conducted that involve both the Land Council and the entity
- the respective benefits that could be expected to accrue to Aboriginal people from the commercial activities.

Recommendation 8

FaHCSIA should require the Land Councils to identify and cost all of the in-kind support (or direct financial support) provided to their respective external commercial entities. Subsequently, FaHCSIA should require the assets and systems of the Land Council and the entity to be separated or, where economies of scale provide cost efficiencies, the costs involved be appropriately distributed between the organisations. All shared arrangements should be documented and made available to the Full Councils, Aboriginal constituents and FaHCSIA.

Recommendation 9

FaHCSIA should require the smaller Land Councils to ensure compliance with section 23(g)(ii) of the ALRA through maintenance of a current register of land trustees.

Recommendation 10

FaHCSIA should require each of the Land Councils to have an active process to provide assurance that traditional ownership is accurately recorded. This will improve the transparency of Land Council functions that require the identification of and consultation of traditional owners, or the distribution of payments to traditional owners through Aboriginal Associations.

Recommendation 11

FaHCSIA should require the smaller Land Councils to record in writing under the common seal of the Land Council the functions and powers delegated by the Full Council to persons and committees. To improve transparency, FaHCSIA should also require the functions and powers retained by the Full Council to be recorded to enable interested parties (including Councillors, constituents and staff) to clearly identify where responsibility for functions and powers reside within the Land Council.

Recommendation 12

FaHCSIA should review and redevelop the current budget process by:

- removing the deficit approach to funding the Land Councils
- introducing a two-pool approach (core administration pool and projects pool) to funding Land Councils which will balance the constant funding needs and the changing priorities of the Land Councils and the responsible Minister
- implementing a zero-based budget approach as the initial step in cooperation with the Land Councils to complement the 2006 ALRA amendments. This would establish the practical budget needs of the Land Councils and what functions will lie in the two proposed pools
- allocating funding to the Land Councils for multiple years. This will provide greater certainty for Land Councils and the responsible Minister when negotiating statements of expectations or intent and developing strategic plans
- in consultation with the Land Councils, developing a new budgetary template to align with and support the Outcome/Outputs Framework reporting requirements

Recommendation 13

FaHCSIA should develop a policy regarding cost recovery and fee for service that encourages economic development on Aboriginal land. This policy would give consideration to providing incentives for the Land Councils to charge fees for services. This could include developing a model to allow for partial retention of recoveries, depending on the quantum recovered, to be utilised in addition (rather than as an alternative) to core funding.

Recommendation 14

FaHCSIA should encourage Land Councils to cover all costs associated with land use agreements when negotiating LUAs. This should occur within the context of the proposed cost recovery and fee for service policy proposed in Recommendation 13.

Recommendation 15

FaHCSIA should require the Land Councils to include indicators in their strategic planning processes common to both their internal and external reporting requirements. This should include KPIs developed for the Outcome/Outputs Reporting Framework. This will improve transparency to external parties and allow for closer comparison of common activities across the Land Councils.

Recommendation 16

FaHCSIA should require the Land Councils to individually and collectively assess the risks to their organisations from an increasing difficulty in recruiting and retaining staff. Consideration should also be given to establishing a working group across each of the Land Councils to identify common causes and potential treatments. Treatments could include the introduction of succession planning strategies such as:

- provision of appropriate hand-over processes for new staff
- documentation of key systems and processes
- identification of Aboriginal-specific management roles
- enhancement of professional development programs
- opportunities to access the expertise of staff from other Land Councils, including the provision of specialist services.

Recommendation 17

FaHCSIA should review the structures and processes used by the AAMC to manage distributions to Aboriginal Associations and to determine whether it represents better practice, and should gain wider acceptance and use.

Recommendation 18

FaHCSIA should take an active role in facilitating coordination between the Land Councils to achieve efficiencies in areas such as training, reporting and system development.

Recommendation 19

FaHCSIA should require the Land Councils to develop a set of CEO instructions which outline:

- administrative policies and procedures that are readily available and accessible by staff
- a risk management plan
- an internal audit and review program.

BACKGROUND

1 Overview

Introduction

1.1 On 23 November 2006 the Office of Evaluation and Audit (Indigenous Programs) (the Office) was requested by the former Parliamentary Secretary to the Minister for Finance and Administration to audit the four Northern Territory Land Councils (Land Councils) established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The four Land Councils are:

- Northern Land Council (NLC)
- Central Land Council (CLC)
- Tiwi Land Council (TLC)
- Anindilyakwa Land Council (ALC).

1.2 By virtue of Part 4B of the *Aboriginal and Torres Strait Islander Act 2005*, the Office has the function of evaluating and auditing Indigenous programs administered by Australian Government bodies or organisations receiving funding under such programs. More specifically, under section 193X(1)(ca) the Office may, when requested by the Minister, audit or evaluate the activities or operations of a Land Council (within the meaning of the ALRA).

The Northern Territory Land Councils

1.3 The Land Councils were established under the ALRA and are statutory authorities incorporated under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). Their main function is to represent and advance the interests of Aboriginal people and traditional owners of Aboriginal land within the region of the Land Council. The Land Councils are primarily funded through the Aboriginals Benefit Account (ABA) from a special appropriation which is equal to a proportion of mining royalty equivalent payments received from mining activity on Aboriginal land. However, the Land Councils are sourcing an increasing amount of funding from other public and private sector sources.

1.4 Upon commencement of the ALRA, the NLC and the CLC were established to represent the Aboriginal people in the Northern Territory. The NLC covers the top half of the Northern Territory and includes approximately 563,000 square kilometres of land with an Aboriginal population in excess of 40,000 persons. The CLC covers the southern half of the Northern Territory and includes 771,747 square kilometres of land with an Aboriginal population of approximately 18,000 persons. There are in excess of 20 different Aboriginal languages spoken within the regions of the two larger Land Councils.

1.5 The two smaller Land Councils (the TLC and the ALC) were established subsequent to the commencement of the ALRA.

1.6 Established in 1978, the TLC covers the Bathurst and Melville Islands northwest of Darwin. The two islands total 7,800 square kilometres of land and have a permanent Aboriginal population of approximately 2,500 people. The Tiwi people have had a largely unrestricted use of their own land over many years and have a separate and singular identity.

1.7 Established in 1991, the ALC covers Groote Eylandt and Bickerton Island and is situated on the western side of the Gulf of Carpentaria approximately 600km east, southeast of Darwin. There are approximately 2,000 Aboriginal people living on the islands in three communities and a number of outstations. The Groote Eylandt Mining Company (GEMCO) mining operations on Groote Island predate the ALRA and provide a sizeable permanent and semi-permanent population of miners living on the island (in Alyangula).

The ALRA

1.8 The ALRA is an Act providing for the granting of Traditional Aboriginal Land in the Northern Territory for the benefit of Aboriginals, and for other purposes. Under this Act almost half of the Northern Territory's land has been granted to the traditional owners.

1.9 The sections within the ALRA and the *Aboriginal and Torres Strait Islander Act 2005* regarding Land Councils have been recently amended, resulting in the Minister for Families, Community Services and Indigenous Affairs requesting the Parliamentary Secretary to request the Office to audit the operations of the Land Councils in preparation of a move to "performance-based funding". The relevant amendments are provided as **Attachment A**. The most significant change to the ALRA that resulted in the request for this audit was the change to the administrative funding for Land Councils under section 64(1). The ALRA previously provided 40% of royalty equivalents to Land Councils based on the Aboriginal population in each area for administrative purposes. Under the amendments Land Councils will now be funded based on estimates approved by the responsible Minister.

Functions of the Land Councils

1.10 The functions of the Land Councils are set out under section 23 of the ALRA (**Attachment B**). These functions include:

- ascertaining and expressing the wishes and opinion of Aboriginal people living in the area as to the management of Aboriginal land
- protecting the interests of the traditional owners
- assisting Aboriginal people in the protection of sacred sites
- consulting Aboriginal people on proposals relating to the use of Aboriginal land
- negotiating with persons where the Land Council holds in escrow a deed of grant of land made to a land trust
- negotiating with persons desiring to obtain an estate or interest in land in the area of the Land Council
- assisting Aboriginal people in the area of the Land Council to carry out commercial activities
- assisting Aboriginal people in the area pursuing land claims.

The Aboriginals Benefit Account

1.11 The ABA is primarily funded by a special appropriation equal to royalty payments received by the Australian and Northern Territory Government from mining projects on Aboriginal land. Amounts are debited from the ABA and payments made to the Land Councils under section 64 of the ALRA. The ABA is a Special Account of the Australian Government established under the ALRA for the receipt and distribution of statutory royalty equivalent monies generated by mining in the Northern Territory. The Government's policy on the ABA is to ensure that the ABA is viable over the long term and funding is well targeted to achieve outcomes, particularly economic development. The ABA makes payments:

- to Land Councils for meeting their administrative expenses
- to Land Councils for distribution to incorporated Aboriginal Associations, communities or groups affected by mining operations
- as the responsible Minister directs for the benefit of Northern Territory (NT) Aboriginal persons, for acquisition of leases and making of loans.

1.12 Of the royalty equivalents paid into the ABA, the ALRA previously provided 40% to Land Councils based on the Aboriginal population in each area for administrative purposes [section 64(1) of the ALRA]. Due to the recent amendments to the ALRA, from 1 October 2006, section 64(1) administrative monies will be paid based on approval by the responsible Minister of estimates supplied by the Land Councils. Prior to the amendments, Land Councils could also receive additional money from the Minister under section 64(8) for administrative purposes if the Minister was satisfied that the Land Council could not meet its administrative costs under section 64(1). This clause has since been removed.

1.13 The recent amendments to the ALRA did not change the percentage of royalty equivalents distributed to Aboriginal Associations, communities or groups [section 64(3) of the ALRA] which remains at 30%. This money is distributed to Aboriginal organisations in areas affected by mining operations. The remaining royalty equivalents paid into the ABA is made available for payments at the discretion of the responsible Minister for the benefit of NT Aboriginal persons, for acquisition of leases and making loans. These payments may be subject to conditions. Unexpended royalty equivalents in any given financial year are used to build equity in the ABA.

Funding

1.14 In 2005-06 the ABA distributed \$45.0 million to the Land Councils for administration [section 64(1) and 64(8)²] and distribution [section 64(3)³]. The breakdown was as follows:

Table 1.1: 2005-06 ABA distributions to Land Councils

Land Council	Funding provided for		
	Administration	Distribution	Total
NLC	\$14.4m	\$5.5m	\$19.9m
CLC	\$9.5m	\$2.4m	\$11.9m
ALC	\$0.9m	\$11.0m	\$11.9m
TLC	\$1.3m	-	\$1.3m
Total	\$26.1m	\$18.9m	\$45.0m

Source: Aboriginals Benefit Account Annual Report 2005-06

1.15 The Land Councils also receive funding from other sources, such as Special Purpose Grants and raise revenue from the provision of goods and services and interest on deposits.

Reporting

1.16 Section 37 of the ALRA outlines the reporting requirements of the Land Councils (**Attachment C**). Being CAC Act bodies, the Land Councils must provide annual reports under section 9 of the CAC Act. The annual reports must be supplied to the responsible Minister by 15 October in the year in which the financial year ends.

² Only the CLC and the ALC received s64(8) funding in 2005-06

³ Aboriginals Benefit Account Annual Report 2005-2006

Audit Objective

1.17 The objective of the audit was to assess the efficiency, effectiveness and economy of the management and administration of the Land Councils, including mechanisms for measuring the achievement of outcomes and benchmarking of performance.

Audit Scope and Focus

1.18 The audit sought to examine the following:

- The performance of the Land Councils in terms of:
 - > the functions undertaken as articulated by the ALRA
 - > the provision of services, including achievement and reporting of outcomes and outputs
 - > the level of traditional owners' satisfaction with services provided by their Land Council.
- Corporate governance of the Land Councils including:
 - > decision making processes
 - > the use of internal controls and measures to address real or perceived conflicts of interest
 - > the operations of the boards including their compliance with legislative requirements.
- Key systems, processes and decision making mechanisms in place relating to the administration of the Land Councils including the:
 - > preparation and review of budgets
 - > use of operational and strategic plans
 - > staffing and human resource management
 - > allocation and administration of funds to Aboriginal Associations, royalty associations, communities and groups.

1.19 In addition, the audit sought to identify best practice across all Land Councils in the areas of resource allocation, decision making and overall operations in order to provide benchmarks for performance.

Methodology

1.20 To assess the efficiency, effectiveness and economy of the management and administration of the Land Councils, the audit included:

- discussions with relevant staff and directors of the Land Councils and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
- general research into the operations and administration of the Land Councils
- analysis of key systems and processes relating to the administration of the Land Councils
- examination of Land Council policies and procedures
- review of key documents and data.

Acknowledgement

1.21 The Office would like to thank the management and staff of the Land Councils for the generous cooperation and assistance they provided during the course of the audit.

1.22 The Office also wishes to thank the management and staff of FaHCSIA for their cooperation and assistance during the audit.

Exit Discussions

1.23 Exit discussions were held with management of each of the Land Councils visited, where findings and tentative recommendations were discussed with management and/or Board members.

1.24 Subsequent to this, a Discussion Paper was issued to each Land Council, with the Land Council requested to respond to the findings appearing in the Discussion Paper.

1.25 This Audit Report has been prepared taking into account the content of each of the Discussion Papers, along with feedback received from the Land Councils and FaHCSIA.

AUDIT FINDINGS AND CONCLUSIONS

2 Performance of Land Councils

This segment of the report comments on the performance of Land Councils in terms of:

- > *frameworks in place to measure and report Land Council performance*
- > *measuring the activities of Land Councils, considering their functions under the ALRA established outputs and considered purpose*
- > *their changing priorities and work, and how this can be best promoted and measured.*

Key issues related to performance that were noted include:

- > *a poor performance framework for both promoting and measuring Land Council performance*
- > *a lack of useful and comparable performance data*
- > *non reporting of performance of Land Councils external economic development entities*
- > *no measurement of full council performance*
- > *no formal assessment of traditional owner satisfaction*
- > *a need to establish a clear framework of accountability between the responsible Minister and Land Councils which recognises the changing nature of Land Councils work.*

Background

2.1 The Office sought to analyse performance of the Land Councils in relation to their functions as stated within the ALRA. Underpinning these functions is the requirement to ascertain and express the wishes and the opinion of Aboriginal people living in the area of the Land Council. The requirement to consult with Aboriginal people is repeatedly emphasised within the legislation and, in response, the Land Councils have consultation well embedded into their processes and operating ethos.

2.2 A problem the Office encountered when examining Land Council performance in relation to the functions expressed in the ALRA is the broadness of these stated functions. As a result, Land Councils appear to be attempting many different activities as required under the ALRA without clear agreement between the responsible Minister and the Land Councils on which activities Land Councils should be focusing. This lack of alignment between the responsible Minister and the Land Councils could be resolved through negotiating a Statement of Expectations and Intent between the responsible Minister and the Land Councils.

Promoting and measuring performance: the need for an effective performance framework

2.3 Moving to performance-based funding requires a robust performance measurement system be in place. Ideally this should:

- provide a means for the regular collection of information to enable assessment on how effectively an organisation is performing
- provide a way of understanding whether particular programs are meeting their stated objectives and whether funding should continue
- provide a way of focussing attention on achieving important outcomes and encouraging the establishment of goals and strategies to achieving these outcomes
- be able to both monitor progress of implementation to test whether the results are being achieved and if the strategies selected were appropriate
- be able to identify innovation and promising activities that could be used elsewhere or scaled up
- provide a link to a budget or resource allocation process so that performance information is considered in the decision making process on resources for ongoing and new initiatives.

2.4 The elements that would need to be in place for this include:

- a shared understanding of the program logic which has clearly stated goals, presents a reasonable theory about how all of the inputs, activities and outputs, and in what combination, lead to successful attainment of the goals
- a shared understanding of what success looks like in terms of these goals, including the achievements to look for on the way
- understanding what information can be collected and who will do it by when
- appropriate financial resources made available for monitoring and evaluation
- sufficient technical capacity and expertise
- a way of telling the performance story to decision makers.

2.5 While there are various arrangements in place relating to performance measurement, the Office does not consider there to be a sufficient basis for operating under a performance based funding approach.

2.6 Land Council performance is intended to be measured through the Outcome/Outputs Reporting Framework introduced by FaHCSIA in 2006. The Outcome/Outputs Framework identifies the required outcomes, output groups and outputs of the Land Councils (for both the ALRA and Native Title Act). On a triannual basis, the Land Councils are required to report performance against each of the outputs.

2.7 As mentioned earlier, the implementation of the Outcome/Outputs Reporting Framework is in its early stages and it is too soon to assess the effectiveness of the system for providing meaningful performance information on Land Council activity. However, the Office believes there are some issues which need to be addressed for the Outcome/Outputs Framework to be more effective.

