

Governance of the Northern Land Council

Northern Land Council

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Canberra ACT
15 August 2023

Dear President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Northern Land Council. The report is titled *Governance of the Northern Land Council*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Audit snapshot

Auditor-General Report No.1 2023–24 *Governance of the Northern Land Council*



Why did we do this audit?

- ▶ This audit is part of a series of audits of the governance of the Northern Territory (NT) Land Councils. It was conducted to provide independent assurance to Parliament that the Land Councils' governance arrangements are effective in meeting legislative obligations.
- ▶ Land Councils play an important role in securing rights and realising benefits for Aboriginal constituents. Many stakeholders rely on the efficient and effective operation of the Land Councils.



What did we find?

- ▶ The Northern Land Council's governance arrangements under the ALRA, NTA and the PGPA Act are largely effective.
- ▶ There are instruments of delegation under the ALRA, however there is a lack of clarity as to whether the accountable authority can delegate.
- ▶ The NLC's governance arrangements under the ALRA and NTA are largely effective.
- ▶ The NLC's arrangements to promote the proper use and management of resources under the PGPA Act are largely appropriate.



Key facts

- ▶ The Northern Land Council (NLC) was established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).
- ▶ The NLC is also a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and a Native Title Representative Body under the *Native Title Act 1993* (NTA).
- ▶ The NLC's jurisdiction covers approximately 572,000 square kilometres. The Council is comprised of 83 members.



What did we recommend?

- ▶ There were eleven recommendations to the NLC: two aimed at documenting governance arrangements relating to the accountable authority; six aimed at improving governance arrangements under the ALRA; and three aimed at improving governance arrangements under the PGPA Act.
- ▶ The NLC agreed to the recommendations.

51,000

Estimated Aboriginal population in the NLC area.

\$59.9m

Received by the NLC from Aboriginals Benefit Account for operations in 2021–22.

\$56.5m

Land use and other payments distributed to Traditional Owners and Aboriginal corporations in 2021–22.

Summary and recommendations

Background

1. Four Northern Territory (NT) Land Councils are established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) to represent the interests of Aboriginal people within their respective regions and assist them with the management of Aboriginal land. The four NT Land Councils are corporate Commonwealth entities and must comply with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).
2. The *Native Title Act 1993* (NTA) provides for the Land Councils' responsibilities as Native Title Representative Bodies. The NTA provides a mechanism for the recognition of the rights and interests of Aboriginal and Torres Strait Islander people in land and waters according to their traditional laws and customs.
3. The Northern Land Council (NLC) was established in 1973 to represent the Aboriginal people of the northern part of the NT. The Council has 83 members and an Executive Council comprised of 14 members. In 2021–22, the NLC received \$59.9 million from the Aboriginals Benefit Account for its operations, \$5.1 million from government for its native title program, and \$17.7 million for special purpose grants. It also received \$66.6 million from land use rents, royalties and access permits.

Rationale for undertaking the audit

4. This performance audit is part of a series of audits of the governance of the NT Land Councils. It was conducted to provide independent assurance to Parliament that the Land Councils' governance arrangements are effective in meeting legislative obligations under the ALRA, the NTA and the PGPA Act.
5. Land Councils play an important role in securing rights and realising benefits for Aboriginal constituents. Many external stakeholders, including government entities, non-government organisations, and Indigenous and non-Indigenous businesses, rely on the efficient and effective operation of the Land Councils.

Audit objective and criteria

6. The objective of the audit was to assess the effectiveness of the governance of the Northern Land Council under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the *Native Title Act 1993* and the *Public Governance, Performance and Accountability Act 2013*.
7. To form a conclusion against this objective, the following high-level criteria were applied.
 - Has the NLC appropriately exercised its decision-making authority under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the *Native Title Act 1993* and the *Public Governance, Performance and Accountability Act 2013*?
 - Is the NLC effectively governing its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*?

- Has the NLC established appropriate arrangements to promote the proper use and management of resources?

Conclusion

8. The Northern Land Council's governance arrangements under the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Native Title Act 1993* and *Public Governance, Performance and Accountability Act 2013* are largely effective.

9. Land Council decision-making authority is exercised under multiple pieces of legislation. The delegation of functions and powers under this legislative framework is complex. The NLC has delegated its functions and powers under the ALRA and NTA through two instruments of delegation. The purpose of a 'Financial Delegations Policy' is unclear and it is not appropriately endorsed. Greater clarity is required for the Northern Territory (NT) Land Councils in relation to how accountable authority delegations are required to be implemented under the two Acts.

10. The NLC's governance arrangements under the ALRA and NTA are largely effective. The establishment and governance of the Council and its committees complies with legislative requirements. Poor record-keeping reduces transparency over the Council member nomination process and the validity of the constitution of the Council. The transparency of other decision-making arrangements could be improved. The NLC has not met a commitment to the Minister for Indigenous Australians and the community to review its method of choice for Council member selection. Governance arrangements for the exercise of the NLC's key statutory functions (negotiating and assisting with land use, assisting with commercial activities, consulting and obtaining informed consent, and distributing royalties and rents) are largely appropriate.

11. The NLC's arrangements to promote the proper use and management of resources are largely appropriate. The NLC has established an appropriate framework of risk oversight and management, and a policy framework, which have not been fully implemented. Finalisation of policies, improved training and greater risk reporting would enhance the arrangements. Arrangements to support the integrity of the Land Council operations are undermined by a system of fraud control that has not met the requirements of the mandatory Commonwealth fraud rule, although arrangements for declaring conflicts of interest are largely appropriate. The NLC 2021–2025 Corporate Plan largely complied with the PGPA Rule and the 2021–22 Annual Report was fully compliant with PGPA Act and *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) requirements. There could be improvements to performance reporting. There is an Audit Committee which has been appropriately established, although its review of performance reporting is insufficient. There are some weaknesses in the Audit Committee's mandatory reporting to the NLC accountable authority. An internal audit function is developing.

Supporting findings

Exercise of decision-making authority

12. There are two delegation instruments that devolve ALRA and NTA functions and powers to the Executive Council, regional Councils and officials employed by the NLC. (See paragraphs 2.5 to 2.8)

13. A document titled 'Financial Delegations Policy' has been established by the NLC CEO. The intent and function of the Financial Delegations Policy is unclear. However, as either an instrument of delegation under the ALRA, or an instrument of authorisation under the PGPA Act, it is not appropriately endorsed by the Council and/or accountable authority, and it could be more specific. There is no governance document regarding how the Chair and the CEO of the Land Council (the joint accountable authority) expect to manage their joint responsibilities. There is a lack of clarity as to whether the accountable authority of the NLC has any power to delegate under the PGPA Act and ALRA. (See paragraphs 2.9 to 2.19)

Governance under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*

14. The method of choice has not been reviewed since 2016 despite assurances in 2016, 2020 and 2021 to the Minister for Indigenous Australians and NLC constituents that it would be reviewed. There is a lack of transparency and communication regarding how the method of choice is intended to work. Record-keeping of member nominations does not support assurance that the Council is appropriately constituted under the method of choice. Clear guidance exists on the roles and responsibilities of full Council, Executive Council and regional Councils, although there could be more regular ongoing governance training. Meeting rules are approved and largely followed. Council meetings and processes largely support informed decision-making by members. The reporting to the full Council and regional Councils by the Executive Council, which has broad delegations, is insufficient. The NLC maintains registers of members. (See paragraphs 3.4 to 3.36)

15. The ANAO assessed the NLC governance arrangements for the key legislative functions.

- Negotiating and assisting — Policies and procedures exist to support the exercise of most of its negotiating and assisting activities, although they are often in a draft form. The NLC's approach to the prioritisation of land use applications is publicly available on its website. There are a large number of outstanding assessments and the NLC does not report on timeliness to process agreements and permits. Since 2019 the NLC has conducted some audits of compliance with agreement conditions, although it lacks a risk-based compliance strategy. Arrangements to assist with commercial and other activities are largely effective; and processes to protect sacred sites are appropriate.
- Consultation and obtaining consent — NLC's arrangements to consult and obtain consent are largely appropriate. There is no dispute resolution policy, and the complaints handling system could be improved.
- Distributing royalties and other payments — The NLC has a policy for distributing payments from Part IV and section 19 agreements and procedures for recording instructions from beneficiary groups on how to distribute monies received from any land use arrangement. There is no policy for distributing NTA agreement monies. The NLC has mechanisms for providing assurance that monies are distributed to the correct beneficiaries. Not all monies received under the ALRA are distributed within the six-month legislated timeframe. (See paragraphs 3.37 to 3.101)

Arrangements to promote the proper use and management of resources

16. The NLC is operating under a risk management framework that was re-drafted in 2022. A risk register has been established, is regularly maintained and is largely consistent with the draft

2022 Enterprise Risk Management Framework. A requirement to report quarterly to the Council about risks is not implemented, which reduces the Council's risk oversight. A suite of corporate policies has been established, although not all policies have been operationalised through appropriate supporting procedures and some are not appropriately endorsed and finalised. There is governance training, although mandatory training on certain policies is not enforced. (See paragraphs 4.2 to 4.21)

17. The NLC is not fully implementing its Fraud and Corruption Policy. While there is a Fraud and Corruption Control Plan this is not clearly tied to identified fraud risks, fraud risk assessments are not conducted as frequently as required under the Plan, it is not clear if reporting channels are confidential, and the NLC does not have a formal mechanism for recording incidents of fraud or suspected fraud. The NLC's arrangements for managing conflicts of interest among staff and Council members are largely appropriate. Key management personnel, including the Chair and CEO, make a declaration of their positions on the board of other entities. A Conflict of Interest Policy and mandatory online declaration mechanism were established for staff declarations. Use of the online declaration system by staff is monitored and an online declaration under the policy was made by all sampled senior managers in 2022, except by the CEO. Improvements are required to the completeness of declarations by senior management and the rate of completion of declaration forms by other staff. Council members are required to declare their interests as they arise during meetings, and the declarations are recorded in the minutes and in a register. Management strategies were recorded for most declared Council member interests. (See paragraphs 4.23 to 4.38)

18. The 2021–2025 Corporate Plan largely complied with the PGPA Rule. Some deficiencies were identified in the description of the NLC's purpose and performance measures. The 2021–22 Annual Report was fully compliant with ALRA and PGPA requirements. The line of sight between performance measures in the corporate plan and the annual performance statements could be improved. The NLC accountable authority and Council had some oversight in the development and approval of corporate plans and annual reports. (See paragraphs 4.39 to 4.53)

19. The NLC is developing an internal audit function. The establishment and composition of the Audit Committee complies with PGPA Rule requirements and Department of Finance guidance. The Audit Committee is delivering on its mandatory functions, except in relation to the review of performance reporting. The Audit Committee partly complies with its mandatory reporting requirements. (See paragraphs 4.54 to 4.71)

Recommendations

- Recommendation no. 1**
Paragraph 2.11
- The Northern Land Council clarify its Financial Delegations Policy such that:
- (a) it is clear whether it is an instrument of delegation, an instrument of authorisation or a policy; and
 - (b) depending on its clarified intent, an instrument of delegation or authorisation is appropriately endorsed by either the full Council under common seal, the accountable authority, or both.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 2**
Paragraph 2.15
- The Northern Land Council establish a governance document setting out:
- (a) how the accountable authority (that is, the Chair and CEO) intends to operate, with specific reference to those decisions which require joint authority, and those which can be made independently by one or the other party; and
 - (b) the role of the accountable authority under the PGPA Act and the role of the Council under the ALRA.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 3**
Paragraph 3.9
- To provide transparency over Council nominations, the Northern Land Council:
- (a) publish the method of choice;
 - (b) document and publish the method to determine recognised entities; and
 - (c) publish the list of recognised entities and of communities or outstations that do not have a recognised entity.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 4**
Paragraph 3.13
- The Northern Land Council undertake a review of the method of choice and provide advice on the method of choice to the Minister for Indigenous Australians prior to the 2025 nomination process.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 5**
Paragraph 3.21
- The Northern Land Council obtain mandatory nomination documentation for all nominees, and keep complete and accurate records of the nomination process, to provide assurance that there is a properly constituted Council.
- Northern Land Council response:** *Agreed.*

- Recommendation no. 6**
Paragraph 3.34
- The Northern Land Council:
- (a) develop a mechanism to improve the full Council's and regional Councils' visibility of decisions made by the Executive Council;
 - (b) implement action lists to monitor progress of actions items arising from Council meetings; and
 - (c) more clearly document key discussion points in Council meeting minutes, with regard to an appropriate balance between transparency and usability.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 7**
Paragraph 3.53
- The Northern Land Council develop a risk-based compliance strategy for land use agreements to detect and address non-compliance with agreement conditions, including non-financial conditions.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 8**
Paragraph 3.79
- The Northern Land Council increase the transparency of its anthropological processes, by:
- (a) documenting its approach to quality assurance of anthropological work for ALRA and NTA matters; and
 - (b) promoting the ability for Aboriginal people to access their own genealogical and anthropological materials.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 9**
Paragraph 4.9
- The Northern Land Council:
- (a) ensure the Risk Management Framework is reviewed and endorsed by the accountable authority of the NLC; and
 - (b) provide risk reporting to the full and Executive Councils in accordance with the Risk Management Framework.
- Northern Land Council response:** *Agreed.*
- Recommendation no. 10**
Paragraph 4.25
- The Northern Land Council fully comply with the Commonwealth fraud rule, and its Fraud and Corruption Policy including by:
- (a) conducting fraud risk assessments regularly;
 - (b) implementing a mechanism to record fraud; and
 - (c) reporting fraud and suspected fraud to the Audit Committee.
- Northern Land Council response:** *Agreed.*

Recommendation no. 11 The accountable authority of the Northern Land Council:
Paragraph 4.72

- (a) annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions;
- (b) amend the Audit Committee Charter to require the Audit Committee to monitor the implementation of agreed recommendations made by external reviews including Auditor-General performance audits and parliamentary committee inquiries; and
- (c) include in the annual report a direct electronic link to the Audit Committee Charter.

Northern Land Council response: *Agreed.*

Summary of entity response

20. The NLC's summary response is provided below and its full response is included at Appendix 1. The improvements observed by the ANAO during the course of this audit are at Appendix 2.

The Northern Land Council (NLC) is thankful for the opportunity to participate in this Australian National Audit Office (ANAO) Performance Audit.

The NLC welcomes the assessment that the NLC's governance arrangements are largely effective.

The NLC acknowledges the ANAO's recommendations and has progressed 72% (eight) of recommendations and 53% (seven) of opportunities for improvement. The NLC is in the process of developing plans to address the remaining 38% (three) of recommendations and 47% (six) of opportunities for improvement.

In addition to the NLC's response to each recommendation and the improvements noted in appendix 2, the NLC has:

- October 2022: Commenced work on establishing baseline assurance levels.
- December 2022: Delivered governance training at council meetings as a standing agenda item.
- March 2023: Enhanced the corporate plan, focusing on purpose statement, methodology of performance measures and targets.
- May 2023:
 - Delivered complaints management training to key staff.
 - Enhanced reporting on conflict of interest.
- April 2023:
 - Developed a rotation policy for Audit and Risk Committee members.
 - Redrafted the fraud and corruption framework and control plan to align with the Commonwealth Fraud Rule.
- June 2023:

- Commenced an internal audit of its complaint's management process.
- Completed fraud risk assessments in high fraud risk areas.

The NLC has commenced implementation of the recommendations/opportunities for improvement identified in this report, demonstrating our commitment to continually strengthen governance arrangements.

Key messages from Northern Territory Land Council audits for all Australian Government entities

21. Below is a summary of key messages, including instances of good practice, which have been identified in a series of audits on the four Northern Territory Land Councils.¹

Maintaining trust

- In the absence of provisions for Freedom of Information under existing Commonwealth legislation, and of appeal and review mechanisms under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Northern Territory (NT) Land Councils should ensure that adequate means exist to provide transparency over operations, so that trust is maintained among constituents and external stakeholders.
- Land Councils were established to represent their constituents' interests. While Land Councils choose their method of selecting their members, transparency over this method of choice is crucial to support constituent confidence. There should be:
 - accessible information available to all constituents on the chosen method, review mechanisms, and election events;
 - clear records that demonstrate that the method has been effectively implemented; and
 - a mechanism and clear triggers to review the method of choice, such as when there is discontent from the community that is being represented.
- Effective management of disputes and complaints is an important mechanism for entities to identify and address stakeholder concerns.
- The Commonwealth fraud rule binds all Commonwealth entities. Compliance with the fraud rule not only ensures that entities meet their legislative obligations for fraud control but also protects the integrity of activities delivered and funds managed, in line with the entity's purpose and stakeholder expectations.

Achieving the full intent of governance mechanisms

- Officials who are elected or appointed to perform a governance role should be familiar with the requirements of that role, to enable them to fully meet their obligations. Formal training, documentary guidance or regular discussion of responsibilities can assist with this. Where

¹ The other Northern Territory Land Councils audits include:

- Auditor-General Report No.25 2022–23 *Governance of the Tiwi Land Council*;
- Auditor-General Report No.29 2022–23 *Governance of the Anindilyakwa Land Council*; and
- Auditor-General Report No.35 2022–23 *Governance of the Central Land Council*.

there is a charter governing roles, there should be assurance that the charter is understood and agreed to by those operating under the charter.

- Entities that have an obligation to consult and obtain consent should consider whether consultation practices are leading to genuine understanding and the underlying principle of informed consent. Processes for consultation should be embedded in decision-making. Constituents should be provided with detailed and balanced information to support their considerations, including frank communication of the risks, costs and benefits of options.
- Where decision-makers are performing multiple roles in related and associated entities, conflicts of interest should be identified, declared and managed. A declaration alone does not mean a conflict of interest is effectively managed.
- An effective audit committee is central to an entity's third line of defence, and should provide independent assurance to the accountable authority that governance, risk management and internal controls are effective. Accountable authorities should ensure their audit committees cover the range of functions required of them under the Public Governance, Performance and Accountability Rule 2014.

Cooperation and coordination between agencies

- The *Public Governance, Performance and Accountability Act 2013* states that the accountable authority of a Commonwealth entity has a duty to encourage cooperation with others and must encourage officials of the entity to cooperate with others to achieve common objectives where practicable. Entities that share a similar operating context or operate under the same legislative framework should collaborate where practicable to address common risks and challenges. This provides an opportunity for entities to learn from each other's experiences and adopt better practice.
- Agencies responsible for legislation or policy have an obligation to ensure that the relevant legislative or policy frameworks can be effectively implemented by the agencies to which they apply, and to providing assurance over the ongoing fitness for purpose of these frameworks. Policy owners need to assist entities to meet their obligations under the frameworks.

Audit findings

1. Background

Introduction

1.1 Four Northern Territory (NT) Land Councils are established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) to represent the interests of Aboriginal people within their respective regions and assist them with the management of Aboriginal land: the Northern Land Council (NLC), the Central Land Council (CLC), the Tiwi Land Council (TLC), and the Anindilyakwa Land Council (ALC).

Legislative framework

1.2 In addition to the ALRA, the NT Land Councils operate under two key legislative frameworks:

- the *Native Title Act 1993* (NTA), which provides for the Land Councils' responsibilities as Native Title Representative Bodies; and
- the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), which set the Land Councils' requirements as corporate Commonwealth entities.²

Aboriginal Land Rights (Northern Territory) Act 1976

1.3 The ALRA was the first legislation in Australia that enabled Aboriginal and Torres Strait Islander people to claim land rights for Country where traditional ownership could be proven. The ALRA recognises Aboriginal people's spiritual affiliation and traditional responsibility for Country as the basis for ownership of land.

1.4 The Aboriginal Land Commissioner undertakes inquiries into traditional land claims in the NT.³ Upon the Aboriginal Land Commissioner's satisfaction that the Traditional Owners⁴ have been correctly identified according to Aboriginal law, he or she provides a report to the Commonwealth minister responsible for the administration of the ALRA and the Administrator of the NT.⁵ The Commonwealth minister decides whether to recommend to the Governor-General of Australia to grant all or part of the land under claim.

2 The NT Land Councils also have functions under other legislation, including the: *Aboriginal Land Act 1978* (NT); *Environment Protection and Biodiversity Conservation Act 1999* (Cth), *Mining Management Act 2015* (NT), *Mineral Titles Act 2016* (NT); and *Territory Parks and Wildlife Conservation Act 2006* (NT).

3 In April 2022 the Minister for Indigenous Australians requested that the Aboriginal Land Commissioner commence a review into Part V (Aboriginal Land Commissioners) and other relevant provisions of the ALRA. The report from the review, including recommendations, should be provided to the Minister no later than 30 June 2023.

4 The ALRA defines Traditional Owners as 'a local descent group of Aboriginals who: (a) have common spiritual affiliations to a site on the land ... ; and (b) who are entitled by Aboriginal tradition to forage as of right over that land'.

5 As at March 2023 the Commonwealth minister responsible for the administration of the ALRA was the Minister for Indigenous Australians. The Administrator of the NT represents the Crown in right of the NT. Their role is essentially the same as state governors across Australia.

1.5 Once land has been granted, it is held by a Land Trust⁶, and Traditional Owners manage their land with the help of their Land Council. Aboriginal land is a form of ‘inalienable’ freehold, which means it cannot be bought or sold, and Traditional Owners of the land have the right of exclusive access and the power to veto proposals to access or use land. As at 2016 Aboriginal people held freehold title to approximately 50 per cent of the NT land mass and 85 per cent of its coastline.⁷

Native Title Act 1993

1.6 Determinations of native title recognise the ongoing connection of Aboriginal and Torres Strait Islander peoples to specific areas of land and waters. Successful claims under the NTA give Aboriginal and Torres Strait Islander peoples a collection of rights, which may include exclusive possession or such rights as the right to camp, hunt, use water, hold meetings, perform ceremony and protect cultural sites.⁸ As at 2023 native title had been recognised over 358,402 square kilometres (25 per cent) of land and waters in the NT.⁹

1.7 Under the ALRA, land rights usually comprise a grant of freehold title to Aboriginal peoples. By contrast, native title arises as a result of recognition, under Australian common law, of pre-existing Indigenous rights and interests according to traditional laws and customs. It does not provide for a process to grant ownership of the land as the ALRA does.¹⁰

Public Governance, Performance and Accountability Act 2013

1.8 The four NT Land Councils are corporate Commonwealth entities¹¹ and as such also must comply with the requirements of the PGPA Act and Rule. The four NT Land Councils are also registered as charities with the Australian Charities and Not-for-profits Commission (ACNC).¹²

6 Aboriginal land trusts are established by the Minister for Indigenous Australians under the ALRA to hold title and exercise their powers as owners of the land for the benefit of Aboriginal people. Land trusts must exercise their functions in accordance with the directions given by the Land Council for the area in which the land is situated.

7 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Native Title Information Handbook Northern Territory 2016*, p. 3.

Schedule 1 of the ALRA defines the land that has been recognised as Aboriginal freehold.

8 Native title rights can also include commercial rights and making decisions in relation to the management or development of the land. Native title may be claimed in areas such as Crown land, parks, land held by government agencies, some leases and waters that are not privately owned.

9 National Native Title Tribunal, *Native Title Determinations: Determined Outcomes* [Internet], 1 April 2023, available from http://www.nntt.gov.au/Maps/Determinations_map.pdf [accessed 26 May 2023].

10 This form of native title is referred to as non-exclusive possession because others also have rights to the land. In some cases, native title rights may include possession of an area to the exclusion of all others. These are called exclusive possession native title rights which are valued like freehold title.

11 The ALRA established Land Councils as bodies corporate. With the introduction of the *Commonwealth Authorities and Companies Act 1997*, Land Councils became ‘Commonwealth authorities’ and were subject to financial statement audits by the Auditor-General for Australia.

12 Although the *Charities Act (Cth) 2013* subsection 5(d) states that a government entity cannot be a charity, the ACNC advised that the NT Land Councils do not meet the definition of a government entity for ACNC purposes.

Governance structures under the ALRA and NTA

Northern Territory Land Councils

1.9 The CLC and NLC were established in 1973 as part of the Australian Government's Aboriginal Land Rights Commission (Woodward Royal Commission) to inquire into the appropriate way to recognise Aboriginal land rights in the NT. The function of the Land Councils at that time was to represent the views of Aboriginal people to the Woodward Royal Commission. The CLC and NLC are responsible for the southern and northern parts of the NT, respectively.

1.10 On 26 January 1977 the Woodward Royal Commission's recommendations were realised through the enactment of the ALRA, which established the CLC and NLC as independent statutory authorities with powers and responsibilities to assist Aboriginal people to acquire and manage their traditional land and seas. The ALRA also made provision for the establishment of other Land Councils in the NT. This led to the creation of the TLC in 1978 (representing the Aboriginal people of Bathurst and Melville Islands) and of the ALC in 1991 (representing the Aboriginal people of the Groote Archipelago).

1.11 The structure of the Land Councils consists of representatives chosen by Aboriginal people living in the region, referred to as 'members of the Council', and an administrative arm managed by a Chief Executive Officer (CEO), who is appointed by the Council. The accountable authority of the NLC is defined in the PGPA Rule (section 7A) as the group of persons made up of the Chair of the Land Council and the CEO of the Land Council.

1.12 The Aboriginals Benefit Account was established under the ALRA in 1976 and is the primary source of revenue for the Land Councils. Aboriginals Benefit Account distributions include funding for the administration of Land Councils, royalty payments for distribution to Traditional Owners, and grants to benefit Aboriginal people living in the NT.

Native Title Representative Bodies

1.13 Once a native title determination is made, the NTA prescribes that native title holders must establish a prescribed body corporate¹³ to manage and protect their native title rights and interests. Native Title Representative Bodies are organisations appointed under the NTA and funded by the National Indigenous Australians Agency (NIAA) to assist Indigenous people with all aspects of their native title claims, and in some cases the management of native title rights once a claim has been determined. There are 14 Native Title Representative Bodies in Australia, including two in the NT. The NLC is the Native Title Representative Body for the northern region, including the Tiwi Islands and Groote Archipelago, and the CLC represents those within the NT's southern region.

National Indigenous Australians Agency

1.14 The NIAA was established as an executive agency in May 2019 to provide advice to and support the Minister for Indigenous Australians (the Minister), including in relation to Land Councils

13 This is a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The CATSI Act provides for the ownership and control of corporate entities to be vested in groups of Aboriginal and Torres Strait Islander people.

and the exercise of his or her powers under the ALRA and the NTA.¹⁴ These functions were previously undertaken by the Department of the Prime Minister and Cabinet. The NIAA advised the ANAO that:

While [NIAA] is not involved in the daily operations of land councils, it does provide support where required, performance monitoring and some administrative oversight. A range of branches within the [NIAA] provide information and support on various issues, including land and native title programs, Indigenous Portfolio Bodies Section, environment and rangers programs, specific policy and program areas for grants activities, and finance teams.

1.15 Land Councils engage with the NIAA in relation to the administration of funds for operational and capital expenses (from the Aboriginals Benefit Account), land management programs and annual reporting obligations.

Functions of the Land Councils

1.16 The Land Councils' key functions, under subsection 23(1) of the ALRA, are to:

- negotiate and enter into Aboriginal land use and access agreements with third parties on behalf of Traditional Owners and of other Aboriginal persons interested in the land;
- assist in carrying out commercial activities;
- assist with traditional land claims and the protection of sacred sites;
- consult with Aboriginal people in the Land Council area about the management of land, and protect their interests; and
- supervise, and provide administrative or other assistance for, Land Trusts in the area.

1.17 Section 35 prescribes how Land Councils must distribute the money received from Aboriginal land use and access.

1.18 The key functions of Native Title Representative Bodies are set out in section 203B of the NTA. They are: facilitation and assistance; certification; dispute resolution; notification; agreement making; and internal review. The powers and duties of Native Title Representative Bodies in respect of money received under the NTA arise from the general law and the terms of the relevant agreement.

1.19 The ALRA prescribes that, in carrying out its functions, a Land Council must not take any action unless it is satisfied that Traditional Owners understand the nature and purpose of the action and consent to it; and any Aboriginal group that may be affected by the proposed action has been consulted. The NTA prescribes that the Native Title Representative Body must consult with native title holders and for some of the functions, be satisfied that they consent to the course of action being taken on their behalf. Given that the vast majority of claims to land under the ALRA are settled

14 Federal Register of Legislation, *Order to establish the National Indigenous Australians Agency as an Executive Agency, 30 May 2019*, [Internet], 2019, available from <https://www.legislation.gov.au/Details/C2019G00474> [accessed 14 December 2022].

as at March 2023¹⁵, facilitating the benefits that can be derived from land rights has been identified by the larger NT Land Councils as an increasing focus and priority.

1.20 A core objective of both the ALRA and the NTA is to establish and support land rights of Traditional Owners (under the ALRA) and native title holders (under the NTA). Land Councils are required to have the capability to confirm the identity and traditional connection of specific individuals to particular areas of land. To this end, Land Councils may collect anthropological data and engage specialist expertise.

1.21 Appendix 3 provides more detail on the Land Councils' powers, functions and duties under the ALRA, the NTA and the PGPA Act.

Land use and access arrangements

1.22 The main types of arrangements for land use and access under the ALRA and NTA, and how the monies received from these arrangements are distributed, are shown in Table 1.1.

Table 1.1: Land use and access arrangements

Land use and access arrangements	Description	Legislation	Selected provisions	Payment distribution
Royalty equivalents	Mining monies	ALRA	Subsection 64(3)	The monies take the form of royalties. Under the ALRA subsection 64(3), a defined amount of mining royalties must be debited from the Aboriginals Benefit Account from time to time and paid to Land Councils for distribution to Aboriginal corporations.
'Part IV agreements' ^a	Mining and exploration monies	ALRA	Part IV (sections 42, 43, 44, and 46)	The monies are specified in an agreement with the land use applicant. Payments are made to Aboriginal corporations, Traditional Owners or another entity as defined in an agreement that is established under Part IV of the ALRA.
'Section 19 (s19) agreements' ^a	Primarily non-mining and some mining related monies	ALRA	Sections 15, 16 and 19	The monies are specified in an agreement with the land use applicant. Payments are made to Aboriginal corporations, Traditional Owners or another entity, as defined in an agreement that is not established under Part IV of the ALRA.
'Township leases' ^b	Township lease monies	ALRA	Section 19A	The monies derive from township leases. Payments are made to Aboriginal corporations.

15 A 1987 amendment to the ALRA prevents the Aboriginal Land Commissioner from dealing with claims lodged after 5 June 1997 (ALRA subsection 67A(6)). As at December 2022, two land claims remained unresolved in the area of the CLC and 32 in the area of the NLC. There are no unresolved claims in the area of the ALC and TLC.

Land use and access arrangements	Description	Legislation	Selected provisions	Payment distribution
'Permits'	Enabling access to Aboriginal land or roads	ALRA	Section 70	Fees are payable to and defined by the Land Council.
'Native title agreements' ^a	Any monies from land use for land subject to native title claim	NTA	Various	The monies are specified in an agreement with the land use applicant. Payments are made to native title holders.

Note a: Payment arrangements are made as per instructions from Traditional Owners and native title holders.

Note b: In this table township leases are voluntary agreements between Traditional Owners and the Australian Government, established by the Executive Director of Township Leasing under ALRA section 19A. The Executive Director of Township Leasing manages the land in the township on behalf of the Traditional Owners and the community for up to 99 years, including sub-leases to business and governments and the protection of sacred sites. There are no township leases in the area of the NLC managed by the Executive Director of Township Leasing.

Source: ANAO analysis.

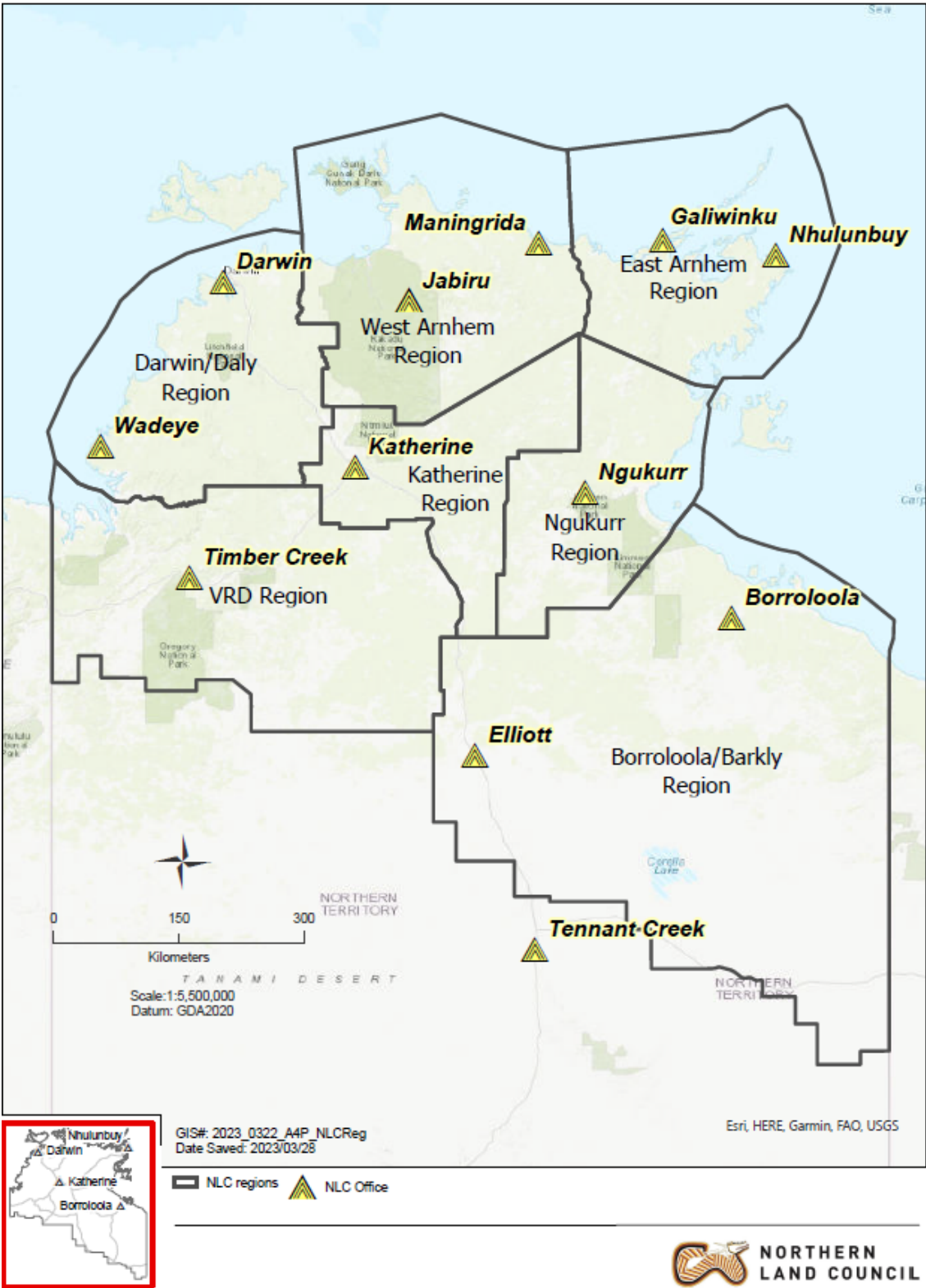
About the Northern Land Council

1.23 The NLC's jurisdiction is divided into seven regions (Figure 1.1), which cover an area of approximately 572,000 square kilometres. Thirty-six per cent of this area is Aboriginal land under the ALRA; and 31 per cent is subject to native title rights and interests under the NTA.

1.24 Approximately 51,000 Aboriginal people live in the NLC region, 80 per cent of whom live in regional or remote areas.¹⁶ The NLC's jurisdiction is linguistically diverse, with over 70 Aboriginal language groups. There are approximately 1700 land owning groups.

16 Northern Land Council, *Our land and people* [Internet], NLC, available from <https://www.nlc.org.au/our-land-sea> [accessed 22 February 2023].

Figure 1.1: NLC regions



Source: Northern Land Council.

1.25 The full Council of the NLC has 83 members, comprising 78 elected members and five ‘co-opted’ women who are appointed by the NLC Chair.¹⁷ As at April 2023 there were 18 women on the full Council. The NLC has established three types of committees and subcommittees.

- Executive Council — the Executive Council is comprised of 14 Council members who are elected from the full Council, with two members representing each region. Its role includes ensuring legislative responsibilities are discharged, appointing the CEO and communicating with regional Councils.
- Regional Councils — each Council member represents their region on one of the NLC’s seven regional Councils, and their role includes consulting communities in their region about issues to be raised with Executive Council members.
- Women’s Advisory Group — to which all female Council members are invited. Women’s subcommittee meetings are held on the day before the full Council meetings ‘to discuss cultural women’s issues’.

1.26 In 2021–22 the NLC had 497 employees, of which 347 were full-time or part-time permanent employees, and 150 were casual employees to support seasonal workloads during the dry season. Sixty per cent of its workforce identify as Aboriginal or Torres Strait Islander. The NLC has 12 offices across its jurisdiction, including its head office located in Darwin.

1.27 In 2021–22 the NLC’s operating budget was \$82.7 million, comprising a \$59.9 million appropriation from the Aboriginals Benefit Account, \$5.1 million under the native title program, and \$17.7 million from special purpose grants. In addition, under the NT Indigenous Economic Stimulus Package the NLC received \$14.7 million in 2021–22 and \$22 million in 2020–21 to support Indigenous businesses and jobs in the NT.¹⁸ In 2021–22 \$67.5 million of royalties, rents, lease monies and native title compensation were paid into the NLC’s Royalty Trust Account for distribution to Traditional Owners and native title holders. The NLC holds property and other non-financial assets valued at \$18.2 million.

Rationale for undertaking the audit

1.28 This performance audit is part of a series of audits of the governance of the NT Land Councils. It was conducted to provide independent assurance to Parliament that the Land Councils’ governance arrangements are effective in meeting legislative obligations under the ALRA, the NTA and the PGPA Act.

1.29 Land Councils play an important role in securing rights and realising benefits for Aboriginal constituents. Many external stakeholders, including government entities, non-government organisations, and Indigenous and non-Indigenous businesses, rely on the efficient and effective operation of the Land Councils.

17 Under subsection 29(2) of the ALRA, a Land Council may, with the approval of the Minister, co-opt up to five Aboriginal people living in the area of the Land Council as additional members.

18 In total, \$100 million were allocated as part of the NT Indigenous Economic Stimulus Package to the four NT Land Councils, in two tranches. The CLC and NLC received \$36.7 million each and the ALC and TLC received \$13.3 million each.

Audit approach

Audit objective, criteria and scope

1.30 The objective of the audit was to assess the effectiveness of the governance of the Northern Land Council under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the *Native Title Act 1993* and the *Public Governance, Performance and Accountability Act 2013*.

1.31 To form a conclusion against this objective, the following high-level criteria were applied.

- Has the NLC appropriately exercised its decision-making authority under the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Native Title Act 1993* and the *Public Governance, Performance and Accountability Act 2013*?
- Is the NLC effectively governing its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*?
- Has the NLC established appropriate arrangements to promote the proper use and management of resources?

1.32 The audit did not specifically examine prescribed bodies corporate under the *Native Title Act 1993* except where they related to the governance of the Northern Land Council.

Audit methodology

1.33 The audit involved:

- reviewing legislation, regulations, policies and best practice standards;
- reviewing NLC documentation, including charters, meeting papers and minutes, policies and procedures, annual reports, corporate plans and correspondence;
- visits to the NT, including Darwin, Tiwi Islands, Katherine, Jabiru and Elliott;
- observing meetings of the full Council, Executive Council, regional Councils, and Audit Committee;
- observing NLC consultations with Aboriginal people;
- meetings with members and staff of the NLC, and officers from relevant business areas within the:
 - Australian Government (including the NIAA, Office of Township Leasing and Office of the Registrar of Indigenous Corporations);
 - NT Government (including the Office of the Chief Minister and Cabinet; Department of Infrastructure, Planning and Logistics; NT Electoral Commission, and Aboriginal Areas Protection Authority);
 - NT local government; and
- 28 meetings with and 14 submissions from businesses, Aboriginal corporations, members of the public, peak bodies and non-government organisations operating in the NLC area.

1.34 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$547,300.

1.35 The team members for this audit were Chayathri Kulatunge, Dr Isabelle Favre, Eliza Glascott, Weinnie Zhou, Kai Swoboda, Alicia Vaughan, Michael Commens, Dr Jennifer Canfield, Sam Hayward, Graeme Corbett, Daniel Whyte and Christine Chalmers.

2. Exercise of decision-making authority

Areas examined

This chapter examines the functions, powers and responsibilities of the Land Councils under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), *Native Title Act 1993* (NTA) and *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and whether these have been appropriately delegated for the Northern Land Council (NLC).

Conclusion

Land Council decision-making authority is exercised under multiple pieces of legislation. The delegation of functions and powers under this legislative framework is complex. The NLC has delegated its functions and powers under the ALRA and NTA through two instruments of delegation. The purpose of a 'Financial Delegations Policy' is unclear and it is not appropriately endorsed. Greater clarity is required for the Northern Territory (NT) Land Councils in relation to how accountable authority delegations are required to be implemented under the two Acts.

Areas for improvement

The ANAO made two recommendations to the NLC to clarify the purpose of and properly endorse its Financial Delegations Policy, and to establish a governance document setting out how the accountable authority wishes to exercise its joint authority.

2.1 Authorisations and delegations are a fundamental part of good governance. They play an important role in ensuring that the entity is acting in accordance with the legal framework that applies to it. An entity needs to put in place arrangements to devolve decision-making power from the ultimate repository of that power to the relevant officers of the entity, as the ultimate repository of that power cannot do everything.¹⁹

2.2 Appendix 4 shows how Land Council decision-makers are defined under the ALRA, NTA and PGPA Act. Under the ALRA, the members of the Council, including an elected Chair and Deputy Chair, are the decision-makers. Under the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), the accountable authority of the Land Council is defined as the Chair of the Council and the Chief Executive Officer (CEO). The former is to be elected by the Council and the latter is to be appointed by the Council under section 27 of the ALRA, which states that the Council may employ staff.

2.3 Whether the Council, Native Title Representative Body or accountable authority has decision-making authority depends upon the decision that is being made and whether that decision relates to powers and functions under the ALRA, NTA or PGPA Act, respectively. Appendix 3 outlines the Councils', Native Title Representative Bodies' and accountable authorities' respective powers and functions under the ALRA, NTA and PGPA Act. In summary: the Land Council is the primary decision-maker in relation to the land; Native Title Representative Bodies have the power 'to do all things necessary or convenient to be done for or in connection with the performance of its functions'; and the accountable authority is the primary decision-maker in relation to performance and proper use of resources under finance law.

19 Australian Government Solicitor, *Fact Sheet No 11: Corporate Commonwealth entities - authorisations and delegations*, AGS, 2014, p. 1.

2.4 Under the ALRA and PGPA Act, the Land Council's and accountable authority's functions are distinct except for the preparation of budget estimates (ALRA section 34 and PGPA Act section 36) and the preparation of the annual report (ALRA section 37 and PGPA Act section 46). Although functions are clearly distinct with these two exceptions, in practice powers and responsibilities may overlap.

Has the Land Council appropriately delegated its functions and powers under the ALRA and the NTA?

There are two delegation instruments that devolve ALRA and NTA functions and powers to the Executive Council, regional Councils and officials employed by the NLC.

2.5 The Australian Government Solicitor has noted that when enabling legislation establishes a board or Council as having ultimate control over the operations of the entity, most commonly the enabling legislation prescribes the CEO or director as the officer responsible for the day-to-day management of the entity.²⁰ This may result in the CEO having 'implied authority', although the Australian Government Solicitor advises that even so it is generally better that decision-making power be expressly delegated.²¹ The ALRA is silent on the role of the CEO (in both their capacity as a CEO and as one of the accountability authorities) or other officials, and an instrument of delegation for functions and powers under the ALRA is therefore required.

2.6 If there is a power to delegate, it will usually be found in the enabling legislation. Appendix 5 shows the ALRA provisions in relation to delegation of powers and functions from the Council to: the Chair of the Council; to committees of the Council; and to Land Council staff, including the CEO. These delegations must be made in writing under the Land Council's common seal. The ANAO examined whether the decision-making authority as defined in the ALRA is properly exercised by the NLC through the Council's delegation of ALRA powers and functions.

2.7 The NLC made its first instrument of delegation under the ALRA in 1996 and this has been amended four times. The most recent version was agreed by the full Council on 30 May 2017. There is certainty around specific delegations under the instrument.

- Non-delegated ALRA powers (that is, those retained by the full Council) are clearly set out in the instrument of delegation.²²
- The devolvement of power to the Executive Council is very broad in that all powers are delegated except: those explicitly retained by the full Council; and the power to direct a Land Trust to grant, transfer or surrender any estate or interest in land under an agreement that will have effect for a period that exceeds 40 years.
- Powers are devolved to regional Councils and officials employed by the NLC including the CEO and Chief Financial Officer.

20 Australian Government Solicitor, *Fact Sheet No 11: Corporate Commonwealth entities - authorisations and delegations*, AGS, 2014, p. 1.

21 *ibid.*, p. 2.

22 The full Council retains the power to request the Minister for Indigenous Australians vary the method of choice for Council members, the power to elect the Chair and Deputy Chair of the Council, the power to make Council meeting rules, the power to co-opt additional members, and powers which cannot be delegated under subsection 28(2) of the ALRA.

2.8 The full Council as a Native Title Representative Body under the NTA has delegated functions and powers in a separate delegation instrument. The most recent version of the delegation instrument was agreed by the Council on 17 December 2021, and meets the requirements of the ALRA because it is in writing and under the common seal of the Council.

Has the accountable authority appropriately delegated its functions and powers under the PGPA Act?

A document titled 'Financial Delegations Policy' has been established by the NLC CEO. The intent and function of the Financial Delegations Policy is unclear. However, as either an instrument of delegation under the ALRA, or an instrument of authorisation under the PGPA Act, it is not appropriately endorsed by the Council and/or accountable authority, and it could be more specific. There is no governance document regarding how the Chair and the CEO of the Land Council (the joint accountable authority) expect to manage their joint responsibilities. There is a lack of clarity as to whether the accountable authority of the NLC has any power to delegate under the PGPA Act and ALRA.

2.9 The CEO has put in place a 'Financial Delegations Policy' (May 2022), the stated purpose of which is to 'to assign delegations of authority with regard to finance matters'. The Financial Delegations Policy uses the terms 'policy', 'delegates' and 'authorises' interchangeably. This diminishes the clarity of the purpose and legal intent of the policy.²³ The Financial Delegations Policy does not represent an appropriate instrument of delegation (because it is not made under common seal of the Land Council) or authorisation (because it is not made by the Land Council Chair and CEO as the accountable authority).

2.10 The Financial Delegations Policy does not clearly identify which specific sections of the ALRA or PGPA are being delegated to officials. The lack of specificity in the delegations means that the ANAO cannot determine if these are related to functions that are incidental to the Council's functions under the ALRA or are more correctly functions and powers held by the accountable authority under the PGPA Act.