2.8 First, the framework does not currently contain KPIs for each of the output groups or sub-outputs under these output group headings. Without appropriate performance indicators and measures it is not possible for the Land Councils or FaHCSIA to measure changes in performance over reporting periods. A longitudinal analysis of performance is of particular value as it assists in reviewing the effectiveness of programs and projects in delivering the required Land Council outputs. The absence of standardised KPIs also limits the ability to compare outputs across Land Councils and is a significant weakness of the Outcome/Outputs Reporting Framework.

2.9 Second, measurement of performance under the Outcome/Outputs Reporting Framework occurs at the output, rather than outcome, level. The outcome for the Land Councils is “enhanced social, political and economic participation and equity for Aboriginal people in the Land Council’s area as a result of the promotion, protection and advancement of their land right, other rights and interests.”

2.10 The complexity of the range and interrelationship of social and economic Australian Government policies prevents the Land Councils from being able to directly attribute their activities to this outcome. While there is a clear relationship between the Land Councils’ activities and social and economic participation for Aboriginal people, this outcome is also affected by a range of factors beyond the Land Council’s control, such as the provision of health and educational services. To this end, the outcome identified in the Framework may not be measurable, and may need to be adjusted to an outcome that is more readily controllable and influenced or facilitated by the Land Councils. FaHCSIA in cooperation with the Land Councils need to develop a program logic which demonstrates how achieving these outputs will advance the stated outcome.

2.11 Third, measurement of organisational performance across the Land Councils is impacted by an absence of relevant formalised systems and procedures for managing staff performance. Whilst the enterprise bargaining agreements of the larger Land Councils specifically refer to staff performance systems, these do not currently operate effectively within the Land Councils. As a result, it is difficult for managers within the Land Councils to provide objective staff assessments linked to the objectives of the Land Council and its business units.

2.12 Fourth, traditional owner satisfaction is not formally measured. All of the Land Councils informally monitor traditional owner satisfaction. The structure of the executive

and administrative arms of the Land Councils provide multiple feedback loops where traditional owners can provide feedback on the Full Council, the Chairman, individual Councillors and staff members. The three year cycle for the Full Council also provides traditional owners with the ability to change their representatives within the Full Council (and Regional Councils in the case of the larger Land Councils). However, there are no formal processes for undertaking this review and it is not currently linked to the Outcome/Outputs Reporting Framework.

2.13 Five, the absence of a statement of expectation from the responsible Minister to the Land Councils limits the ability of the Minister to assess performance against agreed activities and outputs.

Recommendation 1

FaHCSIA should in consultation with the Land Councils redevelop the Outcome/ Outputs Reporting Framework. Specifically, the redevelopment should include:

- introducing Key Performance Indicators (KPIs) for the output groups (a sample of possible KPIs that could be incorporated into the Framework have been provided in **Appendix 1**)
- introducing a specific, measurable and achievable outcome with clear articulation of how the range of outputs prescribed will result in that outcome being achieved
- measuring traditional owner satisfaction.

FaHCSIA Response:

Agree.

Performance at present: comparison of Land Council activities

2.14 The Office found a lack of consistency in performance data across the Land Councils, impacting its ability to compare the performances of Land Councils. In addition, the Office noted anomalies in the performance data collected for different purposes. For example, in a number of cases there is a lack of alignment between performance data in the ABA Annual reports, Land Council Annual Reports and triannual reports and specific data supplied by Land Councils throughout this audit.

2.15 By way of summary, the following tables have been prepared outlining major activities and performance for each of the Land Councils, which broadly correlates with their functions under the ALRA and the output groups provided under the Outcome/Outputs Framework. The tables should be used as an approximate guide to performance, as much of the data presented has been estimated, or extrapolated from original source material. In cases where adequate data has not been collected or provided, a hyphen (-) has been used in the relevant cell. Performance related to land claims and the purchase of land is not applicable (N/A) for the smaller Land Councils.

2.16 The following source documents were used to collect data for the table:

- Northern Land Council Annual Reports 2004 – 2005, 2005 – 2006
- Central Land Council Annual Reports 2004 – 2005, 2005 – 2006
- Tiwi Land Council Annual Reports 2004 – 2005, 2005 – 2006
- Anindilyakwa Land Council Annual Reports 2004 – 2005, 2005 – 2006
- Aboriginals Benefit Account Annual Report 2005 – 2006
- Northern Land Council Triannual Reports July – Oct 2006, Nov 2006 – Feb 2007
- Central Land Council Triannual Reports July – Oct 2006, Nov 2006 – Feb 2007
- Tiwi Land Council Triannual Reports July – Oct 2006, Nov 2006 – Feb 2007
- Anindilyakwa Land Council Triannual Reports July – Oct 2006, Nov 2006 – Feb 2007
- Aboriginal Land Commissioner Annual Report 2004 - 05
- Written advice from the office of the Aboriginal Land Commissioner (5 February 2007)
- CLC Land Management Report, March 2006.

2.17 Additional performance data is provided in **Appendix 2**

Table 2.1: Comparison of Land Council activities

Land Council Activities												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
Assist with Land Claims												
Total Land Claims Finalised	5	1	0	3	0	0	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding Land Claims	48	43	-	27 ⁴	24 ⁵	-	N/A	N/A	N/A	N/A	N/A	N/A
Pursue other avenues to acquire land												
Other acquisition (Titles granted)	1	1	-	-	3	0	N/A	N/A	N/A	N/A	N/A	N/A
Land Use Agreements (LUAs)												
Active LUAs	276	374	-	- ⁶	153	-	-	-	0	21	21	-
LUAs under consideration	85	85	-	-	-	14	-	-	0	27	31	-
Exploration Licence Agreements (ELAs)⁷												
ELAs finalised or with Minister	29	12	-	75	50	11	-	-	-	9	0	-
ELAs (& mining) received	22	55	-	50	65	66	-	-	-	-	5	2
ELAs outstanding	55	137	-	131	147	176	-	-	3	-	5	-
Issuing permits												
Permits Issued in period	14,104	22,260	7,775	3,499	3,486	1,793	426	433	200	2,578	4,289	3,005
Land and Sea Management												
Ranger Groups supported	34	32	33	3	4	6	1	1	1	0	2	2
Aboriginal participants	400	350	350	-	-	-	6	6	-	0	10	10

⁴ Figures determined from total figures less NLC figures

⁵ Figures determined from total figures less NLC figures

⁶ The CLC do not have LUA numbers available for 2004/05. However, they believe that their numbers had increased

⁷ The Office could not obtain data that reflected the number of active ELAs that Land Councils are managing

	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
Statutory payments (exc. Funerals)												
Number of payments made to TOs	1,180	1,455	758	-	-	-	-	-	-	-	-	-
Economic advancement of Aboriginal people												
Jobs created	-	415	>300	-	-	-	-	-	>3	16	47	>9
Assistance / advice provided	Current data collection does not allow for this to be measured accurately											
Public awareness of issues affecting Aboriginal people, their land and rights												
Lands rights news distributed	39,000	39,000	26,000	39,000	39,000	26,000	0	0	0	0	0	0
Seminars / conferences held	Current data collection does not allow for this to be measured accurately											
Advocacy and representation to the TOs and other clients												
Meetings held:												
Full Council	2	2	1	3	4	1	4	5	-	6	-	-
Exec. Council / Manage. Comm.	5	6	-	6	5	2	N/A	N/A	N/A	19	24	-
Regional Council	22	26	7	-	-	-	N/A	N/A	N/A	N/A	N/A	N/A
Cultural and heritage support to TOs												
Sacred site / work area clearances	-	-	-	-	85	>48	-	4	-	-	>4	-
Ceremonial and funeral assistance	166	204	-	194	191 ⁸	-	-	-	-	-	-	-
Resolution of land disputes												
Number of disputes in period	9	-	-	-	0	-	-	-	-	0	0	-
Number of disputes resolved	-	-	-	-	0	-	-	-	-	0	0	-

⁸ Funeral Assistance only

2.18 As apparent from the table above, there is a lack of consistent performance information from which to base an analysis of Land Council performance. There is some disjointed information surrounding core functions such as land claims, LUAs, ELAs and issuing of permits, however the information is inadequate to compare performance across the four Land Councils. There is also a problem in the type of information collected. For example, the Office was able to collect some data surrounding ELAs finalised, received and outstanding, however the Office could not obtain information surrounding the number of active ELAs as was possible for active LUAs.

2.19 There were also some noticeable gaps in the above table relating to important areas of Land Council performance. These include assistance in conducting commercial activities, full council performance and traditional owner satisfaction.

Assistance in conduct of commercial activities (ALRA function)

2.20 Section 23(1)(ea) of the ALRA requires the Land Council to assist Aboriginal people in the area of the Land Council to carry out commercial activities, without the Land Councils incurring any financial liability or financial benefit.

2.21 In response, all Land Councils have developed internal and external structures, programs and activities to assist Aboriginal people to carry out commercial activities and develop economic capacity within the community. In particular, each has established, or facilitated the establishment of, an external commercial entity to assist Aboriginal people with the investment of royalty and other Land Use Agreement payments and with the conduct of commercial activities.

2.22 Economic development for the benefit of Aboriginal people in the NT is a very important issue. However, the Office was unable to measure the performance of Land Councils achieving this as the scope of this audit did not extend to examining the external structures that the Land Councils have in place to achieve this function. However, it would appear that Land Councils have few arrangements in place to measure the performance of these entities. Notwithstanding, Land Councils should monitor the performance of these organisations in achieving this function and provide regular advice to their constituents on how these bodies provide benefits to them.

Full Council performance

2.23 The governance structures of the Land Councils impact upon the systems and processes available to measure their effectiveness. As such, it is necessary that the governance structures in place for the Full Council (and its sub-committees) and the administrative arm allow each Land Council to objectively and adequately measure the effectiveness of its own performance.

2.24 The Full Councils are nominated or elected by constituents to represent and express their views. Similar to the parliamentary system, the three year term of the Full Council provides a mechanism by which constituents are able to alter the composition of their Full Council if concerned about the effectiveness of the Land Council. Anecdotal evidence indicates that Land Councils are monitoring and managing the performance of their Councillors and, in some cases, have removed non-performing Councillors from the Full Council mid-term. Both the NLC and the CLC cited verbal examples where Councillors have been removed from Council because of breaches of the Code of Conduct.

2.25 In these circumstances Councillors were usually asked to step down. The TLC also cited an example where a Councillor had served gaol time and he was asked to step down. None of the Land Councils keep formal records of these actions.

2.26 Beyond the triennial election cycle, the Land Councils undertake no formal processes to assess the effectiveness of their Full Councils or executive sub-committees. Furthermore, there are no formal mechanisms within the Land Councils to assess traditional owner satisfaction with their performance.

2.27 The service charters of the Land Councils detail the expected performance of the elected and administrative arms as well as the feedback points that allow for Aboriginal constituents and other stakeholders to provide comment on effectiveness.

Recommendation 2

FaHCSIA should require the Land Councils to extend their performance management frameworks to improve the capacity to measure the effectiveness of Land Councils elected and administrative arms.

Specifically, FaHCSIA should require the Land Councils to:

- provide a formal process by which Councillors can raise performance issues at Full Council meetings. This may require a set time being allocated and a culturally sensitive approach being adopted
- provide a formal process to invite and manage feedback from other external stakeholders (including mining companies and other organisations engaged with Aboriginal people on land use activities). This process should be developed collectively by the Land Councils.

FaHCSIA Response:

Agree with qualification.

Legal advice suggests that empowering FaHCSIA to direct the Land Councils would require legislative amendment to the Aboriginal Land Rights (Northern Territory) Act 1976.

Traditional Owner Satisfaction

2.28 The ALRA established the Land Councils to represent and advance the interests of Aboriginal people and traditional owners of Aboriginal land within the region of the Land Council. As such, Land Councils should be satisfying traditional owners that they are advancing their interests. All of the Land Councils informally monitor traditional owner satisfaction. The structure of the executive and administrative arms of the Land Councils provide multiple feedback loops where traditional owners can provide feedback on the Full Council, the Chairman, individual Councillors and staff members. The three year cycle for the Full Council also provides traditional owners with the ability to change their representatives within the Full Council (and Regional Councils in the case of the NLC and the CLC). Inhibiting the effectiveness of feedback is the geographical isolation of a number of constituents within the larger Land Councils.

2.29 While the regional office structures of the larger Land Councils assist, even these offices are often a days travel away from some of the communities they service.

2.30 There is no formal measurement and reporting of traditional owner satisfaction by the Land Councils. While the Office recognises the difficulty in capturing and presenting this information in a useful manner there is a need to measure and report traditional owner satisfaction. The Outcome/Outputs Framework provides an opportunity for incorporating measurement of Full Council performance, including traditional owner satisfaction with the Land Council, although it will require further enhancement to incorporate these measures.

Performance in the future: the changing nature of Land Council work and priorities

2.31 The nature and priorities of Land Council work is changing and is likely to change further. As the amount of Aboriginal land secured through the ALRA increases, the importance and need for Aboriginal people to derive economic benefit from their land also increases. There is also a increasing push from Government to derive greater economic benefit. As a result, the relative importance of Land Council programs and activities relating to commercial activities is increased.

2.32 This presents a number of issues in relation to the management and administration of the Land Councils. Specifically:

- the impact on resources required to negotiate, manage and monitor an increasing number of LUAs
- the development and resourcing of ancillary programs and services that support LUAs
- the application of a fee for service to assist funding of programs and activities related to LUAs.

2.33 The draft reports from the Review of the Corporate Governance of Statutory Authorities and Office Holders (*Uhrig Review*) conducted in 2006 for each of the Land Councils identified that having a statement of expectations or intent between each of the Land Councils and the responsible Minister is better practice. This would recognise the changing nature of Land Council work and provide a clear framework of accountability between the Land Councils and the Minister.

2.34 The Office noted that the former Minister for Families, Community Services and Indigenous Affairs proposed to introduce Statements of Expectations and Intent for each Land Council. The former Minister for Finance and Administration supported this proposal and requested that these be issued and released publicly and as soon as possible.

Recommendation 3

FaHCSIA should expedite the development of the Statements of Expectations and Intent between the Land Councils and the responsible Minister. These Statements should set clear frameworks of accountability between the Land Councils and the Minister, prioritise Land Councils' core work activities and be released publicly.

FaHCSIA Response:

Agree.

Conclusion

2.35 The performance framework for promoting and monitoring Land Council performance is not yet adequate for a move to performance based funding and there is poor measurement of useful performance data. The Outcome/Outputs Framework is a beginning, however it requires further development, which include:

- a set of clear KPI's to monitor and compare performance of Land Councils
- setting outcomes that are relevant and achievable
- measurement of full council performance and traditional owner satisfaction
- Land Councils need to know what benefit their economic development entities are generating for Indigenous people in the NT.

2.36 Land Councils work is shifting from land claims activity to pursuing LUAs for Indigenous constituents. As a result it requires good planning, including the monitoring of performance of the Land Councils in providing these services to the traditional owners. With these changing priorities and breadth of activities legislated in the ALRA as Land Council functions, the responsible Minister needs to agree with Land Councils on what they are expected to prioritise as their core work. Having negotiated Statements of Expectations or Intent will provide alignment between the Land Councils and the responsible Minister on the Land Councils priorities which could then be used to assess future performance.

3 Corporate governance of Land Councils

This segment of the report comments on the state and effectiveness of corporate governance mechanisms within the Land Councils, with particular reference to:

- > *decision making processes within the Land Councils, including the Councillor selection processes*
- > *the management of conflicts of interest*
- > *the operations of their board and administrative arm, including their compliance with various legislative requirements.*

Key issues related to corporate governance that were noted include:

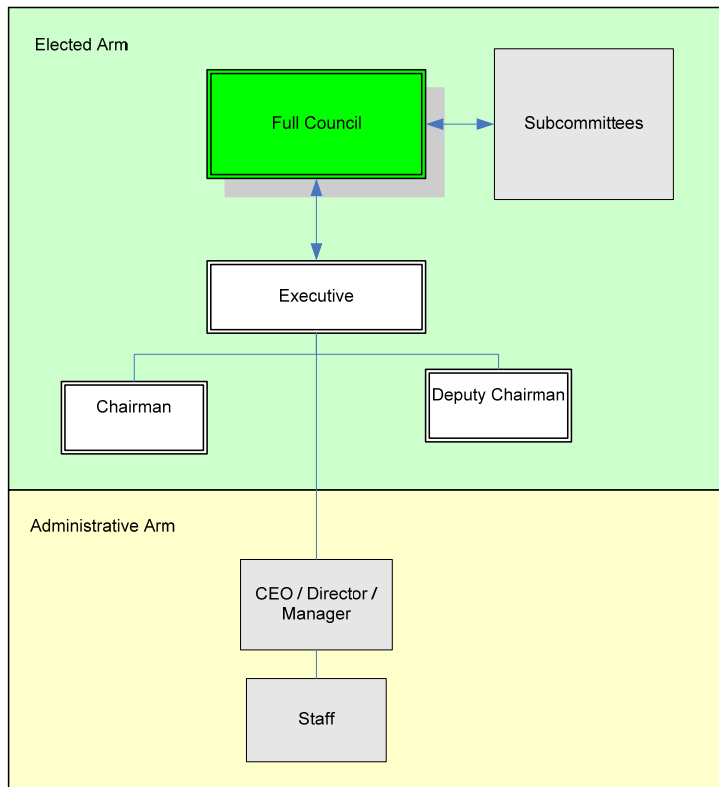
- > *good systems for selection of Councillors*
- > *good corporate governance training material of the larger Land Councils*
- > *poor systems for identifying and managing conflicts of interests*
- > *a lack of transparency surrounding Land Council and Councillor relationships with external commercial entities*
- > *a lack of accurate traditional owner identification in smaller Land Councils, resulting in a need for up-to-date traditional owner registers.*

Background

3.1 The Land Councils are Commonwealth statutory authorities that operate under the ALRA. The Land Councils are primarily representative bodies for Aboriginal people living in the Land Council area, with specific functions under section 23(1) of the ALRA. The Land Councils also have delegated functions and powers under other Australian and Northern Territory Government legislation and both the NLC and the CLC act as the Native Title Representative body under the *Native Title Act 1993*.