Recommendation no. 1

2.11 The Northern Land Council clarify its Financial Delegations Policy such that:

- (a) it is clear whether it is an instrument of delegation, an instrument of authorisation or a policy; and
- (b) depending on its clarified intent, an instrument of delegation or authorisation is appropriately endorsed by either the full Council under common seal, the accountable authority, or both.

Northern Land Council response: *Agreed.*

2.12 *The NLC has commenced a review of its Financial Delegations Policy.*

23 As a policy, it would be possible to divert from policy if there are reasons for doing so.

2.13 The Department of Finance advised the ANAO in February 2023 that how the accountable authority (that is, the Council Chair and the CEO) is required to operate is a matter for the accountable authority to determine between themselves (noting that they are jointly responsible for fulfilling the duties and legal obligations under the PGPA Act), and that the PGPA Act provides flexibility to accountable authorities to establish systems of internal control most appropriate to their operating environment (noting that this must be consistent with the proper use and management of public resources).

2.14 It is usual practice for an accountable authority made up of multiple individuals, such as boards, to have an operational charter setting out how the accountable authority operates. The NLC does not have a governance document explaining how the accountable authority intends to manage its joint responsibilities under the PGPA Act.

Recommendation no. 2

2.15 The Northern Land Council establish a governance document setting out:

- (a) how the accountable authority (that is, the Chair and CEO) intends to operate, with specific reference to those decisions which require joint authority, and those which can be made independently by one or the other party; and
- (b) the role of the accountable authority under the PGPA Act and the role of the Council under the ALRA.

Northern Land Council response: *Agreed.*

2.16 *The NLC agrees that this would be a useful development and will prepare a document setting out those decisions which require joint authority, and those which can be made independently by one or the other party.*

2.17 *To further improve clarity this document will include information about the roles of the accountable authority under the ALRA and the PGPA.*

2.18 The Finance Minister delegates some of his or her functions and powers to the accountable authority of an entity under section 107 of the PGPA Act. Section 110 of the PGPA Act indicates when an accountable authority may delegate to an official of a non-corporate Commonwealth entity. This provision does not apply to corporate Commonwealth entities, which are legally separate from the Commonwealth. In the case of corporate Commonwealth entities, the delegation requirements should be specified in the enabling legislation — in this case the ALRA. However, the ALRA is silent regarding delegations by the Land Council accountable authority as defined by the PGPA Act. It appears that the accountable authority of a Land Council is not able to delegate his or her functions and powers under existing legislation.

2.19 Auditor-General Report No.25 of 2022–23 *Governance of the Tiwi Land Council* made a recommendation to the National Indigenous Australians Agency to, in consultation with relevant stakeholders, clarify the conditions and requirements under which a Land Council accountable authority may delegate its functions and powers. The National Indigenous Australians Agency agreed to the recommendation.

3. Governance under the Aboriginal Land Rights (Northern Territory) Act 1976 and the Native Title Act 1993

Areas examined

This chapter examines whether the Northern Land Council (NLC) has effectively governed its legislative functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) and the *Native Title Act 1993* (NTA).

Conclusion

The NLC's governance arrangements under the ALRA and NTA are largely effective. The establishment and governance of the Council and its committees complies with legislative requirements. Poor record-keeping reduces transparency over the Council member nomination process and the validity of the constitution of the Council. The transparency of other decision-making arrangements could be improved. The NLC has not met a commitment to the Minister for Indigenous Australians and the community to review its method of choice for Council member selection. Governance arrangements for the exercise of the NLC's key statutory functions (negotiating and assisting with land use, assisting with commercial activities, consulting and obtaining informed consent, and distributing royalties and rents) are largely appropriate.

Areas for improvement

The ANAO made six recommendations to the NLC aimed at: publishing its method of choice; reviewing its method of choice; keeping complete records of its nomination process; increasing the transparency of decisions made by the Executive Council on behalf of the full Council; developing a risk-based compliance strategy for land use agreements; and increasing the transparency of its anthropological processes.

The ANAO also suggested that the NLC: inform stakeholders when the nominations for Council members are occurring; provide ongoing governance training for Council members; finalise its ALRA and NTA policies, procedures and processes; publicly report on its timeliness to finalise proposals and permit applications; develop and implement a policy for its dispute resolution function; improve its complaints handling arrangements; develop a policy documenting payments arrangements for monies received under the NTA; and finalise procedures for payment assurance.

3.1 The Northern Territory (NT) Land Councils' key purpose is to assist in claiming Aboriginal land and once a claim has been granted, to manage Aboriginal land on behalf of Traditional Owners and other Aboriginal people living in the area of the Land Council. To achieve this purpose, the ALRA prescribes that specific governance arrangements must be in place for Land Councils to manage their operations. The arrangements relate to: appointments to key governance positions; the establishment and conduct of Council and committee meetings; and the establishment of registers of Council and Land Trust members, and of Traditional Owners.²⁴

24 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) sections 29–30 — appointment of Council members, Chair and Deputy Chair; section 29A — establishment of Committees; paragraph 23(1)(g) — establishment of a register of Council and Land Trust members; and section 24 — establishment of a register of Traditional Owners.

3.2 Land Councils must also establish governance arrangements to support the delivery of their key legislative functions, which pertain to three main types of activities.

- Negotiation and assistance — Land Councils must assist Traditional Owners and Aboriginal people with land claims, negotiate on behalf of Traditional Owners and other Aboriginal people with third parties wanting to use or access Aboriginal land; and assist Aboriginal people to carry out commercial activities and protect sacred sites.²⁵
- Consultation and consent — Land Councils must consult with Traditional Owners and Aboriginal people in the area of the Land Council about the management of land and endeavour to protect their interests.²⁶
- Distribution of royalties and payments — Land Councils must distribute royalties and other payments, such as rents, to, or on behalf of, Traditional Owners.²⁷

3.3 Land Councils and Land Trusts are exempt from compliance with the *Freedom of Information Act 1982*.²⁸ There are also no appeal or review mechanisms in the ALRA. This reinforces the importance of effective governance arrangements to support the management of Land Councils' key activities.

Has the Land Council established and implemented appropriate governance arrangements to manage its operations?

The method of choice has not been reviewed since 2016 despite assurances in 2016, 2020 and 2021 to the Minister for Indigenous Australians and NLC constituents that it would be reviewed. There is a lack of transparency and communication regarding how the method of choice is intended to work. Record-keeping of member nominations does not support assurance that the Council is appropriately constituted under the method of choice. Clear guidance exists on the roles and responsibilities of full Council, Executive Council and regional Councils, although there could be more regular ongoing governance training. Meeting rules are approved and largely followed. Council meetings and processes largely support informed decision-making by members. The reporting to the full Council and regional Councils by the Executive Council, which has broad delegations, is insufficient. The NLC maintains registers of members.

Appointment of key governance positions

3.4 The ALRA prescribes how the Council, including the Chair and Deputy Chair of the Council, must be appointed (see Appendix 6). The ALRA specifies that Council members shall be chosen by Aboriginal people living in the area of the Land Council in accordance with a 'method of choice', which is to be approved by the Minister.

25 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) paragraph 23(1)(f) — assistance with land claims; paragraphs 23(1)(d), (e), (fa) — negotiation; paragraphs 23(1)(ea), (eb) — assistance with commercial activities; paragraph 23(1)(ba) — protection of sacred sites.

26 *ibid.*, paragraphs 23(1)(a)–(c), subsection 23(3) — consultation and consent.

27 *ibid.*, section 35.

28 *Freedom of Information Act 1982* (Cth), Schedule 2, Part I Division 1.

Development of the method of choice

3.5 The NLC's method of choice was approved by the Minister for Indigenous Australians (the Minister) on 9 November 2016. The method of choice establishes the composition of the Council and the selection process for 78 positions.

- The 78 members are nominated from 54 listed communities or outstations, for a term of three years. Each community or outstation has between one and four Council member positions. The method of choice does not indicate in what way the distribution of Council member positions across communities should reflect population size or other demographic characteristics.
- In some communities and outstations, members are nominated by incorporated Aboriginal organisations that are recognised by the Council ('recognised entity').
- Communities or outstations that do not have a recognised entity shall, with the assistance of an employee of the NLC, hold a meeting to nominate a person or persons to be a member of the NLC.

3.6 An additional five members have been co-opted since 1993 using a provision under the ALRA that allows the NLC, with the approval of the Minister, to co-opt or appoint up to five members that are Aboriginal people living in the NLC area. The NLC's method of choice does not outline how the co-opted members are to be selected. The 2017 'NLC Handbook — Rules for Councillors' (the Handbook), which was approved by the Minister on 19 July 2017, states that five co-opted women are appointed by the Chair on advice from the Executive and regional Council members, for the purpose of improving female representation.

3.7 The method of choice does not specify how the NLC determines which incorporated Aboriginal organisations to 'recognise', list the recognised entities, indicate the number of Council member positions associated with each recognised entity, or specify the mechanism adopted by recognised entities to nominate a member to the Council. The NLC has a separate list of recognised entities. It does not have criteria or guidelines for recognising entities and does not have input into recognised entities' nomination processes. The NLC advised the ANAO that: 'there are discussions between Aboriginal entities as to [which entity] is best placed to have the responsibility'; Council members ultimately determine which organisations should become recognised entities; and the latest list of recognised entities was endorsed by the full Council in June 2019.

3.8 The method of choice specifies that 'all people in the community have a chance to find out that nominations must be made and have a good chance to have their say over who the member should be.' The method of choice, list of recognised entities and list of communities or outstations that do not have a recognised entity, are not publicly available.

Recommendation no. 3

- 3.9 To provide transparency over Council nominations, the Northern Land Council:
- (a) publish the method of choice;
 - (b) document and publish the method to determine recognised entities; and
 - (c) publish the list of recognised entities and of communities or outstations that do not have a recognised entity.

Northern Land Council response: *Agreed.*

3.10 *The NLC will publish its updated method of choice after the completion of the current review, anticipated to be completed in 2025.*

Review of the method of choice

3.11 The NLC advised the Minister in 2016 that the Council had resolved to review the method of choice, but that the review would not be completed in time for the November 2016 member nominations. The NLC identified that a review was needed to ensure that the distribution of seats reflected Indigenous population changes that had occurred since 2001. The Minister approved the 2016 method of choice with the understanding that the 2016–2019 Council would finalise a review.²⁹

3.12 As at April 2023 the review had not been completed, and the 2016 method of choice was used to conduct the Council nomination process of October–November 2022.

- In the *Land Rights News* December 2018 issue³⁰, the NLC announced that it was reviewing the seat distribution ahead of Council nominations in the second half of 2019. The review did not occur.
- In February 2020 the NLC advised the Minister that it planned to conduct a review and propose a revised method to the Minister prior to 2022 nominations. The advice noted there had been three complaints about the 2019 member nomination process.³¹ In April 2021 the NLC advised the Minister that due to COVID-19 disruptions, the review had not been completed, and that a revised method of choice would be submitted to the Minister in early 2022 following consultations.³² This also did not occur.
- In September 2022 the NLC advised the Executive and regional Councils that community consultations would be conducted in 2023. The NLC advised the ANAO that the 2023 consultations would consider the ‘appropriateness of recognised entities’ and would be finalised by 2025, in time for the next Council member nomination process.

29 Differences between the 2001 and 2016 method of choice included minor changes to community names, new terms and conditions for membership, and changes to the member nomination process. There were no changes to the number of members.

30 Northern Land Council, *Land Rights News — Northern Edition* [Internet], NLC, 21 December 2018, p. 20, available from <https://www.nlc.org.au/uploads/pdfs/LRN-December-2018-web.pdf> [accessed 27 February 2023].

31 Complaints comprised a challenge to a member's eligibility, the selection of members from two groups in dispute, and the selection process undertaken in a region.

32 The Minister acknowledged the NLC Letter in June 2021.

Recommendation no. 4

3.13 The Northern Land Council undertake a review of the method of choice and provide advice on the method of choice to the Minister for Indigenous Australians prior to the 2025 nomination process.

Northern Land Council response: *Agreed.*

3.14 *The NLC commenced the review of the method of choice in 2019, progress was hindered by COVID-19. In 2022, the NLC method of choice consultations with regional councils commenced. The next step is community consultations. The NLC is committed to completing the review before the 2025 nomination process.*

October–November 2022 Council member nominations and remuneration

3.15 In the October–November 2022 nomination process, 60 positions were to be nominated by 43 recognised entities and 18 positions were to be nominated through a community meeting. The outcome of the nomination process was the appointment of 74 members, with four positions remaining vacant as at April 2023.

3.16 The method of choice specifies that ‘all people in the community have a chance to find out that nominations must be made and have a good chance to have their say over who the member should be.’ Posters and information packs were sent to recognised entities. In late September 2022 the NLC telephoned recognised entities, and emailed Council members, recognised entities and NLC regional offices, to inform them about the nomination process. Emails to Council members and recognised entities were not sent prior to the date that nominations opened. The NLC advertised the nomination process on social media platforms.³³ The NLC did not use other forms of media (such as its website, *Land Rights News* or the radio) to inform stakeholders about the nomination process.

Opportunity for Improvement

3.17 The NLC could increase the use of available communication channels to inform stakeholders when the nominations for Council members are occurring.

3.18 A recognised entity nomination is valid if a signed and witnessed nomination in writing and a copy of the resolution of the recognised entity’s governing body is provided to the NLC. A community nomination is valid if there is a nomination in writing and a report about the nomination meeting by an NLC officer.

3.19 The ANAO examined nomination documentation for 13 of 74 filled positions in October–November 2022 (nine from recognised entities and four from communities without a recognised entity) to determine if nominations were supported by the required documentation. Three of the 13 nominations (23 per cent) were supported by complete mandatory documentation.

33 The NLC’s social media statistics indicated that advertisements on Facebook ‘reached’ over 27,000 people. ‘Reach’ is the estimated number of people who saw any content on a Facebook page.

See: Facebook, *Differences between Page views, reach and impressions* [Internet], 2023, available from <https://www.facebook.com/help/274400362581037> [accessed 20 April 2023].

- Recognised entities — All nominations were provided in writing, however six of the nine examined nominations were incomplete. None of the six incomplete nominations had a copy of the resolution of the recognised entity's governing body and three nominations were not signed or witnessed correctly.
- Communities without a recognised entity — All four community nominations examined had a nomination in writing, however none had an NLC report about the nomination meeting as required by the method of choice.

3.20 The NLC tracked the 2022 nominations in a spreadsheet, which was not complete as at April 2023. Information in the spreadsheet for 29 of the 74 (39 per cent) nominated member positions did not include the name of the nominee as published on the NLC website. The lack of mandatory documentation and appropriate records to support a nomination means that the NLC is unable to provide assurance that the Council was validly constituted.

Recommendation no. 5

3.21 The Northern Land Council obtain mandatory nomination documentation for all nominees, and keep complete and accurate records of the nomination process, to provide assurance that there is a properly constituted Council.

Northern Land Council response: *Agreed.*

3.22 *The NLC will review the record management process and implement appropriate changes prior to the next council nomination process.*

Election of the Chair and Deputy Chair

3.23 The Handbook sets out that at the first sitting of a new full Council, members elect a Chair and a Deputy Chair. The newly formed Council met on 6–9 December 2022 and elected the Chair and Deputy Chair in accordance with the required process. The NLC engaged the NT Electoral Commission to oversee the election process.

Remuneration of Council Chair and members

3.24 The remuneration of Council members is determined by the Remuneration Tribunal.³⁴ As at March 2023 the prescribed remuneration of the Chair as a full-time office holder was \$227,800. The prescribed daily fees for Council members when engaged on the general functions or duties of the Land Council were \$344, and \$520 if Council members were engaged in functions or duties as a member of the Executive Council.³⁵ The Handbook specifies that Council members who are also employed elsewhere must apply to their employer for leave without pay when attending Council meetings.

34 The Remuneration Tribunal is the independent statutory body that handles the remuneration of federal parliamentarians, judicial and non-judicial offices of federal courts and tribunals, Australian Government department secretaries, holders of various public offices and principal executive offices. It was established under the *Remuneration Tribunal Act 1973*.

35 The Remuneration Tribunal determines that 100 per cent of the daily fee is to be paid if the meeting duration is more than three hours. A pro rata calculation is applied if the meeting is less than three hours' duration.

3.25 Under subsection 7(11) of the *Remuneration Tribunal Act 1973*, a full-time public office holder is prohibited from receiving remuneration for holding, or performing the duties of, another public office. In July 2022 the NLC Chair declared, in addition to his full-time paid position as the Chair of the Council, one paid and 11 unpaid part-time positions on other entities' boards. In July 2023 the NLC Chair declared one paid and two unpaid part-time positions. It is not clear to the ANAO that the Chair holding a paid position in another organisation is consistent with the *Remuneration Tribunal Act 1973*. The ANAO did not examine whether the Chair's performance of duties for other entities impacts on his capacity to complete his duties for the Council as a full-time remunerated public office holder.

Guidance and training for Council members

3.26 The NLC has developed guidance to assist new Council, Executive Council and regional Council members in their role. The Handbook includes information about the NLC's: vision; governing legislation (including the ALRA, NTA and *Public Governance, Performance and Accountability Act 2013* – PGPA Act); separation of 'roles and powers' between the Council and NLC staff; reporting; delegations; and policies and rules.

3.27 In February 2021 the NLC Executive Council participated in a three-day course on governance and leadership. During the first meeting of the new full Council in December 2022, members attended a governance induction on the NLC's functions and powers, delegations, roles of members, meeting rules, and key NLC policies such as the Conflict of Interest Policy. The NLC does not provide Council members with ongoing governance training.

Opportunity for improvement

3.28 The NLC could develop regular refresher training for members of the Council on their governance responsibilities.

Establishing and implementing meeting and committee rules

Establishment of committees

3.29 The NLC has established two types of committees in accordance with the ALRA (section 29A — see Appendix 6): the Executive Council and the regional Councils. The purpose and functions of the two types of committees are described in the Handbook.

Establishment of Council and committee meeting rules

3.30 The NLC has complied with the requirements of the ALRA in relation to the establishment of meeting rules for the full Council, Executive Council and regional Councils (see Appendix 6). The meeting rules, which were approved by the Minister in 2017, are contained within the Handbook.

3.31 The ALRA requires that Council and committee meeting rules and minutes are made available to Traditional Owners and any Aboriginal people living in the area of the Land Council. In April 2023 the NLC updated its website to explain how to arrange an inspection of the meeting rules and minutes. As the NLC does not maintain a register of requests, the NLC was not able to confirm whether any requests for access have been made and if meetings rules and minutes were provided as required under the ALRA.

Implementation of meeting rules

3.32 The implementation of meeting rules during 2021–22 was largely appropriate.

- Meeting frequency and quorum — The full Council, Executive Council and three of seven regional Councils did not always meet as frequently as specified in the meeting rules.³⁶ Seventeen of the 22 Council and committee meetings required by the meeting rules were held. Quorum was met for all meetings.
- Briefings for meetings — Members are to be briefed prior to making decisions and meeting papers are to be distributed prior to the meeting. Detailed papers were distributed for the 2021–22 full Council and Executive Council meetings. The ANAO observed an Executive Council and regional Council meeting in September 2022 where information was presented on a large screen and printed copies of information packs (containing agenda papers, the Handbook, delegations and key policies) were provided to members. NLC staff gave presentations and answered questions.
- Decision-making at meetings — The meeting rules specify that matters that are passed need to be motioned and seconded, and the majority of members must indicate they are in favour.³⁷ Meeting minutes show that motions were moved, seconded and carried.
- Implementation of decisions — The meeting rules set out that NLC staff will implement decisions, monitor progress and report back to the Council. Lists of agreed actions to be completed were compiled for two of 17 meetings. In January 2023 the NLC advised the ANAO that it would implement action lists in 2023. As at July 2023 these had not yet been implemented in the nine meetings that had been held since January 2023.
- Record of meetings — Meeting minutes including a record of Council member attendance were prepared for all meetings in 2021–22. For Traditional Owners' and other Aboriginal people's access to meeting minutes to be meaningful, the minutes could be clearer and provide more information than just a summary of decisions. While meeting minutes of the full, Executive and regional Councils documented key decisions and questions that led to an action item, 2021–22 meeting minutes often did not include other discussions points, such as concerns raised and options discussed. Executive and regional Council minutes included some questions and concerns.

3.33 The full Council fulfils its role by delegation of substantial functions to the Executive Council (see Chapter 2). In 2021–22 the Executive Council made significant decisions in relation to land use agreements and claims, policy determinations, appointments, remuneration and other financial decisions. However, the Executive Council's reporting of decisions to the full Council and regional Councils was limited. The meeting minutes for a three-day full Council meeting in 2021–22 did not include reporting from the Executive Council. For nine of the 11 regional Council meetings that occurred during 2021–22, Executive Council reporting was mainly focused on land use agreement decisions, with little reference to other types of decisions. Given the substantive nature of decisions being made by the Executive Council, the scope of its reporting is not fully consistent with providing

36 The required frequency was six meetings for the Executive Council and two meetings each for the full Council and regional Councils. On 14 January 2022, the NLC accountable authority issued a direction to 'cease and refrain from conducting or facilitating any physical meetings with constituents' in response to the COVID-19 pandemic. On 14 March 2022 the NLC accountable authority directed that NLC meetings were to resume.

37 The meeting rules do not specify whether votes are oral or by a show of hands.

transparency to regional Councils, or with the accountability for decisions that is retained by the full Council.

Recommendation no. 6

3.34 The Northern Land Council:

- (a) develop a mechanism to improve the full Council's and regional Councils' visibility of decisions made by the Executive Council;
- (b) implement action lists to monitor progress of actions items arising from Council meetings; and
- (c) more clearly document key discussion points in Council meeting minutes, with regard to an appropriate balance between transparency and usability.

Northern Land Council response: *Agreed.*

3.35 (a) *The NLC intends to review the current mechanisms for capturing Executive Council meeting decisions.*

(b) *Actions are recorded as part of council meeting minutes. The NLC will implement an improved system of monitoring and reporting of progress against action items.*

(c) *While noting that current reporting of meeting minutes is comprehensive, the NLC intends to review the way that minutes capture discussion points and will implement changes as cultural considerations allow.*

Compiling and maintaining registers

3.36 The NLC complies with the ALRA in maintaining a record of Council and Land Trust members (see Appendix 6). The NLC does not maintain a register of Traditional Owners³⁸, which is consistent with the non-mandatory nature of the ALRA (section 24), although it keeps 'informal and noncomprehensive records' of names and contact details (see paragraph 3.74).

Has the Land Council established and implemented appropriate governance arrangements to exercise its key legislative functions?

The ANAO assessed the NLC governance arrangements for the key legislative functions.

- Negotiating and assisting — Policies and procedures exist to support the exercise of most of its negotiating and assisting activities, although they are often in a draft form. The NLC's approach to the prioritisation of land use applications is publicly available on its website. There are a large number of outstanding assessments and the NLC does not report on timeliness to process agreements and permits. Since 2019 the NLC has conducted some audits of compliance with agreement conditions, although it lacks a risk-based compliance strategy. Arrangements to assist with commercial and other activities are largely effective; and processes to protect sacred sites are appropriate.

38 There is no requirement under the NTA for the Land Councils to maintain a register of native title holders.

- Consultation and obtaining consent — NLC’s arrangements to consult and obtain consent are largely appropriate. There is no dispute resolution policy, and the complaints handling system could be improved.
- Distributing royalties and other payments — The NLC has a policy for distributing payments from Part IV and section 19 agreements and procedures for recording instructions from beneficiary groups on how to distribute monies received from any land use arrangement. There is no policy for distributing NTA agreement monies. The NLC has mechanisms for providing assurance that monies are distributed to the correct beneficiaries. Not all monies received under the ALRA are distributed within the six-month legislated timeframe.