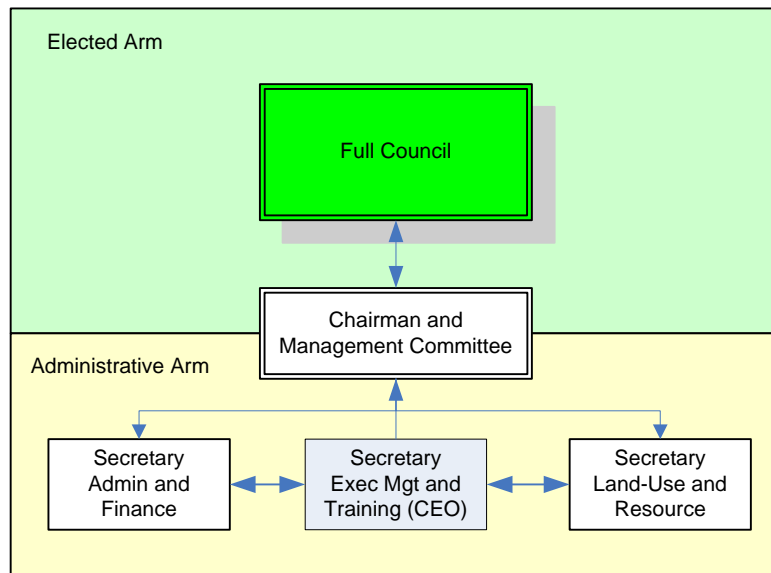
3.2 The NLC, CLC and the ALC all share similarities in their corporate governance and reporting arrangements. These arrangements are summarised in the following diagram:

Figure 3.1: Summarised Land Council Structure



3.3 The TLC governance structure is unique amongst the Land Councils. In 1995, a Management Committee reflecting traditional Tiwi decision-making processes was incorporated into the governance structure. The Management Committee was approved by the former Federal Minister for Aboriginal and Torres Strait Islander Affairs (Robert Tickner) pursuant to section 29A of the ALRA. Rather than applying a traditional executive and management division of responsibilities, the TLC has established a Management Committee comprising three Councillors (referred to as Managers).

3.4 The TLC Management Committee is responsible for making decisions relating to the day-to-day operations of the TLC. The Management Committee is supported by the administrative arm with the Secretary Executive Management (Chief Executive Officer (CEO)), Secretary Administration and Finance, and Secretary Land-Use and Resource reporting directly to the committee. The CEO does not have delegated authority over the other two secretary positions.

Figure 3.2: Tiwi Land Council Structure

3.5 A key feature of the TLC governance structure is that the three Councillors who operate as managers are all remunerated by the TLC. Unlike the other Land Councils or traditional CAC Act authorities, the three Managers have responsibilities in both the policy setting and administrative functions of the organisation.

Selection and support of Councillors

Selection processes

3.6 All of the Land Councils use a nomination process to select Councillors and an election process to determine the Chairman and Deputy Chairman of the Land Council. The process may be overseen by the Australian Electoral Commission (AEC). In situations where more nominations are received from communities than there are allocated positions on the Land Council for those communities, the AEC oversees the election of representatives to the Full Council. Each Land Council maintains membership documentation for the Full Council in accordance with section 29 of the ALRA.

3.7 The engagement of the AEC to oversee the nomination and endorsement of Councillors provides a level of assurance that due process is followed in selecting or electing representatives, whilst allowing traditional Aboriginal selection processes to operate (i.e. a consensus nomination from the clan removes the need for a ballot to be conducted by the AEC). The use of the AEC also provides assurance to stakeholders that the selection processes are open, transparent and in accordance with good governance principles, although in consensus nomination situations there is less transparency.

3.8 With the exception of the TLC, each of the Land Councils operates an executive sub-committee (drawn from the Full Council) with delegated functions and powers. The purpose of the executive sub-committee is to improve the efficiency of Land Council operations and decision-making between Full Council meetings. The election of persons to positions on the executive sub-committees is formally conducted and endorsed by the Full Council.

3.9 The TLC utilise their Management Committee in a similar, although more extensive, manner to the executive sub-committees. Unlike the executive sub-committees in other Land Councils, the TLC apply a 'succession planning' model where the incumbent managers identify and select their successors from the Full Council membership (encouraging the next generation of leaders to seek nomination to the Full Council).

3.10 Within the larger Land Councils (CLC and NLC), the respective roles and responsibilities of the Full Council, executive and other sub-committees, and the administrative arm are clearly expressed in their governance manuals and other documentation. The roles of the Chairman and Deputy Chairman are identified in the induction papers, as are the procedures relating to the conduct of Full Council meetings.

3.11 Within the smaller Land Councils (ALC and TLC), the respective roles and responsibilities of the executive sub-committee are not as clearly defined or communicated to internal and external stakeholders. By rectifying this situation, the smaller Land Councils would improve the transparency of their decision-making processes and allow external stakeholders including their Aboriginal constituents to better understand the decision-making processes within the Land Council.

Available skills and capability

3.12 The selection criteria and processes for appointing members of a Land Council (Councillors) are substantially different to other CAC Act boards (where appointments are usually made by the responsible Minister). The primary selection criterion for Councillors is the ability to represent and express the wishes of the Aboriginal people within their community. Land Councils indicated that, as a rule it is more important that a Councillor has the respect and support of community elders than specific technical and administrative expertise to operate as a board member. This can result in Councillors lacking a range of financial and commercial skills or knowledge that may be necessary to promote economic outcomes utilising Indigenous land. As a result, Councillors and Land Councils are more dependent on their administrative arms. This said, the Office noted that the NLC had provided basic accounting and financial skills training to some of their Councillors via a specialised program designed by the Aboriginal Investment Group.

3.13 The Office believes that a range of options could be considered to increase financial and commercial knowledge of Land Council boards. These options could include corporate governance training to enable better discharge of duties under the ALRA and CAC Act (such as utilising the training material of the larger Land Councils), considering the current approach to board composition, and considering the establishment of sub-committees that utilise independent individuals with the requisite financial and commercial knowledge and Councillors to promote economic outcomes.

3.14 There are two additional factors that compound the challenge for Land Councils in sourcing capable Councillors to serve on their Full Council and executive sub-committees.

3.15 First, a significant proportion of Aboriginal people speak English as a second or third language. For the smaller Land Councils where a single language is spoken throughout the Land Council region, the primary challenge is ensuring that all Councillors understand the issues discussed at meetings (especially when there are concepts that do not have an equivalent in Aboriginal culture). Often meetings are conducted in the region's primary language and translated into English to minute the meeting. For the larger Land Councils where there are multiple Aboriginal languages within the region, there is the additional challenge of translating and conducting discussions in a number of languages. Similar to the smaller Land Councils, the official records of meetings are subsequently recorded in English.

3.16 Second, the low level of literacy and numeracy within Aboriginal communities often impacts upon the administrative capabilities of Councillors and subsequently the style and content of communications at Full Council and executive sub-committee meetings by requiring a greater number of verbal briefings and communications by administrative staff in comparison to other CAC Act boards.

3.17 In response, the larger Land Councils have developed comprehensive induction and governance training material for their Councillors that take account of language and literacy barriers to effective participation by using simple language and diagrams. These were initially developed by an external cross-cultural consultant for one of the Land Councils and then on-sold to the other Land Council. In both cases, Councillors are provided materials in a range of formats that includes a handbook containing a range of relevant governance and operational information.

3.18 The combination of the training materials provides an excellent platform for ensuring that Councillors have the necessary skills and understanding to make informed decisions. It is important that the training material is utilised through a suitable delivery method.

3.19 The smaller Land Councils do not have comparable governance training materials for their Councillors. The costs associated in independently developing similar programs would be prohibitive and the process would involve a significant duplication of effort. Rather, the joint development of governance training programs and materials offers the Land Councils an opportunity for collaboration and cost efficiencies.

Recommendation 4

FaHCSIA should require the smaller Land Councils to identify and document the delegated functions, roles and responsibilities of their executive sub-committees (i.e. respectively, the Executive Committee and Management Committee). In addition, position descriptions detailing the role of executive sub-committee members should be developed and endorsed by the Full Council of the Land Council.

FaHCSIA Response:

Agree.

Recommendation 5

FaHCSIA should require the smaller Land Councils to develop appropriate governance training and induction materials for their Councillors that take account of language and literacy skills. Consideration should be given to adopting a collaborative approach and leveraging the existing work undertaken by the larger Land Councils in this area.

FaHCSIA Response:

Agree.

Managing conflicts of interest

3.20 The 2006 amendments to the ALRA included the insertion of section 29AA (Register of interests of members of Land Council). Under section 29AA, each member of a Land Council is required to make written disclosures of their direct or indirect pecuniary interests in accordance with a determination of the responsible Minister.

3.21 Each of the Land Councils had developed different reporting arrangements to manage actual or perceived conflicts of interest. All four Land Councils require their Councillors to sign either a 'Code of Conduct' or a 'Declaration by Executive Members' form upon the commencement of their term. These documents are intended to provide guidance to Councillors on expected and acceptable decision-making practices and provide assurance that their conduct aligns with Part 3 Division 4 of the CAC Act. The larger Land Councils support their documentation through their governance training manual.

3.22 There are two key issues for Land Councils in relation to the management of actual and perceived conflicts of interest.

3.23 First, the traditional decision-making processes and clan hierarchies within Aboriginal communities do not necessarily align with due process expected of CAC Act boards. The senior elders within a community are empowered with the responsibility of making the key decisions that impact upon their community. The concepts of 'conflicts of interest' do not always necessarily align with traditional decision-making within Aboriginal communities making it more difficult for Councillors to identify situations where there is an actual or perceived conflict of interest. The corporate governance training of the larger Land Councils addresses this issue to some extent.

3.24 Second, in many Aboriginal communities there are a small number of people with the seniority and technical capacity to hold positions of authority. The people who are Councillors on the Land Councils are often also members of the Land Trust directly involved with major projects within the community or on the governing body of the external economic entities.

3.25 As a result, it is possible to expect that there would be a number of instances where Councillors have an actual or perceived conflict of interest in a matter. This increases the need for transparent decision-making in order for Land Councils to provide assurance to their stakeholders that Councillors decisions are in the best interests of all constituents. The development of the registers of interest will determine the extent of conflicts of interest and provide greater transparency in the decision making process.

Recommendation 6

FaHCSIA should expedite the passing of a Ministerial Determination regarding the composition of Registers of Interest to allow Land Councils to implement a process consistent with the Minister’s requirements.

FaHCSIA Response:

Agree.

Assistance in conduct of commercial activities (ALRA function)

3.26 Section 23(1)(ea) of the ALRA requires the Land Council to assist Aboriginal people in the area of the Land Council to carry out commercial activities.

3.27 In response, all of the Land Councils have developed internal and external structures, programs and activities to assist Aboriginal people to carry out commercial activities and develop economic capacity within the community. In particular, each of the Land Councils has established, or facilitated the establishment of, an external commercial entity to assist Aboriginal people with the investment of royalty and other LUA payments and the conduct of commercial activities.

3.28 The primary external commercial entities associated with each of the Land Councils, or facilitated by the Land Councils are as follows:

Table 3.1: Primary commercial entities associated with Land Councils

Land Council	Commercial Entities
NLC	Aboriginal Investment Group (AIG) Larrakia Development Corporation (LDC) Pty Ltd
CLC	Centrecorp Aboriginal Investment Corporation Pty Ltd
ALC	Groote Eylandt and Bickerton Island Enterprises (GEBIE) Pty Ltd
TLC	Pirntubula Pty Ltd

3.29 The above list is not exhaustive. Within the NLC region, there are a number of other small external commercial entities that assist Aboriginal people to carry out commercial activities. Likewise, the TLC has recently established Tiwi Infrastructure Management Pty Ltd to undertake road works and other infrastructure projects on the Tiwi Islands.

3.30 Diagrams that illustrate the Office’s understanding of both the Land Councils administrative structures and relationships with these entities are included at **Appendix 3**.

3.31 The relationships between Land Councils and their respective external commercial entities vary. In many instances, the Land Council retains a shareholding in the entity and a certain number of positions on the governing committee of the entity (as per the entity’s rules of association).

3.32 Land Councils do not report on the operations or financial statements of the external commercial entities in their annual reports as they do not consider the commercial entities to be related entities. The validity of this position has been confirmed by the ANAO. The information collated on the external commercial entities by the Office has been provided by the relevant Land Council, sourced directly from the entity with the assistance of the Land Council, or sourced from the public record.

3.33 For the larger Land Councils, the physical location and operations of the commercial entities are separate from the Land Council itself. A number of the key stakeholders within the larger Land Councils also hold positions of authority on the commercial entities. For example, the members of the Executive Committee of NLC also operate as the Directors and Trustees of one economic development entity. There is no indication, within the confines of the audit scope that the dual roles held by key stakeholders impacts upon the operations of the larger Land Councils or provides a significant conflict of interest for those stakeholders.

3.34 For the smaller Land Councils, the linkages between the Land Councils and their respective independent economic entities are more complex. The operations and resources of the Land Council and the independent economic entity are often linked without a clear division.

3.35 The operations of the independent commercial entities raise two key issues for the Land Councils:

- the transparency of relations and operations between Land Councils and independent commercial entities
- accounting for, and cross-subsidisation through, in-kind support provided by the smaller Land Councils to independent commercial entities.

Transparency of relations and operations

3.36 The external commercial entities provide a valuable means by which Aboriginal people, through Aboriginal Associations, are able to invest mining royalty and other land use agreement payments.

3.37 However, the linkages between the Land Councils and external commercial entities are, in many instances, complex.

3.38 The Land Council's Full Council needs to be able to provide assurance to its Aboriginal constituency that its relationship with the external commercial entity, and the dual roles of a number of its Councillors and internal staff, are in their best interests. In particular, the issue of perceived and actual conflicts of interest between the broader social responsibilities of the Land Councils and the economic development agenda of the external commercial entities needs to be managed.

3.39 In situations where it is unavoidable that functions of the Land Council and its external commercial entity be combined or conducted by the same person, the importance of documented and transparent decision-making processes is higher. If not addressed, perceived conflicts of interest with the external commercial entity represent a risk to the Land Council's reputation and may undermine its position within the Aboriginal community.

In-kind support by smaller Land Councils

3.40 The smaller Land Councils provide a level of in-kind support to their respective external commercial entities. For example, one of the smaller Land Councils provides a range of administrative support services and systems to its external commercial entity. Those support services and systems include processing of the entity's accounts, provision of office accommodation for some staff, storage of electronic systems and files on the Land Council server and incorporation of external commercial entities into consultancies undertaken for Land Councils (an example being the current review of internal controls being undertaken for the ALC). At present, the level of in-kind support is not substantially documented or quantified.

3.41 The provision of in-kind support to the external commercial entities raised the issue of whether the resources of the Land Council are being efficiently and effectively used to meet its legislative requirements and whether ABA funds are being used to subsidise commercial activities.

3.42 The entities which undertake commercial activities should operate independently of the Land Councils. Where there are economies of scale to be achieved in the sharing of resources and activities, those arrangements should be documented and costs appropriately proportioned between the two organisations. The process should be transparent to provide assurance to the Full Councils, constituents and FaHCSIA that ABA funding is solely used for the purposes for which it was intended.

Recommendation 7

FaHCSIA should require the Land Councils to clearly state and make publicly available, the linkages between the relations and operations of the Land Council and those of the external commercial entities operating within its region. The linkages which should be identified include:

- Councillors and staff who hold positions (paid or otherwise) with the commercial entity
- the shares or interests held by the Land Council in the commercial entity (such as voting rights and automatic board appointments)
- the programs, projects and activities conducted that involve both the Land Council and the entity and
- the respective benefits that could be expected to accrue to Aboriginal people from the commercial activities.

FaHCSIA Response:

Agree.