Negotiating and assisting

Negotiating Aboriginal land use and access

3.37 The ANAO examined NLC’s processes in relation to section 19 (s19) agreements, Part IV agreements, permits and native title agreements. S19 agreements cover primarily non-mining land use arrangements, Part IV agreements primarily relate to mining and exploration, and permits enable access to Aboriginal land or roads (see Table 1.1).

Procedures for Section 19 and Part IV agreements

3.38 A paper presented at an August 2019 Executive Council meeting stated that a key focus was ensuring that parties who occupy or use Aboriginal Land enter into suitable land use agreements, and that the majority of lots on Aboriginal land in the NLC region were held under formal agreements. Between 2018 and 2022, the number of land use agreements significantly increased. As at December 2022 the NLC was administering 828 s19 agreements and 48 Part IV agreements. There were also 794 proposed s19 agreements awaiting NLC’s assessment as at December 2022 and 258 proposed Part IV agreements awaiting NLC’s assessment as at April 2023.

3.39 As at April 2023 the NLC had draft processes and guidance for establishing s19 agreements and Part IV agreements.

Procedures for land access permits

3.40 Under the ALRA (section 70), unless a person holds a lease or a license, they cannot enter or remain on Aboriginal land, or use a road on Aboriginal land, without a permit.³⁹ Several categories of permit exist in the NLC including work, tourism, transit, mining, and residential. In 2021–22 the NLC issued 19,448 permits, 54 per cent of which were work permits and 20 per cent were tourism permits.⁴⁰ As at April 2023 there were 70 permit requests being assessed by the NLC.

3.41 The NLC uses a permit administration IT system to assess, provide and monitor permit applications. There are clear guidelines on how to use the system. The approval of some of the

39 In some circumstances (for example, accessing common areas, boarding or disembarking aircraft, or for those with traditional rights to use the land), Aboriginal land can be accessed without a permit.

40 Northern Land Council, *Permits* [Internet], NLC, available from, <https://www.nlc.org.au/apply-for-permit> [accessed 21 February 2023].

The NLC collects permit fees for a limited number of sites in one of the seven NLC regions.

permits is by ‘permit advisers’, who are Traditional Owners representing the views of affected groups. In 2020 the NLC engaged 197 permit advisers across four NLC regions.

3.42 The NLC has a Permit Policy (September 2020), draft procedures for permit compliance and investigation, and a banned visitor register. While the Permit Policy states that the banned visitor register is to be reviewed annually, the NLC advised that reviews are conducted on an ‘as needed’ basis and not formally recorded. The NLC employs Caring for Country⁴¹ rangers to conduct permit compliance activities, and has developed a draft Caring for Country Rangers Compliance Policy. As at April 2023 the NLC had seven compliance officers and employed a Senior Project Coordinator whose role covered permit compliance and investigation.

Procedures for Native title agreements

3.43 As part of its functions prescribed under the NTA, the NLC represents native title claimants to make applications to the Federal Court for determinations of native title (see paragraph 1.13). As at April 2023 a search of the National Native Title Register for the NLC region returned 87 determinations for native title.

3.44 When a native title interest has been registered with the National Native Title Tribunal, the NLC is responsible for assisting native title holders in response to ‘future acts’⁴², and for supporting the negotiation of agreements made under the NTA. As at April 2023 the NLC reported that there were 61 agreements made under the NTA and 30 new agreements under negotiation.

3.45 The NLC has established a prescribed body corporate (PBC — see paragraph 1.13), the Top End Default PBC. The Top End Default PBC performs the administrative functions required under the NTA at no charge to, and with the intent of eliminating the administrative burden for, native title holders. As at November 2022 the Top End Default PBC was the PBC for all except one⁴³ determination of native title in the NLC region.

3.46 The NLC had policies and procedures for most of its native title functions, however most were undated and had not been endorsed by senior management or finalised as at April 2023 (see Appendix 7).

3.47 Under the NTA⁴⁴, the NLC is to provide and publicise a process by which a PBC or a person with native title interests can request a review of the NLC’s decisions as a Native Title Representative Body (NTRB). The NLC developed an approved policy covering this matter in April 2023. However, the NLC did not publicise its process for review of native title decisions. The NTA requires the NLC to promote understanding about native title matters.⁴⁵ In 2021 the NLC reported

41 Caring for Country refers to the programs funded by the National Indigenous Australians Agency that assist Aboriginal and Torres Strait Islander peoples to care for and connect with Country. The Indigenous Rangers and Indigenous Protected Areas programs are two of these programs.

42 ‘Future acts’ are proposals to use land that will affect native title. While the ALRA allows Traditional Owners the right to refuse access to their Country, the NTA does not allow the holders of native title to refuse exploration, mining or work on the land. The NT Government publishes a notice disclosing an application to explore or mine an area under native title. The NT Government must notify any entity holding native rights (that is, the prescribed body corporate), any native title claimants, and the Native Title Representative Body (in this case, the NLC). When there is no registered native title claim or determination, the NT Government must notify the NLC.

43 The Indjalandji-Dhidhanu Aboriginal Corporation is the PBC for the Rocklands Pastoral Lease.

44 NTA section 203BI.

45 NTA subsection 203BJ(c).

that it would develop, translate and promote native title information materials.⁴⁶ As at April 2023 the NLC had not done this.

Opportunities for improvement

3.48 The NLC should:

- (a) develop and finalise the policies and procedures supporting its key functions under the ALRA and the NTA; and
- (b) publicise its native title decisions review process and promote understanding about native title matters.

3.49 Under the NTA (section 203DF) the Minister may appoint a person to investigate a NTRB's performance of its functions and exercise of its powers. In 2020 the National Indigenous Australians Agency commissioned the Nous Group to undertake a review of the performance of NLC's functions as a NTRB between 1 July 2016 and 30 June 2019.⁴⁷ Nous Group findings included:

- overall the NLC had been able to achieve native title outcomes for its clients;
- the NLC had adopted an assessment and prioritisation approach which focused on strategically important claims, but had not documented or communicated to staff and clients its prioritisation policy;
- although the NLC generally engaged respectfully and professionally with clients, some improvements could be made to the NLC's conduct of meetings and communication of outcomes;
- the NLC reported on progress against agreed milestones, though some reports were delivered late, and native title performance could be better monitored;
- governance structures and organisational policies and practices broadly supported efficient and effective project delivery, with some areas for improvement (clarifying responsibilities, ensuring clients understand how to make a complaint, and finalising key organisational policies);
- having the Top End Default PBC as the default PBC had not promoted native title holders' self-sufficiency; and

46 This was in response to a recommendation from a review of the performance of the NLC's functions as a NTRB. Nous Group, *Review of Performance as a Native Title Representative Body: Northern Land Council (Summary Report)*, Nous Group, March 2021, p. 11, available from <https://www.niaa.gov.au/sites/default/files/publications/12-nlc-public-summary-report.pdf> [accessed 21 February 2023].

47 Three reports on the NLC were produced:

- a full report about the performance of the NLC (finalised in January 2021 and not publicly available);
- a summary of the report published in March 2021 (Nous Group, *Review of Performance as a Native Title Representative Body: Northern Land Council (Summary Report)* [Internet] Nous Group, March 2021, available from <https://www.niaa.gov.au/sites/default/files/publications/12-nlc-public-summary-report.pdf> [accessed 21 February 2023]), which documents the NLC's response to the recommendations; and
- a report of the comparative performance of 14 NTRBs published in February 2022 (Nous Group, *Comparative Performance of fourteen Native Title Representative Bodies* [Internet], Nous Group, March 2021, available from <https://www.niaa.gov.au/sites/default/files/publications/final-public-summary-report.pdf> [accessed 21 February 2023]).

- no formal strategy was in place for the NLC's role in a post-determination environment.

3.50 The January 2021 report made 17 recommendations to which the NLC responded, indicating its planned implementation approach. As at April 2023 the NLC provided evidence to the ANAO that it had implemented four and partly implemented ten recommendations.

Monitoring land use agreements

3.51 The NLC has a policy for debt recovery (June 2022), a draft policy for managing agreements under the ALRA and NTA (including an audit procedure dated August 2021), and a draft checklist for administering Part IV agreements (undated). In 2018 the NLC created a contract administrator position whose role included auditing compliance with land use agreements. Desktop review and audit activities conducted between 2019 and 2021 identified compliance issues (including outstanding rental payments and outdated or incorrect insurance). These activities also identified some limitations with NLC systems and procedures to manage compliance (including in relation to the maintenance of the NLC contract management system, record keeping practices of NLC staff and regularity of site inspections).

3.52 An August 2019 Executive Council meeting paper stated that the NLC was not well equipped to monitor compliance with the growing number of agreements and that compliance issues were reported in an unsystematic manner by NLC staff, Traditional Owners and community members. The NLC estimated that it would take 96 weeks to conduct site inspection audits for all pastoral lease agreements alone. As at April 2023 the NLC did not have a risk-based strategy for prioritising monitoring activities, including compliance audits.

Recommendation no. 7

3.53 The Northern Land Council develop a risk-based compliance strategy for land use agreements to detect and address non-compliance with agreement conditions, including non-financial conditions.

Northern Land Council response: *Agreed.*

3.54 *The NLC will develop a risk-based compliance strategy for land use agreements that addresses non-compliance matters.*

Prioritisation and timeliness of land use agreement decisions

3.55 The ALRA and the NTA prescribe that Land Councils must determine the priorities they will give to performing their functions⁴⁸; and state that Land Councils must use their best efforts to perform their functions in a timely manner, particularly in relation to any legislated time limits.⁴⁹

3.56 The NLC's website and internal documentation state that the NLC prioritises the assessment of land use agreement proposals on the basis of, among other factors: legislative timeframes; court scheduled dates; major and priority projects; government leasing; activities that have been in the queue for a lengthy period; reputational risk; highest value and benefit to Traditional Owners and

48 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) section 23AA and *Native Title Act 1993* (Cth) subsection 203B(4).

49 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) subsection 23AA(4) and *Native Title Act 1993* (Cth) subsection 203BA(1).

community; key community assets, such as shops; and projects that have critical dates for government funding.

3.57 As at April 2023, the NLC's website provided information on the range of factors impacting on the time that it takes to process a s19 agreement, including the number of existing proposals, NLC resource availability, Traditional Owners' availability, the number of Aboriginal groups or communities affected by the proposal, the complexity of the proposal, and the impact of COVID-19 access restrictions on consultation meetings. Due to these factors, the website advised that simple proposals usually took five to six months to finalise, and complex proposals 12 months or longer, and invited applicants to contact the NLC for an update on their s19 proposal.⁵⁰ For permit applications, the website advised that at least 10 days could be required to consult with Traditional Owners, and complex permit applications could require more extensive consultation and more time.⁵¹ Internal NLC reporting shows that in 2021–22, 85 per cent of permits were issued within 10 days.

3.58 The NLC 2021–22 Annual Performance Statements state that NLC values include to be responsive, to complete actions and tasks in a timely way and to be accountable to the people it represents.⁵² None of the Annual Performance Statements measures relate to timeliness, and the Annual Report does not include information on the time taken to complete actions and tasks, including land use agreements and permits. There are also no internal measures relating to timeliness, and there is no reporting to the Council on timeliness.

Opportunity for improvement

3.59 To improve the transparency of the NLC processes, the NLC could publicly report on its timeliness to finalise proposals and permit applications.

Assisting with commercial and other activities

3.60 Under the ALRA, the Land Councils are to assist Aboriginal people in the area of the Land Council to carry out commercial activities in a manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit; and may provide administrative or other assistance to an Aboriginal corporation that received an amount of money from the Council. The NLC's main mechanisms to provide assistance with commercial and other activities are delivered through: support provided to Aboriginal people in applying for Aboriginals Benefit Account (ABA) grants; the administration of the NT Indigenous Economic Stimulus Package; and the Community Planning and Development Program.

Aboriginals Benefits Account grants support

3.61 As at January 2023 the NLC had two grant assistance officers. Between October 2021 and June 2022, it provided assistance to 41 people and Aboriginal organisations applying for ABA grants,

50 Northern Land Council, *Section 19 Land Use Agreements — Please note and Frequently Asked Question No.10. How long does it take to get a section 19 agreement?* [Internet], NLC, available from <https://www.nlc.org.au/our-land-sea/aboriginal-land-legislation> [accessed 8 May 2023].

51 Northern Land Council, *Permit FAQs* [Internet], NLC, available from <https://www.nlc.org.au/apply-for-permit/permit-fags> [accessed 24 February 2023].

52 Northern Land Council, *Annual Report 2021–22* [Internet], p. 85, NLC, available from https://www.nlc.org.au/uploads/pdfs/Northern-Land-Council-Annual-Report_2021-22.pdf [accessed 24 February 2023].

including through the review of six applications, and providing general information on funding opportunities and how to draft applications.

Northern Territory Indigenous Economic Stimulus Package

3.62 The NLC reported in its 2021–22 Annual Report that it had distributed \$20.7 million (of \$36.7 million) of NT Indigenous Economic Stimulus Package funding to Aboriginal entities and communities (see paragraph 1.27), with \$16 million to be expended in 2022–23.

3.63 As at 30 September 2022 the NLC had received 187 applications over two funding rounds. The NLC had different arrangements for the assessment of applications across the two rounds. For all 73 applications in the first round and for 14 of 114 second round applications, an NLC staff member was the sole assessor. For the remaining 100 second round applications, applications were first individually assessed by three senior NLC managers, then moderated by the three managers as a panel, and finally reviewed by a fourth senior manager. Criteria were provided to applicants and advertised by the NLC for both rounds.

3.64 The ANAO examined a targeted selection⁵³ of 95 completed application forms and the documentation supporting their assessment by the NLC.⁵⁴

- Information that was provided to applicants and the public was appropriate.
- For 10 community applications, the NLC advised the ANAO that funding was not provided directly to the applicants, but rather that ‘to ensure these funds were available to all, and to mitigate the risks’, the NLC facilitated and managed the related community projects. This meant that ‘the NLC obtained quotes and paid all associated expenses’ directly to suppliers. Assessment documentation recorded that an assessment was made against one of five assessment criteria.⁵⁵ The NLC advised the ANAO that this was because its management of project delivery ‘would ensure that the requirements of value for money, capacity [to] deliver, whole of life costs and measure outcomes of the projects were achieved.’
- Table 3.1 shows the quality of assessment documentation for the remaining 85 applications. The program guidelines for the two rounds stated that ‘all assessment criteria are given equal weighting.’ For 71 of the 85 applications (84 per cent), assessments were documented, and the assessment documentation recorded assessment notes against the funding priorities and all five assessment criteria. For the remaining 14 applications (16 per cent), assessments were either not documented (4), or available assessment documentation did not record a clear and explicit assessment against all five criteria (10).

53 Targeting was on the basis of examining assessments from both funding rounds and different applicant types (community versus business).

54 One additional application that was submitted in the second round and selected as part of the targeted sample was excluded from the analysis. The NLC advised that the application was not assessed due to the applicant receiving funding in the first round. NLC’s final assessment report for the second round stated that ‘applicants that did not receive funding in the first round were prioritised over those that did.’

55 The assessment documentation commented on one of the five assessment criteria (investment principles). The other four assessment criteria (value for money, capacity to deliver, whole of life costs, and measurable benefits) were not discussed.

Table 3.1: Documented assessments of applications for COVID-19 stimulus funding, as at September 2022

Funding application assessment documentation	Demonstration of applications being assessed against criteria	Number of applications that were approved	Number of applications that were not approved
NLC assessments of applications were documented.	Assessment documentation included assessments against all five assessment criteria.	51	20
	Assessment documentation included assessments against one of the five assessment criteria. ^a	4 ^b	1 ^c
	Assessment documentation did not contain a clear and explicit link between the assessment and the five assessment criteria.	5	0
NLC assessments of applications were not documented.	N/A	4	0
Total		64	21

Note a: The assessment was made against one of the five assessment criteria (investment principles). There was no substantive commentary provided against the four other assessment criteria (value for money, capacity to deliver, whole of life costs, and measurable benefits).

Note b: For two of the four applications, assessment documentation noted that not enough information was provided to the NLC and therefore conditional approval would be provided.

Note c: The assessment documentation noted that not enough information was provided to the NLC. The documentation recorded a recommendation to approve \$250,000 subject to submission of two quotations or justification for one quotation. The NLC later advised the ANAO that this project was not funded.

Source: ANAO analysis of NLC documentation.

Community Planning and Development Program

3.65 The Community Planning and Development Program (the Development Program) was established in 2016. The Development Program's Framework (2022–2026) states that its goal is to 'work alongside Aboriginal groups in building their governance and planning capacity to effectively control their own interests and build healthy and resilient communities for future generations.'

3.66 A November 2021 La Trobe University monitoring report states that between 2016 and June 2021, the Development Program worked with 18 Traditional Owner groups and committed approximately \$8.6 million towards community benefit. The 2021–22 NLC Annual Report states that 60 projects were completed or underway as at 30 June 2022.

3.67 The operation of the Development Program is supported by a range of policy documents. In 2018 the NLC also developed a monitoring and evaluation framework for the Development Program, which was updated in 2022. As at February 2023 six monitoring reports covering the period 2016 to 2022 were produced by La Trobe University and Charles Darwin University. The January 2020 to June 2021 La Trobe University monitoring report (November 2021) concluded that the Development Program had increased capacity to support Aboriginal governance, however recommended that the NLC:

- promote a more strategic and consistent approach to increase Aboriginal-led social, cultural and economic development;
- increase resourcing for the Development Program;
- improve tools to enable more informed planning and decision-making by Aboriginal participants; and
- continue to develop program monitoring and evaluation.

3.68 The 2021–22 Charles Darwin University monitoring report (February 2023) documents the NLC's acceptance of the 2021–22 recommendations and the actions taken against the recommendations.

Assisting with the protection of sacred sites

3.69 The ALRA prescribes that the Land Councils must take measures to assist in the protection of sacred sites on land in the area of the Land Council.

3.70 The NLC Anthropology Branch is responsible for maintaining information on sacred sites and other NLC staff are able to request this information to inform agreement negotiations. The NLC also assists with the protection of sacred sites through:

- entering into memoranda of understanding with the Aboriginal Areas Protection Authority (AAPA) regarding major projects;
- assisting AAPA in investigations and prosecutions of offences for sacred site damage;
- requiring an applicant to enter into an agreement with the custodians of sacred sites before consent is given to AAPA for the issuance of a sacred sites authority certificate; and
- appealing to the National Native Title Tribunal where the NT government has not required a sacred site certificate be obtained before issuing a mineral exploration license.

3.71 NLC land use agreements require compliance with the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), including that the applicant obtain an AAPA Authority Certificate⁵⁶ prior to undertaking any construction, demolition or other works on the land. The land use agreements also provide for compensation to the NLC where the applicant enters, damages or interferes with a sacred site. NLC documentation indicates that it has successfully negotiated out of court compensation payments.

Consulting and obtaining consent

3.72 The ALRA determines that, in carrying out its functions, a Land Council shall have regard to the interests of, and shall consult with, the Traditional Aboriginal Owners of the land in its area and any other Aboriginal people interested in the land. The ALRA further specifies that a Land Council shall not take any action unless it is satisfied that:

56 The AAPA is an independent statutory authority established under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT). The AAPA issues Authority Certificates to 'protect sacred sites from damage by setting out conditions for carrying out works proposed by a proponent on an area of land or sea'. The AAPA states that the Authority Certificate is a legal document which 'indemnifies the holder against prosecution under the Act'. See: Aboriginal Areas Protection Authority, *Authority Certificate*, [Internet], AAPA, available from <https://www.aapant.org.au/our-services/authority-certificates>, [accessed 1 February 2023].

- the Traditional Owners of that land understand the nature and purpose of the proposed action and, as a group, consent to it⁵⁷; and
- any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.⁵⁸

3.73 The NTA describes NTRB functions in relation to assistance to Indigenous people for: native title applications; future acts; native title agreements; rights of access; and any other matters relating to native title or to the operation of the NTA. Section 203BC describes how in performing its facilitation and assistance functions a NRTB must:

- consult with, and have regard to the interests of any registered native title bodies corporate, native title holders or persons who may hold native title who are affected by the matter; and
- if the matter involves the representative body representing such bodies corporate, native title holders or persons — be satisfied they understand and consent to any general course of action that the representative body takes on their behalf in relation to the matter.

3.74 Table 3.2 shows the number of consultations with Traditional Owners and affected Aboriginal groups conducted by the NLC between 2016–17 and 2021–22.

Table 3.2: Northern Land Council community consultations, 2016–17 to 2021–22

Year	Number of meetings	Number of Aboriginal people consulted	Number of land owning groups consulted	Number of meeting locations
2016–17	217	9408	256	Not available
2017–18	293	10,136	646	106
2018–19	346	7242	650	147
2019–20 ^a	209	3884	362	96
2020–21	439	4626	589	107
2021–22	240	3064	Not available	70

Note a: In 2019–20, the NLC internally reported that it cancelled or postponed 145 consultations due to COVID-19 restrictions.

Source: NLC documentation.

3.75 The NLC's Land and Law Division (which comprises Legal Services, the Anthropology Branch, the Resources and Energy Branch, and Community Planning and Development Branch) is primarily involved in the identification of and consultation with Traditional Owners and affected Aboriginal groups. The resourcing and processes established by the NLC to consult with Aboriginal people and obtain consent from Traditional Owners are largely fit for purpose and allow the NLC to meet the dual requirements of the ALRA and NTA.

57 The ALRA (subsection 77A(1)) also states that where a particular traditional decision-making process exists, it must be followed.

58 *Aboriginal Land Rights (Northern Territory) 1976* (Cth), subsection 23(3).

- The Anthropology Branch's key functions are to conduct research for the identification of Traditional Owners, participate in consultations, and identify and assist in the protection of sacred sites.
- The identification of Traditional Owners is through a database, the Land Interest Reference (which contains the records of Aboriginal land ownership, social and cultural organisation, kinship systems and genealogical relations in the NLC region, accumulated over 70 years, and updated with new information by the anthropologists). Maps are produced for land claims, native title claims, permits and site surveys.
- A draft Anthropology Branch Methodology Guide (March 2021) and a draft Anthropology Branch Manual (March 2023) do not include clear procedures for quality assurance or peer review of anthropology work. However, the NLC advised that its anthropological work is quality assured through peer review by experienced anthropologists, and provided examples (dated between September 2019 and March 2022) of internal and external reviews undertaken over anthropological work for six native title claims.
- Consultation and consent meetings are organised by the Regional Development Division.
- The conduct of consultation meetings is supported by procedures and policies. A Guide to Running Meetings (October 2020) covers the role and required qualities of the meeting facilitator, guidance for planning consultations and running meetings, and resources and tools. The Guide to Running Meetings includes procedures to ensure that Traditional Owners and affected Aboriginal people are supported to understand the nature of the consultation, including through using plain English, visual aids, interpreters and translations.

3.76 The ANAO observed two day-long consultations in September 2022 which were held for the purpose of making a decision on a proposed native title agreement (regarding mining exploration), and to discuss the management of a national park. The meetings were conducted in a manner that was aligned with the NLC policies and procedures.

- Once relevant participants had been identified, individual notifications were sent two weeks ahead of the meeting. When necessary, an NLC employee hand-delivered the notifications, including to remote locations.
- On the day of the meeting, when necessary, an NLC employee collected each participant from their place of residence, drove them to the meeting place and back to their residence at the end of the meeting.
- A record of attendance was taken at the meeting, and NLC staff sought confirmation from participants that the relevant people who could, under traditional custom, make decisions for that Country, were present. An NLC officer later visited one person who was unable to be present.
- During the meeting, written information was available, and there were presentations on screen and maps. An NLC lawyer, anthropologist, and several other NLC officers answered questions.
- In the case of the mining exploration meeting, a representative from the mining company explained the proposal and left the room to let participants deliberate. The protection of sacred areas located in the proposed exploration area was discussed.

- Meeting minutes were retained.

3.77 The NLC's Legal Branch Practice Manual (May 2020) states that to seek approval from the full Council, Executive Council, regional Councils or Chief Executive Officer (CEO) in relation to the performance of a legislative function or power, an agenda paper must be drafted and presented at the relevant meeting, or a memorandum to the CEO must be prepared. The agenda papers and memoranda to the CEO must include information about consultations. All 2021–22 agenda papers presented to the Council for a decision in relation to s19 agreements included information about consultations on the matter.

3.78 The NLC advised the ANAO that members of an Aboriginal group can view land use agreement documentation on a 'case-by-case' basis having regard to legal considerations. Aboriginal people can apply for access to genealogical information about their immediate family. The ANAO did not examine whether applications for access were made and granted. A recurrent theme of ANAO consultations was a lack of awareness of the possibility for Aboriginal people to access their genealogical information, combined with questions in relation to NLC processes to establish genealogies and determine Traditional Owner status.

Recommendation no. 8

3.79 The Northern Land Council increase the transparency of its anthropological processes, by:

- documenting its approach to quality assurance of anthropological work for ALRA and NTA matters; and
- promoting the ability for Aboriginal people to access their own genealogical and anthropological materials.

Northern Land Council response: *Agreed.*

3.80 *The NLC is placing a greater focus on quality assurance processes across the organisation. This includes improving quality assurance processes relating to anthropological matters.*

3.81 *The NLC will add information to our website about how Aboriginal people in our region can access their genealogical information.*

Disputes and complaints

3.82 The ALRA establishes a duty of Land Councils to attempt conciliation of disputes with respect to land in the area of the Council.⁵⁹ The ALRA does not include requirements for complaints management, however in order to ensure the Land Council is representing the interests of its constituents effectively and transparently, complaints should be handled effectively. The Commonwealth Ombudsman's Better Practice Complaint Handling Guide identifies attributes of a strong complaints system, including: actively encouraging complaints; supporting early resolution; communicating outcomes; and feeding back systemic issues.⁶⁰ Under the NTA, NTRB functions

59 *Aboriginal Land Rights Act (Northern Territory) 1976* (Cth) section 25.

60 Commonwealth Ombudsman, *Better Practice Complaint Handling Guide* [Internet], 1 January 2023, available from https://www.ombudsman.gov.au/publications-resources-and-fags?form=simple&profile=default&num_ranks=&query=%21showall&collection=comomb-publications&f.Tab%7CFUN7lh9eghnqfzocccchoegs0qpg=Better+practice+guides [accessed 5 February 2023].

include to promote agreement and mediate disputes between NTRB constituents in relation to the making of native title applications, future acts, native title agreements, and rights of access.

Dispute resolution

3.83 The Legal Branch Practice Manual (May 2020) and draft Anthropology Branch Manual address conflict and dispute resolution, and note that land-related disputes are common. The Legal Branch Practice Manual identifies the importance of a dispute management policy, however there is no policy. The draft Anthropology Branch Manual identified the importance of developing dispute conciliation procedures and a dispute resolution framework, however there are no procedures or framework.

3.84 The NLC risk register includes a risk, added in January 2018 and last updated in August 2022: 'the lack of resources, skills and will to facilitate external dispute resolution'. The 'very high' inherent risk is reduced to 'low' after mitigations, which are to: request additional ABA funding for dispute conciliation; hold dispute reconciliation meetings to strengthen relationships; and senior anthropologists develop dispute resolution skills. The February 2023 risk register recorded that mitigations for the risk related to dispute resolution were 25 per cent implemented.

Opportunity for improvement

3.85 The Northern Land Council should develop and implement a policy for its dispute resolution function.

3.86 The Legal Branch Practice Manual states that dispute management training is offered on an annual basis. Between July 2020 and November 2022, 36 staff members participated in three dispute resolution related training courses. In February 2022 NLC anthropologists attended a two-day workshop on managing disputes under the ALRA and NTA.

Complaints handling

3.87 Auditor-General Report No.55 2016–17 *Effectiveness of the Governance of the Northern Land Council*⁶¹ suggested that the NLC improve its handling of complaints by providing training, making staff aware of how to respond to a complaint, and considering how complaints are reported to the Audit Committee.

3.88 The ANAO assessed the NLC's complaints handling system against the eight design principles outlined in the Better Practice Complaint Handling Guide, which showed that the NLC had partly addressed the ANAO 2016–17 suggestion: there is a complaints lodging process and policy, however training has not been provided to relevant staff; and although the regional Councils have received updates on complaints, the Audit Committee has not.

Opportunity for improvement

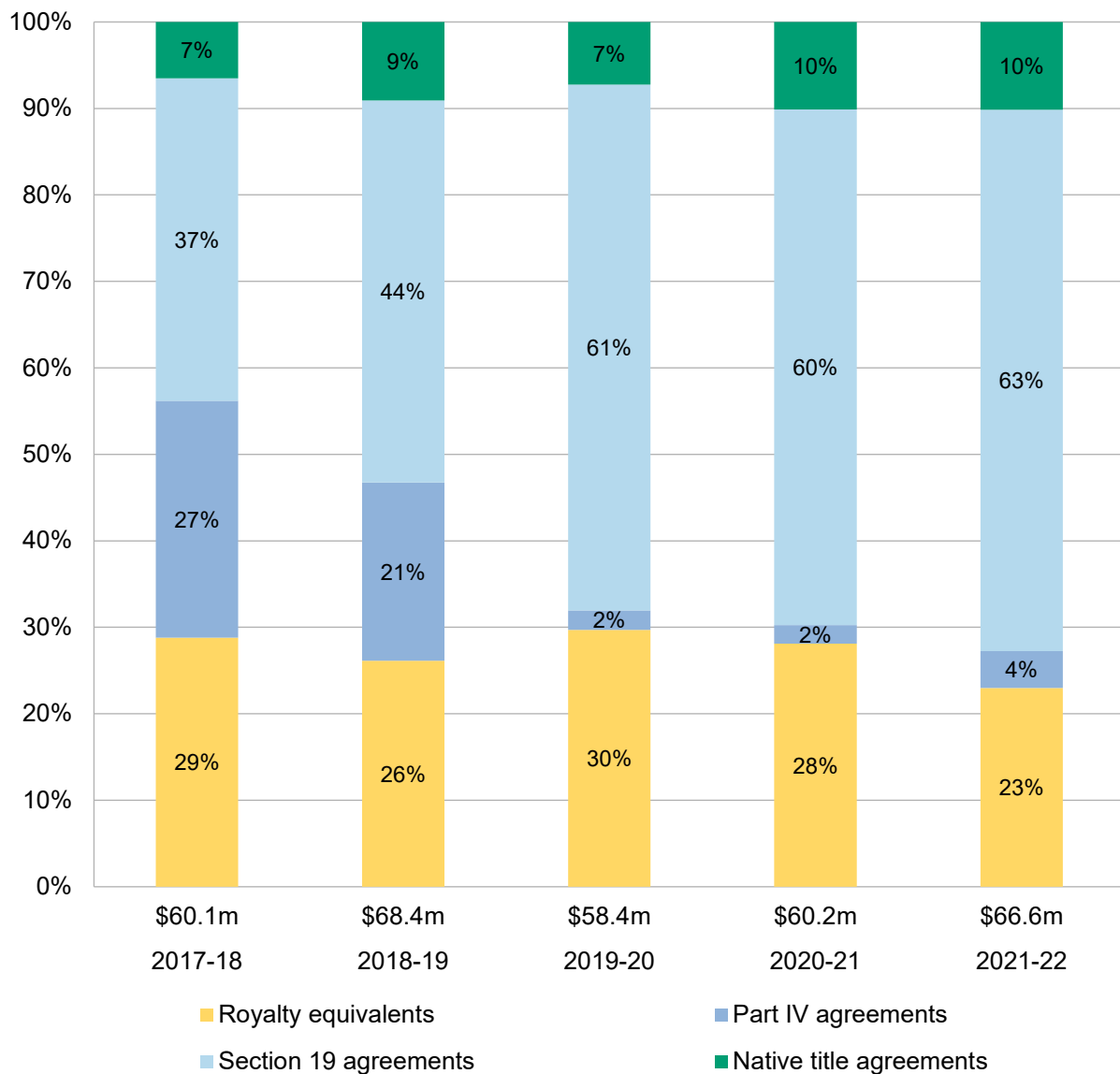
3.89 The NLC could review its complaints management arrangements to improve alignment with the Commonwealth Ombudsman's better practice guidance.

61 Auditor-General Report No.55 2016–17 *Effectiveness of the Governance of the Northern Land Council*, paragraphs 2.39 and 2.40.

Distributing royalties and other payments

3.90 The NLC established the Royalty Trust Account to hold monies received from land use agreements under the ALRA and the NTA. Between 2017–18 and 2021–22, total annual receipts ranged from \$58.4 million to \$68.4 million (see Figure 3.1). Payments under the ALRA typically represent approximately 90 per cent of total receipts and payments under the NTA typically represent approximately 10 per cent.

Figure 3.1: Royalty Trust Account receipts, 2017–18 to 2021–22

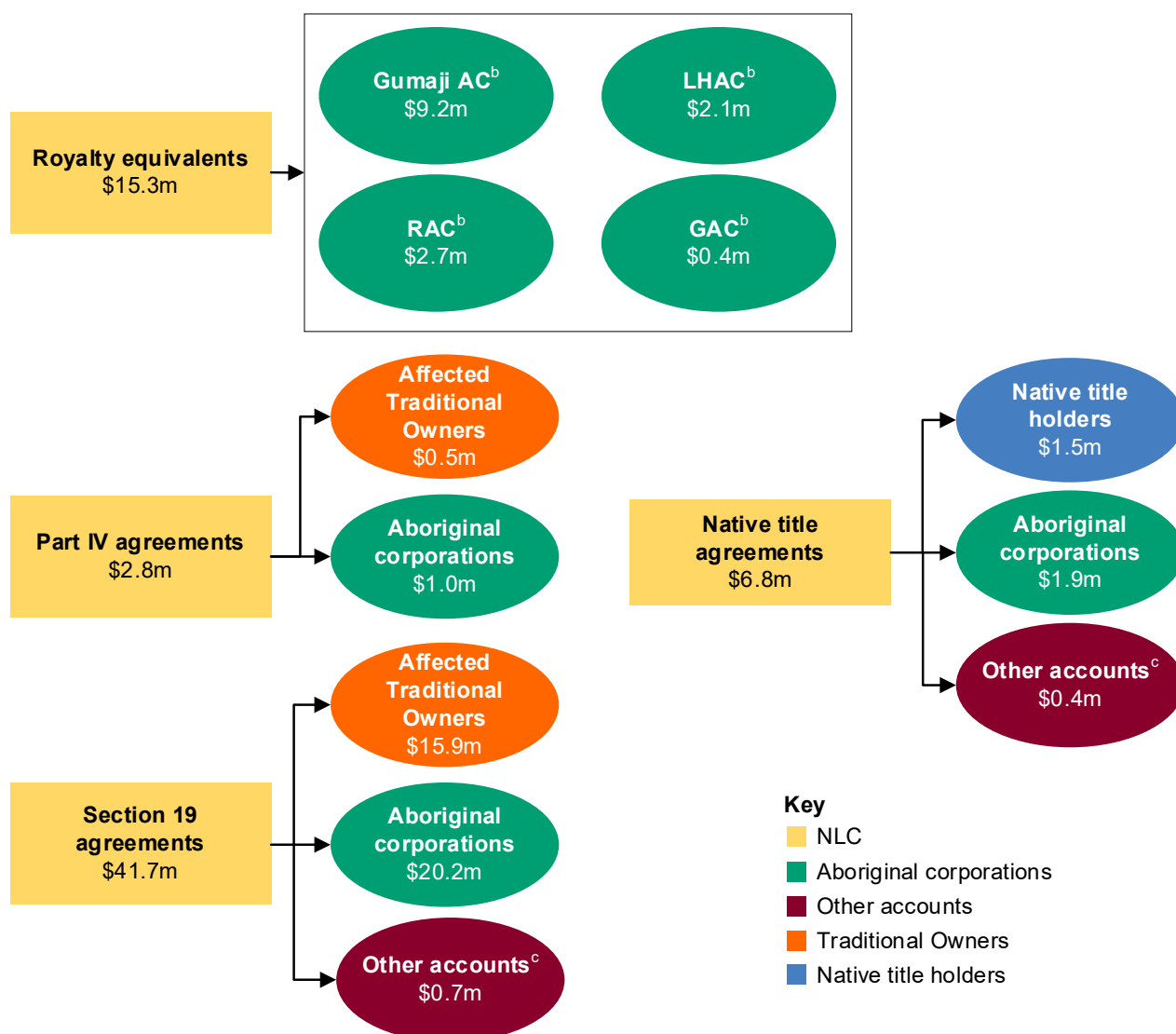


Note: In 2020–21 the NLC reported that in 2019–20 monies from two contracts were misclassified. In 2019–20 a contract for \$14.7 million was incorrectly classified as monies from a Part IV agreement and was later reclassified as section 19 agreement monies. The second contract, worth \$2.1 million, initially classified as monies from a section 19 agreement was reclassified as native title agreement monies.

Source: ANAO analysis of NLC annual reports.

3.91 Figure 3.2 describes how land use agreement monies received in 2021–22 by the NLC were distributed. The ANAO examined the distribution of payments from royalty equivalents, Part IV agreements, s19 agreements and native title agreements.

Figure 3.2: Distribution of royalties and other payments, 2021–22^a



Note a: Payments received are sometimes different from payments distributed as payments received in one financial year may have been distributed in the following financial year.

Note b: Gumaji AC — Gumaji Aboriginal Corporation. RAC — Rirratjingu Aboriginal Corporation. LHAC — Laynhapuy Homelands Aboriginal Corporation. GAC — Gundjeihmi Aboriginal Corporation.

Note c: Other accounts include monies for Community Planning and Development Projects managed by the NLC (see paragraphs 3.65 to 3.68), as well as monies set aside for future needs identified by Traditional Owners, such as funerals and ceremonies.

Source: ANAO analysis of NLC documentation.

3.92 The NLC has a Payment Arrangements Policy (November 2018) for monies received under the ALRA, which states that:

- for Part IV agreement monies, distribution arrangements should be stipulated in the payment clauses of relevant agreements; and
- for section 19 agreements, as far as practicable, distribution arrangements should be made at the time that Traditional Owners consent to a new agreement under which monies will be payable.

3.93 For all agreement types covered by the Payments Arrangements Policy, when not stipulated in agreements, distributions to beneficiaries are to be made according to instructions that are agreed to by beneficiary groups at specially convened meetings.

3.94 The Payment Arrangements Policy does not cover several types of payments.

- The Payments Arrangements Policy does not address royalty equivalent payments. Instead, the NLC full Council passes resolutions to apportion the royalty equivalent monies received from mining projects⁶² to specified Aboriginal corporations (see Figure 3.2).
- The Payment Arrangements Policy does not apply to monies received for distribution by the NLC or the Top End Default PBC⁶³ under the NTA and the NLC does not have clear procedures for distributing payments made under the NTA. The NLC advised the ANAO that to the extent possible, the NLC follows the Payment Arrangement Policy for NTA payments.

Opportunity for improvement

3.95 The NLC could document payment arrangements for monies received under the NTA, or update the Payment Arrangements Policy to include NTA monies.

3.96 The NLC has draft approval procedures describing multiple checks that are to be conducted by staff across different areas of the NLC to ensure that the correct payments are made to the correct beneficiary accounts. A royalty disbursement application is automatically sent to the Anthropology Branch manager for approval.

Opportunity for improvement

3.97 Draft approval procedures for payment assurance should be finalised.

3.98 The Payment Arrangements Policy states that the NLC will need to be satisfied that the payments are for the benefit of the Traditional Owners. The NLC checks the financial viability and governance arrangements of recipient Aboriginal corporations to support the apportionment of royalty equivalents. This check includes referring to information maintained by the Office of the Registrar of Indigenous Corporations for compliance with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* before making a payment.

3.99 Under the ALRA, Aboriginal corporations must provide their financial statements to the Land Council, as well as a report on the use of royalty equivalents received from the Land Councils. The NLC advises the full Council that it checks these reports prior to the full Council passing a resolution to apportion additional royalty equivalents to the Aboriginal corporation.

3.100 Between 2017–18 and 2021–22, the proportion of payments received from s19 agreements increased, while the proportion of payments received from Part IV agreements decreased (see

62 In 2021–22, there were three mining projects: Gove Rio Alkan, Gulkula Bauxite Mining and Ranger Uranium Mine. Northern Land Council, *Annual Report 2021–22*, pp. 156–157.

63 In relation to payments made under the NTA, the Native Title (Prescribed Bodies Corporate) Regulations 1999 prescribe that PBCs are to hold in trust money connected with the native title rights and interests, and to invest or apply the money held in trust as directed by native title holders. A 2017 service level agreement between the NLC and the Top End Default PBC provides for payment conditions.

Figure 3.1). In response to the increase in monies from s19 agreements, the NLC established a 15-person Benefits Distribution Unit in December 2021, which has primary responsibility for consulting Traditional Owners about distributions. The NLC 2021–22 Annual Report indicated that the Benefits Distribution Unit aims to ‘develop new ways to ascertain the interest of Traditional Owners’, including through annual meetings to seek approval of a forward annual budget encompassing all expected sources of income. The intent of the annual meetings is to improve the Traditional Owners’ ability to plan for their future.⁶⁴

3.101 Payments under the ALRA must be made within six months of their receipt by the Land Council, unless the Land Council has received written instruction from the Traditional Owners prior to distribution. The ANAO financial statements audit for 2021–22 continued to identify breaches of this requirement, which have been unresolved since they were first raised in 2012–13.⁶⁵ In 2021–22, the ANAO financial statements audit found that the distribution of monies to Traditional Owners was not made within six months for 16 of the 25 (64 per cent) land use and access agreements tested. The NLC advised the ANAO that the Benefits Distribution Unit had begun consulting with Traditional Owner groups from September 2021 to determine how to distribute funds held for longer than six months, or to seek written approvals from these groups to hold monies for longer than six months. The NLC also improved its ICT system in order to distinguish aged funds that ought to have been distributed within six months, from aged funds held by request. The NLC stated that these strategies contributed to increasing the timeliness with which negotiated monies and rents and leases were distributed in 2021–22 compared with the previous financial year.

64 Northern Land Council, *Annual Report 2021–22*, p. 71.

65 As at June 2022 there was an unreconciled balance of \$1.7 million in the Royalty Trust Account. The NLC filed an application with the Supreme Court of the Northern Territory on 26 July 2022 for directions on how to allocate the unreconciled monies. As at April 2023 the Court has yet to give its decision.

See: Auditor-General Report No.8 2022–23 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2022*, p. 272.

4. Arrangements to promote the proper use and management of resources

Areas examined

This chapter examines whether the Northern Land Council (NLC) has appropriate arrangements to promote the proper use and management of resources under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).

Conclusion

The NLC's arrangements to promote the proper use and management of resources are largely appropriate. The NLC has established an appropriate framework of risk oversight and management, and a policy framework, which have not been fully implemented. Finalisation of policies, improved training and greater risk reporting would enhance the arrangements. Arrangements to support the integrity of the Land Council operations are undermined by a system of fraud control that has not met the requirements of the mandatory Commonwealth fraud rule, although arrangements for declaring conflicts of interest are largely appropriate. The NLC 2021–2025 Corporate Plan largely complied with the PGPA Rule and the 2021–22 Annual Report was fully compliant with PGPA Act and *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) requirements. There could be improvements to performance reporting. There is an Audit Committee which has been appropriately established, although its review of performance reporting is insufficient. There are some weaknesses in the Audit Committee's mandatory reporting to the NLC accountable authority. An internal audit function is developing.

Areas for improvement

The ANAO made three recommendations to the NLC aimed at addressing: the finalisation and implementation of its risk management framework; conduct of fraud risk assessments and implementation of fraud recording and reporting mechanisms; and updating the Audit Committee Charter.

The ANAO also suggested the NLC: finalise its internal control policies and implement training; improve its processes to manage conflicts of interest; structure its Corporate Plan with a clear purpose statement; enhance its performance measures by introducing more targets and an explanation of measurement methodology; and include a member rotation policy in its Audit Committee Charter.

4.1 Under the PGPA Act, Commonwealth entities are accountable to the Parliament and the public for the proper use and management of public resources to deliver programs and services and achieve outcomes. Effective management of risk, fraud and probity; a robust policy framework; a

corporate plan and annual report, including a performance statements; and an audit committee are key mechanisms under the PGPA Act to implement this duty.⁶⁶

Has the Land Council established a system of risk oversight and management and a policy framework that are appropriate?

The NLC is operating under a risk management framework that was re-drafted in 2022. A risk register has been established, is regularly maintained and is largely consistent with the draft 2022 Enterprise Risk Management Framework. A requirement to report quarterly to the Council about risks is not implemented, which reduces the Council's risk oversight. A suite of corporate policies has been established, although not all policies have been operationalised through appropriate supporting procedures and some are not appropriately endorsed and finalised. There is governance training, although mandatory training on certain policies is not enforced.

Risk oversight and management

4.2 The PGPA Act (section 16) requires accountable authorities of Commonwealth entities to establish and maintain appropriate systems and internal controls for the oversight and management of risk. The Commonwealth Risk Management Policy supports the PGPA Act. As a corporate Commonwealth entity, the NLC is not required to comply with the Commonwealth Risk Management Policy, however the Policy states that corporate Commonwealth entities 'should align their risk management frameworks and systems with this policy as a matter of good practice'.⁶⁷

Risk management framework and risk appetite

4.3 In April 2022 the NLC drafted a new risk management framework to replace its 2017 Risk Management Framework and Policy, and advised the ANAO that staff are required to follow the redrafted risk management framework. The draft 2022 Enterprise Risk Management Framework states that its purpose is to assist the NLC to identify, assess, manage, and monitor existing and potential risks as and when they arise. It includes the NLC's risk governance arrangements, responsibilities for managing and reporting risks, requirements for the quarterly review of operational and strategic risks, and requirements for reporting risks to the full and Executive Councils. The draft Enterprise Risk Management Framework includes the NLC's risk appetite statement, which states that the NLC's appetite towards accepting risk (which is either 'no', 'limited'

66 *Public Governance, Performance and Accountability Act 2013 (Cth)*: section 15 (duty to govern), section 16 (duty to establish systems for risk and control), section 35 (corporate plan), section 39 (performance statements) and section 46 (annual report); and PGPA Rule: section 10 (preventing, detecting and dealing with fraud), and Part 2-2, Division 2 (duty to disclose interests). Subsection 12(2) of the PGPA Rule specifies that the duty to disclose interests does not apply to a member of a Land Council, if the interest arises because the official is a Traditional Owner or an Aboriginal person who has an entitlement, in accordance with Aboriginal tradition, to enter and use or occupy the land.