Recommendation 8

FaHCSIA should require the Land Councils to identify and cost all of the in-kind support (or direct financial support) provided to their respective external commercial entities. Subsequently, FaHCSIA should require the assets and systems of the Land Council and the entity to be separated or, where economies of scale provide cost efficiencies, the costs involved be appropriately distributed between the organisations. All shared arrangements should be documented and made available to the Full Councils, Aboriginal constituents and FaHCSIA.

FaHCSIA Response:

Agree with qualification.

FaHCSIA will identify in-kind support provided to external commercial entities and will have regard to costs through the Budget Estimates process where these activities have not been appropriately charged by the relevant Land Council.

Maintenance of a register of members of land trusts (ALRA function)

3.43 Section 23(g)(ii) of the ALRA requires the Land Council to keep a register recording the names of the members of the Land Trusts. The larger Land Councils have well defined processes for undertaking this function.

3.44 In contrast, the smaller Land Councils either do not maintain a register of land trustees, or their register is out-of-date. This exposes the Land Council to breaches of section 23(g)(ii) of the ALRA.

Recommendation 9

FaHCSIA should require the smaller Land Councils to ensure compliance with section 23(g)(ii) of the ALRA through maintenance of a current register of land trustees.

FaHCSIA Response:

Agree.

Maintenance of a register of traditional owners (ALRA function)

3.45 Section 24 of the ALRA relates to the compilation and maintenance of a register of traditional Aboriginal owners. Specifically, a Land Council may compile and maintain a register setting out the names of the persons who, in the opinion of the Council, are the traditional owners of Aboriginal land and in relation to each group of traditional owners, a map or other references showing the sites belonging to them.

3.46 The larger Land Councils employ a number of anthropologists to assist in the identification of the traditional owners of Aboriginal land. The anthropology branch or section within each of the larger Land Councils also operates a system to maintain and update the anthropological data set on Aboriginal people within the Land Council region.

3.47 The large number of Aboriginal people within the regions of the larger Land Councils and the mobility of the population, has necessitated the development and operation of these systems.

3.48 The registers of traditional owners provide transparency and rigour to the Land Council functions that require the identification of the traditional owners of Aboriginal land. In particular, this transparency and rigour is important in supporting Land Council functions related to consulting traditional owners on mining and other land use activities and the distribution of payments related to those activities.

3.49 The Aboriginal population within the smaller Land Councils is substantially smaller and the movement of Aboriginal people in and out of the communities less frequent. However, neither of the smaller Land Councils maintain a current register of traditional owners.

3.50 The need for anthropological services in the smaller Land Councils does not require a full time anthropologist. Services are contracted in as and when required, although in the case of the TLC, this has not occurred in the last eight years. Instead, reliance is placed upon the Full Council and the administrative arm to direct consultations to the appropriate traditional owners when the need arises. As a result there is less transparency in the smaller Land Councils in relation to activities that require consultation with or consent of traditional owners and the distribution of payments from mining and other LUAs.

Recommendation 10

FaHCSIA should require each of the Land Councils to have an active process to provide assurance that traditional ownership is accurately recorded. This will improve the transparency of Land Council functions that require the identification of, and consultation of traditional owners, or the distribution of payments to traditional owners through Aboriginal Associations.

FaHCSIA Response:

Agree with qualification.

Legal advice suggests that empowering FaHCSIA to direct the Land Councils would require legislative amendment to the Aboriginal Land Rights (Northern Territory) Act 1976.

Delegation of statutory functions

3.51 Section 28 of the ALRA details the functions and powers that the Full Council of the Land Council is required to retain and the persons or committees to whom the Full Council may delegate its other functions and powers.

3.52 Specifically, the Full Council is required to retain functions and powers relating to

- the giving or withholding of consent in relation to land acquisition or use
- the application of money of the Land Council
- consenting to the grant of an exploration licence
- consenting to mining activity on Aboriginal land.

3.53 The Full Council may delegate its other functions and powers to the Chairman, another member of the Full Council, a committee comprising of Full Council members, or a staff member of the administrative arm of the Land Council. In addition, under section 28A, the Full Council is able to delegate a number of its functions and powers to a body corporate incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

3.54 The larger Land Councils have ALRA instruments of delegation executed as a deed and signed by the Chairman and two other members of the Full Council. These instruments clearly detail the functions and powers delegated and to whom they are delegated. The instruments of delegation prepared and maintained by the larger Land Councils provide a clear, concise and transparent method of delegating Full Council functions and powers.

3.55 The smaller Land Councils record the delegation of Full Council functions and powers through minuted decisions at Full Council meetings. The delegations are catch-all statements that broadly identify delegations without specifically referring to sections of the ALRA. Interested persons, including Land Council staff needing to clarify who has delegated authority are required to refer to the minutes of the relevant Full Council meeting.

3.56 The process adopted by the smaller Land Councils lacks the level of transparency and comparative efficiency offered by the larger Land Councils' processes. Identification of delegated functions and powers should be recorded in the Full Council minutes. As minuted, the delegations also require a person to have an understanding of the ALRA and make an interpretation as to which functions and powers are delegated within the catch-all statements. The person must also refer to section 28 of the ALRA to identify those functions and powers required to be retained by the Full Council.

3.57 As stated in the ALRA, delegations are to be recorded in writing under the common seal of the Land Council. The smaller Land Councils need to amend their management of delegations to comply with the ALRA.

3.58 The Office also identified instances where multiple internal documents were used to assist in the management of delegations. This raises the issue of the accuracy, consistency and currency of delegations within the various documents and the inefficiencies of maintaining several documents that perform a similar function. This issue of information management is covered in the Administration of Land Councils section.

Recommendation 11

FaHCSIA should require the smaller Land Councils to record in writing under the common seal of the Land Council the functions and powers delegated by the Full Council to persons and committees. To improve transparency, FaHCSIA should also require the functions and powers retained by the Full Council to be recorded to enable interested parties (including Councillors, constituents and staff) to clearly identify where responsibility for functions and powers reside within the Land Council.

FaHCSIA Response:

Agree.

Conclusion

3.59 The Office considers that the corporate governance within the Land Councils is generally satisfactory. The larger Land Councils display more robust systems, especially the corporate governance training material for Councillors. Notwithstanding this general assessment, there are deficiencies in Land Councils corporate governance practices that need to be addressed. Smaller Land Councils should consider the provision of training for Councillors on corporate governance.

3.60 The absence of a register of interests to identify and manage conflicts of interest has significantly reduced transparency in the Land Councils decision making and actions. In addition there is a lack of transparency surrounding the Land Councils dealings with external commercial entities which needs to be addressed, particularly in regards to Councillors appointments and positions within these entities. Similarly, the absence of accurate and up-to-date traditional owners registers within the smaller Land Councils has inhibited the identification of traditional owners.

4 Administration of Land Councils

This segment of the report comments on key systems, processes and decision making in place relating to the administration of the Land Councils including:

- > *budgetary and financial management*
- > *strategic and operational planning*
- > *staffing and human resource issues*
- > *allocation and administration of funds to Aboriginal Associations*
- > *internal control processes.*

Key issues related to administration that were noted include:

- > *inefficiency in the budgeting process, especially in relation to the deficit funding approach*
- > *a need for Land Councils to more proactively recover costs associated with negotiating, managing and monitoring Land Use Agreements*
- > *instances when strategic plans are not supported with operational plans*
- > *problems in recruiting and retaining staff*
- > *inadequacy of internal controls, especially for asset management and procurement*
- > *the absence of a proper audit and review function.*

Background

4.1 The ALRA provides for the granting of Traditional Aboriginal Land for the benefit of Aboriginal people and for other purposes (e.g. mining). To assist in the achievement of this purpose, the functions of the Land Councils are detailed in section 23 of the ALRA. In addition, other sections of the ALRA identify further functions which are listed in **Attachment B**.

4.2 The key administrative activities discussed in this section relate to budgeting, staffing, strategic and operational planning, administering payments to Aboriginal Associations and internal control mechanisms.

4.3 The ABA makes payments to Land Councils for meeting their administrative expenses under section 64(1) of the ALRA. In 2005-06 and 2004-05, the CLC and the ALC also received funding under section 64(8). In 2005-06 the ABA distributed \$26.1 million to the Land Councils for this purpose, and in 2004-05, \$21.9 million. The breakdown to each of the Land Councils was as follows:

Table 4.1: ABA funding provided to Land Councils for administration

Land Council	ABA funding provided for Administration	
	2005-06	2004-05
NLC	\$14.4m	\$11.4m
CLC	\$9.5m	\$8.7m
ALC	\$0.9m	\$0.8m
TLC	\$1.3m	\$1.00m

Source: Aboriginal Benefits Account Annual Report 2005-06

4.4 The Land Councils receive additional funding from other sources such as Special Purpose Grants and raise revenue from fees for service, the provision of goods and services and interest on deposits.

4.5 In accordance with ABA guidelines, funds are released to Land Councils on a quarterly basis upon receipt of a request from the Land Council demonstrating actual requirements. This may result in the amount of funds released differing from the pro-rata allocation recommended for each Land Council. This difference is discernable in the following table identifying the total income received by Land Councils in 2005-06.

Table 4.2: 2005-06 income received by Land councils

Income Source	Land Council			
	NLC	CLC	ALC	TLC
Revenue				
ABA	\$13.0m	\$9.1m	\$0.8m	\$1.6m
Special Purpose Grants	\$6.4m	\$4.6m	\$0.1m	-
Subtotal	\$19.4m	\$13.7m	\$0.9m	\$1.6m
Good & Services	\$1.4m	\$1.5m	\$0.1m	\$0.2m
Interest	\$0.2m	\$0.2m	-	-
Other	\$0.1m	-	\$0.2m	-
Total	\$21.1m	\$15.4m	\$1.2m	\$1.8m

Source: Land Council Annual Reports 2005-06

4.6 The administrative estimates bid process, Annual Report and the Outcome/Outputs Reporting Framework are the primary means by which the Land Councils demonstrate that their expenditure is consistent with the objectives of the ALRA.

Budgetary and financial management

Budget process

4.7 Under the original ALRA, the administrative costs of the Land Councils were set to 40% of the mining royalty equivalent payments received by the ABA. In practice, the fluctuating amounts of royalty payments received by the ABA resulted in the responsible Minister annually approving additional payments for the administrative expenses of the Land Councils. The 2006 amendments to the ALRA now reflect current practice with the Minister approving the budget allocation of the Land Councils from ABA funds.

4.8 As part of the administrative estimates bid process Land Councils are required to present a detailed budget proposal and case for the funding of individual programs and projects. The administrative estimates bid (budget) process provides assurance that the Land Council budgets are aligned to and consistent with the objectives of the ALRA. The detailed budget proposals are reviewed by an external entity on behalf of FaHCSIA who then provide a funding recommendation to the responsible Minister. The reports contain a breakdown of the budget by output group and core activities. Income streams from non-ABA sources such as fees for services and grants from other organisations are also considered and the budget allocation is adjusted.

4.9 In theory, Land Council budgets are developed from a zero base where the operational units identify the funding and staffing levels required to deliver set programs and activities. In practice, the administrative estimate bids prepared by the Land Councils are subsequently constricted into a pre-determined budget figure (based on the previous year's approved amount adjusted for Consumer Price Index movements) and allocated to the four Land Councils.

4.10 Land Councils have advised the Office that from their perspective it would be more efficient to develop operational budgets based on an advised budget figure and for a separate ABA amount to be made available for new project bids submitted by the Land Councils. Land Councils believe that a separate allocation for new projects would provide a more transparent process for FaHCSIA to assess the relative merits of new project bids and assist Land Councils and FaHCSIA to identify new projects with common elements. This will enable potential for collaboration between the Land Councils.

4.11 The Office believe the budget process could be further improved by having two pools of funding for the Land Councils. The first would cover the core administrative costs associated with operating the Land Council. The second would cover all project activities of the Land Council. By having a separate pool for all project activities the Land Councils and the responsible Minister have flexibility to respond to new and changing priorities of the Land Councils and of the responsible Minister, which align with the Statement of Expectations and Intent.

4.12 The current process also discourages the Land Councils from making significant changes to the content of their administrative estimates bid for fear of losing funding from existing programs at the same time that new programs and projects are not funded. The lower risk approach for the Land Councils is to increase the level of bids associated with current programs and projects (relying on inflation to support increased bids) and source alternate funding for new programs and projects.

4.13 To promote greater stability and funding predictability in Land Council activities, the Office believes that in addition to the proposal for two pools of funding, the allocation to these pools should be for three years rather than annual funding.

4.14 The Outcome/Outputs Reporting Framework was introduced after the administrative estimates bid process. As a result, the current Land Council budgets do not align with the framework. Specifically, the output groups need to be re-aligned within the Administrative Estimates Bid document. In doing so, the ability of the Land Councils to report financial expenditure against specific output groups would be improved. It is expected that FaHCSIA will amend the administrative estimates bid templates to align with the Outcome/Outputs Reporting Framework.

Recommendation 12

FaHCSIA should review and redevelop the current budget process by:

- removing the deficit approach to funding the Land Councils
- introducing a two-pool approach (core administration pool and projects pool) to funding Land Councils which will balance the constant funding needs and the changing priorities of the Land Councils and the responsible Minister
- implementing a zero-based budget approach as the initial step in cooperation with the Land Councils to complement the 2006 ALRA amendments. This would establish the practical budget needs of the Land Councils and what functions will lie in the two proposed pools
- allocating funding to the Land Councils for multiple years. This will provide greater certainty for Land Councils and the responsible Minister when negotiating Statements of Expectations or Intent and developing strategic plans
- in consultation with the Land Councils, developing a new budgetary template to align with and support the Outcome/Outputs Framework reporting requirements.

FaHCSIA Response:

Agree with qualification.

As noted in the general comments section, FaHCSIA is broadly supportive of this recommendation; however this represents a significant change in current policy and procedure and will require consideration by government.

Cost Recovery and Fee for Service activities

4.15 Under section 33A of the ALRA, the Land Councils are able to charge a fee for service for functions performed. In practice, all four of the Land Councils look to recover costs for establishing and maintaining LUAs. The majority of 'fee for service' operations relate to charges applied to mining companies and other organisations conducting, or wishing to conduct, activities on Aboriginal land. A smaller proportion relate to administrative services provided to Aboriginal Associations receiving royalty payments.

4.16 For example, on a discretionary basis, the CLC charges the external party for ongoing activities associated with larger agreements (such as anthropology, legal and mining advice). The fee is an estimate of the costs associated with ongoing consultation relating to the agreement. Detailed actual costs for the service are not calculated.

4.17 FaHCSIA state that they undertake a deficit funding approach, where Land Councils firstly define their expenditure, then identify sources of income from fees and other activity generated sources and the deficit is then funded by the ABA input. The Land Councils are required to provide an estimate of the income generated from service fees. From the Land Council's perspective, there is no incentive to increase service fees, or to even accurately calculate the cost of providing services to external parties as there is no financial benefit for the Land Council. There are two key budgeting issues that act as a disincentive for Land Councils.

4.18 First, the administrative burden of operating a fee for service system has to be absorbed into the administration costs and operations of Land Councils and has a negative cost-benefit. The reduced capacity of the Land Councils to perform other activities when staff are engaged in fee for service activities is not reflected in the administrative estimates bids process or the performance management system. There is a net loss in capacity for the ABA funded programs and activities of Land Councils when staff are engaged in fee for service activities.

4.19 Second, the requirement to estimate income from fee for service activities and the subsequent reduction in ABA funding, increases the risk that Land Councils will have a negative cash flow. Over-estimation of the income to be generated from fee for service activities and unavoidable external delays to major projects have the potential to reduce cash flow for a Land Council. While Land Councils are deficit funded this is no guarantee that the ABA will cover a shortfall in fee for service income; Land Councils will more likely have to source income from elsewhere or reduce expenditure. Conversely, if Land Councils underestimate their fee for service revenue their ABA funding will be reduced to keep their total income in line with their budget estimate. Given the dependence of the Land Councils on fee for service income, any cash flow shortages have the ability to impact operations and the delivery of core ALRA programs and activities.

4.20 Given these issues, Land Councils have an incentive to underestimate their fee for service revenue during the budget stage and let the ABA cover the difference, instead of over estimating fee for service revenue, and possible not having enough income to cover expenses if the estimate is not achieved.

4.21 The ability of the Land Councils to charge a fee for services provides a mechanism by which a user-pay model can be adopted to fund or partially fund additional Land Council services. The current system provides a clear disincentive for Land Councils to accurately cost and raise fee for service revenue. There may be an overall benefit for Aboriginal people and the broader community, if the Australian Government, ABA and Land Councils subsidise and encourage the economic development of Aboriginal land.

Recommendation 13

FaHCSIA should develop a policy regarding cost recovery and fee for service that encourages economic development on Aboriginal land. This policy would give consideration to providing incentives for the Land Councils to charge fees for services. This could include developing a model to allow for partial retention of recoveries, depending on the quantum recovered, to be utilised in addition (rather than as an alternative) to core funding.

FaHCSIA Response:

Further consideration required.

The Land Councils are Statutory Authorities which are funded to perform a number of functions provided for in the Aboriginal Land Rights (Northern Territory) Act 1976. Allowing for the partial retention of recoveries would be inconsistent with current provisions of the Act which require the Land Councils to expend their monies in accordance with the Estimates approved by the Minister. Legislative amendment would be required to implement this recommendation.

Any new legislative and administrative system would have to provide the right balance of incentives and be transparent to administer. FaHCSIA intends to consider this recommendation further and discuss with affected stakeholders including the mining industry.

Resources required to negotiate, manage and monitor Land Use Agreements

4.22 There are increasing numbers of LUAs being negotiated by the Land Councils on behalf of their Aboriginal constituents. This is viewed generally as a positive result for Aboriginal people who are able to generate an economic benefit from their land. For the Land Councils, the increasing number of Land Use Agreements is placing additional demand to assist with, or conduct, negotiations between Aboriginal people and organisations looking to use Aboriginal land.

4.23 The Land Councils also recognise that there is a need to monitor the compliance of both parties to the LUAs. Without monitoring, there is an increased risk that the intent of LUAs and the goodwill between companies and local Aboriginal people could be compromised and negatively impact upon the ability to conduct commercial activities on Aboriginal land.

4.24 The activities and costs associated with this function are currently absorbed by the Land Councils and where practical, combined with funded activities. However, the increasing number of agreements is placing an unplanned pressure on the resources of the Land Councils.

4.25 The Office is of the opinion that where practicable, Land Councils should ensure that the costs of monitoring, managing and maintaining LUAs are factored into these agreements during negotiations. For example, the renegotiation and signing of the new mining license with the Groote Eylandt Mining Company Pty Ltd (GEMCO) in 2006, allowed the ALC to significantly increase its staffing and service levels. In some instances, GEMCO fully fund positions within the ALC such as the Mining Officer and certain associated on-costs for the position such as a motor vehicle.

4.26 The Office recognises that some LUAs may not be economically viable after factoring in these additional costs. Notwithstanding this position, Land Councils should consider all agreements as they may provide other additional benefits to the Aboriginal community. For example, training and employment or possible future economic development arising from the growth of businesses seeking agreements. In such situations Land Councils should seek the additional funding required for the monitoring, managing and maintaining of the LUAs from other sources, such as the ABA, Government grants or private sponsorship. An example of private funding is GEMCO's provision of additional funding to support ALC programs and activities like the Polly Farmer Foundation program.

Recommendation 14

FaHCSIA should encourage Land Councils to cover all costs associated with LUAs when negotiating LUAs. This should occur within the context of the proposed cost recovery and fee for service policy proposed in Recommendation 13.

FaHCSIA Response:

Agree with qualification.

Refer to response to Recommendation 13.

Strategic and Operational Plans

4.27 The Land Councils are responsible for the preparation and execution of their strategic plans. The plans and processes to develop them vary between the Land Councils.

4.28 In the case of the larger Land Councils the development of the strategic plans followed a well defined process consistent with better practice strategic planning. The strategic plans produced were well presented, concise and clearly linked the strategic objectives of the Land Council with its operational outputs and activities. The strategic plans also contained performance indicators and measures to assist with the monitoring and understanding of the efficiency and effectiveness of Land Council operations.

4.29 The processes for developing operational plans also vary between the Land Councils. In some instances the operational plans are developed through formal processes that link to the strategic plan, engage key internal stakeholders and require the document to be endorsed by the Full Council. In other instances strategic plans are not supported with operational plans and the allocation of resources and the prioritisation of activities is undertaken in response to the current operational needs of the Land Council. In these cases the alignment of resources and activities is not clearly linked to the strategic directions of the Land Council.

4.30 In 2006 the Land Councils adopted a standard Outcome/Outputs Reporting Framework that is now used to report to FaHCSIA on the performance of the individual Land Councils. The framework impacts upon the future strategic and operational planning requirements of the Land Councils as they will all need to incorporate the outcome and outputs detailed in the Outcome/Outputs Reporting Framework. At the time of the audit it was too soon to assess the response of the Land Councils to the framework. However, the NLC is in the process of developing their new strategic plan (2007 – 2011) and accompanying operational plans and have indicated that they have incorporated the Outcome/Outputs Reporting Framework into the process.

4.31 The development of the Outcome/Outputs Reporting Framework represents an opportunity for closer alignment in strategic planning between each of the Land Councils. Once the Outcome/Outputs Reporting Framework includes KPIs, Land Councils can link them to their Strategic and Operational Plans.

Recommendation 15

FaHCSIA should require the Land Councils to include indicators in their strategic planning processes common to both their internal and external reporting requirements. This should include KPIs developed for the Outcome/Outputs Reporting Framework. This will improve transparency to external parties and allow for closer comparison of common activities across the Land Councils.

FaHCSIA Response:

Agree.

Staffing and Human Resource Management

4.32 The budget process places a significant administrative burden on the Land Councils and reduces their ability to adapt their service delivery to areas of emerging need. Under section 34(3) of the ALRA Land Councils are not allowed to exceed expenditure on specific line items in their bid by more than 20%. Therefore, Land Councils have limited ability to significantly alter their staffing and other resource composition through ABA funding to meet changing priorities. Instead, they are required to seek additional funding through other sources. For example, the NLC sought funding for an additional 14 positions in 2005-06, but was only allocated part-funding for two positions.

4.33 Staffing levels for each of the Land Councils as at March 2007 is as follows:

Table 4.3: Staffing levels of Land Councils as at March 2007

Staffing	Land Council			
	NLC	CLC	ALC	TLC
ABA Establishment	95	97	7 ⁹	6 ¹⁰
Actual Staffing Levels ¹¹	130 ¹²	138	13	6

Figures provided by Land Councils during the audit

Funding staff positions through external grants

4.34 Land Councils use a variety of external sources in addition to ABA funding to fund positions that support the conduct of ALRA related programs and activities, in particular Land Management activities. Without this external funding activities could not continue. While there are a number of administrative inefficiencies related to sourcing program funding from multiple sources¹³, a key issue for the Land Councils is how funding for staff positions is sourced and the impact on ABA funding for staff positions.

4.35 A review of Land Council budgets indicates that over the period 2002-03 to 2005-06 there has been a gradual trend away from Land Council positions being resourced by ABA or Native Title funding and toward short-term grant funding (for example from 13.5% grants funded for one of the larger Land Council in 2002-03 to 17.5% in 2005-06). In instances where a Land Council have sought to fund a program from non-ABA sources (including funds for wages), FaHCSIA has adjusted subsequent ABA budget allocations and reduced the salary component of those budget allocations. The net result for Land Councils is that a greater proportion of staff are employed on period contracts that are linked to the ongoing funding of specific programs and activities, some of which are related to the achievement of ALRA objectives.

4.36 There are two issues of concern for the Land Councils.

4.37 First, the ABA funding process restricts the ability of the Land Councils to adjust their strategic direction and priorities over time. As stated previously, when Land Councils have obtained separate program funding FaHCSIA has reduced similar ABA funding, resulting in Land Councils taking the safer approach to funding by protecting what they already have instead of proposing new projects.

4.38 As identified by the NLC CEO, the role of the Land Councils in supporting Aboriginal people is evolving. When established, the priority of the larger Land Councils was to secure land for their Aboriginal constituents under the ALRA (or subsequently the Native Title Act). With a substantial amount of land now secured, the priority is to assist Aboriginal people to use and derive economic benefit from their land.

⁹ Includes part-funding for field officers

¹⁰ Includes TLC 'Managers' and part-funding for Secretary Land Management

¹¹ Excludes Rangers

¹² Includes Chairman

¹³ An issue that is not unique to Land Councils and experienced by any organisation with multiple funding sources

4.39 As a result, within the Land Councils there is an increasing level of activity associated with land use programs. Land Councils may need specific funding to provide this service that Aboriginal constituents are requiring to advance their interests. If this is the case, priorities should be factored in to any statement of expectations prepared by the responsible Minister and FaHCSIA for the Land Councils. Using the two-pool budgeting approach will allow for lower priority projects to be wound back and high priority projects scaled up to reflect this.

4.40 Second, the requirement to use short-term funding for staff positions reduces the ability of the Land Councils to offer security of tenure to staff and to recruit and retain quality staff. The provision of three year budget allocations should assist in overcoming this issue.

Staff remuneration

4.41 The remuneration of staff varies significantly between the Land Councils. The Enterprise Agreements of the various Land Councils were independently negotiated and are based on (or linked to) different Australian Government agency agreements.

4.42 The larger Land Councils face increasing competition for staff within the local labour markets and that there are concerns that staff remuneration levels are not keeping pace with the market place. In particular, there are concerns that the Land Councils' remuneration packages are not competitive with those of the Northern Territory Government, which may be contributing to increased turnover of staff in a number of areas. The NLC is investigating this issue in relation to its anthropology staff and reviewing the relative salaries on offer between the Land Council and the Northern Territory Aboriginal Areas Protection Authority. At the time of the audit the findings of the review were yet to be released.

4.43 In the smaller Land Councils, recent external reviews of staff remuneration provide assurance that the salaries on offer are appropriate. This could be partially attributed to smaller Land Councils not employing anthropology staff. The remote location is a more significant issue impacting human resource management in these organisations.

Recruitment and retention

4.44 A key strategic risk for each of the Land Councils is their ability to recruit and retain appropriately qualified and experienced staff. Specifically, factors acknowledged to negatively impact upon recruitment and retention include:

- national labour-market shortages
- the changing role of the Land Councils (where funding is not certain)
- remoteness
- field-work requirements
- remuneration
- the need for specialised skills and experience
- reputational issues for each of the Land Councils.

4.45 A key mitigation for retention risk to date has been the longevity of a number of key staff within most of the Land Councils and the commitment of many staff to the Land Councils' goals. All of the Land Councils are seeking to mitigate this risk through a range of internal structures, policies, programs and activities. However, while there are examples of effective recruitment and retention practices, the management of this risk is predominantly occurring in a piece-meal manner and there is substantial opportunity for improvement through a strategic and systematic approach.

Recommendation 16

FaHCSIA should require the Land Councils to individually and collectively assess the risks to their organisations from an increasing difficulty in recruiting and retaining staff. Consideration should also be given to establishing a working group across each of the Land Councils to identify common causes and potential treatments. Treatments could include the introduction of succession planning strategies such as:

- provision of appropriate hand-over processes for new staff
- documentation of key systems and processes
- identification of Aboriginal-specific management roles
- enhancement of professional development programs
- opportunities to access the expertise of staff from other Land Councils, including the provision of specialist services.

FaHCSIA Response:**Agree with qualification.**

While consideration of the establishment of a working group is agreed, legal advice suggests that empowering FaHCSIA to direct the Land Councils would require legislative amendment to the Aboriginal Land Rights (Northern Territory) Act 1976.

Allocation and administration of funds

4.46 Section 35(2) of the ALRA require the Land Councils to distribute monies received as mining royalty equivalent payments to Aboriginal Associations (generated from mining operations on Aboriginal land). This amounts to 30% of royalty equivalent monies generated from mining operations on Aboriginal land within the Northern Territory.

4.47 In the last two financial years, section 35(2) payments made to the Land Councils for distribution were as follows:

Table 4.4: ALRA section 35(2) payments made to Land Councils

Land Council	2005-06	2004-05
NLC	5.4m	4.9m
CLC	2.4m	2.8m
TLC	Not applicable ¹⁴	Not applicable
ALC	11.0m	7.2m
Total	18.8m	14.9m

Source: Aboriginal Benefits Account Annual Report 2005-06

4.48 In addition, the Land Councils distribute monies received from a number of other activities related to exploration licence applications, exploration licences, other LUAs and lease payments. The Land Councils are required to distribute monies received within six months of receipt by the Land Council, or otherwise advise the Minister of the failure to distribute.

4.49 The audit examined the suitability and transparency of each of the Land Council's systems and processes for distributing monies received under section 35(2), and hence monies received from the other activities on Aboriginal land.

¹⁴ The TLC does not receive these payments

4.50 Three of the Land Councils (NLC, CLC and ALC) distribute monies under section 35(2) of the ALRA and all four Land Councils have similar or identical processes for distributing payments to traditional owners affected by other land use activities. In some instances, Land Councils are responsible for determining the proportion of funds distributed to the various Aboriginal Associations affected by the mining activity. In other instances, the members of the relevant Aboriginal Association (representing the affected traditional owners) hold a distribution meeting to determine the amounts to be distributed to community members. The Land Councils often assist in the conduct of distribution meetings. A number of Aboriginal Associations have defined investment strategies with monies held by the Land Council or invested with one of the external economic entities (e.g. Centrecorp)¹⁵.

4.51 All four Land Councils operate trust accounts separate to their operating accounts to manage the receipt and payment of royalty equivalents. Funds are held in the trust accounts until transfer to the relevant Aboriginal Association account.

4.52 The degree to which the Land Councils control the distribution process varies. Some Land Councils divest control of the distribution process at the point when funds are transferred to the Aboriginal Association. Other Land Councils assist with the distribution process and put in place controls to ensure funds are distributed in accordance with the instructions of the Aboriginal Association.

4.53 All four Land Councils monitor payments to Aboriginal Associations and their subsequent distribution into the Aboriginal community. This is a reactive process where the Land Council will respond to situations where a complaint is filed with the Land Council (formally or informally); however this provides some assurance that payments are being utilised 'for the benefit' of Aboriginal people in accordance with the ALRA.

4.54 Controls around the distributions to Aboriginal Associations could be improved by each Land Council. A limiting factor for the Land Councils is the lack of an internal audit and review capacity. The Land Councils lack an independent internal function to review the controls related to distributions.

4.55 The Office recognised that the CLC demonstrated better practice through the establishment of the Aboriginal Associations Management Centre (AAMC) for managing payments to Aboriginal Associations. The AAMC assists Aboriginal Associations to achieve legislative compliance; managing core administrative activities (e.g. completion of ATO and BAS returns); facilitates meetings to determine distribution payments; manages the income distribution process; facilitates the external audit of Aboriginal Associations; and identifies traditional owners eligible for distribution payments (using the services of the CLC Anthropology section).

Recommendation 17

FaHCSIA should review the structures and processes used by the AAMC to manage distributions to Aboriginal Associations and to determine whether it represents better practice, and should gain wider acceptance and use.

FaHCSIA Response:

Agree.

¹⁵ Refer to the section on Land Council performance for the discussion on external economic entities

Collaboration between Land Councils

4.56 The four Land Councils are required to perform a range of identical administrative activities. For example, in accordance with the ALRA, all Land Councils are required to manage the administration of exploration licence applications and mining agreements. Likewise, many of the corporate services functions for the Land Councils are similar, regardless of their size.

4.57 At present, the communication between Land Councils and the sharing of information in relation to the systems and processes for service delivery is occurring in an ad hoc manner. The cooperation between Land Councils is taking place at the officer level and is dependent upon the relationships and networks of individual staff.

4.58 The development of the Outcome/Outputs Reporting Framework is a positive example of the recent success of the collaboration between FaHCSIA and Land Councils. However, there are also examples where the lack of information sharing between Land Councils results in a duplication of effort and a missed opportunity to reduce the overall costs of administration of the Land Councils. For example, the larger Land Councils are separately developing Geographic Information Systems (GIS) to manage their respective land related data sets. The required functionality of the two systems is identical. From a cost perspective, both the Land Councils recognise that off-the-shelf products used by the larger mining companies are cost prohibitive.

4.59 Yet the two Land Councils develop and maintain their GIS systems separately (and from smaller Land Councils). There is a definite need for better coordination between the four Land Councils.

Recommendation 18

FaHCSIA should take an active role in facilitating coordination between the Land Councils to achieve efficiencies in areas such as training, reporting and system development.

FaHCSIA Response:

Agree.

Internal control

4.60 While it was outside the scope of the audit to undertake a detailed analysis of all of the Land Councils' internal controls, the Office reviewed a number of key internal controls and identified a number of common themes related to them.

4.61 There are three key areas related to internal controls that apply to all four of the Land Councils:

- the extent to which Land Councils have an effective policy and procedural framework
- the adequacy of specific internal controls and the existence of control breakdowns
- the adequacy of the internal audit and review function within Land Councils.

Policy and procedural framework

4.62 The extent of documented administrative policies and procedures vary between the Land Councils. In general, the larger Land Councils maintain a better coverage of policy and procedural documentation than do the smaller Land Councils which are more dependent upon staff to make judgements on issues.

4.63 The Office identified four areas of concern related to the extent of documented administrative policies and procedures (and areas that provide opportunities for improvement).

4.64 First, not all of the Land Councils have policies and procedures which provide guidance across the full range of administrative activities. As a result, there are a number of situations where staff are required to make judgements about policy or procedural matters. The staff and Land Council are subsequently exposed to questions about the appropriateness and transparency of administrative actions.

4.65 Second, the lack of a central and easily accessible repository for administrative policies and procedures is negatively impacting upon the efficiency of operations. A central repository (e.g. an Intranet site) improves staff awareness of and access to policies and procedures and reduces the risk that out-of-date policies and procedures are unwittingly applied.