67 Department of Finance, *Commonwealth Risk Management Policy* [Internet], Finance Minister's Forward, updated 29 November 2022, available from <https://www.finance.gov.au/government/comcover/risk-services/management/commonwealth-risk-management-policy> [accessed 20 March 2023].

or 'have') is dependent on the nature of 10 activity categories and the degree of risk and potential rewards.⁶⁸

Risk assessment

4.4 The NLC's draft Enterprise Risk Management Framework includes the required processes for identifying and assessing risks, controlling and treating identified risks, and quarterly monitoring and reviewing of risks. In November 2022 the NLC implemented an online risk tool and developed guidance to assist staff to identify new risks, view and modify existing risks, access risk management training materials, develop risk visualisations and extract risk data (in the form of risk registers). The NLC maintains one consolidated risk register that covers multiple areas of the organisation. The ANAO reviewed three versions of the risk register (March 2022, August 2022 and February 2023) for completeness, accuracy and consistency with requirements established in the draft Enterprise Risk Management Framework. The NLC's risk registers were compliant with the framework except that they did not articulate whether assessed risks exceeded the risk appetite; and the risk registers did not always record information to demonstrate that risks had been reviewed in each quarter.

4.5 Risk management training is not mandatory. Between November 2020 and November 2022, 26 NLC employees (or approximately seven per cent of permanent staff) completed risk management training; and 41 (12 per cent) completed training on workplace health and safety risks. In July 2022, 64 employees (18 per cent) completed 'NLC Governance 101' training, which included a high-level introduction to the draft Enterprise Risk Management Framework.

Risk reporting

4.6 The NLC's 2017 Risk Management Framework and Policy states that the Executive Council is responsible for reviewing and supporting the overall risk management practices. The 2022 draft Enterprise Risk Management Framework states that strategic risks are to be reported to the Council and a strategic risk report is to be provided to the Executive Council each quarter. Strategic risks are defined as 'Risks that may prevent the NLC from achieving its corporate objectives.'

4.7 The NLC develops risk snapshots based on the risk register. The ANAO reviewed risk snapshots from May 2021, February 2022 and August 2022. The risk snapshots provide high-level quantitative information on risks, such as the number of risks and the change in the number of risks since the last snapshot. The snapshots do not draw attention to strategic risks, or provide information on the implementation of mitigation plans and on the effectiveness of controls in mitigating NLC's risks.

4.8 In 2021–22 the Audit Committee received a risk snapshot at two of its four meetings. ANAO analysis of minutes for Council meetings in 2021–22 found that there was limited risk reporting. The full Council met once in July 2021. During this meeting it received a report from the Audit Committee, which included one sentence on risk that asserted that there were improvements in risk management maturity and to the frequency of risk reviews. There is no evidence that the Executive Council, which met five times in 2021–22, received strategic risk reporting.

68 The 10 activity categories are: corporate objectives; governance and compliance; financial; brand and reputation; legal; work health and safety; constituent [confidence]; cyber security; core business operations; and internal relations.

Recommendation no. 9

4.9 The Northern Land Council:

- (a) ensure the Risk Management Framework is reviewed and endorsed by the accountable authority of the NLC; and
- (b) provide risk reporting to the full and Executive Councils in accordance with the Risk Management Framework.

Northern Land Council response: *Agreed.*

4.10 *The NLC will finalise the Risk Management Framework by the end of 2023.*

4.11 *The NLC provides risk management updates to the Executive Council and acknowledges these will be more detailed and frequent in accordance with the risk management framework once approved.*

Policy framework

Establishment of corporate policies

4.12 Policies and procedures are an important part of an entity's system of internal controls. As at April 2023 the NLC had 51 corporate policies and procedures⁶⁹, which cover most key resource management areas.

4.13 The NLC's draft Governance Framework states that the Governance, Compliance and Risk Unit is responsible for assisting the Chief Executive Officer (CEO) in establishing a governance framework through maintaining a set of approved policies and procedures. The NLC has a Policy Framework and Policy Management Process Guide which provides guidance on developing, maintaining and reviewing corporate policies, procedures and other documents.

4.14 The Policy Framework states that policies should be approved by the CEO who has the discretion to progress to the Executive or full Council for approval where it has significant impact on elected members or Traditional Owners. As at April 2023, of the 51 NLC policies and procedures, 45 were approved by the CEO and six were either in draft form (not approved) or not approved by the CEO.

4.15 NLC's corporate policies rely on supporting procedures and other documents for the operationalisation of the principles outlined in the policies. Details are often not provided in the procedures and other documents referenced in the policies, which instead direct the reader back to the policy in a circular manner. Some documents referenced in the policies could not be provided by the NLC when requested by the ANAO.

4.16 Table 4.1 provides an overview of ANAO's assessment of NLC's key governance policies, focusing on whether the policies are sufficiently detailed and clear and are consistent with the PGPA Act's requirement for proper use and management of resources.

69 These are distinct from operational policies and procedures discussed in Chapter 3 that support the NLC's work under the ALRA and *Native Title Act 1993*.

Table 4.1: Selected key governance policies^a

Title	Clear and detailed ^b	Consistent with PGPA Act
Code of Conduct	◆	◆
Conflict of Interest Policy	◆	◆
Credit Card Policy	◆	◆
Gifts and Benefits Policy	▲	◆
Procurement Policy	◆	◆
Public Interest Disclosure (Whistle Blower) Policy	◆	N/A
Records Management Policy	◆	◆
Recruitment and Selection Policy	▲	▲
Travel Policy	◆	◆

Key: ◆ Fully demonstrated ▲ Partly demonstrated ■ Not demonstrated N/A – not relevant to the PGPA Act

Note a: Risk management and fraud policies are examined in separate sections of this report.

Note b: Assists the reader to clearly understand what their obligations and what actions are required of them.

Source: ANAO analysis.

4.17 Two of the nine examined policies were not clear and detailed, and one was not aligned with relevant PGPA Act requirements. Exceptions are described below.

- Gifts and Benefits Policy — According to the Gifts and Benefits Policy, the gift register undergoes a biennial review and is physically located at the NLC's Darwin office. All gifts and benefits are to be reported to a supervisor and recorded in the gift register. It is not clear from the Policy how staff located in the NLC's 11 regional offices will record information in a physical register located in Darwin. As at April 2023 the register (which was established in 2017) included five entries recorded between January 2020 and April 2023.
- Recruitment and Selection Policy — The Recruitment and Selection Policy commits to ensuring fair, equitable and legally satisfactory recruitment of NLC employees. The General Manager of People Services can override merit-based processes through direct appointments, including but not limited to cases where a short-term vacancy (defined as less than six months) exists and where cultural knowledge and Traditional Owner endorsement is deemed to be required. NLC employees with a conflict of interest are also not prohibited from participating in recruitment. Classification levels were not always clearly defined in the Policy. The ANAO did not assess how recruitment processes occurred.

4.18 Eleven of the 45 corporate policies and procedures that were approved by the CEO were not reviewed within the required time periods. The length of the overdue period varied, ranging from four to five years.

Operationalisation and communication of corporate policies

4.19 Corporate policies and procedures are available to staff via the NLC intranet. Since 1 July 2020 training has been conducted for 14 out of 51 corporate policies and procedures. Training on the Conflict of Interest, Records Management and Social Media policies is to be provided during staff induction.

4.20 Training on the Conflict of Interest Policy (see paragraph 4.29) is mandatory for all staff. Of 347 permanent staff, 171 (49 per cent) completed a training module on the Conflict of Interest Policy in 2022. As the requirement to undertake Conflict of Interest Policy training is not annual, it is unclear whether this represents a satisfactory participation rate.

4.21 Training on the Code of Conduct is also mandatory for all staff. The NLC advised the ANAO that in 2022 staff were required to attend one face to face training session on the Code of Conduct. NLC training records show that of 347 permanent staff:

- 114 (33 per cent) completed training on the Code of Conduct in 2021; and
- 103 (30 per cent) completed training on the Code of Conduct in 2022.

Opportunity for improvement

4.22 Northern Land Council should finalise the policies supporting its system of internal controls. It should ensure that the gifts and benefits register is accessible to all staff to enable them to make their declarations. Communication and training on the Gifts and Benefits Policy could be enhanced and the enforcement of mandatory training can be improved.

Are there appropriate arrangements to support the integrity of the Land Council operations?

The NLC is not fully implementing its Fraud and Corruption Policy. While there is a Fraud and Corruption Control Plan this is not clearly tied to identified fraud risks, fraud risk assessments are not conducted as frequently as required under the Plan, it is not clear if reporting channels are confidential, and the NLC does not have a formal mechanism for recording incidents of fraud or suspected fraud. The NLC's arrangements for managing conflicts of interest among staff and Council members are largely appropriate. Key management personnel, including the Chair and CEO, make a declaration of their positions on the board of other entities. A Conflict of Interest Policy and mandatory online declaration mechanism were established for staff declarations. Use of the online declaration system by staff is monitored and an online declaration under the policy was made by all sampled senior managers in 2022, except by the CEO. Improvements are required to the completeness of declarations by senior management and the rate of completion of declaration forms by other staff. Council members are required to declare their interests as they arise during meetings, and the declarations are recorded in the minutes and in a register. Management strategies were recorded for most declared Council member interests.

Fraud control

4.23 Under section 27 of the PGPA Act and under section 10 of the PGPA Rule, an official of a Commonwealth entity must not improperly use his or her position to gain, or seek to gain, a benefit

or an advantage for himself or herself or any other person, and the accountable authority of a Commonwealth entity must take all reasonable measures to prevent, detect and deal with fraud relating to the entity. Requirements for fraud control by Commonwealth entities are contained in the 2017 *Commonwealth Fraud Control Framework*⁷⁰, which consists of three tiered documents — the fraud rule, fraud policy and fraud guidance. As a corporate Commonwealth entity, the NLC must comply with the fraud rule, which ensures a minimum standard for managing the risk and incident of fraud. While Land Councils are not bound by the fraud policy or fraud guidance, the government ‘considers both documents as better practice for corporate Commonwealth entities and expects that these entities will follow the fraud guidance and fraud policy where appropriate in meeting the requirements of the fraud rule.’⁷¹

4.24 The NLC’s fraud control arrangements fall short of the minimum requirements established in the fraud rule. The NLC has developed a Fraud and Corruption Policy and a Fraud and Corruption Control Plan and conducted training. The Fraud and Corruption Policy is not clearly tied to identified fraud risks and fraud risks are not assessed as frequently as specified in the Policy. There is no confidential reporting channel and no mechanism to record and report incidents of fraud or suspected fraud. The definition of corruption in the Fraud and Corruption Policy could be better aligned with section 8 of the *National Anti-Corruption Commission Act 2022* (see Appendix 8).

Recommendation no. 10

4.25 The Northern Land Council fully comply with the Commonwealth fraud rule, and its Fraud and Corruption Policy including by:

- (a) conducting fraud risk assessments regularly;
- (b) implementing a mechanism to record fraud; and
- (c) reporting fraud and suspected fraud to the Audit Committee.

Northern Land Council response: *Agreed.*

4.26 *The NLC Fraud and Corruption Policy is currently under review. The review will ensure it complies with the Commonwealth fraud rule, the National Anti-Corruption Commission and Northern Territory Independent Commissioner Against Corruption requirements.*

4.27 *The NLC has conducted fraud risk assessments for areas identified as very high risk. Fraud risk assessments will be conducted across the NLC as part of business as usual moving forward.*

Conflicts of interest management

4.28 The Australian Commission for Law Enforcement Integrity’s guide on conflicts of interest management states:

70 Department of the Attorney-General, *Commonwealth Fraud Control Framework*, August 2017.

71 *ibid.*, p. iv.

Agencies should provide clear and consistent guidance to employees on how to identify, declare and manage conflicts of interest. Agency executives and management should regularly communicate about the conflict of interest framework and how it is implemented.⁷²

Conflict management policy

4.29 The NLC established a Conflict of Interest Policy in 2018, which it reviewed in 2021. While the Conflict of Interest Policy states that it applies to Council members and staff (employees, volunteers and contractors), the processes described are mostly specific to staff. The Code of Conduct addresses expectations for Council members and staff in relation to managing conflicts of interest.

4.30 The Conflict of Interest Policy clearly defines what constitutes a conflict of interest and includes examples of activities (including outside employment) that could give rise to a conflict. Individuals are required to declare conflicts either verbally or in writing. The General Manager of Corporate Services is to determine the most appropriate management action, which could range from simply recording the conflict to relinquishing the factors giving rise to the conflict or NLC employment.

Conflict of interest management

Key management personnel

4.31 The NLC's key management personnel⁷³ sign an annual declaration listing the positions held on boards of any other entities. The ANAO examined declarations by the NLC Chair and CEO. The Chair declared 12 positions and the CEO declared one position. One of the entities declared by the Chair operated under two names (under a single Australian Business Number), one of which was declared. The NLC advised that it conducts a check of all financial transactions against the entities recorded in the declarations, including by Australian Business Number.

Staff members

4.32 Since February 2022 staff declarations are completed through an online system, which requires staff to read the Conflict of Interest Policy and a fact sheet. The staff members' supervising managers are then required to specify whether they consider the disclosed interests to give rise to a conflict (via a checkbox), and identify actions to manage the conflict. The form includes a checkbox for staff to declare that they have no conflict of interest. Completion of a declaration is a required step within the first week of staff onboarding and for ongoing staff the Conflict of Interest Policy states that conflicts of interest 'must be declared as soon as they are realised.' In 2022, 178 of 347 permanent staff in 2021–22 (51 per cent) had completed declarations via the online system.

4.33 The ANAO assessed declarations made in 2022 by 10 senior managers (including the CEO), selected on the basis of their governance roles at the NLC. Declaration forms were completed via

72 Australian Commission for Law Enforcement Integrity, *Prevention in Practice – Understanding Conflict of Interest* [Internet], [no date] p. 10, available from <https://www.aclei.gov.au/preventing-corruption/corruption-risks-and-vulnerabilities/conflicts-of-interest> [accessed 22 December 2022].

73 Under Australian Accounting Standards Board (AASB) Standard 124 *Related Party Disclosures*, key management personnel of an entity are people with the authority and responsibility for planning, directing and controlling the activities of that entity, directly or indirectly. As at 30 June 2022, the NLC reported that it had 15 personnel who met the definition of key management personnel, including the NLC CEO, the Chair and 13 other Executive Council members.

the online system by nine of the 10 sampled senior managers, and signed by the relevant supervisors. Of the nine declarations, three were a nil declaration, while the other six identified interests that may give rise to a conflict. The declaration form was completed incorrectly for three of the six senior managers who declared interests: one form did not fully record what impact the conflict of interest may have or any management strategy; and two forms did not clearly record a management strategy. The tenth senior manager (the CEO) identified a position held on the board of another entity in the annual declaration for key management personnel, however did not make a declaration as required for all staff under the Conflict of Interest Policy.

4.34 Under the 2021 Conflict of Interest Policy, the NLC is to undertake an annual audit of employees' declarations. In October 2022 the NLC conducted a 'review' of staff who had not provided a declaration via the online system, and the NLC advised that it repeated this process in May 2023. Following the October 2022 review, seven senior managers were provided with a list of staff who had not completed their declarations, and the NLC advised that it did the same in May 2023. No further follow-up was undertaken. In July 2023 the NLC advised it would undertake a 'major push' for conflict of interest declarations in October 2023.

Opportunities for improvement

4.35 The Northern Land Council should consistently:

- (a) apply requirements to declare conflicts of interest; and
- (b) document management plans for declared conflicts of interests.

Council members

4.36 Section 29AA of the ALRA requires that each member of a Land Council make a written declaration of their direct or indirect pecuniary interests, in a register of interests kept by the Council. This is to be done in accordance with a determination made by the Minister for Indigenous Australians (the Minister) regarding the kind of interests to be disclosed, the manner in which the disclosures are to be made and the form in which the register is to be kept. Such a determination had not been made by the Minister as at April 2023.

4.37 The NLC Member Handbook requires that Council members declare their interests at meetings. The Council members making the declaration are not permitted to vote and may be asked to leave the meeting. The NLC records conflicts of interest in two ways: through meeting minutes; and in annual registers, which are based on conflicts declared during meetings and are compiled every calendar year. The NLC provided to the ANAO the Executive Council meetings registers for 2020, 2021 and 2022.

4.38 The ANAO examined meeting minutes from 2021–22 and found that conflicts were declared at eight of the 17 meetings conducted in 2021–22: three Executive Council and five regional Council meetings. For most of the conflicts declared (33 out of 43), a management strategy was noted whereby the member was recorded as leaving the room or abstaining from voting. For the remaining 10 declared conflicts, five related to agenda items that did not require a Council resolution. Of the five conflicts that related to agenda items that required a Council resolution, nothing was recorded in the minutes to indicate any action was taken.

Are the corporate plan and annual report consistent with legislative requirements?

The 2021–2025 Corporate Plan largely complied with the PGPA Rule. Some deficiencies were identified in the description of the NLC’s purpose and performance measures. The 2021–22 Annual Report was fully compliant with ALRA and PGPA requirements. The line of sight between performance measures in the corporate plan and the annual performance statements could be improved. The NLC accountable authority and Council had some oversight in the development and approval of corporate plans and annual reports.

Corporate plan

4.39 The ANAO assessed the NLC’s compliance with requirements for its 2021–2025 Corporate Plan as set out in the PGPA Rule and Department of Finance (Finance) guidance (see Appendix 9). The 2021–2025 NLC Corporate Plan⁷⁴ met the requirements relating to its reporting period, introduction, and timeliness of publication. The remainder of this section discusses requirements that were not met in the 2021–2025 Corporate Plan in relation to providing: an explanation of the entity’s purpose; a summary of key risks and the management of those risks; and performance measurement against the entity’s purpose.

Purpose

4.40 The NLC 2021–2025 Corporate Plan does not set out the NLC’s purpose in a clear and concise way. There is a 'strategic direction' which includes a vision and mission statement, however Finance guidance⁷⁵ notes that vision or mission statements should not be a substitute for a purpose statement. The 2021–2025 NLC Corporate Plan contains four goals: 'Advocate: Be a voice for Aboriginal people'; 'Opportunity and empower: Create real opportunities for Aboriginal people'; 'A strong NLC: Be a culturally rich and trusted organisation'; and 'Proactively manage country: Acquire, manage and protect traditional lands and waters in accordance with statutory functions.' Again, these do not represent a clear purpose statement. By contrast, the Anindilyakwa Land Council and the Central Land Council corporate plans have clear purpose statements that reference NT Land Councils’ legislative functions as prescribed under the ALRA.

Opportunity for improvement

4.41 The NLC’s corporate plan should contain a clear and succinct purpose statement.

Risk summary

4.42 Item 4 of subsection 16E(2) of the PGPA Rule requires the corporate plan to set out (among other things) a summary of the risk oversight and management systems of the entity; and the key risks that the entity will manage and how those risks will be managed. The 2021–2025 Corporate

74 Northern Land Council, *2021–2022 Corporate Plan* [Internet], available from <https://www.nlc.org.au/media-publications/nlc-corporate-plan-2021-22> [accessed 20 February 2023].

75 Department of Finance, *What to include in a corporate plan* [Internet], RMG 132, <https://www.finance.gov.au/government/managing-commonwealth-resources/corporate-plans-commonwealth-entities-rmg-132/what-include-corporate-plan#operating-context> [accessed 13 February 2023].

Plan included a summary of the risk oversight and management systems that the NLC uses, however did not include the key risks that the NLC will manage, or how those risks will be managed. It identified COVID-19 as the ‘most significant risk’ faced by the NLC and provided some explanation of how that risk is dealt with, however no other risks were identified. The risk description was improved in the 2022–2026 Corporate Plan, which identifies eight key risks and provides the mitigation strategy for each risk.

Performance

4.43 The section of the 2021–2025 Corporate Plan titled ‘performance and achievements’ is separated into two sections. The ‘goals and objectives’ section contains a table that links the NLC’s four goals to different objectives (which resemble activities). The ‘goal alignment’ section links each objective (activity) to an ‘owner’ and ‘measure’ (sometimes with targets). Measures are included for 2022–23, 2023–24 and 2024–25.

4.44 Although the 2021–2025 Corporate Plan provides some meaningful performance information, this information could be improved in a number of ways.

- Many of the measures are not clearly explained. For example, the performance measure ‘customer satisfaction levels’ does not explain the level of customer satisfaction the NLC is working towards or how this will be measured.
- Some output measures do not have a specific target. For example, a target for the measure ‘number of work experience students in offices’ is not specified.
- Most of the activities and performance measures relate directly to the NLC’s legislative functions under the ALRA, however some measures are based on general functions of an organisation. For example, the Corporate Plan includes several measures relating to ICT management. Measures such as this do not allow the NLC to demonstrate its level of achievement against its specific purpose.
- The measures are focused on activities and outputs mainly, and occasionally outcomes; they do not measure efficiency.

4.45 In the 2022–2026 Corporate Plan there are improvements in the wording, content and presentation of the performance measures. However, the weaknesses discussed above are not addressed.

Opportunity for improvement

4.46 The NLC could enhance its performance measures by ensuring that the measure and its underlying methodology is clearly explained, and all measures have targets where practicable.

Annual report

4.47 The 2021–22 Annual Report is compliant with the PGPA Act and Rule, and the ALRA requirements (see Appendix 9).

Annual performance statements

The 'clear-read' principle

4.48 A clear line of sight between an entity's planning documents (corporate plan) and its key reporting document (annual report) is known as the 'clear-read' principle.⁷⁶

4.49 The line of sight between the 2021–2025 Corporate Plan and the 2021–22 Annual Report is not clear. The measures identified in the 2021–2025 Corporate Plan appear in the 2021–22 Annual Performance Statements. However, the specific targets identified in the 2021–2025 Corporate Plan are not reported against in 2021–22 Annual Performance Statements. For example, in the 2021–2025 Corporate Plan, the performance measure 'full, Executive and regional Council meetings held during the year' has three specific targets: two full Council; six Executive Council; and 12–14 regional Council meetings held per calendar year. These specific targets did not appear in the 2021–22 Annual Performance Statements.

PGPA Rule section 16F requirements

4.50 The annual performance statements of an entity, published in the annual report, must provide information about the entity's performance in achieving its purposes and comply with any requirements prescribed under section 16F of the PGPA Rule. The NLC's 2021–22 Annual Performance Statements met these requirements (see Appendix 9).

Development of the corporate plan and annual report

4.51 While a Land Council accountable authority is required to prepare and submit a corporate plan and annual report to the Minister under the PGPA Act, the Council has specific functions under the ALRA and should be involved in the development of the corporate plan and the annual report. The accountable authority should also gain assurance that the information published in the corporate plan and annual report, including in the performance statements, is complete and accurate.

4.52 The NLC accountable authority and Council had some involvement in the development and approval of the 2021–2025 and 2022–2026 Corporate Plan and annual reports. At the September 2022 Executive Council meeting, members discussed and directed NLC staff on the wording and development of the NLC's 2022–2027 Strategic Plan, including the development of strategic goals, vision and mission statements. A paper on the NLC Strategic Plan 2022–2027 presented to the full Council in December 2022 noted that upon approval of the Strategic Plan, the NLC accountable authority would commence work on the next corporate plan to 'ensure that it aligns with the expectations and priorities set by the members.'

4.53 The NLC engaged with the National Indigenous Australians Agency (NIAA) and the Department of Finance when preparing the 2021–2025 Corporate Plan and the 2021–22 Annual Report. The NIAA conducted a compliance check of the draft 2021–2025 Corporate Plan and provided feedback to the NLC, which the NLC incorporated into the finalised version of the Corporate

76 Department of Finance, *Why is performance information reported in a PBS?* [Internet], Finance, January 2022, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/reporting-performance-information-portfolio-budget-statements-rmg-129/why-performance-information-reported-pbs> [accessed 20 March 2023].