4.66 Third, a number of the Land Councils did not have a consistent structure for their administrative policies and procedures, leading to a lack of clarity of the policy and procedural framework.

4.67 Fourth, the excessive reliance upon tacit knowledge within the organisation (especially in the smaller Land Councils) increases the risk of knowledge loss and the subsequent impact when key staff members leave.

4.68 Better practice examples of Land Council policies and procedures are covered in better practice section.

Adequacy of specific controls and existing control breakdowns

4.69 All of the Land Councils have, at minimum, the basis of an internal control framework. Thus the Land Councils are able to provide some level of assurance that their administrative activities are conducted in accordance with the ALRA and other statutory and legislative requirements; and provide for an efficient and economical use of resources.

4.70 However, the Office identified a number of examples where there are inadequate internal controls for administrative activities. Specifically, a number of the Land Councils procure goods and services without obtaining multiple quotes. While it is acknowledged that in regional and remote areas the number of suppliers may be limited, this is not always the case for items such as consumables and information technology equipment. The Land Councils are not bound by the *Commonwealth Procurement Guidelines*, however they would be well served to apply similar principles in their procurement policies and procedures. The periodic testing of the market also provides assurance that current suppliers are charging a fair price for products and services.

4.71 The asset management policies and procedures within a number of the Land Councils could also be improved. The Office identified a number of instances where control weaknesses expose Land Councils to inappropriate use of, or misappropriation of, assets. Causes for this varied across the Land Councils, but in general there is scope for improving the recording of assets, and in some cases, restricting the use of Council assets to Land Council employees. Controls to ensure assets are appropriately recorded in an asset register would assist in addressing some of the current control weaknesses.

Internal Audit and Audit Committees

4.72 All of the Land Councils operate an audit committee as either an executive sub-committee of the Full Council, a committee of senior staff, or a combination of the two. In theory, all of the audit committees have an external representative with audit expertise. The functionality and effectiveness of the audit committees vary between the Land Councils with the larger Land Councils generally having better managed Audit Committees than the smaller Land Councils. The larger Land Councils have formalised Audit Committee meetings with agendas and are conducted as stand alone meetings.

4.73 The smaller Land Councils, in particular the TLC has often held "Audit Committee" meetings as part of their Management Group meetings where the external member was usually absent.

4.74 None of the Land Councils has a formal internal audit function or capacity to undertake internal audits and reviews (nor are they specifically resourced to do so from the ABA funds). Regardless, the charters of the audit committees indicate that they have a function to provide assurance to the Land Council of the adequacy of the administrative, operating and financial control environment. The absence of a structured program of internal audit, however significantly limits the ability of the audit committees to fulfil their stated function.

Recommendation 19

FaHCSIA should require the Land Councils to develop a set of CEO instructions which outline:

- administrative policies and procedures that are readily available and accessible by staff
- a risk management plan
- an internal audit and review program.

FaHCSIA Response:

Agree with qualification.

Legal advice suggests that empowering FaHCSIA to direct the Land Councils would require legislative amendment to the Aboriginal Land Rights (Northern Territory) Act 1976.

Conclusion

4.75 Better administration of Land Councils is being inhibited by the deficit funding approach used for ABA funding. The deficit funding approach provides an incentive for Land Councils to maintain the status quo regarding Land Council work, staffing and priorities. Land Councils are not accurately costing and charging parties looking to enter into LUAs with traditional owners due to the current budget disincentives to do so. The Office found that policies surrounding asset management and procurement were lacking and that there is a lack of internal audit by the Land Councils. The Office also found that there is an absence of collaboration between the Land Councils which may be affecting the overall cost efficiency of Land Councils.

5 Identification of better practice within Land Councils

5.1 In undertaking this audit, the Office identified a number of innovative practices by Land Councils which were effective and worthy of consideration by other Land Councils. In particular, the following innovative practices were noted:

Corporate Governance

Selection and support of Councillors

- The engagement of the Australian Electoral Commission (AEC) to oversee the election of the Full Council (if required), the Chairman and the Deputy Chairman. The use of the AEC provides assurance that the process is transparent and conducted in accordance with statutory requirements. All Land Councils should utilise the AEC.
- The development of governance training material for Full Council members. The materials used by the larger Land Councils are clear, concise and tailored to the needs of the Aboriginal Councillors. The material can be delivered in the regions using appropriate materials (e.g. durable, printed materials as opposed to electronic media) and participants are provided with a handbook for future reference. The material ensures that Councillors are well informed with appropriate resources on hand that will assist them to understand and perform their duties as Councillors, but must be delivered consistently. The CLC and NLC have both developed governance training material.

Executive Meetings and Executive Committees

- The appointment of an independent external person to chair, or participate on the audit sub-committee. The CLC and NLC involve independent external parties on their audit committees, whilst the ALC's external audit committee member is not independent as he is also a director of two of the Groote Eylandt and Bickerton Island Enterprises (the ALC's commercial entity) consortia. The use of an independent external, qualified member provides the Land Council with access to technical expertise and an increased level of assurance that the audit function is conducted in a transparent and objective manner.
- The detailed recording and maintenance of the official minutes of the meetings of the Full Council, executive sub-committees and other official forums within the Land Council. This process is adopted by the TLC. At the end of each calendar year, minutes are bound with several copies made available for perusal in the Land Council offices and another copy placed in the National Archives of Australia for safe-keeping. The official minutes provide a critical resource for tracking the key executive and administrative decisions of the Land Council. The process provides transparency of decision-making and security of the official records.

Administration

Strategic and operational plans

- The implementation of a strategic planning process by the CLC that actively engages the key internal stakeholders (including the Full Council) through the conduct of meetings and workshops, and the circulation of draft documents prior to finalisation. This facilitates informed consultation and decision-making, together with a sense of ownership of the process and outcomes.
- The alignment of the strategic planning process with the Outcome/Outputs Reporting Framework by the NLC. This provides assurance that the strategic objectives of the Land Council are aligned with the Australian Government's expectations of the Land Councils and that KPIs and measures reflect the required outcomes and outputs of the Land Councils.

Staffing and human resource management

- The use of regional offices by the CLC and NLC to assist in engaging with, and representing the interests of its Aboriginal constituents. This enables the larger Land Councils to maintain a higher level of contact with Aboriginal people and improves the efficiency and effectiveness of consultations. It is important to ensure that these regional offices are liaison centres and not decision making centres.
- The staff induction processes implemented by the CLC that require new employees to read and sign the key administrative policies of the Land Council. A hardcopy record of the signed policies are provided to the employee and retained on the personnel records. This process provides assurance that employees are aware of their responsibilities and obligations in working for the Land Council.
- The use of an Intranet to store, manage, promote and disseminate the administrative policies and procedures of the CLC. This system provides assurance that staff are aware of administrative policies and procedures that they are readily accessible by staff and they are centrally maintained to reduce the risk that out-of-date policies and procedures are unwittingly applied.
- (For smaller Land Councils) The formalisation of a governance model whereby a sub-committee of Full Council members takes on responsibility for a range of administrative functions of the Land Council. This model is used by the TLC. While the model does provide an overlap between the executive and administrative roles and raises issues of independence, the key benefit is the increased opportunity for involvement of Aboriginal people in the operations of their Land Council. Given that meeting minutes of the activities are freely available it ensures transparency of operations within the Land Council. The sub-committee also provides potential succession-planning for positions currently held by non-Aboriginal staff.
- The implementation of a Managers' Training Program by the TLC aimed at identifying and developing Aboriginal people to take over leadership positions. The succession planning program recognises the value in developing skills and ensuring the future skills capability of Aboriginal people within the Land Council.

Allocation and administration of funds

- The CLC's creation of the Aboriginal Associations Management Centre (AAMC) and its role in supporting Aboriginal Associations on a fee for service basis. The structure and processes of the AAMC provide a greater level of assurance that the process of distribution of payments to Aboriginal Associations is in accordance with the relevant mining or other LUAs.

6 Concluding comments

6.1 In undertaking this performance audit the Office found that the efficiency, effectiveness and economy of the management and administration of the Land Councils is not only affected by their own actions, but by the policies and processes that are in place surrounding the ABA funding they rely on. Where issues affecting individual Land Councils are identified, the Office has made relevant recommendations in the individual Discussion Papers. The issues universal to the Land Councils collectively have been identified in this Report.

6.2 The main issues affecting the efficiency, effectiveness and economy of the management and administration of the Land Councils as a whole were identified as:

- a lack of performance data, combined with a Outcome/Outputs Framework without measurable and achievable outcomes and KPIs
- a lack of alignment between the Land Councils and the responsible Minister on the core priorities of the Land Councils
- a lack of transparency surrounding the Land Councils dealings with the external commercial entities established to promote economic development, particularly in regards to Councillors appointments and positions within these entities
- an inefficient budgetary process which does not encourage Land Councils to be flexible in meeting changing priorities and acts as a disincentive for them to charge fees for services
- a need for Land Councils to recover costs associated with negotiating, managing and monitoring LUAs.

6.3 The Office believes that this report will provide the impetus for the responsible Minister, FaHCSIA and the Land Councils to convene and focus on the current and future performance of the Land Councils.

APPENDICES AND ATTACHMENTS

Appendix 1: Sample KPIs for use in the Outcome/Outputs Framework

Outcome		
Enhanced social, political and economic participation and equity for Aboriginal people in the Land Council's area as a result of the promotion, protection and advancement of their land rights, other rights and interests.		
Output Groups	Outputs	Possible KPIs
1. Land, Sea and Natural Resource Management support services.	1.1 Administer and issue permits for access/closures to or through Aboriginal land and sea.	<ul style="list-style-type: none"> • Number of permits issued. • Percentage of permits processed within 10 days. • Cost per permit issued.
	1.2 Provide research and assistance as required to Aboriginal landowners and other Aboriginal people to manage land and sea and to undertake activities consistent with their ambitions and the sustainability of their resources.	<ul style="list-style-type: none"> • Number of cases of assistance provided to Land Owners on land and sea management. • Level of satisfaction of Land Owners with assistance given (measured through a satisfaction survey). • Number of Ranger programs supported. • Number of participants in Ranger programs. • Cost per Ranger Program.
2. Land Claims and Acquisitions support services.	2.1 Provide assistance as required to Aboriginal claimants of land under the ALRA.	<ul style="list-style-type: none"> • Number of land claims finalised. • Number of land claims actively progressed.
	2.2 Pursue all other appropriate avenues to achieve the acquisition of land for the benefit of Aboriginal people.	<ul style="list-style-type: none"> • Number and type of other non-ALRA and non-Native Title land acquisition cases finalised or Number of Community Living Area applications finalised. • Number of titles granted to applicants. • Level of satisfaction of affected Aboriginal people (measured through a satisfaction survey).

Output Groups	Outputs	Possible KPIs
<p>3. Economic Development and Commercial services.</p>	<p>3.1 Process applications and assist in making Land Use Agreements on Aboriginal land.</p>	<ul style="list-style-type: none"> • Number of LUAs finalised. • Number of people consulted regarding specific LUAs. • Percentage of LUAs received that are approved. • Income generated as a result of LUAs. • Average number of days to process a LUA or Percentage of LUAs finalised within a set period • Number of outstanding LUAs. • Cost per LUA finalised.
	<p>3.2 Assist as appropriate in the economic advancement of Aboriginal people through employment, education and training, particularly in relation to land use proposals, within the Land Council region.</p>	<ul style="list-style-type: none"> • Number of people receiving training through LUAs. • Number of Indigenous positions created through LUAs (permanent / temporary / casual). • % of LUAs containing Indigenous employment clauses, training clauses or both. • Level of satisfaction of affected Aboriginal people (measured through a satisfaction survey).
	<p>3.3 Process applications for consent to explore and mine on Aboriginal land.</p>	<ul style="list-style-type: none"> • Number of ELAs finalised. • % of ELAs received that are finalised. • Average time to process an ELA. • Outstanding ELAs. • Cost per ELA finalised.
	<p>3.4 Provide research and assistance and identify infrastructure requirements as appropriate to enable Aboriginal landowners and other Aboriginal people to undertake commercial activities.</p>	<ul style="list-style-type: none"> • Number of cases of assistance provided. • Level of satisfaction of affected Aboriginal people (measured through a satisfaction survey).

Output Groups	Outputs	Possible KPIs
4. Advocacy services.	4.1 Promote public awareness on issues affecting Aboriginal people, their land and other rights.	<ul style="list-style-type: none"> Number and type of promotional activities carried out by the Land Council.
	4.2 Provide advocacy and representation as appropriate to the Traditional Owners and other clients of the Land Councils.	<ul style="list-style-type: none"> Number of contacts with Land Council clients. Level of satisfaction of TOs (measured through a satisfaction survey).
	4.3 Provide cultural and heritage support as appropriate to the Traditional Owners and other clients of the Land Councils.	<ul style="list-style-type: none"> Number of cases of cultural / heritage support provided to TOs and other clients. Cost of support provided.
	4.4 Facilitate targeted Aboriginal community development initiatives as appropriate with the Traditional Owners and other clients of the Land Councils.	<ul style="list-style-type: none"> Number and type of community development initiatives facilitated / sponsored by the Land Councils. Distribution of community development initiatives across the Land Council area.
5. Administration and Support services.	5.1 Administer and distribute statutory, negotiated and other payments as appropriate to the Traditional Owners and other clients of the Land Councils.	<ul style="list-style-type: none"> Number of payment distributions made. Number of people payments distributed to. Percentage of distributions made on time. Cost as a proportion of payments distributed.
	5.2 Administer Land Trusts in accordance with the provisions of the ALRA.	<ul style="list-style-type: none"> Number of Land Trusts administered. Number of trustees updated.
	5.3 Assist in the resolution of disputes with respect to land as appropriate.	<ul style="list-style-type: none"> Number of disputes resolved. Percentage of disputes resolved.
6. Native Title.	6.1 Funded and reported on separately under the Native Title Act.	N/A.

Appendix 2: Performance comparison across the Land Councils

Output Group 1: Land, Sea and Natural Resource Management support services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
Administer and issue permits for access/closures to or through Aboriginal land and sea. ALRA S19(13), 48(H) ¹⁶												
• Permits Issued	14,104	22,260	7,775	3,499	3,486	1,793	426	433	200	2,578	4,289	3,005
• Cost per permit	\$47	\$49	-	-	-	-	-	-	-	-	\$19.12	-
• Average processing time	6.3 days	4.4 days	-	-	-	-	-	-	-	-	-	-
• Overall cost of activity	-	\$0.98M	-	-	-	-	-	-	-	-	\$76K	\$43K
Provide research and assistance as required to Aboriginal landowners and other Aboriginal people to manage land and sea and to undertake activities consistent with their ambitions and the sustainability of their resources. ALRA S23(1)(b)												
• Ranger Groups supported	34	32	33	3	4	8	1	1	1	-	1	1
• Aboriginal participants	400	350	350	-	-	-	6	6	-	-	10	10

¹⁶ Also legislative powers in the *Aboriginal Land Act*

Output Group 2: Land Claims and Acquisitions support services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
2.1 Provide assistance as required to Aboriginal claimants of land under the ALRA. ALRA S23(1)(f)												
• Land Claims finalised	5	1	0	3	0	0	N/A	N/A	N/A	N/A	N/A	N/A
• Land Claims progressed	-	>10	>16	-	-	2	N/A	N/A	N/A	N/A	N/A	N/A
• Outstanding Land Claims	48	43	-	27 ¹⁷	24 ¹⁸	-	N/A	N/A	N/A	N/A	N/A	N/A
• Cost of activity	\$1.1M	\$1.2M	-	-	-	-	N/A	N/A	N/A	N/A	N/A	N/A
2.2 Pursue all other appropriate avenues to achieve the acquisition of land for the benefit of Aboriginal people. ALRA S11(1AF), 23(1)(d) ¹⁹ 3(1)(e)		\$86K										
• Community Living Area applications finalised	2	2	0	2	3	0	N/A	N/A	N/A	N/A	N/A	N/A
• Titles Granted	1	1		2	3	0	N/A	N/A	N/A	N/A	N/A	N/A
• Consent Agreements progressed	-	1	>5	-	-	5	N/A	N/A	N/A	N/A	N/A	N/A

¹⁷ Determined by deducting NLC figures from total

¹⁸ Determined by deducting NLC figures from total

¹⁹ Also legislative powers under the *Native Title Act 1993*, *Aboriginal Land Act* and the *Pastoral Land Act*

Output Group 3: Economic Development and Commercial services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
Process applications and assist in making Land Use Agreements (LUAs) on Aboriginal land. ALRA S19, S23(1)(c), S23(1)(e) ALRAS23(3), S27(1)(c)												
• LUAs finalised	62	71	79	-	-	0	-	-	1	-	24	-
• Active LUAs	276	374	-	-	153	-	-	-	0	-	-	-
• LUAs under consideration	85	85	-	-	-	14	-	-	0	-	31	-
• Income from all LUAs	\$6.4M	\$7.2M	-	-	-	-	-	-	-	-	\$428K	-
• TOs receiving income	1,346	1,659	-	-	-	-	-	-	-	-	-	-
• Cost per agreement	\$42K	\$52K	-	-	-	-	-	-	-	-	-	-
Assist as appropriate in the economic advancement of Aboriginal people through employment, education and training, particularly in relation to land use proposals, within the Land Council region. ALRA S23(1)(ea)												
• Jobs created	-	415	>300	>110	>96	-	-	-	>3	16	47	>9
• Advice provided	-	-	-	-	-	-	-	-	-	-	-	-
• Aboriginal people attending training	-	-	-	-	-	-	-	-	>61	-	-	-

Output Group 3: Economic Development and Commercial services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
3.3 Process applications for consent to explore and mine on Aboriginal land. ALRA S40-48												
• Consultations held	101	37 ²⁰	45 ²¹	18	14	>9	-	-	-	-	-	-
• Cost of consultations minus recoveries	\$32K	\$29K	-	-	-	-	-	-	-	-	-	-
• ELAs (& mining) received	22	55	-	50	65	66	-	-	-	0	5	2
• ELAs finalised (or with Minister)	29	12	-	75	50 ²²	11 ²³	-	-	-	9	0	-
• Outstanding applications (at year end)	55	137	-	131	147	176	-	-	3	-	5	-
• Land subject to ELAs	-	50%	-	-	-	-	-	-	100%	-	-	-
• Environmental & Social impact assessments prepared re mining	4	20	-	-	-	-	-	-	-	-	-	-
3.4 Provide research and assistance and identify infrastructure requirements as appropriate to enable Aboriginal landowners and other Aboriginal people to undertake commercial activities. ALRA S23(1)(ea)												
• Opportunities considered / investigated / supported	-	-	-	-	>55	>12	-	1	-	-	1	-

²⁰ 128 ELAs were considered at these 37 meetings

²¹ Consultations are calculated on individual ELAs considered, rather than meetings held

²² Includes 15 applications refused but does not include withdrawn applications

²³ 24 applications withdrawn in addition to these 6 (includes 4 with Minister and 2 refused)

Output Group 4: Advocacy services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
4.1 Promote public awareness on issues affecting Aboriginal people, their land and other rights.												
• Land Rights news distributed	39,000	39,000	26,000	39,000	39,000	26,000	0	0	0	0	0	0
4.2 Provide advocacy and representation as appropriate to the Traditional Owners and other clients of the Land Councils. ALRA S31(7), S31(10)												
• Number of Councillors	83	83	83	88	88	88	25	25	25	-	38	38
• Full Council meetings held	2	2	1	3	4	1	4	5	-	-	-	-
• Executive Council meetings held	5	6	-	6	5	2	N/A	N/A	N/A	19	24	-
• Regional Council meetings held	22	26	7	-	-	-	N/A	N/A	N/A	N/A	N/A	N/A
• Submissions to Government	18	-	-	8	6	-	-	-	-	-	-	-
4.3 Provide cultural and heritage support as appropriate to the Traditional Owners and other clients of the Land Councils. ALRA S23(1)(ba), S24												
• TO Identification	59?	-	-	-	-	78	-	-	-	-	-	-
• Site & Work Area clearances	-	-	-	-	85	-	-	-	-	-	-	-
• Ceremonial and funeral grants	166	204	-	194	191 ²⁴	-	-	-	-	-	-	-

²⁴ Funeral assistance only

Output Group 4: Advocacy services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
4.4 Facilitate targeted Aboriginal community development initiatives as appropriate with the Traditional Owners and other clients of the Land Councils.												
• Major Community Development Projects	-	-	-	2	2	-	-	-	-	-	1	-

Output Group 5: Administration and Support services.												
	NLC			CLC			ALC			TLC		
	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07	04/05	05/06	July 06 -Feb 07
5.1 Administer and distribute statutory, negotiated and other payments as appropriate to the Traditional Owners and other clients of the Land Councils. ALRA S35(2) – (8)												
• Payments made	1,180	1,455 ²⁵	758	-	-	-	-	-	-	-	-	-
• Amount distributed	\$11M	\$13.6M	-	\$20.4M	\$16.8M	\$22.5M	-	-	-	-	\$428K	-
• AbCorps administered	-	-	-	61	63	62	-	-	-	-	-	-
5.2 Administer Land Trusts in accordance with the provisions of the ALRA. ALRA S23(1)(g)- (h)												
• Land Trusts overseen	-	-	-	-	70	-	-	-	-	-	1	1
• Membership renewals	-	-	>14	-	-	-	-	-	-	-	7	-
5.3 Assist in the resolution of disputes with respect to land as appropriate. ALRA S25	9	-	-	-	0	-	-	-	-	0	0	-

²⁵ Excludes 204 grants for funerals and ceremonies

Staffing numbers as at March 2007

	NLC ²⁶	CLC ²⁷	ALC ²⁸	TLC ²⁹
Secretariat / Directorate	11	8	2	4 ³⁰
Corporate Services	29	25	8 ³¹	1
AAMC	N/A	7	N/A	N/A
Mining	9	9	1	N/A
Regional Services	29	20	N/A	N/A
Land / Resource Management	22	31	2	1
Native Title ³²	N/A	8	N/A	N/A
Anthropology	19	21	N/A	N/A
Legal	11	9	N/A	N/A
TOTAL	130	138	13	6

²⁶ Staffing numbers for the NLC as at 30th June 2006 were 110 against an establishment of 133. This compares with staffing levels provided in March 2007 of 130.

²⁷ Staffing levels for the CLC as at 30th June 2006 were 122. This compares with staffing levels provided in March 2007 of 138.

²⁸ Staffing numbers for the ALC as at March 2007 were 13 (excluding 8 rangers) of an establishment of 14.

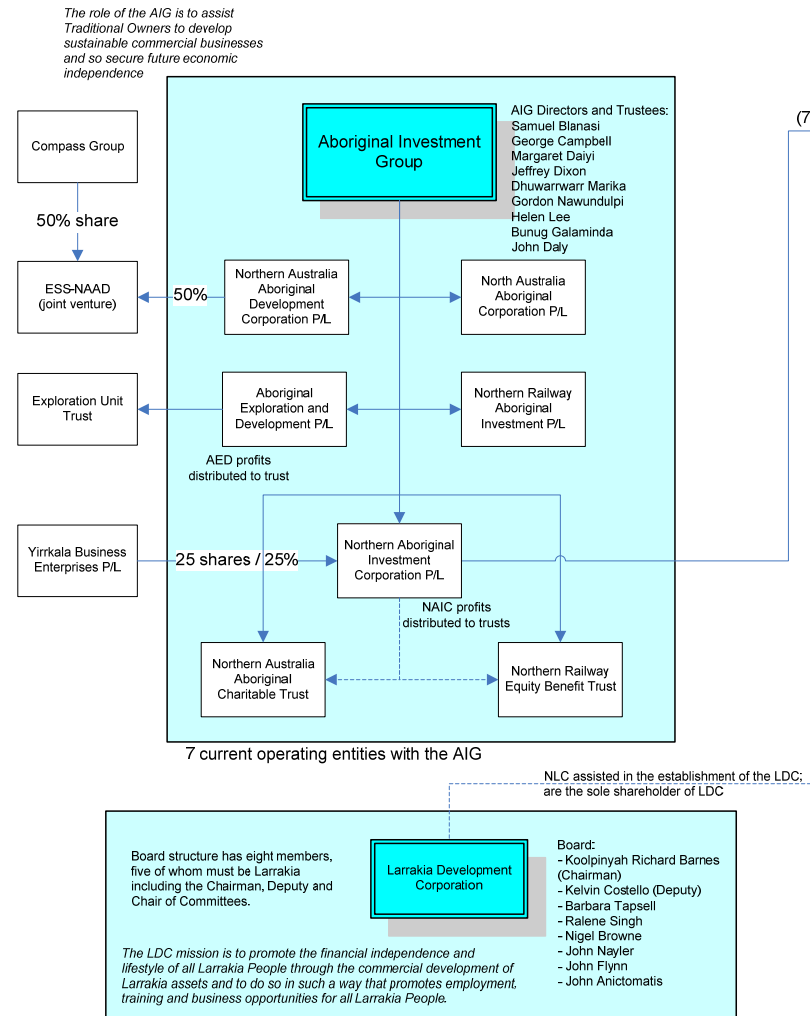
²⁹ Average staffing levels for the TLC in 05/06 were 5 (TLC Annual Report page 53). In addition, rangers are employed, funded through external sources.

³⁰ Includes 3 Tiwi Managers

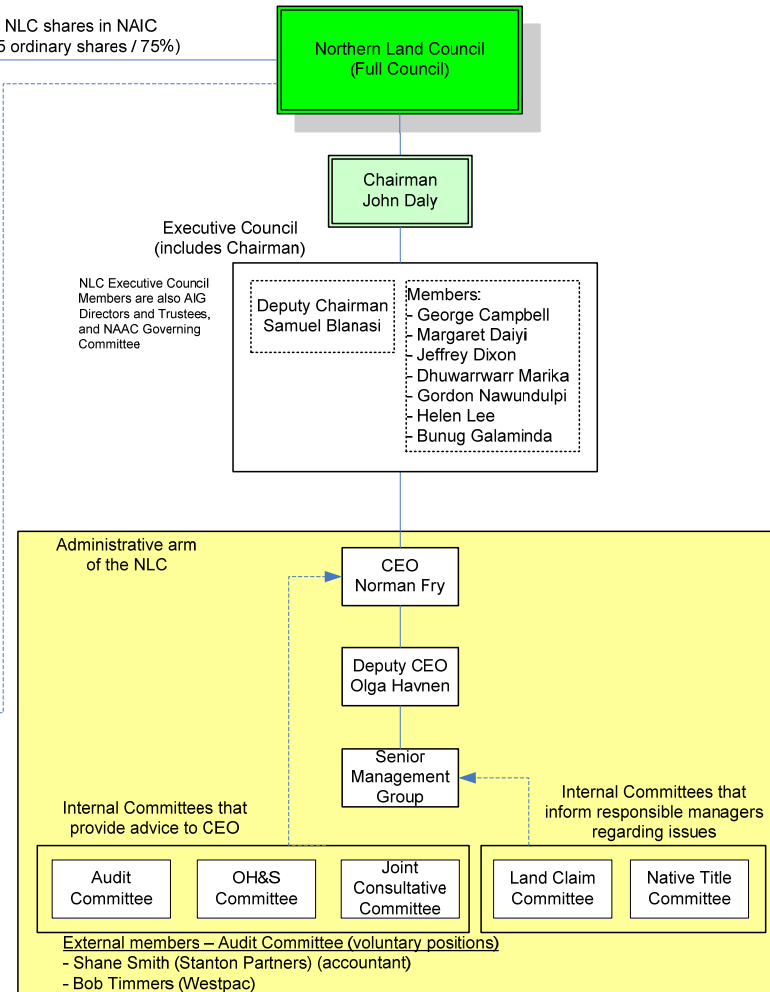
³¹ Includes Cultural, Liaison, Information & linguistics, and Employment & Education Officers

³² NLC Native Title has approximately 18 positions including 3 Anthropologists, 1 GIS Officer, 3 Legal Advisers and 1 Mapping Officer – these are incorporated into the above figures