Plan. The NLC also participated in sessions held by Finance's 'Performance Community of Practice', to maintain and expand its understanding of reporting requirements under the PGPA Act.

Does the Audit Committee and internal audit function provide adequate oversight and scrutiny of the Land Council's operations?

The NLC is developing an internal audit function. The establishment and composition of the Audit Committee complies with PGPA Rule requirements and Department of Finance guidance. The Audit Committee is delivering on its mandatory functions, except in relation to the review of performance reporting. The Audit Committee partly complies with its mandatory reporting requirements.

Internal audit function

4.54 An internal audit function is an important mechanism in relation to the accountable authority's responsibility under section 16 of the PGPA Act to establish a system of internal control.⁷⁷

4.55 Auditor-General Report No.55 2016–17 *Effectiveness of the Governance of the Northern Land Council*⁷⁸ noted that, as at April 2017 the NLC did not have an internal audit function, although the NLC Audit Committee had agreed in November 2016 to consider establishing such a function by 30 June 2017. In May 2020 the NLC established the Governance, Compliance and Risk Unit, with a mandate covering strategic planning, monitoring and risk management. The Governance, Compliance and Risk Unit drafted the first Internal Audit Strategy (covering 2021–22 to 2023–24) in 2021. The draft Internal Audit Strategy identifies focus areas and a work plan.

4.56 The draft Internal Audit Strategy determines that the audit program will be delivered partly in-house and partly using an external provider. In July 2022 the NLC engaged Deloitte Touche Tohmatsu Limited (Deloitte) as its contracted internal audit partner for the period 2022–23 to 2024–25. The NLC advised the ANAO that Deloitte has been commissioned to provide assurance mapping of the NLC's key controls by July 2023, and that this would inform the finalisation of the draft Internal Audit Strategy and the audit work plan priorities.

Establishment and composition of the Audit Committee

4.57 The NLC is fully compliant with the PGPA Rule requirements and Finance guidance in relation to an Audit Committee charter, and the establishment and composition of an Audit Committee (see Appendix 10).

Charter

4.58 The NLC's Audit Committee Charter provides that the Audit Committee will review the Charter at least annually and that 'any substantive changes to the charter will be recommended by the Audit Committee and formally approved by the accountable authority'. The Charter was

⁷⁷ Department of Finance, *Resource Management Guide (RMG) 206 - Model Accountable Authority Instructions for Corporate Commonwealth Entities*, Finance, 2021, p. 14.

⁷⁸ Auditor-General Report No.55 of 2016–17 *Effectiveness of the Governance of the Northern Land Council*, paragraph 2.44.

reviewed by the Audit Committee in March 2022. The ANAO examined accountable authority-endorsed versions of an Audit Committee Charter dated March 2017, March 2020 and March 2022. The March 2022 Charter contains the relevant requirements as set out in the PGPA Rule and associated Finance guidance.

Member characteristics

Skills and experience

4.59 The NLC Audit Committee Charter requires that members have:

appropriate qualification, knowledge, skills or experience to enable the committee to perform its function effectively and efficiently. At least one member of the Committee should have a background in financial reporting, accounting and auditing, however, the lack of any such member shall not invalidate or otherwise affect the actions taken by the Committee.

4.60 The qualifications, knowledge, skills and experience of Audit Committee members were reported in the NLC's 2021–22 Annual Report — two of four members at the time held qualifications in accounting and finance, and the remaining two members were members of the full Council. The formal qualifications and technical skills of the Audit Committee members who are also members of the full Council were not specified.

Independence

4.61 The NLC's Audit Committee Charter requires the Audit Committee to comprise three to five members appointed by the accountable authority of whom the majority must not be Council or 'Executive members'.⁷⁹ The accountable authority appoints an 'independent' member as the Chair of the Audit Committee. As at April 2023 the NLC's Audit Committee consisted of a Chair and two other members, neither of whom were NLC employees or Council members.

4.62 The NLC's Audit Committee Charter requires members to provide annual written declarations of any material personal interests and to declare any material personal interests at the beginning of each meeting based on specific matters on the meeting agenda. In relation to the annual declaration, in September 2022, two of the three members of the Audit Committee declared nil interests and one declared two interests relating to their employment in a legal firm and position as a board member for a non-governmental organisation. There were no management plans outlined for the one member who declared interests in the annual declaration. In 2021–22, the Audit Committee meeting minutes did not record whether any material personal interests were declared at the beginning of each meeting during any of the four meetings that occurred. The NLC advised that effective from March 2023 members would be required to declare any material personal interests and a management plan would be established for any declared interest. The draft March 2023 meeting minutes noted that there were no conflicts declared.

Remuneration

4.63 Finance guidance does not establish a standard for Audit Committee remuneration, and indicates that the remuneration should be commensurate with the importance of responsibilities and the commitment required.⁸⁰ The NLC 2021–22 Annual Report noted that the Audit Committee

79 The NLC advised that 'Executive members' refers to the Executive Council members.

80 Department of Finance, *Resource Management Guide 202 - A guide for corporate Commonwealth entities on the role of audit committees*, September 2021, p. 24.

met four times and members other than the Chair each received between \$156 and \$496 for each meeting attended.⁸¹ The Chair of the Audit Committee received, for the four meetings attended, \$3048.⁸²

Rotation

4.64 The 2018 *Independent Review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule* recommended that accountable authorities ‘establish an audit committee membership rotation policy, with maximum appointment terms to ensure regular rotation of committee membership’.⁸³ Finance guidance indicates that the Finance Secretary wrote to all accountable authorities in August 2019 drawing their attention to this recommendation.⁸⁴

4.65 The NLC’s Audit Committee Charter provides that the term of appointment for Audit Committee members is initially for three years with reappointments possible for further terms of three years ‘with the aim of ensuring an appropriate balance between continuity of membership, the contribution of fresh perspectives, and a suitable mix of qualifications, knowledge and skills and experience.’ There is no limit on the number of terms that an Audit Committee member may serve. The Audit Committee Chair was first appointed as a member of the Audit Committee in 2015–16 and was appointed as Chair in September 2019. One of the two remaining members was first appointed to the Audit Committee in 2019–20 and the second was appointed in September 2022.

Opportunity for improvement

4.66 The NLC could include in its Audit Committee Charter a member rotation policy that specifies the maximum number of appointment terms.

Effectiveness of Audit Committee operations

4.67 Appendix 10 presents the ANAO’s assessment of the effectiveness of the NLC Audit Committee’s operations against the PGPA Rule requirements and Finance guidance. The ANAO assessment is based on analysis of Audit Committee meeting minutes and papers for 2021–22,

81 By comparison, in 2021–22 the other NT Land Councils provided the following annual remuneration to each of the Audit Committee members (excluding the Chair): Anindilyakwa Land Council — between \$334 and \$1336 (three meetings); Central Land Council — between \$6050 and \$6450 (four meetings); and Tiwi Land Council — between \$1672 and \$2090 (five meetings). The remuneration described here does not include the remuneration related to being a Council member, which is provided to Audit Committee members who are also Council members.

82 By comparison, in 2021–22 the other NT Land Councils provided the following annual remuneration to each of the Audit Committee Chairs (excluding travel and other expenses): Anindilyakwa Land Council — \$58,352 (three meetings); Central Land Council — \$6700 (five meetings); and Tiwi Land Council — \$2780 (five meetings).

83 E Alexander and D Thodey, *Independent Review into the operation of the Public Governance, Performance and Accountability Act and Rule* [Internet], Department of Finance, 2018, p. 29, available from https://www.finance.gov.au/sites/default/files/2019-08/PGPA_Independent_Review_-_Final_Report.pdf [accessed 12 January 2023].

While the PGPA Rule does not mandate minimum or maximum periods of appointment for audit committee members, it states that the rotation of audit committee members allows for a flow of skills and talent through the committee, enhancing its effectiveness and ensuring its objectivity.

84 Department of Finance, *Resource Management Guide 202 - A guide for corporate Commonwealth entities on the role of audit committees*, 2021, p. 24.

direct observation of Audit Committee meetings in May and September 2022, and discussions with the Audit Committee members and NLC officials.

Mandatory functions and reporting

Mandatory functions

4.68 The Audit Committee has been discharging its assurance responsibilities in relation to financial reporting, risk oversight and management, and the system of internal control. However, the Audit Committee's review of the NLC's performance reporting, including the annual performance statements required under the PGPA Act, was not fully effective. In October 2022 the Audit Committee submitted a report to the accountable authority on the performance of its functions and responsibilities for 2021–22, which noted that '[t]he Committee reviewed the NLC's performance reporting and provided a reasonable level of assurance to the accountable authority on the appropriateness of the performance reporting'. However, there was limited evidence in meeting minutes that the NLC Audit Committee considered the appropriateness or completeness of the performance measures. The draft NLC 2021–22 Annual Report and draft NLC Corporate Plan 2021–2025 were provided to the Audit Committee at the October 2021 meeting, however the Audit Committee had no questions or feedback on them.

Mandatory reporting

4.69 The Audit Committee's mandatory reporting requirements were partly met.

- Charter and committee members — The NLC's 2021–22 Annual Report included information about the committee members including name, qualifications, meetings attended and remuneration. The link to the Audit Committee Charter was not a direct electronic address as required by paragraph 17AG(2A)(a) of the PGPA Rule, instead a general link to the NLC's website.
- Written statement — The Finance guidance outlines that the Audit Committee advice to the accountable authority should be documented in the form of a written statement of its view of the appropriateness of the accountable authority's financial reporting. While the NLC provided reports to the accountable authority in March 2022 and October 2022, these reports did not include a clear statement on its views on the appropriateness of the accountable authority's financial reporting. Rather the reports outlined the Audit Committee's general compliance with its Charter.
- Assessment of Audit Committee performance — The NLC Audit Committee Charter includes a provision that the Chair of the Audit Committee will initiate a self-assessment of the performance of the Audit Committee at least once every two years. Meeting minutes show that the Audit Committee undertook a self-assessment of its performance in March 2021, however, the Audit Committee did not document the results of its self-assessment. Reports provided to the accountable authority in March 2022 and October 2022 state that 'The Committee has undertaken a self-assessment of its performance in March 2021'.

Review function

4.70 A suggested function for audit committees of corporate Commonwealth entities in undertaking their review function is to review the implementation of agreed recommendations

from external reports, such as ANAO reports and parliamentary committee inquiries.⁸⁵ This function is not included in the NLC's Audit Committee Charter.

4.71 Auditor-General Report No.55 2016–17 *Effectiveness of the Governance of the Northern Land Council*⁸⁶ made one recommendation to the NLC.⁸⁷ The NLC agreed to the recommendation, which was: 'to support the administrative and strategic reforms underway, the Northern Land Council: develops and maintains an action plan to monitor the progress of reform initiatives and projects; and develops a communication strategy to inform staff of the changes.' While the NLC's Audit Committee meeting minutes from 18 September 2018, 5 December 2018 and 9 April 2019 record that implementation of the ANAO recommendation was to be monitored by the Audit Committee, there is no record of consideration or monitoring of the recommendation in Audit Committee minutes in the period from September 2018 to May 2022. The NLC was not able to provide evidence to the ANAO that it had implemented the recommendation.

85 Department of Finance, A guide for corporate Commonwealth entities on the role of audit committees, 30 September 2021, p. 21, available from <https://www.finance.gov.au/sites/default/files/2021-10/Guide%20for%20corporate%20Commonwealth%20entities%20on%20the%20role%20of%20audit%20committees.pdf> [accessed 31 January 2023].

86 Auditor-General Report No.55 of 2016–17 *Effectiveness of the Governance of the Northern Land Council*, paragraphs 3.68 and 4.28.

87 A second recommendation to which the NLC agreed was addressed to the Department of the Prime Minister and Cabinet. Prior to the establishment of the NIAA as an executive agency in May 2019, the Department of the Prime Minister and Cabinet's functions included providing advice to and supporting the Minister for Indigenous Affairs, including in relation to Land Councils and the exercise of his or her powers under the ALRA and the *Native Title Act 1993*. The ANAO did not examine the implementation of this recommendation.

Recommendation no. 11

4.72 The accountable authority of the Northern Land Council:

- (a) annually assess the performance of the Audit Committee to confirm that it is effectively undertaking all mandatory functions;
- (b) amend the Audit Committee Charter to require the Audit Committee to monitor the implementation of agreed recommendations made by external reviews including Auditor-General performance audits and parliamentary committee inquiries; and
- (c) include in the annual report a direct electronic link to the Audit Committee Charter.

Northern Land Council response: *Agreed.*

4.73 *(a) The NLC will progress the development of a process to annually assess the Audit Committee is effectively undertaking its functions.*

(b) At the Audit Committee Meeting in July 2023 the Audit Committee endorsed changes to the Audit Committee Charter. The revised charter includes requirements to monitor implementation of recommendations. It is important to note though that the Audit Committee is currently provided with copy of the audit tracking checklist which lists the financial audit findings, recommendations and updates/actions taken by Northern Land Council as of a given period. Further to this we also include in the agenda any update on external reviews.

(c) The NLC will include in the annual report a direct link to the revised audit committee charter.



Grant Hehir
Auditor-General

Canberra ACT
15 August 2023

Appendices

Appendix 1 Northern Land Council response



12 July 2023

Ref: E2023/16464

Mr Grant Hehir
Auditor-General
Australian National Audit Office

Dear Mr Hehir,

We are writing in response to the performance audit conducted by the Australian National Audit Office (ANAO) into the effectiveness of governance arrangements of the Northern Land Council (NLC).

The NLC welcomes the report and your assessment that the governance arrangements of the NLC are largely effective.

The NLC acknowledges the ANAO's recommendations, noting our responses which provide information about work already underway to further strengthen governance arrangements.

Our organisation has made significant governance improvements in recent years. As the Accountable Authority we will work with the NLC's Full Council, to ensure strong and robust governance, to enable continued and effective delivery of NLC services to Aboriginal People across our region.

Yours sincerely,

A handwritten signature in black ink, appearing to read "S Bush-Blanasi".

Dr Samuel Bush-Blanasi
Accountable Authority/Chair

A handwritten signature in black ink, appearing to read "Joe Martin-Jard".

Joe Martin-Jard
Accountable Authority/CEO

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2022–23 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - initiating reviews or investigations.
4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

Report paragraph no.	Actions observed during the course of the audit
3.12	In September 2022 the Northern Land Council (NLC) advised the Executive Council and regional Councils that community consultations would be conducted in 2023. The NLC advised the ANAO that the appropriateness of recognised entities would be included in the review of the method of choice.
3.31	In April 2023 the NLC updated its website to publicly explain how to arrange an inspection of the meeting rules and minutes.
3.47	In April 2023 the NLC finalised its policy covering the provision of a process by which a prescribed body corporate (PBC) or a person with native title interests can request a review of NLC's decisions as a Native Title Representative Body.
3.56	In April 2023 the NLC updated its website to include information on its approach to the prioritisation of land use applications.
3.75	In March 2023 the NLC updated its draft Anthropology Branch Manual.
4.3	In April 2022 NLC updated an Enterprise Risk Management Framework (in draft form as at April 2023).

Report paragraph no.	Actions observed during the course of the audit
4.4	In November 2022 the NLC implemented an online risk tool and developed guidance to assist staff to identify new risks, view and modify existing risks, access risk management training materials, develop risk visualisations and extract risk data (in the form of risk registers).
4.34	In October 2022 and May 2023 the NLC conducted a review of staff declarations of interest.
4.56	In July 2022 the NLC engaged Deloitte Touche Tohmatsu Limited as its contracted internal audit partner for the period 2022–23 to 2024–25.
4.62	The draft March 2023 meeting minutes for the Audit Committee indicated that a declaration of conflicts process had been undertaken for the first time.
Appendix 8	The NLC developed a Fraud and Corruption Control Plan approved by the General Manager Corporate Services in March 2022.

Appendix 3 Powers, functions and duties of the Land Councils

Land Councils' powers

1. The Land Councils' powers are mainly described in section 23AA, section 27 and Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The Land Council has the power to determine priorities, allocate resources, employ staff, give directions to Land Trusts, receive moneys and grant licenses.
2. Section 203BK of the *Native Title Act 1993* (NTA) establishes that a native title representative body has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
3. Section 20A of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) indicates that the accountable authority has the power to give instructions to an official about a matter relating to finance law.

Land Councils' functions

4. The Land Councils' functions are mainly described in subsection 23(1) of the ALRA. In summary, these include to:
 - ascertain and express the wishes of Aboriginal peoples living in the area of the Land Council regarding the management of Aboriginal land;
 - protect the interests of relevant Aboriginal people;
 - assist Aboriginal people to protect sacred sites;
 - consult with relevant Aboriginal people regarding any proposal relating to the use of the land;
 - negotiate with persons having interests in the land;
 - assist Aboriginal peoples living in the area of the Land Council to carry out commercial activities (so long as this is done in a manner that will not cause the Land Council to incur financial liability or receive financial benefit);
 - assist Aboriginal people with traditional land claims; and
 - keep registers of Council and Land Trust members.
5. Sections 34 and 37 also establish the Land Councils' functions in relation to preparing estimates of administrative or capital costs for ministerial approval; and obligations in relation to preparing an annual report under the PGPA Act.
6. Under the NTA (section 203BB), Native Title Representative Bodies' key functions are to facilitate and assist through research and preparation of native title applications; and assist prescribed bodies corporate and native title holders in consultations, mediations, negotiations and proceedings relating to native title applications, future acts, Indigenous land use agreements and rights of access. Other functions include certification of applications for determination and registration of native title (section BE), dispute resolution (section BF), notifications (section BG) and agreement making (section BH).
7. Under the PGPA Act, accountable authority functions include to keep records (section 37), including those relating to the approvals of a commitment of relevant money (section 18) and

those relating to financial transactions and position (section 41); prevent, detect and deal with fraud (Section 10); establish and determine the functions of an audit committee (sections 17 and 45); and prepare a corporate plan (sections 16E and 35), budget estimates (section 36), performance statements (sections 16F and 39), annual financial statements (section 42) and an annual report (section 46).

Land Councils' duties

8. Under the ALRA, Land Councils' primary duties relate to: consulting and obtaining consent from Traditional Owners and affected Aboriginal people (subsection 23(3) and section 23AA); attempting dispute conciliation (subsection 25(1)); disclosing pecuniary interests (section 29AA); spending money and disbursing royalties, and exploration and mining interest payments, within six months (section 35). The various provisions set out when the Land Council has a duty to seek the Minister's approval and keep the Minister informed.

9. Under the NTA, the duties of the Land Councils as Native Title Representative Bodies relate primarily to financial management and access to information.

10. The duties applying to the Land Council accountable authority under the PGPA Act include: disclosing material personal interests that relate to the affairs of the entity (section 13); governing the entity to promote the proper use and management of public resources (section 15); establishing and maintaining systems relating to risk and control (section 16); encouraging cooperation of officials with others (section 17); taking account of the risk and effect of imposing requirements on others (section 18); and keeping the Minister informed (section 19). This is in addition to general duties prescribed in sections 25–29.

Appendix 4 Decision-making authority

Table A.1: Decision-makers under the *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)*

Membership of the Land Council	
Section 29	<p>(1) The members of a Land Council shall be Aboriginals living in the area of the Land Council, or whose names are set out in the register maintained by the Land Council in accordance with section 24, chosen in accordance with the method of choice approved by the Minister.</p> <p>(2) A Land Council may, with the approval of the Minister, co-opt members but not more than 5 such members may hold office at any one time.</p>
Chair and Deputy Chair under the ALRA	
Section 30	<p>(6) A Land Council may, at any time, by resolution, elect a new Chair or Deputy Chair who holds office for 3 years and is eligible for re-election.</p> <p>(7) A co-opted member of a Land Council is not eligible to be elected as the Chair or the Deputy Chair of the Land Council.</p>
Section 31	<p>(1) The Chair shall convene such meetings of a Land Council and shall preside if present, if not the Deputy Chair presides.</p> <p>(2) At the request of minimum 6 members, the Deputy Chair may convene a meeting of the Land Council and preside.</p>

Source: Extracts from the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Table A.2: Decision-makers under the *Public Governance, Performance and Accountability (PGPA) Act 2013* and the *Public Governance, Performance and Accountability Rule 2014*

Definition of accountable authority		
PGPA Act subsection 12(2)	The accountable authority for a body corporate is the governing body of the entity unless otherwise prescribed by an Act or the rules.	
PGPA Act section 8	The governing body of a corporate Commonwealth entity is the board or Council (if it has one).	
PGPA Act section 7A	(7) The following table has effect as follows:	
	a) each body corporate referred to in Column 1 of an item is a Commonwealth entity;	
	b) the accountable authority of the entity is the person or group of persons referred to in Column 2 of the item.	
	Bodies corporate established under a law of the Commonwealth	
	Column 1	Column 2
	Item	Commonwealth entity
	Accountable authority	
	1	Anindilyakwa Land Council
	The group of persons made up of:	
	a) the Chair of the Land Council; and	
	b) the CEO of the Land Council.	
	2	Central Land Council
	The group of persons made up of:	
	a) the Chair of the Land Council; and	
	b) the CEO of the Land Council.	

Definition of accountable authority		
	3 Northern Land Council	The group of persons made up of: a) the Chair of the Land Council; and b) the CEO of the Land Council.
	4 Tiwi Land Council	The group of persons made up of: a) the Chair of the Land Council; and b) the CEO of the Land Council.
Powers of accountable authorities		
PGPA Act section 20A	(1) Accountable authorities may by written instrument give instructions to an official about a matter relating to finance law.	

Source: Extracts from the *Public Governance, Performance and Accountability Act 2013* and the *Public Governance, Performance and Accountability Rule 2014*.

Table A.3: Decision-makers under the *Native Title Act 1993* (NTA)

Land Councils as Native Title Representative Bodies	
Section 203AD	<p><i>Commonwealth Minister may recognise representative bodies</i></p> <p>(1) The Commonwealth Minister may, by legislative instrument, recognise, as the representative body for an area or areas, an eligible body that has applied under section 203AB to be the representative body for the area or areas if the Commonwealth Minister is satisfied that:</p> <p>(c) if the body is already a representative body — the body satisfactorily performs its existing functions; and</p> <p>(d) the body would be able to perform satisfactorily the functions of a representative body.</p> <p><i>Period of recognition</i></p> <p>(2) The recognition of the body as a representative body:</p> <p>a) takes effect on the day specified in the instrument of recognition; and</p> <p>b) subject to subsection (3), ceases to have effect at the end of the day specified in that instrument unless the body's recognition is earlier withdrawn under section 203AH.</p> <p>(3A) The period of recognition specified in the instrument of recognition must be at least 1 year but not more than 6 years.</p>
Section 201A	<p><i>Definitions</i></p> <p>In this Part, unless the contrary intention appears:</p> <p>director, in relation to a representative body, means a member of the governing body of the representative body.</p>
Section 203EA	<p>(3) A director of the representative body who has a material personal interest in a matter that is being considered by the body's governing body:</p> <p>a) must not be present during any deliberation by the governing body on the matter; and</p> <p>b) must not take part in any decision of the governing body on the matter.</p>

Land Councils as Native Title Representative Bodies	
Section 5 (Instrument)	For subsection 203AD(1) of the Act, the Northern Land Council is the recognised Representative Body for the area described in Schedule 1.
Section 5 (Instrument)	For subsection 203AD(1) of the Act, the Central Land Council is the recognised Representative Body for the area described in Schedule 1.

Source: Extracts from *Native Title Act 1993* (Cth), Native Title (Recognition as Representative Body–Central Land Council) Instrument 2018, and Native Title (Recognition as Representative Body – Northern Land Council) Instrument 2018.