Appendix 3: Land Council structures and relationships with commercial entities

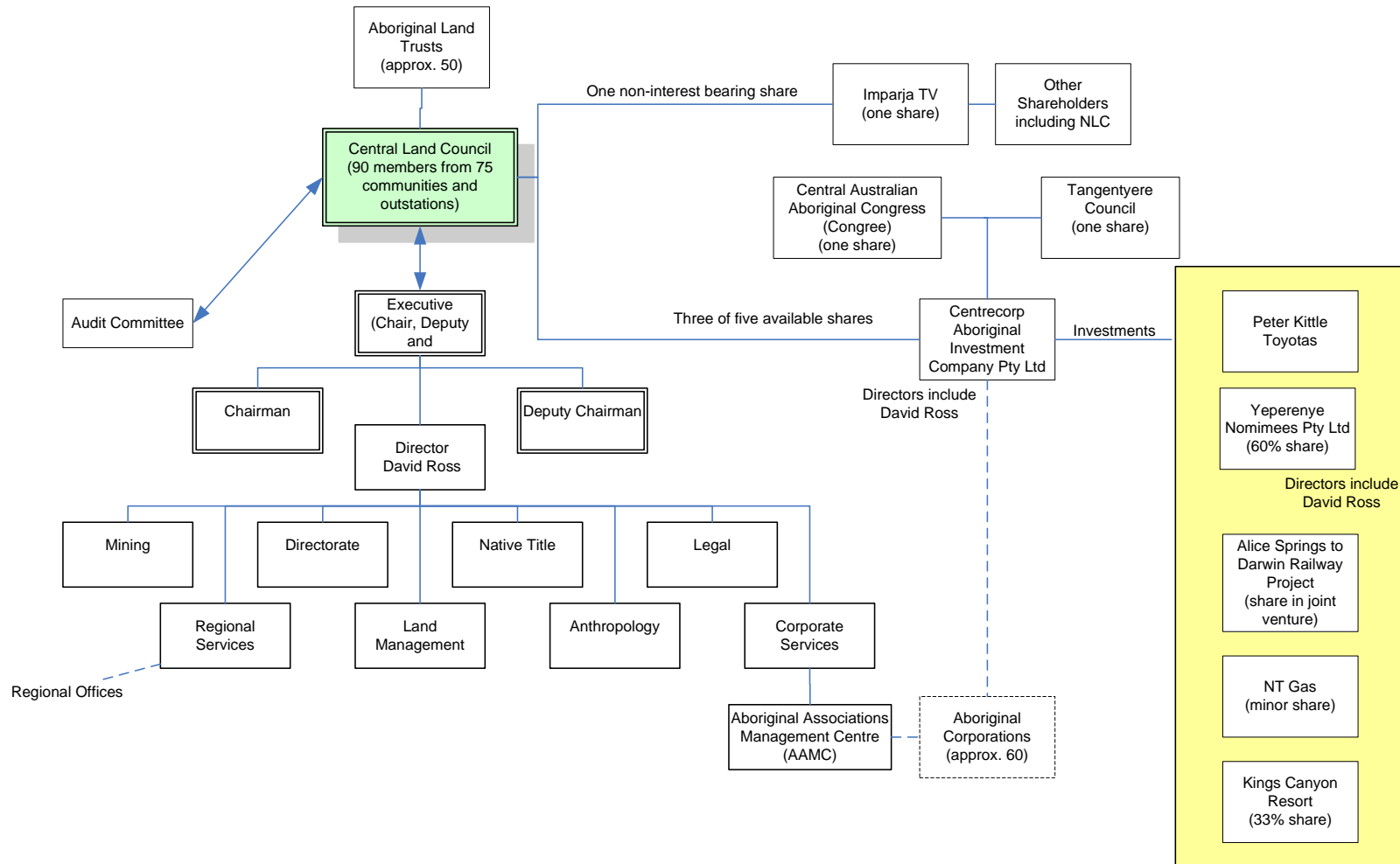


Northern Land Council Governance Arrangements



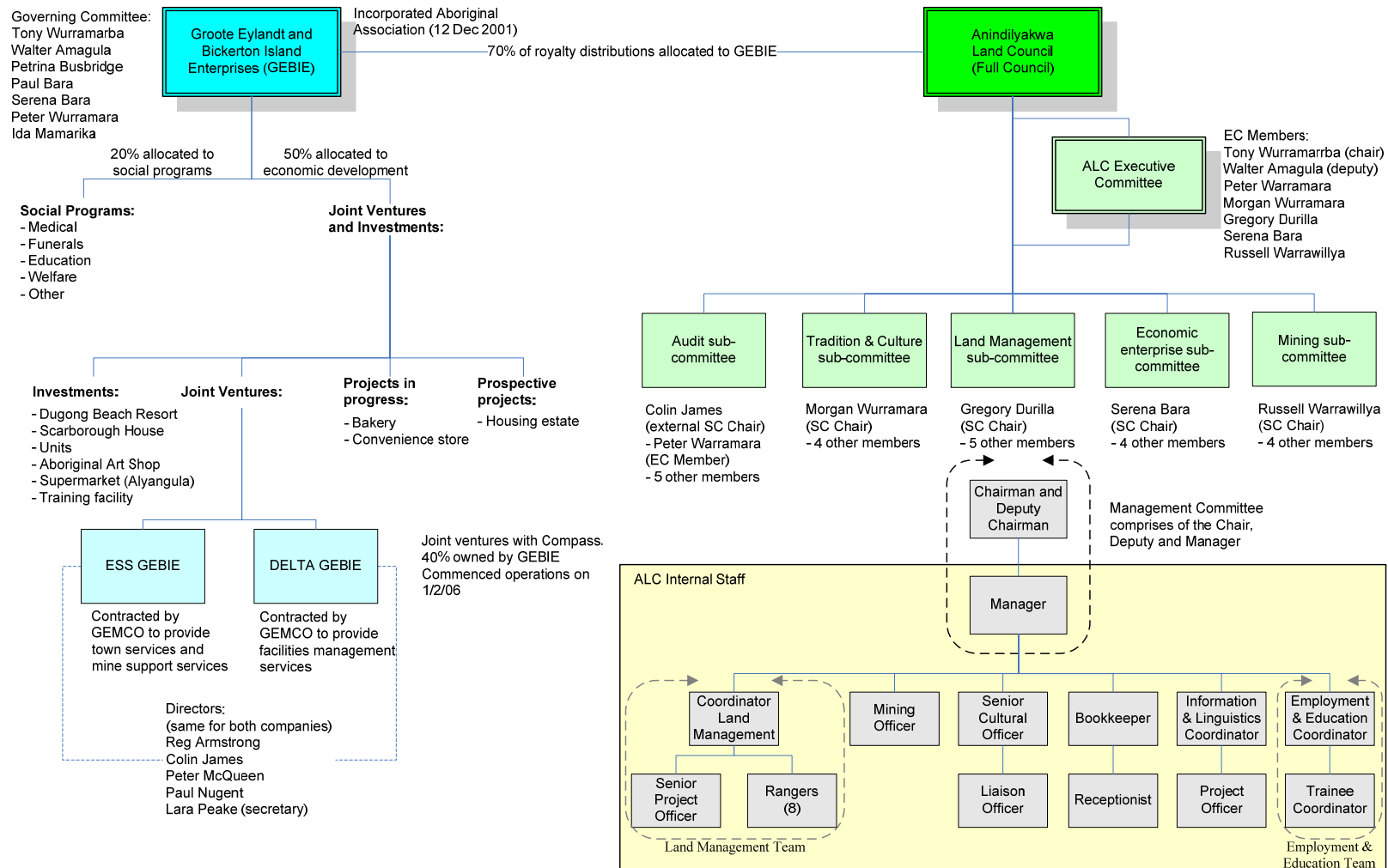
Central Land Council

Governance Arrangements

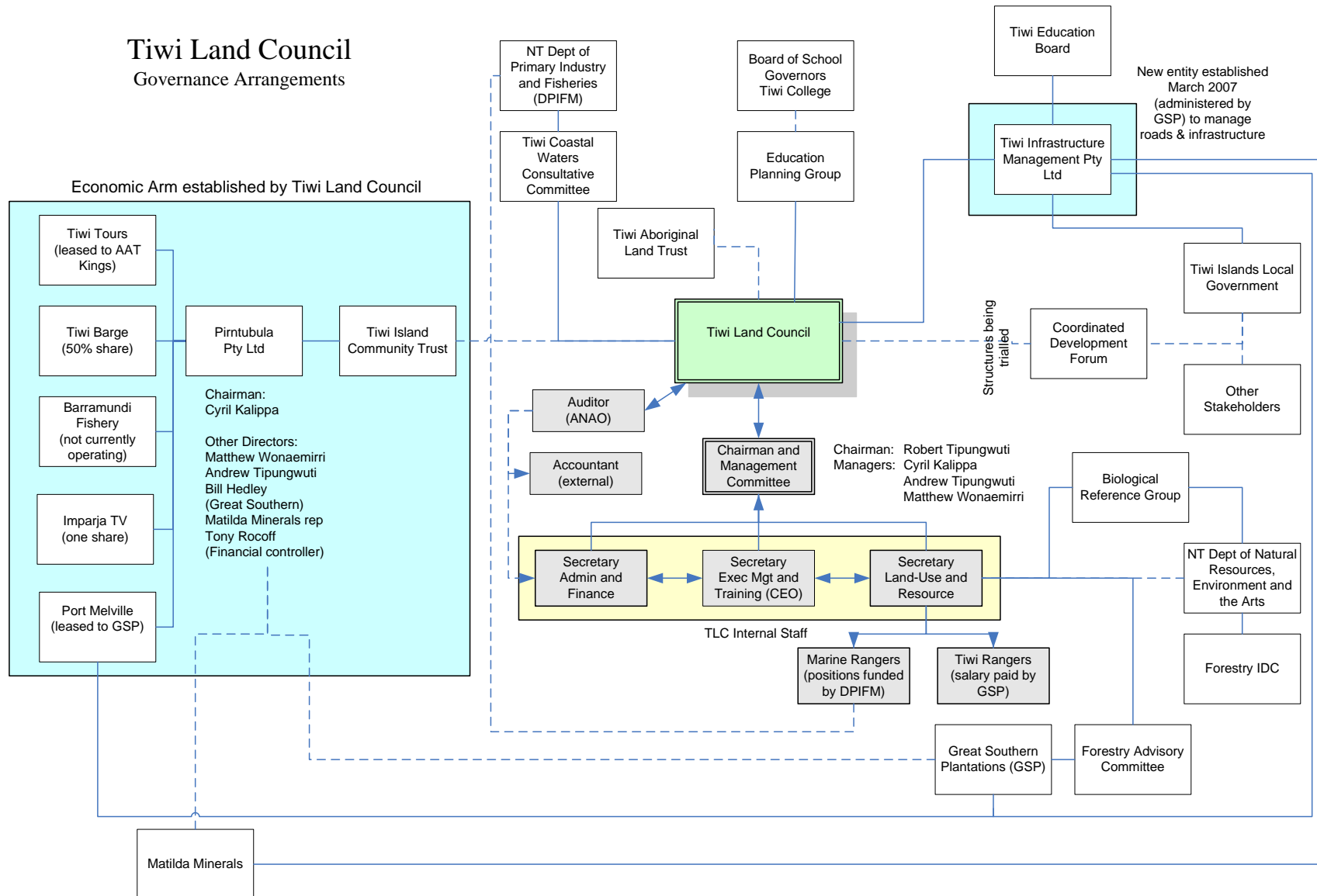


Anindilyakwa Land Council

Governance Arrangements



Tiwi Land Council Governance Arrangements



Attachment A: Recent amendments to ALRA and ATSI

Relevant amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* and *Aboriginal and Torres Strait Islander Act 2005*.

Aboriginal and Torres Strait Islander Act 2005

1 After paragraph 193X(1)(c)

Insert:

- (ca) when requested to do so by the Minister—to evaluate or audit the activities or operations of a Land Council (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); and
- (cb) when requested to do so by the Minister—to evaluate or audit the activities or operations of any body corporate or other person that has received an amount:
 - (i) under a determination under subsection 35(2), (3) or (6) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
 - (ii) under subsection 35(3) of that Act in accordance with an agreement mentioned in that subsection; or
 - (iii) under subsection 35(4) of that Act that the Land Council concerned has advised, under subsection 35(4A) of that Act, is an accountable amount; or
 - (iv) under subsection 35(4B) of that Act; or
 - (v) under subsection 35(11) of that Act in relation to an amount covered by subparagraph (i), (ii), (iii) or (iv) of this paragraph; or
 - (vi) under subsection 67B(6) of that Act that the Land Council concerned has advised, under subsection 67B(7) of that Act, is an accountable amount;but only to the extent that the evaluation or audit concerns that amount or the income or other benefit derived from that amount; and
- (cc) when requested to do so by the Minister—to evaluate or audit the activities of any individual or organisation that has received an amount under subsection 64(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976*, but only to the extent that the evaluation or audit concerns that amount or the income or other benefit derived from that amount; and

Aboriginal Land Rights (Northern Territory) Act 1976

75 Subsection 34(1)

After “administrative costs”, insert “or capital costs”.

Note: The heading to section 34 is altered by omitting “**Administrative expenditure**” and substituting “**Expenditure**”.

76 At the end of subsection 34(1)

Add:

Note: The Minister must have regard to approved estimates in determining what amounts are to be debited from the Account under subsection 64(1).

77 After subsection 34(1)

Insert:

- (1A) A Land Council must, at the time it submits estimates to the Minister under subsection (1), notify the Minister, in such form as the Minister directs, of:
- (a) the total amount of fees it expects to receive under section 33A during the period to which those estimates relate; and
 - (b) the total amount of other income it expects to receive during the period to which those estimates relate in relation to performing functions or exercising powers under this Act.

Note: The Minister must have regard to these amounts in determining what amounts are to be debited from the Account under subsection 64(1).

- (1B) Paragraph (1A)(b) does not apply to:
- (a) a payment made to a Land Council as mentioned in subsection 35(2), (3), (4) or (4B); or
 - (b) interest received by a Land Council as mentioned in subsection 35(11) in relation to such a payment.

78 Subsection 34(2)

After “administrative costs”, insert “or capital costs”.

79 After subsection 34(3)

Insert:

- (3AA) Nothing in subsection (3) empowers a Land Council to spend amounts, in relation to matters covered by the estimates approved by the Minister, that exceed the total amount of expenditure provided for by those estimates.

80 Subsection 34(4)

Repeal the subsection, substitute:

- (4) In this section:

administrative costs of a Land Council includes:

- (a) the cost of providing services for which the Council may charge a fee under section 33A; and
- (b) the cost of paying remuneration and allowances that are payable under this Act to:
 - (i) a member of the Council; or
 - (ii) a member of a Land Trust holding land, or established to hold land, in the area of the Council.

81 Subsection 35(1)

Repeal the subsection, substitute:

- (1) A Land Council must spend the following amounts in meeting its administrative costs or capital costs, in accordance with section 34, in the financial year in which the amounts are received or in the next financial year:
- (a) money paid to the Council under subsection 64(1);
 - (b) fees the Council receives under section 33A;
 - (c) other income the Council receives in relation to performing functions or exercising powers under this Act.

(1A) Paragraph (1)(c) does not apply to:

- (a) a payment made to a Land Council as mentioned in subsection (2), (3), (4) or (4B); or
- (b) interest received by a Land Council as mentioned in subsection (11) in relation to such a payment.

174 Subsection 64(1)

Omit “having regard to the number of Aboriginals living in the area of each Council, an amount equal to 40% of the amounts credited to the Account in accordance with subsection 63(1) or (4).”, substitute:

having regard to the following in relation to each Land Council:

- (a) the most recent estimates approved by the Minister under section 34;
- (b) the most recent amounts notified to the Minister under subsection 34(1A);
- (c) any surplus specified in the most recent financial statements prepared under clause 2 of Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* and given to the Minister.

Attachment B: Functions of Land Councils

Section 23 of the *Aboriginal Land Rights (Northern Territory) Act 1976* states the functions of the Northern Territory Land Councils. Within the ALRA there are also a number of other functions and powers bestowed upon the Land Councils. The following is a summary of the functions and powers with references to the related sections within the ALRA.

It is noted that the Land Councils also perform functions prescribed in other Australian and Northern Territory Government legislation (e.g. *Native Title Act 1993*, *Northern Territory Aboriginal Sacred Sites Act 1989*). Those functions were not part of the audit and are not listed below.

Section 23 functions and powers	ALRA Reference
Ascertain and express the wishes and opinion of Aboriginal people living in the Land Council area	Section 23(1)(a)
Protect the interests of traditional owners of, and other Aboriginal people interested in, Aboriginal land	23(1)(b)
Assist in the protection of sacred sites	23(1)(ba)
Consult with traditional owners relating to the use of Aboriginal land	23(1)(c)
Negotiate the acquisition of land by the Land Trusts	23(1)(d)(i)
Negotiate the use by Aboriginal people of land	23(1)(d)(ii)
Negotiate with persons desiring to obtain an estate or interest in Aboriginal land	23(1)(e)
Assist Aboriginal people to carry out commercial activities	23(1)(ea)
Assist Aboriginal people in pursuing a land claim	23(1)(f)
Negotiate, and enter into agreements, relating to access through Aboriginal land	23(1)(fa)
Compile a register of the members of the Land Council	23(1)(g)(i)
Compile a register of the members of the Land Trusts	23(1)(g)(ii)
Supervise and provide administrative assistance for Land Trusts	23(1)(h)
Other functions as approved by the Minister	23(2)
Consultation with Aboriginal people with interests on land	23(3)

Functions and powers from other sections	ALRA Reference
Nominate members of a Land Trust	7(3)
Request the Minister to effect amalgamations of Land Trusts	4(1B)
Keep Land Trust seals	4(4)
Request the Minister to remove a member of a Land Trust	8
Hold title deeds in escrow on behalf of Land Trusts	10(2) & (2B)
Negotiate and enter agreements with the Northern Territory Government identifying public roads on Schedule 1 Aboriginal land	12AA to 12AC
Negotiate with regard to, and consent to, proposed grants of interest to third parties over Aboriginal land held in escrow	13
Terminate a pre-existing occupation on Aboriginal land by a mission	18(2)
Negotiate and enter agreements with third parties having pre-existing rights to a lease over Schedule 1 Aboriginal land	20
Determine the priorities of the Land Council, ensuring priority is given to the protection of interests of Aboriginal people in the area of the Council	Section 23AA
Compile and maintain a register of traditional owners (optional)	24
Conciliation of disputes with respect to land	25
Pay the administrative expenses of Land Trusts	26
Employ staff and engage consultants	27(1)(a) & (b)
Provide direction to Land Trusts concerning the performance of their functions	27(1)(c)
Provide administrative or other assistance to funded Incorporated Aboriginal Associations	27(1A)
Appoint committees of Land Council members to assist the Land Council to fulfil its functions	29A
Elect the Chairman and Deputy Chairman of the Land Council	30
Convene, conduct and minute Land Council meetings (i.e. Full Council and Regional Councils)	31(7) & 31(10)
Application (i.e. expenditure) of money of a Land Council	35
Distribute royalty payments to Aboriginal Councils and Incorporated Aboriginal Associations	35(2) & 35(3)
Audit or evaluate activities or operations of bodies funded by Land Council (optional)	35(3)
Distribute lease rental payments and other land use payments to the relevant traditional owners	35(4)

Functions and powers from other sections	ALRA Reference
Following written instruction from an Aboriginal Council or Incorporated Aboriginal Association, hold payments in trust until advised to do otherwise	35(9)
Notify relevant Aboriginal communities and groups about exploration proposals	41(7)
Consent, or refuse to consent, to the grant of an exploration licence following consultation with relevant traditional owners; within this Part IV of the <i>ALRA</i> there is a series of steps that the Land Councils are required to perform in relation to exploration licences	42
Negotiate and consent, or refuse to consent, to a mining agreement on behalf of Aboriginal people following consultation with the relevant traditional owners; within this Part IV of the <i>ALRA</i> there is a series of steps that the Land Councils are required to perform in relation to mining agreements	48A & 48C
Elect members to the Aboriginals Benefit Account Advisory Committee	65(2)
Approve the construction of roads over Aboriginal land	68
Agree upon access routes across Aboriginal land	70(4)

Attachment C: Additional reporting requirements

Section 37 of the ALRA states the additional reporting requirements for the Land Councils. Those requirements are as follows.

37 Additional Land Council reporting requirements

- (1) The annual report of a Land Council under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include the matters set out in this section in relation to the financial year to which the report relates.

Fees

- (2) The report must specify:
 - (a) the total fees the Council received under section 33A during that year for services the Council provided under Part IV (whether in that year or the previous year); and
 - (b) the total fees the Council received under section 33A during that year for any other services the Council provided (whether in that year or the previous year).

Section 35 determinations

- (3) The report must include:
 - (a) particulars of any determinations made by the Council under subsection 35(2) or (3) during that year; and
 - (b) particulars of any determinations made by the Minister under subsection 35(6) during that year.

Details of amounts paid

- (4) The report must include for each amount paid by the Council during that year:
 - (a) under a determination made under subsection 35(2); or
 - (b) under a determination made under subsection 35(6) (in so far as that determination was made because the Council did not make a determination under subsection 35(2)); or
 - (c) under subsection 35(4) that the Council has advised, under subsection 35(4A), is an accountable amount; or
 - (d) under subsection 35(4B); or
 - (e) under subsection 35(11) in relation to an amount covered by paragraph (a), (b), (c) or (d) of this subsection; or
 - (f) under subsection 67B(6) that the Council has advised, under subsection 67B(7), is an accountable amount;the following details:
 - (g) the recipient of the amount;
 - (h) the subsection under which the amount was paid;
 - (i) the total of the amount paid.

Details of amounts held in trust

- (5) If, at the end of that year, the Council holds an amount:
 - (a) paid to the Council, in any financial year, as mentioned in subsection 35(2) or (3); and
 - (b) in trust as mentioned in subsection 35(6B), (8) or (9);the report must include the following details:
 - (c) the amount paid to the Council and the financial year in which the amount was paid;
 - (d) the amount held in trust;
 - (e) the mining operations concerned.

Details of section 28 delegations

- (6) If a delegation under section 28 to a body corporate is in force at any time during that year, the report must include particulars of the activities of the body during that year to the extent they relate to the delegation.

Details of section 29A committees

- (7) If the appointment of a committee under 29A is in force at any time during that year, the report must include particulars of the activities of the committee during that year.

Details of consultants

- (8) The report must specify:
- (a) each consultant engaged by the Council during that year to do work in relation to the Council's performance of functions or exercise of powers under this Act; and
 - (b) the amount paid to the consultant by the Council during that year for that work.