Appendix 5 Delegation of ALRA powers and functions

- Under section 28, the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) prescribes that the Land Council may delegate its functions and powers, with some exceptions: to the Chair or another member of the Council; or to a member of staff.⁸⁸
- Under subsection 28(2) and section 29A, the Council may also appoint one or more committees of its members to assist it in relation to the performance of any of its functions or the exercise of any of its powers⁸⁹, also with some exceptions.

Table A.4: Delegation under the *Aboriginal Land Rights (Northern Territory) Act 1976*

Delegations under the Aboriginal Land Rights Act 1976 (ALRA)	
Section 28	(1) A Land Council may, in writing under its common seal, delegate to the following: a) the Chair or another member of the Council; and b) a member of the staff of the Council; any of the Council's functions or powers under this Act other than the following:
Section 28	c) the giving or withholding of consent in relation to the acquisition or grant of an estate or interest in Aboriginal land under an agreement or agreements: (i) that will have effect for a period that exceeds, or for periods that together exceed, 2 years; or (ii) in respect of which the approval of the Minister is required by subsection 27(3); ca) the making of a request under section 21E; (variation of LC boundaries); d) the making of determinations under section 35; (application of money); e) the giving or refusing of a consent under subsection 42(1); f) the giving of a consent under section 48C; (exploration licence); g) any function or power prescribed by the regulations.
Section 28	(2) A Land Council may, in writing delegate to a committee appointed under section 29A any of the Council's functions or powers under this Act other than the following: aa) section 21E (varying the border); a) section 35 determinations (application of money); b) any function or power prescribed by the regulations.
Section 28	(4) If the Land Council delegates consenting to an act or things according to the section 23(3) standards then the delegate applies the same standards.
Section 29A	(1) A Land Council may, by notice in writing, appoint a committee or committees of its members to assist the Council in relation to the performance of any of its functions or the exercise of any of its powers.

Source: Extracts from the *Aboriginal Land Rights Act 1976*.

88 The ALRA used to enable the delegation of all or some of the Land Councils' functions or powers to an Aboriginal corporation under section 28A. This was repealed on 13 December 2021.

89 Subsection 27(1) of ALRA also gives the Land Council the power to delegate a function conferred on the Land Council by another Act, provided that the delegation was necessary or convenient. For there to be an authorised delegation it must meet the requirement of conducting 'more effective administration'. The other Act has the capacity to exclude or limit the delegation of the function it confers on the Land Council. *Northern Land Council v Quall* [2020] HCA 33, 7 October 2020.

Appendix 6 Requirements for governance arrangements

Appointment of key governance positions

1. The *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) prescribes how Council and Land Trust members, including the Chair and Deputy Chair of the Council must be appointed.
 - Land Trust members — ALRA (section 7) establishes that, unless the Minister for Indigenous Australians (the Minister) determines otherwise, the membership of Land Trusts will consist of a Chair and three other members, appointed by the Minister, upon receiving from the Land Council nominations of Aboriginal people living in the area of the Land Council, or whose names are set out in a Traditional Owners register. Trust members are appointed for a maximum of five years and are eligible for re-appointment. It does not specify a method to nominate Land Trust members.
 - Council members — ALRA (section 29) establishes Council members' eligibility criteria, and that the Council members shall be Aboriginal people living in the area of the Land Council, or whose names are set out in a Traditional Owners register, chosen by Aboriginal people living in the area of the Land Council in accordance with a 'method of choice'. The method of choice is to be approved by the Minister. Section 29 also establishes that a Land Council may, with the approval of the Minister, co-opt a maximum of five Aboriginal people living in the area of the Land Council as additional members of the Council. A range of disqualifying events apply to candidates for election or to elected members.⁹⁰
 - Chair and Deputy Chair — ALRA (section 30) establishes that the Land Council shall elect two members of that Council as the Chair and the deputy Chair for a period of three years. The Chair and Deputy Chair are eligible for re-election.
 - Land Council staff — ALRA (subsections 27(1) and 27(2)) establish that Land Councils have the power to employ staff, and to determine the terms and conditions of the employment of Land Council staff. It is implied that this includes the Chief Executive Officer (CEO) of the Land Council.

Establishment of committees

2. ALRA (section 29A) establishes that a committee can be appointed by the Council to assist it in relation to the performance of any of its functions or the exercise of any of its powers, and must comprise at least seven members or such other number as is prescribed by the regulations.

Establishment of Council and Committee meeting rules

3. In relation to Council meetings, ALRA (section 31) establishes that:
 - a Land Council must have written rules, which must be approved by the Minister;
 - these rules must be made available for Traditional Owners in the area of the Land Council and any Aboriginal people living in the area of the Land Council to inspect;

90 The disqualifying events are: the person is convicted of an offense (or of two or more offenses, taken cumulatively) not involving dishonesty and sentenced to a period of imprisonment of 12 months or more; or the person is convicted of an offense (or of two or more offenses, taken cumulatively) involving dishonesty and sentenced to a period of imprisonment of three months or more.

- the quorum for meetings must be half the number of the Council members if there is an even number of members in the Council; or half minus one if there is an odd number;
 - a Land Council must keep minutes of its meetings, which Traditional Owners and any Aboriginal living in the area of the Land Council must be able to inspect; and
 - decisions must be made by a majority of the members present, and in the case of an equal vote, the member presiding the meeting will have a casting vote.
4. In relation to committee meetings, section 29A of the ALRA establishes that:
- rules must be established for committee meetings and provided to the Minister; and
 - minutes of meetings must be kept by the Land Council, and made available for Traditional Owners and any Aboriginal living in the area of the Land Council to inspect.

Compiling and maintaining registers

5. ALRA (paragraph 23(1)(g)) prescribes that Land Councils must keep a register of Council members; and a register of Land Trust members which includes descriptions of each area of the land held by the Land Trust(s). Under ALRA (section 24), Land Councils may compile and maintain a register of the Traditional Owners.

Appendix 7 Native title policies, procedures and processes

Table A.5: Northern Land Council's Native Title policies, procedures and processes

Native title function	Summary of policies, processes and procedures	Date	Document status
Facilitation and assistance	The Legal Branch Practice Manual — contains a process for making an application for a native title determination, including the role of the expert anthropologist in preparing materials to support the application, with oversight by the Northern Land Council (NLC) legal and anthropology branches.	May 2020	No review period stated. Not signed by senior management.
	Internal memo on determining the identity of the client ^a — outlines the different clients that the NLC lawyers may represent, which may impact privilege over documents and communications, as well as from whom NLC lawyers accept instructions.	Undated	Not signed by senior management.
	Guidance on drafting affidavits and witness statements in native title matters.	Undated	Not signed by senior management.
Notification	Native Title Future Act Workflows — outlines the process for when a new future act notice in the NLC area is received. It explains branch and team responsibilities for each step.	Undated	Draft version.
	Future Acts Policy and Procedures Guide — sets out the policies and procedures that the NLC follows in responding to future act notices. It includes team member responsibilities, as well as processes for project administration and for entering into an agreement.	Undated	Draft version.
	Future Acts Quick Facts Guide — provides a summary of the future act provisions of the NTA. It outlines the types of acts that would constitute future acts, as well as notice requirements and whether there is a right to compensation.	Undated	Draft version.
	NLC officer roles in future acts — outlines team member responsibilities.	Undated	Not signed by senior management.
	NTG future act notices procedures — lists for different types of notices (such as water extraction licences or extractive mineral exploration).	October 2022	Draft version.
Agreement making	The Legal Branch Practice Manual — covers guidelines on requirements to negotiate in good faith to reach an agreement, as well as templates for negotiated agreements for future acts. It also summarises what Indigenous Land Use Agreements are.	Undated	Not signed by senior management.
	Future Acts Policy and Procedures Guide, and Draft Quick Facts Guide — defines the types of agreements, as well as steps and roles in executing agreements and registering Indigenous Land Use Agreements.	Undated	Draft version.

Native title function	Summary of policies, processes and procedures	Date	Document status
	Future Acts Quick Facts Guide — provides a summary of the future act provisions in under the NTA.	Undated	Draft version.
Promote understanding of NTA matters	No policy, process or procedure.	N/A	N/A

Note a: The NLC defines the client as the person or persons who request services under the Native Title Representative Body's facilitation and assistance functions, or the persons who constitute the native title claim group in relation to a native title determination application.




Source: ANAO analysis of NLC documentation.

Appendix 8 Northern Land Council compliance with the Commonwealth fraud rule

1. Section 10 of the Public Governance, Performance and Accountability Rule 2014 prescribes the six primary measures that the accountable authority of a Commonwealth entity must take to prevent, detect and deal with fraud.

Table A.6: Northern Land Council's compliance with the Commonwealth Fraud Rule

Requirement		Rating
(a) Conduct fraud risk assessments regularly	<p>The Northern Land Council's (NLC's) Fraud and Corruption Control Plan (March 2022) states that 'NLC has a zero tolerance to fraud and unethical behaviour'.</p> <p>In April 2019 the NLC included a risk titled 'fraud risk' in its risk registers. The risk covers fraud risks in relation to financial management, financial reporting and royalties. The August 2022 and February 2023 risk registers listed as mitigations: 'Ensure implementation of policies and procedures, including staff training to follow these policies and procedures', and 'Implement Fraud Control Plan'.</p> <p>While the Fraud and Corruption Control Plan includes an action to monitor fraud and/or conduct corruption risk assessments on a quarterly basis, the NLC has not done this. The February 2023 risk register recorded that the last update to the risk was made in September 2022. The August 2022 risk register recorded that the last update to the risk was in April 2021.</p> <p>Comparison between the August 2022 and February 2023 risk registers show no recorded change in the level of completion of the mitigation plan.</p>	▲
(b) Develop and implement a fraud control plan that deals with identified risks	<p>The NLC has a Fraud and Corruption Policy (June 2022) and a Fraud and Corruption Control Plan.</p> <p>The Fraud and Corruption Control Plan outlines a range of fraud controls including communication of senior management's 'strong' commitment to promoting compliance with the fraud control plan, and policies and training that contribute to prevention (see below). The Fraud and Corruption Control Plan does not draw the link between these controls and fraud risks included in the risk register.</p> <p>The Fraud and Corruption Control Plan refers to several related policies including Code of Conduct, Public Interest Disclosure (Whistle blower) Policy and Procedure and Risk Management Policy.</p>	▲

Requirement		Rating
(c) Have an appropriate mechanism for preventing fraud, including making employees aware of what constitutes fraud	<p>The Fraud and Corruption Policy assigns responsibility to all NLC staff 'for being vigilant in assessing the risk of fraud. This includes identifying, analysing, evaluating and reporting any suspected fraud and to promote a culture of honesty and integrity within the workplace'. The Fraud and Corruption Policy defines the terms 'corruption' and 'fraud'.</p> <p>The Fraud and Corruption Control Plan outlines six areas that contribute to the prevention of fraud: Code of Conduct; fraud and corruption control planning; staff induction training; fraud awareness training; fraud and corruption risk assessment; and internal control. Under the Fraud and Corruption Control Plan, new and existing staff and Council members are to complete mandatory online training about fraud, corruption and IT security. The NLC has not maintained a centralised record of fraud and corruption training attendance.</p> <p>The Fraud and Corruption Control Plan and the Fraud and Corruption Policy are accessible to staff via the NLC intranet. In February 2023 a cyber security and fraud awareness session was delivered to the Corporate Services staff.</p>	
(d) and (e) Have an appropriate mechanism for detecting and investigating fraud, including a confidential reporting process	<p>The NLC's Fraud and Corruption Control Plan identifies three areas that contribute to the detection of fraud: accounting reporting review; <i>Public Interest Disclosure Act 2013</i> arrangements; and external audit.</p> <p>The Fraud and Corruption Policy states that staff must report any suspected fraud to their immediate manager, the General Manager of Corporate Services, or the Chief Executive Officer. Neither the Fraud and Corruption Policy nor the Fraud and Corruption Control Plan specifies whether such reporting is confidential and there is no channel that represents a confidential reporting process.</p>	
(f) Have an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud	<p>The NLC does not have any formal mechanisms for recording incidents of fraud or suspected fraud. The NLC advised the ANAO that this was because management was not aware of any fraud occurring.</p> <p>The NLC's Audit Committee Charter states that the Audit Committee has a responsibility to review reports on fraud from management that outline any significant or systemic allegations of fraud, the status of any ongoing investigations and any changes to identified fraud risk.</p> <p>There was one instance of fraud in 2019–20 (which was identified by a NLC staff member and reported to the police). The one incident of fraud detected in 2019–20 was not recorded or reported to the Audit Committee. The NLC advised the ANAO that it was not reported because the incident was not determined to be significant or systemic.</p>	

Key:  Fully compliant  Partly compliant  Not compliant

Source: ANAO analysis of NLC fraud control policy and records.

Appendix 9 Northern Land Council compliance with corporate plan, annual report and performance statements requirements

Corporate Plan

1. Section 35 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) requires the accountable authority of a Commonwealth entity to prepare a corporate plan in accordance with any prescribed rules and give the corporate plan to the responsible Minister and Finance Minister.
2. Section 16E of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) sets out the relevant requirements for corporate plans which include the period it is to cover, mandated topics, and presentation and publication requirements. The Department of Finance (Finance) also prepares guidance to assist entities to prepare their corporate plan.⁹¹

Table A.7: Compliance of Northern Land Council's 2021–2025 Corporate Plan with PGPA Rule 16E requirement

PGPA Rule 16E	Requirement	Compliance assessment
Reporting period	Was a corporate plan prepared and did it cover the reporting period for which the plan is prepared and at least the following three reporting periods?	◆
1. Introduction	Did the corporate plan include the mandated statements about the report preparation, the reporting period for which it is prepared and the reporting periods covered?	◆
2. Purposes	Does the corporate plan reflect the purpose of the NLC as included in the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (ALRA) in a clear and concise way?	▲
3. Key activities	Does the corporate plan identify the key activities the NLC will undertake in order to achieve its purposes? ^a	◆
4. Operating context	Does the corporate plan include discussion of the NLC's operating context in relation to the environment, capabilities, risk oversight, cooperation and subsidiaries, for the entire period covered by the plan?	▲ ^b
5. Performance	Does the corporate plan set out details of how the NLC's performance in achieving its purposes will be measured and assessed through: a) performance measures which meet the requirements of the PGPA Rule; and b) targets for each performance measure where it is reasonably practicable to set a target?	▲

91 Department of Finance, *Corporate plans for Commonwealth entities, Resource Management Guide No. 132* [Internet], Finance, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/corporate-plans-commonwealth-entities-rmg-132/what-include-corporate-plan> [accessed 9 March 2023].

PGPA Rule 16E Requirement		Compliance assessment
Publication timeliness	Was the corporate plan published on the entity's website by 31 August?	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Note a: In the NLC 2021–2025 Corporate Plan, 'key activities' are labelled 'objectives'.

Note b: Deficiencies in the discussion of risk were improved in the 2022–2026 Corporate Plan.

Source: ANAO analysis of Northern Land Council 2021–2025 Corporate Plan.

Annual report

3. Annual reporting requirements are established in the PGPA Act and the PGPA Rule. Guidance issued by Finance outlines mandatory content, preparation and publication arrangements and defines mandatory digital publication requirements.

4. The ALRA also requires Land Councils to include in their annual report information relating to fees; amounts held or paid under certain agreements; and details about committees, township leases and consultants.

Table A.8: Compliance of Northern Land Council's 2021–22 Annual Report with PGPA Act, PGPA Rule and ALRA requirements

PGPA Act or Rule / ALRA	Requirement	Compliance assessment
Timeliness <i>PGPA Act section 46</i>	Has the NLC's accountable authority prepared and given the Minister an annual report by 15 October for presentation to the Parliament? If not, has the Minister granted an extension of the period to provide the report?	◆
Approval <i>PGPA Rule section 17BB</i>	Was the NLC's annual report approved and signed by the accountable authority or a member of the accountable authority, and did it state that the accountable authority is responsible for preparing and giving the annual report to the Minister?	◆
Regard to audience <i>PGPA Rule section 17BD</i>	Was the NLC's annual report prepared having regard to the interests of the Parliament and any other persons who are interested in the annual report and was the information included relevant, reliable, concise, understandable and balanced?	◆
Content <i>PGPA Rule section 17BE</i>	Did the NLC's annual report include selected details: the legislation establishing the body; information on the accountable authority, or each member of the accountable authority; and any significant activities and changes that affected the operations or structure of the entity during the period?	◆
<i>ALRA section 37</i>	Did the NLC's annual report include specific details under the ALRA including certain fees received, determinations made, amounts paid, leases granted, committees appointed and consultants engaged?	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Source: ANAO analysis of Northern Land Council's 2021–22 Annual Report.

Annual performance statements

5. The annual performance statements of an entity, published in the annual report, must provide information about the entity's performance in achieving its purposes and comply with any requirements prescribed under section 16F of the PGPA Rule.

6. This audit examined whether, at a high level, the measures and targets provide meaningful performance information. It did not assess whether the Land Council's performance statements met the requirements of the PGPA Rule, and in particular draws no conclusions about reliability, verifiability, potential bias or measurability over time. The Auditor-General's functions include auditing the annual performance statements of Australian Government entities in accordance with the PGPA Act as set out in section 15 of the *Auditor-General Act 1997*. These audits apply a comprehensive methodology to the assessment of selected entities' performance statements. See Auditor-General Report No.23 2021–22 *Audit of the Annual Performance Statements of Australian Government Entities – Pilot program 2020–21*.

Table A.9: Compliance of Northern Land Council's 2021–22 Annual Performance Statements with PGPA Rule section 16F requirements

PGPA Rule 16F	Requirement	Compliance assessment
1. Statement ^a	Does the accountable authority statement include the relevant information about the basis of preparation of the Annual Performance Statements?	◆
2. Performance results	Do the performance statements include the results of the measurement and assessment in the reporting period in achieving its purposes?	◆
3. Performance analysis	Do the performance statements include an analysis of the factors that may have contributed to the entity's performance in achieving its purposes in the reporting period?	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Note a: The statement should include a declaration that the performance statements were prepared as soon as practicable after the end of each reporting period for the entity; specifying the relevant reporting period; and presenting accurately the entity's performance, including by providing information about the entity's performance in achieving its purposes and complying with any requirements prescribed by the PGPA Rule.

Source: ANAO analysis of the Northern Land Council's 2021–22 Annual Performance Statements.

Appendix 10 Northern Land Council compliance with Audit Committee requirements and guidance

1. The purpose of an audit committee is to provide independent advice and assurance to the entity's accountable authority. Section 45 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) states that the accountable authority of a Commonwealth entity must ensure that the entity has an audit committee. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) states that the accountable authority of a Commonwealth entity must, by written charter, determine the functions of the audit committee for the entity, and that these must include reviewing the appropriateness of the accountable authority's financial and performance reporting; system of risk oversight and management; and system of internal control for the entity.⁹² The PGPA rule also states that the audit committee of a corporate Commonwealth entity must consist of at least three persons who are not employees of the entity and who have appropriate qualifications, knowledge, skills and experience.

2. In September 2021 the Department of Finance released a guide (Finance guidance) for corporate Commonwealth entities on the role of audit committees.⁹³ The Finance guidance sets out the better practice principles for the establishment and operation of a corporate Commonwealth entity audit committee, to help ensure that the committee provides independent advice and assurance to the entity's accountable authority. The Finance guidance states that:

Audit committees are integral to good corporate governance. They provide advice to accountable authorities, assist them to meet their duties and obligations, and support the development of key practice and capacity within corporate Commonwealth entities.⁹⁴

Table A.10: Effectiveness of the Northern Land Council Audit Committee Charter and member composition

Requirement/ Guidance	Detail	Compliance assessment
Charter		
Mandatory inclusions <i>PGPA Rule subsections 17(1) and (2)</i>	The accountable authority must, by written charter, determine the functions of the audit committee for the entity, which must include the review of the entity's financial reporting; performance reporting; system of risk oversight and management; and system of internal control.	◆
Other functions and matters <i>Finance guidance, p. 10</i>	The charter may also cover other functions and matters including: membership and tenure of the audit committee, administrative arrangements for the conduct of the audit committee, requirement to disclose conflict of interest and assessment of the audit committee performance.	◆

⁹² *Public Governance, Performance and Accountability Rule 2014*, section 17.

⁹³ Department of Finance, *A guide for corporate Commonwealth entities on the role of audit committees*, September 2021.

⁹⁴ Department of Finance, *Resource Management Guide 202 – A guide for corporate Commonwealth entities on the role of audit committees*, Finance, 2021, p. 5.

Requirement/ Guidance	Detail	Compliance assessment
Member characteristics		
Skills and experience <i>PGPA Rule subsection 17(3)</i>	The audit committee must consist of at least three persons who have appropriate qualifications, knowledge, skills or experience to assist the committee to perform its functions. The members of the audit committee must be persons who are not employees of the entity.	◆
Independence <i>Finance guidance, section 2.1</i>	To effectively deliver its function, the audit committee needs to be independent from management.	◆
Remuneration <i>Finance guidance, section 2.4</i>	The remuneration of audit committee members should be commensurate with the importance of their responsibilities and the commitment required.	◆
Rotation <i>Finance guidance, section 2.5</i>	It is important to rotate the audit committee members to allow for a flow of skills and talent through the committee, enhancing its effectiveness and ensuring its objectivity.	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Source: ANAO analysis.

3. Finance guidance states that the audit committee 'should inherently have sound knowledge of the entity's operating context... In order to understand and review the entity's processes and systems the committee also actively pursues information from relevant areas of the entity.'⁹⁵

Table A.11: Effectiveness of the Northern Land Council Audit Committee operations

Requirement/ Guidance	Detail	Compliance assessment
Delivering the Audit Committee's mandatory functions		
Financial reporting <i>PGPA Rule paragraph 17(2)(a)</i>	The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority's financial reporting. This could entail the audit committee reviewing the financial information systems and the entity's compliance with the mandatory legislative and accounting standards requirements.	◆
Performance reporting <i>PGPA Rule paragraph 17(2)(b)</i>	The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority's performance reporting. To fulfil this function an audit committee must review the entity's performance information, systems and framework and the completeness and appropriateness of performance reporting.	▲

⁹⁵ Department of Finance, *Guide for corporate Commonwealth entities on the role of audit committees*, September 2019, p. 11.

Requirement/ Guidance	Detail	Compliance assessment
System of risk oversight and management <i>PGPA Rule paragraph 17(2)(c)</i>	The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority's system of risk oversight and management. The audit committee role would include reviewing whether identified risks and their treatments are consistent with the entity's operating context and the committee's experience in risk management.	◆
System of internal control <i>PGPA Rule paragraph 17(2)(d)</i>	The PGPA Rule requires that the audit committee review the appropriateness of the accountable authority's system of internal control. The audit committee could take a risk-based approach to ensure that the key elements of internal control are present.	◆
Mandatory reporting		
Charter and committee members <i>PGPA Rule section 17AG</i>	The annual report must include a direct electronic link to the charter, and information about the committee members including name, qualifications, meeting attendance and remuneration.	▲
Written statement <i>Finance guidance, sections 1.1.3; 1.2.3; 1.3.3; and 1.4.3</i>	The advice to the [accountable authority] from its audit committee should be documented in the form of a written statement of its view of the appropriateness of the [accountable authority's] financial reporting; performance reporting; system of risk oversight and management; and system of internal control.	▲
Assessment of committee performance <i>Finance guidance, section 3.7</i>	It is good practice for an [accountable authority] to regularly review the audit committee's performance and assess its conduct and deliverables against the committee charter.	◆

Key: ◆ Fully compliant ▲ Partly compliant ■ Not compliant

Source: ANAO analysis, based on analysis of audit committee minutes and papers for 2021–22.